

111TH CONGRESS  
1ST SESSION

# S. 1263

To amend title XVIII of the Social Security Act to provide for advanced illness care management services for Medicare beneficiaries, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 15, 2009

Mr. WARNER introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to provide for advanced illness care management services for Medicare beneficiaries, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Senior Navigation and Planning Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Medicare and Medicaid coverage of advanced illness care management services.

Sec. 3. Increasing awareness of the importance of end-of-life planning.

- Sec. 4. Inclusion of end-of-life planning materials in the Medicare & You handbook.
- Sec. 5. Senior Navigation Advisory Board.
- Sec. 6. Requirement for physicians and nurse practitioners to provide certain Medicare beneficiaries with information on advance directives and other end-of-life planning tools.
- Sec. 7. Improvement of policies related to the use and portability of advance directives.
- Sec. 8. Additional requirements for facilities.
- Sec. 9. Requirement for Medicare providers to honor written orders for medical care.
- Sec. 10. Incentives for accreditation and certification in hospice and palliative care.
- Sec. 11. Discharge checklist pilot program.
- Sec. 12. Office of Medicare/Medicaid Integration.
- Sec. 13. Web-based materials and grants.
- Sec. 14. HHS study and report on the storage of advance directives.
- Sec. 15. GAO study and report on the provisions of, and amendments made by, this Act.

1 **SEC. 2. MEDICARE AND MEDICAID COVERAGE OF AD-**  
 2 **VANCED ILLNESS CARE MANAGEMENT SERV-**  
 3 **ICES.**

4 (a) **MEDICARE COVERAGE OF ADVANCED ILLNESS**  
 5 **CARE MANAGEMENT SERVICES.—**

6 (1) **COVERAGE.**—Section 1812(a)(5) of the So-  
 7 cial Security Act (42 U.S.C. 1395d(a)(5)) is amend-  
 8 ed to read as follows:

9 “(5) for individuals who have a life expectancy  
 10 of 18 months or less and who have not made an  
 11 election under subsection (d)(1) to receive hospice  
 12 care under this part, advanced illness care manage-  
 13 ment services (as defined in section 1861(hhh)).”.

14 (2) **DEFINITION.**—Section 1861 of the Social  
 15 Security Act (42 U.S.C. 1395x) is amended by add-  
 16 ing at the end the following new subsection:

1           “Advanced Illness Care Management Services

2           “(hhh)(1) The term ‘advanced illness care manage-  
3 ment services’ means the following services furnished to  
4 an individual by a hospice program, as defined in sub-  
5 section (dd)(2):

6           “(A) Palliative care consultation services.

7           “(B) Care planning services.

8           “(C) Counseling of individual and family mem-  
9 bers.

10          “(D) Discussions regarding the availability of  
11 supportive services (including information on ad-  
12 vance care planning).

13          “(E) Patient-centered care.

14          “(F) Family conference services.

15          “(G) Respite services.

16          “(H) Onsite caregiver training.

17          “(I) Such other services as may be appropriate  
18 under a hospice model of care.

19          “(2) For purposes of paragraph (1)(F), the term  
20 ‘family conference services’ means a family conference  
21 held by a hospice program (as so defined) for the indi-  
22 vidual and the family members of the individual, including  
23 services for the facilitation and provision of adequate fol-  
24 low-up to such family conference, which includes addi-  
25 tional collaboration and coordination with the hospice phy-

1 sician or other hospice personnel to clarify and put into  
2 action the goals of care as outlined by the individual and  
3 the family members of the individual.

4 “(3)(A) For purposes of paragraph (1)(G), the term  
5 ‘respite services’ means the provision of additional hours  
6 of care to individuals who are unable to perform 2 or more  
7 activities of daily living. Such services shall be targeted  
8 toward furnishing services to the individual and providing  
9 the caregivers of the individual a needed break outside of  
10 the home of the individual.

11 “(B) For purposes of subparagraph (A), the Sec-  
12 retary shall establish, on an annual basis, a minimum and  
13 maximum number of hours (not to exceed 16 hours each  
14 month) for which respite services may be provided to indi-  
15 viduals eligible to receive such services.

16 “(C) In subparagraph (A), the term ‘activities of  
17 daily living’ means bathing, transferring, toileting, and  
18 feeding.

19 “(4) For purposes of paragraph (1)(H), the term ‘on-  
20 site caregiver training’ means training provided to the  
21 caregivers of an individual, which is focused on training  
22 such caregivers to provide effective personal and technical  
23 care to individuals, with an emphasis on what the care-  
24 giver can expect with the disease process of the individual  
25 or the needs of the individual at the end of life. Such train-

1 ing shall be pragmatic and easily understood by non-  
2 health professionals as well as culturally and educationally  
3 appropriate.

4 “(5) In the case of a hospice program that is fur-  
5 nishing advanced illness care management services to an  
6 individual who becomes eligible for hospice care under this  
7 title, the hospice program shall notify the individual of  
8 such eligibility.”.

