

110TH CONGRESS
1ST SESSION

S. 465

To amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2007

Mr. NELSON of Florida (for himself, Mr. LUGAR, Mr. ROCKEFELLER, Ms. COLLINS, Mr. DURBIN, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Advance Directives Im-
5 provement and Education Act of 2007”.

6 **SEC. 2. ADVANCE DIRECTIVES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) Every year 2,500,000 people die in the
10 United States. Eighty percent of those people die in
11 institutions such as hospitals, nursing homes, and
12 other facilities. Chronic illnesses, such as cancer and
13 heart disease, account for 2 out of every 3 deaths.

14 (2) In 1997, the Supreme Court of the United
15 States, in its decisions in *Washington v. Glucksberg*
16 and *Vacco v. Quill*, reaffirmed the constitutional
17 right of competent adults to refuse unwanted med-
18 ical treatment. In those cases, the Court stressed the
19 use of advance directives as a means of safeguarding
20 that right should those adults become incapable of
21 deciding for themselves.

22 (3) A survey published in 2005 estimated that
23 the overall prevalence of advance directives is 29
24 percent of the general population, despite the pas-
25 sage of the Patient Self-Determination Act in 1990,

1 which requires that health care providers tell pa-
2 tients about advance directives.

3 (4) Competent adults should complete advance
4 care plans stipulating their health care decisions in
5 the event that they become unable to speak for
6 themselves. Through the execution of advance direc-
7 tives, including living wills and durable powers of at-
8 torney for health care according to the laws of the
9 State in which they reside, individuals can protect
10 their right to express their wishes and have them re-
11 spected.

12 (b) PURPOSES.—The purposes of this section are to
13 improve access to information about individuals' health
14 care options and legal rights for care near the end of life,
15 to promote advance care planning and decisionmaking so
16 that individuals' wishes are known should they become un-
17 able to speak for themselves, to engage health care pro-
18 viders in disseminating information about and assisting in
19 the preparation of advance directives, which include living
20 wills and durable powers of attorney for health care, and
21 for other purposes.

22 (c) MEDICARE COVERAGE OF END-OF-LIFE PLAN-
23 NING AND CONSULTATIONS AS PART OF INITIAL PREVEN-
24 TIVE PHYSICAL EXAMINATION.—

8 (B) by adding at the end the following new
9 paragraph:

“(3) For purposes of paragraph (1), the term ‘end-of-life planning consultation’ means a consultation between the physician and an individual regarding—

13 “(A) the importance of preparing advance di-
14 rectives in case an injury or illness causes the indi-
15 vidual to be unable to make health care decisions;

16 “(B) the situations in which an advance direc-
17 tive is likely to be relied upon;

18 “(C) the reasons that the development of a
19 comprehensive end-of-life plan is beneficial and the
20 reasons that such a plan should be updated periodi-
21 cally as the health of the individual changes;

22 “(D) the identification of resources that an in-
23 dividual may use to determine the requirements of
24 the State in which such individual resides so that
25 the treatment wishes of that individual will be car-

1 ried out if the individual is unable to communicate
2 those wishes, including requirements regarding the
3 designation of a surrogate decision maker (health
4 care proxy); and

5 “(E) whether or not the physician is willing to
6 follow the individual’s wishes as expressed in an ad-
7 vance directive.”.

8 (2) EFFECTIVE DATE.—The amendments made
9 by paragraph (1) shall apply to initial preventive
10 physical examinations provided on or after January
11 1, 2008.

12 (d) IMPROVEMENT OF POLICIES RELATED TO THE
13 USE AND PORTABILITY OF ADVANCE DIRECTIVES.—

14 (1) MEDICARE.—Section 1866(f) of the Social
15 Security Act (42 U.S.C. 1395cc(f)) is amended—

16 (A) in paragraph (1)—

17 (i) in subparagraph (B), by inserting
18 “and if presented by the individual (or on
19 behalf of the individual), to include the
20 content of such advance directive in a
21 prominent part of such record” before the
22 semicolon at the end;

23 (ii) in subparagraph (D), by striking
24 “and” after the semicolon at the end;

1 (iii) in subparagraph (E), by striking
2 the period at the end and inserting “;
3 and”; and

4 (iv) by inserting after subparagraph
5 (E) the following new subparagraph:

6 “(F) to provide each individual with the oppor-
7 tunity to discuss issues relating to the information
8 provided to that individual pursuant to subpara-
9 graph (A) with an appropriately trained profes-
10 sional.”;

11 (B) in paragraph (3), by striking “a writ-
12 ten” and inserting “an”; and

13 (C) by adding at the end the following new
14 paragraph:

15 “(5)(A) In addition to the requirements of paragraph
16 (1), a provider of services, Medicare Advantage organiza-
17 tion, or prepaid or eligible organization (as the case may
18 be) shall give effect to an advance directive executed out-
19 side the State in which such directive is presented, even
20 one that does not appear to meet the formalities of execu-
21 tion, form, or language required by the State in which it
22 is presented to the same extent as such provider or organi-
23 zation would give effect to an advance directive that meets
24 such requirements, except that a provider or organization
25 may decline to honor such a directive if the provider or

1 organization can reasonably demonstrate that it is not an
2 authentic expression of the individual's wishes concerning
3 his or her health care. Nothing in this paragraph shall
4 be construed to authorize the administration of medical
5 treatment otherwise prohibited by the laws of the State
6 in which the directive is presented.