9 (3) PAYMENT BASED ON THE PHYSICIAN FEE  
10 SCHEDULE.—Section 1814(i)(4) of the Social Secu-  
11 rity Act (42 U.S.C. 1395f(i)(4)) is amended to read  
12 as follows:

13 “(4) The amount paid to a hospice program with re-  
14 spect to the advanced illness care management services (as  
15 defined in section 1861(hhh)) for which payment may be  
16 made under this part shall be—

17 “(A) with respect to such services, other than  
18 respite services, furnished by a hospice physician, an  
19 amount equal to the amount that would be paid for  
20 an equivalent physician consultation under the fee  
21 schedule established under section 1848(b);

22 “(B) with respect to such services, other than  
23 respite services, furnished by other hospice per-  
24 sonnel, an amount equal to 85 percent of such fee  
25 schedule amount; and

1           “(C) with respect to respite services, payment  
2 shall be at an appropriate rate to be determined by  
3 the Secretary”.

4           (4) CONFORMING AMENDMENTS.—Section  
5 1862(a) of the Social Security Act (42 U.S.C.  
6 1395y(a)) is amended—

7           (A) in paragraph (1)—

8                 (i) by striking “and” at the end of  
9 subparagraph (N);

10                (ii) by striking the semicolon at the  
11 end of subparagraph (O) and inserting “,  
12 and”; and

13                (iii) by adding at the end the fol-  
14 lowing new subparagraph:

15           “(P) in the case of advanced illness care  
16 management services which are respite services  
17 (as defined in section 1861(hhh)(3)), which are  
18 performed more frequently than is provided  
19 under clause (ii) of such section;” and

20           (B) in paragraph (7), by striking “or (K)”  
21 and inserting “(K), or (P)”.

22           (5) EFFECTIVE DATE.—The amendments made  
23 by this subsection shall apply to services furnished  
24 on or after January 1, 2011.

1 (b) MEDICAID COVERAGE OF ADVANCED ILLNESS  
2 CARE MANAGEMENT SERVICES.—

3 (1) IN GENERAL.—Section 1905(a) of the So-  
4 cial Security Act (42 U.S.C. 1396d(a)) is amend-  
5 ed—

6 (A) by redesignating paragraph (28) as  
7 paragraph (29);

8 (B) in paragraph (27), by striking at the  
9 end “and”; and

10 (C) by inserting after paragraph (27) the  
11 following new paragraph:

12 “(28) advanced illness care management serv-  
13 ices (as defined in section 1861(hhh)) for individuals  
14 described in section 1812(a)(5); and”.

15 (2) CONFORMING AMENDMENT.—Section  
16 1902(a)(10)(A) of the Social Security Act (42  
17 U.S.C. 1396a(a)(10)(A)) is amended by striking  
18 “and (21)” and inserting “, (21), and (28)”.

19 (3) EFFECTIVE DATE.—

20 (A) IN GENERAL.—Except as provided in  
21 subparagraph (B), the amendments made by  
22 paragraphs (1) and (2) take effect on January  
23 1, 2011.

24 (B) EXTENSION OF EFFECTIVE DATE FOR  
25 STATE LAW AMENDMENT.—In the case of a

1 State plan under title XIX of the Social Secu-  
2 rity Act (42 U.S.C. 1396 et seq.) which the  
3 Secretary determines requires State legislation  
4 in order for the plan to meet the additional re-  
5 quirements imposed by the amendments made  
6 by paragraph (1), the State plan shall not be  
7 regarded as failing to comply with the require-  
8 ments of such title solely on the basis of its fail-  
9 ure to meet these additional requirements be-  
10 fore the first day of the first calendar quarter  
11 beginning after the close of the first regular  
12 session of the State legislature that begins after  
13 the date of enactment of this Act. For purposes  
14 of the previous sentence, in the case of a State  
15 that has a 2-year legislative session, each year  
16 of the session is considered to be a separate  
17 regular session of the State legislature.

18 (c) EDUCATION ON ADVANCED ILLNESS CARE MAN-  
19 AGEMENT SERVICES.—The Secretary of Health and  
20 Human Services (in this section referred to as the “Sec-  
21 retary”) shall establish a program under which physicians  
22 (as defined in subsection (r) of section 1861 of the Social  
23 Security Act (42 U.S.C. 1395x)) are educated on the cov-  
24 erage of advanced illness care management services (as de-  
25 fined in subsection (hhh) of such section) under the Medi-

1 care and Medicaid programs under titles XVIII and XIX,  
 2 respectively, of the Social Security Act (42 U.S.C. 1395  
 3 et seq.; 1396 et seq.), including the importance of early  
 4 intervention in providing such care to individuals.

5 **SEC. 3. INCREASING AWARENESS OF THE IMPORTANCE OF**  
 6 **END-OF-LIFE PLANNING.**

7 Title III of the Public Health Service Act (42 U.S.C.  
 8 241 et seq.) is amended by adding at the end the following  
 9 new part:

10 **“PART S—PROGRAMS TO INCREASE AWARENESS**  
 11 **OF ADVANCE CARE PLANNING ISSUES**

12 **“SEC. 399GG. ADVANCE CARE PLANNING EDUCATION CAM-**  
 13 **PAIGNS AND INFORMATION PHONE LINE AND**  
 14 **CLEARINGHOUSE.**

15 “(a) ADVANCE CARE PLANNING EDUCATION CAM-  
 16 PAIGN.—The Secretary shall, directly or through grants  
 17 awarded under subsection (e), conduct a national public  
 18 education campaign—

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

21 “(2) to improve the public’s understanding of  
 22 the various situations in which individuals may find  
 23 themselves if they become unable to express their  
 24 health care wishes;

1           “(3) to explain the need for readily available  
2           legal documents that express an individual’s wishes  
3           through—

4                   “(A) advance directives (including living  
5                   wills, comfort care orders, and durable powers  
6                   of attorney for health care); and

7                   “(B) other planning tools, such as a physi-  
8                   cian’s orders for life-sustaining treatment  
9                   (POLST); and

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

12           “(b) INFORMATION PHONE LINE AND CLEARING-  
13           HOUSE.—The Secretary, directly or through grants  
14           awarded under subsection (c), shall provide for the estab-  
15           lishment of a national, toll-free, information telephone line  
16           and a clearinghouse that the public and health care profes-  
17           sionals may access to find out about State-specific and  
18           other information regarding advance directive and end-of-  
19           life decisions.

20           “(c) GRANTS.—

21                   “(1) IN GENERAL.—The Secretary shall use  
22                   funds appropriated under subsection (d) for the pur-  
23                   pose of awarding grants to public or nonprofit pri-  
24                   vate entities (including States or political subdivi-  
25                   sions of a State), or a consortium of any of such en-

1       tities, for the purpose of conducting education cam-  
2       paigns under subsection (a).

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

5               “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
6       are authorized to be appropriated—

7               “(1) for purposes of carrying out subsection  
8       (b), \$5,000,000 for fiscal year 2010 and each subse-  
9       quent year; and

10              “(2) for purposes of making grants under sub-  
11       section (c), \$10,000,000 for fiscal year 2010, to re-  
12       main available until expended.”.

13       **SEC. 4. INCLUSION OF END-OF-LIFE PLANNING MATERIALS**  
14                               **IN THE MEDICARE & YOU HANDBOOK.**

15              “(a) IN GENERAL.—Section 1804(a) of the Social Se-  
16       curity Act (42 U.S.C. 1395b–2(a)) is amended—

17              (1) in paragraph (2), by striking “and” at the  
18       end;

19              (2) in paragraph (3), by striking the period at  
20       the end and inserting “; and”; and

21              (3) by inserting after paragraph (3) the fol-  
22       lowing new paragraph:

23              “(4) information on advance directives, other  
24       end-of-life planning tools, and the hospice care ben-  
25       efit under this title.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to notices distributed on or after  
3 January 1, 2011.

4 **SEC. 5. SENIOR NAVIGATION ADVISORY BOARD.**

5 (a) ESTABLISHMENT.—The Secretary of Health and  
6 Human Services shall establish the Senior Navigation Ad-  
7 visory Board (in this section referred to as the “Advisory  
8 Board”).

9 (b) MEMBERSHIP.—The Board shall be comprised of  
10 advocates, researchers, government officials, health care  
11 providers, ethicists, caregivers, and other individuals with  
12 expertise in issues related to end-of-life care.

13 (c) DUTIES.—The Advisory Board shall advise the  
14 Secretary on issues related to end-of-life care and advance  
15 care planning, including how to—

16 (1) increase patients’ quality of life;

17 (2) reduce current legal hurdles to the enforce-  
18 ment of advance directives;

19 (3) encourage provider participation in edu-  
20 cational and training activities surrounding ad-  
21 vanced illnesses and end-of-life care planning;

22 (4) develop quality and outcome measures that  
23 hospice programs should report for advanced illness  
24 care management services (as defined in section

1 1861(hhh) of the Social Security Act, as added by  
2 section 2);

3 (5) determine what information should be dis-  
4 cussed in discharge planning; and

5 (6) enhance advance care planning.

6 (d) APPLICATION OF FACA.—The Federal Advisory  
7 Committee Act (5 U.S.C. App.) shall apply to the Advisory  
8 Board.

9 (e) PAY AND REIMBURSEMENT.—

10 (1) NO COMPENSATION FOR MEMBERS OF ADVI-  
11 SORY BOARD.—Except as provided in paragraph (2),  
12 a member of the Advisory Board may not receive  
13 pay, allowances, or benefits by reason of their serv-  
14 ice on the Board.