7 “(B) The provisions of this paragraph shall preempt
8 any State law to the extent such law is inconsistent with
9 such provisions. The provisions of this paragraph shall not
10 preempt any State law that provides for greater port-
11 ability, more deference to a patient's wishes, or more lati-
12 tude in determining a patient's wishes.”.

13 (2) MEDICAID.—Section 1902(w) of the Social
14 Security Act (42 U.S.C. 1396a(w)) is amended—

15 (A) in paragraph (1)—

16 (i) in subparagraph (B)—

17 (I) by striking “in the individ-
18 ual's medical record” and inserting
19 “in a prominent part of the individ-
20 ual's current medical record”; and

21 (II) by inserting “and if pre-
22 sented by the individual (or on behalf
23 of the individual), to include the con-
24 tent of such advance directive in a

3 (ii) in subparagraph (D), by striking
4 “and” after the semicolon at the end;

5 (iii) in subparagraph (E), by striking
6 the period at the end and inserting “;
7 and”; and

8 (iv) by inserting after subparagraph
9 (E) the following new subparagraph:

10 “(F) to provide each individual with the oppor-
11 tunity to discuss issues relating to the information
12 provided to that individual pursuant to subpara-
13 graph (A) with an appropriately trained profes-
14 sional.”;

15 (B) in paragraph (4), by striking “a writ-
16 ten” and inserting “an”; and

17 (C) by adding at the end the following
18 paragraph:

19 “(6)(A) In addition to the requirements of paragraph
20 (1), a provider or organization (as the case may be) shall
21 give effect to an advance directive executed outside the
22 State in which such directive is presented, even one that
23 does not appear to meet the formalities of execution, form,
24 or language required by the State in which it is presented
25 to the same extent as such provider or organization would

1 give effect to an advance directive that meets such require-
2 ments, except that a provider or organization may decline
3 to honor such a directive if the provider or organization
4 can reasonably demonstrate that it is not an authentic ex-
5 pression of the individual's wishes concerning his or her
6 health care. Nothing in this paragraph shall be construed
7 to authorize the administration of medical treatment oth-
8 erwise prohibited by the laws of the State in which the
9 directive is presented.

10 “(B) The provisions of this paragraph shall preempt
11 any State law to the extent such law is inconsistent with
12 such provisions. The provisions of this paragraph shall not
13 preempt any State law that provides for greater port-
14 ability, more deference to a patient's wishes, or more lati-
15 tude in determining a patient's wishes.”.

16 (3) EFFECTIVE DATES.—

17 (A) IN GENERAL.—Subject to subparagraph
18 (B), the amendments made by para-
19 graphs (1) and (2) shall apply to provider
20 agreements and contracts entered into, re-
21 newed, or extended under title XVIII of the So-
22 cial Security Act (42 U.S.C. 1395 et seq.), and
23 to State plans under title XIX of such Act (42
24 U.S.C. 1396 et seq.), on or after such date as
25 the Secretary of Health and Human Services

1 specifies, but in no case may such date be later
2 than 1 year after the date of enactment of this
3 Act.

(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (2), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

24 (e) INCREASING AWARENESS OF THE IMPORTANCE
25 OF END-OF-LIFE PLANNING.—Title III of the Public

1 Health Service Act (42 U.S.C. 241 et seq.) is amended
2 by adding at the end the following new part:

3 **“PART R—PROGRAMS TO INCREASE AWARENESS**

4 **OF ADVANCE DIRECTIVE PLANNING ISSUES**

5 **“SEC. 399Z-1. ADVANCE DIRECTIVE EDUCATION CAM-
6 PAIGNS AND INFORMATION CLEARING-
7 HOUSES.**

8 “(a) ADVANCE DIRECTIVE EDUCATION CAMPAIGN.—

9 The Secretary shall, directly or through grants awarded
10 under subsection (c), conduct a national public education
11 campaign—

12 “(1) to raise public awareness of the impor-
13 tance of planning for care near the end of life;

14 “(2) to improve the public’s understanding of
15 the various situations in which individuals may find
16 themselves if they become unable to express their
17 health care wishes;

18 “(3) to explain the need for readily available
19 legal documents that express an individual’s wishes,
20 through advance directives (including living wills,
21 comfort care orders, and durable powers of attorney
22 for health care); and

23 “(4) to educate the public about the availability
24 of hospice care and palliative care.

1 “(b) INFORMATION CLEARINGHOUSE.—The Sec-
2 retary, directly or through grants awarded under sub-
3 section (c), shall provide for the establishment of a na-
4 tional, toll-free, information clearinghouse as well as clear-
5 inghouses that the public may access to find out about
6 State-specific information regarding advance directive and
7 end-of-life decisions.

8 “(c) GRANTS.—

9 “(1) IN GENERAL.—The Secretary shall use at
10 least 60 percent of the funds appropriated under
11 subsection (d) for the purpose of awarding grants to
12 public or nonprofit private entities (including States
13 or political subdivisions of a State), or a consortium
14 of any of such entities, for the purpose of conducting
15 education campaigns under subsection (a) and estab-
16 lishing information clearinghouses under subsection
17 (b).

18 “(2) PERIOD.—Any grant awarded under para-
19 graph (1) shall be for a period of 3 years.

20 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to carry out this section
22 \$25,000,000.”.

23 (f) GAO STUDY AND REPORT ON ESTABLISHMENT
24 OF NATIONAL ADVANCE DIRECTIVE REGISTRY.—

16 (g) EFFECTIVE DATE.—Except as provided in sub-
17 sections (c) and (d), this section and the amendments
18 made by this section shall take effect on the date of enact-
19 ment of this Act.

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