15 (2) TRAVEL EXPENSES.—Each member shall  
16 receive travel expenses, including per diem in lieu of  
17 subsistence under subchapter I of chapter 57 of title  
18 5, United States Code.

19 (f) REPORT.—Not later than 3 years after the estab-  
20 lishment of the Advisory Board, the Advisory Board shall  
21 submit to Congress a final report containing the findings  
22 and conclusions of the Advisory Board, together with rec-  
23 ommendations for such legislation and administrative ac-  
24 tions as the Advisory Board considers appropriate.

1 (g) TERMINATION.—The Advisory Board shall termi-  
 2 nate 30 days after submitting the report under subsection  
 3 (f).

4 (h) AUTHORIZATION OF APPROPRIATIONS.—There  
 5 are authorized to be appropriated such sums as may be  
 6 necessary to carry out this section.

7 **SEC. 6. REQUIREMENT FOR PHYSICIANS AND NURSE PRAC-**  
 8 **TITIONERS TO PROVIDE CERTAIN MEDICARE**  
 9 **BENEFICIARIES WITH INFORMATION ON AD-**  
 10 **VANCE DIRECTIVES AND OTHER END-OF-LIFE**  
 11 **PLANNING TOOLS.**

12 Section 1834 of the Social Security Act (42 U.S.C.  
 13 1395m) is amended by adding at the end the following  
 14 new subsection:

15 “(n) REQUIREMENT FOR PHYSICIANS AND NURSE  
 16 PRACTITIONERS TO PROVIDE CERTAIN INDIVIDUALS  
 17 WITH INFORMATION ON ADVANCE DIRECTIVES AND  
 18 OTHER END-OF-LIFE PLANNING TOOLS.—

19 “(1) IN GENERAL.—No payment may be made  
 20 under this title to a physician (as defined in section  
 21 1861(r)) or a nurse practitioner (as defined in sec-  
 22 tion 1861(aa)(5)(A)) for items and services fur-  
 23 nished on or after January 1, 2014, unless the phy-  
 24 sician or nurse practitioner agrees (under a process  
 25 established by the Secretary) to provide individuals

1 described in paragraph (2) with information on ad-  
 2 vance directives and other end-of-life planning tools.  
 3 Such information shall be provided in a form and  
 4 manner, and at a time, determined appropriate by  
 5 the Secretary.

6 “(2) INDIVIDUAL DESCRIBED.—An individual  
 7 described in this paragraph is an individual entitled  
 8 to, or enrolled for, benefits under part A or enrolled  
 9 for benefits under this part with—

10 “(A) metastatic solid organ cancer;

11 “(B) congestive heart failure;

12 “(C) end stage renal disease;

13 “(D) a progressive neurodegenerative dis-  
 14 order;

15 “(E) oxygen dependent chronic pulmonary  
 16 disease; or

17 “(F) any other condition with a similar  
 18 level of medical necessity determined appro-  
 19 priate by the Secretary.”.

20 **SEC. 7. IMPROVEMENT OF POLICIES RELATED TO THE USE**  
 21 **AND PORTABILITY OF ADVANCE DIRECTIVES.**

22 (a) MEDICARE.—Section 1866(f) of the Social Secu-  
 23 rity Act (42 U.S.C. 1395cc(f)) is amended—

24 (1) in paragraph (1)—

1 (A) in subparagraph (B), by inserting  
2 “and if presented by the individual (or on be-  
3 half of the individual), to include the content of  
4 such advance directive in a prominent part of  
5 such record” before the semicolon at the end;

6 (B) in subparagraph (D), by striking  
7 “and” after the semicolon at the end;

8 (C) in subparagraph (E), by striking the  
9 period at the end and inserting “; and”; and

10 (D) by inserting after subparagraph (E)  
11 the following new subparagraph:

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

17 (2) in paragraph (3), by striking “a written”  
18 and inserting “an”; and

19 (3) by adding at the end the following new  
20 paragraph:

21 “(5)(A) In addition to the requirements of paragraph  
22 (1), a provider of services, Medicare Advantage organiza-  
23 tion, or prepaid or eligible organization (as the case may  
24 be) shall give effect to an advance directive executed out-  
25 side the State in which such directive is presented, even

1 one that does not appear to meet the formalities of execu-  
 2 tion, form, or language required by the State in which it  
 3 is presented to the same extent as such provider or organi-  
 4 zation would give effect to an advance directive that meets  
 5 such requirements, except that a provider or organization  
 6 may decline to honor such a directive if the provider or  
 7 organization can reasonably demonstrate that it is not an  
 8 authentic expression of the individual's wishes concerning  
 9 his or her health care. Nothing in this paragraph shall  
 10 be construed to authorize the administration of medical  
 11 treatment otherwise prohibited by the laws of the State  
 12 in which the directive is presented.

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

19       (b) MEDICAID.—Section 1902(w) of the Social Secu-  
 20 rity Act (42 U.S.C. 1396a(w)) is amended—

21               (1) in paragraph (1)—

22                       (A) in subparagraph (B)—

23                               (i) by striking “in the individual's  
 24                               medical record” and inserting “in a promi-

1            ment part of the individual’s current med-  
2            ical record”; and

3                   (ii) by inserting “and if presented by  
4            the individual (or on behalf of the indi-  
5            vidual), to include the content of such ad-  
6            vance directive in a prominent part of such  
7            record” before the semicolon at the end;

8            (B) in subparagraph (D), by striking  
9            “and” after the semicolon at the end;

10           (C) in subparagraph (E), by striking the  
11           period at the end and inserting “; and”; and

12           (D) by inserting after subparagraph (E)  
13           the following new subparagraph:

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

19           (2) in paragraph (4), by striking “a written”  
20           and inserting “an”; and

21           (3) by adding at the end the following para-  
22           graph:

23           “(6)(A) In addition to the requirements of paragraph  
24           (1), a provider or organization (as the case may be) shall  
25           give effect to an advance directive executed outside the

1 State in which such directive is presented, even one that  
2 does not appear to meet the formalities of execution, form,  
3 or language required by the State in which it is presented  
4 to the same extent as such provider or organization would  
5 give effect to an advance directive that meets such require-  
6 ments, except that a provider or organization may decline  
7 to honor such a directive if the provider or organization  
8 can reasonably demonstrate that it is not an authentic ex-  
9 pression of the individual's wishes concerning his or her  
10 health care. Nothing in this paragraph shall be construed  
11 to authorize the administration of medical treatment oth-  
12 erwise prohibited by the laws of the State in which the  
13 directive is presented.

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

20       (c) EFFECTIVE DATES.—

21           (1) IN GENERAL.—Subject to paragraph (2),  
22 the amendments made by subsections (a) and (b)  
23 shall apply to provider agreements and contracts en-  
24 tered into, renewed, or extended under title XVIII of  
25 the Social Security Act (42 U.S.C. 1395 et seq.),

1 and to State plans under title XIX of such Act (42  
2 U.S.C. 1396 et seq.), on or after such date as the  
3 Secretary of Health and Human Services specifies,  
4 but in no case may such date be later than 1 year  
5 after the date of enactment of this Act.

6 (2) EXTENSION OF EFFECTIVE DATE FOR  
7 STATE LAW AMENDMENT.—In the case of a State  
8 plan under title XIX of the Social Security Act (42  
9 U.S.C. 1396 et seq.) which the Secretary of Health  
10 and Human Services determines requires State legis-  
11 lation in order for the plan to meet the additional  
12 requirements imposed by the amendments made by  
13 subsection (b), the State plan shall not be regarded  
14 as failing to comply with the requirements of such  
15 title solely on the basis of its failure to meet these  
16 additional requirements before the first day of the  
17 first calendar quarter beginning after the close of  
18 the first regular session of the State legislature that  
19 begins after the date of enactment of this Act. For  
20 purposes of the previous sentence, in the case of a  
21 State that has a 2-year legislative session, each year  
22 of the session is considered to be a separate regular  
23 session of the State legislature.

24 **SEC. 8. ADDITIONAL REQUIREMENTS FOR FACILITIES.**

25 (a) REQUIREMENTS.—

1           (1) IN GENERAL.—Section 1866(a)(1) of the  
2 Social Security Act (42 U.S.C. 1395cc(a)(1)) is  
3 amended—

4           (A) in subsection (a)(1)—

5           (i) in subparagraph (U), by striking  
6 “and” at the end;

7           (ii) in subparagraph (V), by striking  
8 the period at the end and inserting a  
9 comma; and

10           (iii) by inserting after subparagraph  
11 (V) the following new subparagraphs:

12           “(W) in the case of hospitals, skilled nursing  
13 facilities, home health agencies, and hospice pro-  
14 grams, to provide individuals receiving care by or  
15 through the provider (and their caregivers and fami-  
16 lies, with the patient’s consent, or their surrogate  
17 decision-makers) with the opportunity to discuss the  
18 general course of treatment expected, the likely im-  
19 pact on length of life and function, and the proce-  
20 dures they should use to secure help if an unex-  
21 pected situation arises, and

22           “(X) in the case of hospitals, skilled nursing fa-  
23 cilities, and hospice programs, to—

24           “(i) provide for an assessment of each indi-  
25 vidual (at the time of discharge from the pro-

1           vider) using an assessment instrument that is  
2           at least as informative as the continuity assess-  
3           ment record and evaluation (CARE) instrument  
4           developed by the Centers for Medicare & Med-  
5           icaid Services; and

6                   “(ii) include the results of such assessment  
7           in the individual’s medical record.”.

8           (2) EFFECTIVE DATE.—The amendments made  
9           by this subsection shall apply to agreements entered  
10          into or renewed on or after January 1, 2012.

11          (b) HHS STUDY AND REPORT ON APPROPRIATE AS-  
12          SESSMENTS AT DISCHARGE.—

13                  (1) STUDY.—The Secretary of Health and  
14          Human Services shall conduct a study on the extent  
15          to which the assessment of individual by hospitals,  
16          skilled nursing facilities, and hospice programs  
17          under section 1886(a)(1)(X) of the Social Security  
18          Act, as added by subsection (a), accurately reflects  
19          the actual diagnosis and care plan of the individual  
20          involved at the time of discharge.

21                  (2) REPORT.—Not later than January 1, 2014,  
22          the Secretary of Health and Human Services shall  
23          submit to Congress a report on the study conducted  
24          under paragraph (1) together with recommendations

1 for such legislation and administrative action as the  
 2 Secretary determines to be appropriate.

3 **SEC. 9. REQUIREMENT FOR MEDICARE PROVIDERS TO**  
 4 **HONOR WRITTEN ORDERS FOR MEDICAL**  
 5 **CARE.**

6 Section 1834 of the Social Security Act (42 U.S.C.  
 7 1395m), as amended by section 6, is amended by adding  
 8 at the end the following new subsection:

9 “(o) REQUIREMENT TO HONOR WRITTEN ORDERS  
 10 FOR MEDICAL CARE.—No payment may be made under  
 11 this title to a provider of services or a supplier for items  
 12 and services furnished on or after January 1, 2013, unless  
 13 the provider or supplier agrees (under a process estab-  
 14 lished by the Secretary) to, in the case of an individual  
 15 with a written order for medical care (such as a physi-  
 16 cian’s orders for life-sustaining treatment (POLST)), fol-  
 17 low such order when furnishing items and services to the  
 18 individual.”.

19 **SEC. 10. INCENTIVES FOR ACCREDITATION AND CERTIFI-**  
 20 **CATION IN HOSPICE AND PALLIATIVE CARE.**

21 (a) HOSPITALS.—Section 1886 of the Social Security  
 22 Act (42 U.S.C. 1395ww) is amended by adding at the end  
 23 the following new subsection:

24 “(o) INCENTIVES FOR ACCREDITATION IN PALLIA-  
 25 TIVE CARE.—

1           “(1) INCENTIVE PAYMENT.—

2                   “(A) IN GENERAL.—Subject to subpara-  
3 graph (3), with respect to inpatient hospital  
4 services and inpatient critical access hospital  
5 services furnished by an eligible hospital during  
6 a payment year, if the eligible hospital has in  
7 place an accredited palliative care program (as  
8 determined by the Secretary) with respect to  
9 such year and meets utilization criteria for such  
10 program (as established by the Secretary) with  
11 respect to such year, in addition to the amount  
12 otherwise paid under this section or section  
13 1814, there shall also be paid to the eligible  
14 hospital, from the Federal Hospital Insurance  
15 Trust Fund established under section 1817, an  
16 amount equal to the applicable percent of the  
17 amount that would otherwise be paid under this  
18 section or section 1814 for such services for the  
19 hospital for such year.

20                   “(B) APPLICABLE PERCENT DEFINED.—

21           The term ‘applicable percent’ means—

22                   “(i) for fiscal years 2011 through  
23                   2016, 2 percent; and

24                   “(ii) for fiscal years 2017 through  
25                   2020, 1 percent.

1           “(C) FORM OF PAYMENT.—The payment  
2           under this paragraph for a payment year may  
3           be in the form of a single consolidated payment  
4           or in the form of such periodic installments as  
5           the Secretary may specify.

6           “(2) INCENTIVE PAYMENT ADJUSTMENT.—Sub-  
7           ject to paragraph (3), with respect to inpatient hos-  
8           pital services and inpatient critical access hospital  
9           services furnished by an eligible hospital during a  
10          fiscal year after fiscal year 2020, if the eligible hos-  
11          pital does not have in place an accredited palliative  
12          care program (as determined by the Secretary) with  
13          respect to such fiscal year, the amount otherwise  
14          paid under this section or section 1814 for such  
15          services for the hospital for the year shall be reduced  
16          by 1 percent.

17          “(3) EXCEPTION.—In the case of an eligible  
18          hospital with fewer than 50 beds, such hospital shall  
19          be deemed to meet the requirement in paragraphs  
20          (1)(A) and (2) if, in lieu of having in place an ac-  
21          credited palliative care program, the hospital pro-  
22          vides patients and family members with access to a  
23          local or regional accredited palliative care team or  
24          program.

25          “(4) DEFINITIONS.—In this subsection:

1           “(A) ELIGIBLE HOSPITAL.—The term ‘eli-  
2           gible hospital’ means—

3                   “(i) a hospital (as defined in section  
4                   1861(e)); and

5                   “(ii) a critical access hospital (as de-  
6                   fined in section 1861(mm)(1)).

7           “(B) PAYMENT YEAR.—The term ‘payment  
8           year’ means fiscal years 2011 through 2020.

9           “(5) LIMITATIONS ON REVIEW.—There shall be  
10          no administrative or judicial review under section  
11          1869, section 1878, or otherwise, of—

12                   “(A) the methodology and standards for  
13                   determining payment amounts under paragraph  
14                   (1) and payment adjustments under paragraph  
15                   (2);

16                   “(B) the methodology and standards for  
17                   determining whether the eligible hospital has in  
18                   place an accredited palliative care program; and

19                   “(C) the application of the exception under  
20                   paragraph (3).”.

21          (b) SKILLED NURSING FACILITIES.—Section 1888 of  
22          the Social Security Act (42 U.S.C. 1395yy) is amended  
23          by adding at the end the following new subsection:

24                   “(f) INCENTIVES FOR ACCREDITATION IN PALLIA-  
25          TIVE CARE.—

1 “(1) INCENTIVE PAYMENT.—

2 “(A) IN GENERAL.—Subject to subpara-  
3 graph (3), with respect to covered skilled nurs-  
4 ing facility services (as defined in subsection  
5 (e)(2)(A)) furnished by a skilled nursing facility  
6 during a payment year, if the facility has in  
7 place an accredited palliative care program (as  
8 determined by the Secretary) with respect to  
9 such year and meets utilization criteria for such  
10 program (as established by the Secretary) with  
11 respect to such year, in addition to the amount  
12 otherwise paid under this subsection (e), there  
13 shall also be paid to the facility, from the Fed-  
14 eral Hospital Insurance Trust Fund established  
15 under section 1817, an amount equal to the ap-  
16 plicable percent of the amount that would oth-  
17 erwise be paid under subsection (e) for such  
18 services for the facility for such year.

19 “(B) DEFINITIONS.—In this subsection:

20 “(i) APPLICABLE PERCENT.—The  
21 term ‘applicable percent’ means—

22 “(I) for fiscal years 2011  
23 through 2016, 2 percent; and

24 “(II) for fiscal years 2017  
25 through 2020, 1 percent.

1                   “(ii) PAYMENT YEAR.—The term  
2                   ‘payment year’ means fiscal years 2011  
3                   through 2020.

4                   “(C) FORM OF PAYMENT.—The payment  
5                   under this paragraph for a payment year may  
6                   be in the form of a single consolidated payment  
7                   or in the form of such periodic installments as  
8                   the Secretary may specify.

9                   “(2) INCENTIVE PAYMENT ADJUSTMENT.—Sub-  
10                  ject to paragraph (3), with respect to covered skilled  
11                  nursing facility services (as defined in subsection  
12                  (e)(2)(A)) furnished by a skilled nursing facility dur-  
13                  ing a fiscal year after fiscal year 2020, if the facility  
14                  does not have in place an accredited palliative care  
15                  program (as determined by the Secretary) with re-  
16                  spect to such fiscal year, the amount otherwise paid  
17                  under subsection (e) for such services for the facility  
18                  for the year shall be reduced by 1 percent.

19                  “(3) EXCEPTION.—In the case of a skilled  
20                  nursing facility with fewer than 60 beds, such facil-  
21                  ity shall be deemed to meet the requirement in para-  
22                  graphs (1)(A) and (2) if, in lieu of having in place  
23                  an accredited palliative care program, the facility  
24                  provides patients and family members with access to

1 a local or regional accredited palliative care team or  
2 program.

3 “(4) LIMITATIONS ON REVIEW.—There shall be  
4 no administrative or judicial review under section  
5 1869, section 1878, or otherwise, of—

6 “(A) the methodology and standards for  
7 determining payment amounts under paragraph  
8 (1) and payment adjustments under paragraph  
9 (2);

10 “(B) the methodology and standards for  
11 determining whether the skilled nursing facility  
12 has in place an accredited palliative care pro-  
13 gram; and

14 “(C) the application of the exception under  
15 paragraph (3).”.

16 (c) PHYSICIANS.—Section 1848 of the Social Security  
17 Act (42 U.S.C. 1395w-4) is amended by adding at the  
18 end the following new subsection:

19 “(p) INCENTIVES FOR CERTIFICATION IN HOSPICE  
20 AND PALLIATIVE CARE.—

21 “(1) INCENTIVE PAYMENT.—

22 “(A) IN GENERAL.—With respect to physi-  
23 cians’ services furnished by a physician during  
24 a payment year, if the physician is certified in  
25 hospice and palliative care (as determined by

1 the Secretary) with respect to such year, in ad-  
2 dition to the amount otherwise paid under this  
3 part, there shall also be paid to the physician,  
4 from the Federal Supplementary Medical Insur-  
5 ance Trust Fund established under section  
6 1841, an amount equal to the applicable per-  
7 cent of the Secretary's estimate (based on  
8 claims submitted not later than 2 months after  
9 the end of the payment year) of the allowed  
10 charges under this part for all covered profes-  
11 sional services (as defined in subsection (k)(3))  
12 furnished by the physician during such year.

13 “(B) DEFINITIONS.—In this subsection:

14 “(i) APPLICABLE PERCENT.—The  
15 term ‘applicable percent’ means—

16 “(I) for 2011 through 2016, 2  
17 percent; and

18 “(II) for 2017 through 2020, 1  
19 percent.

20 “(ii) PAYMENT YEAR.—The term  
21 ‘payment year’ means 2011 through 2020.

22 “(C) FORM OF PAYMENT.—The payment  
23 under this subsection for a payment year may  
24 be in the form of a single consolidated payment

1 or in the form of such periodic installments as  
2 the Secretary may specify.

3 “(2) LIMITATIONS ON REVIEW.—There shall be  
4 no administrative or judicial review under section  
5 1869, section 1878, or otherwise, of—

6 “(A) the methodology and standards for  
7 determining payment amounts under paragraph  
8 (1); and

9 “(B) the methodology and standards for  
10 determining whether the physician is certified  
11 in hospice and palliative care.”.

12 **SEC. 11. DISCHARGE CHECKLIST PILOT PROGRAM.**

13 (a) ESTABLISHMENT.—Not later than July 1, 2010,  
14 the Secretary of Health and Human Services (in this sec-  
15 tion referred to as the “Secretary”) shall conduct a pilot  
16 program under title XVIII of the Social Security Act to  
17 test the use of the Centers for Medicare and Medicaid  
18 Services’ discharge checklist included in the publication  
19 entitled “Planning for Your Discharge: A checklist for pa-  
20 tients and caregivers preparing to leave a hospital, nursing  
21 home, or other health care setting”.

22 (b) WAIVER AUTHORITY.—The Secretary may waive  
23 compliance of such requirements of titles XI and XVIII  
24 of the Social Security Act as the Secretary determines nec-  
25 essary to conduct the pilot program under this section.

1 (c) REPORT.—Not later than 6 months after the com-  
2 pletion of the pilot program under this section, the Sec-  
3 retary shall submit to Congress a final report on the pilot  
4 program, together with recommendations for such legisla-  
5 tion and administrative action as the Secretary determines  
6 appropriate.

7 (d) FUNDING.—There are authorized to be appro-  
8 priated such sums as may be necessary for purposes of  
9 conducting the pilot program under this section.

10 **SEC. 12. OFFICE OF MEDICARE/MEDICAID INTEGRATION.**

11 (a) ESTABLISHMENT.—The Secretary shall establish  
12 or designate an Office on Medicare/Medicaid Integration  
13 (in this subsection referred to as the “Office”) for the pur-  
14 pose of aligning Medicare and Medicaid program policies  
15 and procedures and developing tools to support State inte-  
16 gration efforts in order to—

17 (1) simplify dual eligible access to Medicare and  
18 Medicaid program benefits and services;

19 (2) improve care continuity and ensure safe and  
20 effective care transitions;

21 (3) eliminate cost shifting between the Medicare  
22 and Medicaid programs and among related care pro-  
23 viders;

24 (4) eliminate regulatory conflicts between Medi-  
25 care and Medicaid program rules; and

1 (5) improve total cost and quality performance.

2 (b) RESPONSIBILITIES.—The responsibilities of the  
3 Office are to develop policies and procedures to—

4 (1) identify incentives for States to advance the  
5 integration of the Medicare and Medicaid programs  
6 to improve total cost and quality performance, in-  
7 cluding shared cost savings among consumers, plans,  
8 and Federal and State governments with respect to  
9 State initiatives for advancing Medicare and Med-  
10 icaid program integration;

11 (2) provide support for coordination of Federal  
12 and State contracting and oversight for dual inte-  
13 gration programs supportive of the goals described  
14 in subsection (a);

15 (3) serve as a liaison between Centers for Medi-  
16 care & Medicaid Services central and regional offices  
17 to ensure consistent application of Centers for Medi-  
18 care & Medicaid Services rules, policies, and auditing  
19 practices as such rules, policies, and auditing prac-  
20 tices pertain to dual eligibles;

21 (4) monitor total combined Medicare and Med-  
22 icaid program costs in serving dual eligibles and  
23 make recommendations for optimizing total quality  
24 and cost performance across both programs; and

1           (5) identify legislative and administrative  
2 changes that are needed to facilitate the integration  
3 of benefits and oversight functions of the Medicare  
4 and Medicaid programs with respect to dual eligi-  
5 bles.

6           (c) DUAL ELIGIBLE DEFINED.—In this section, the  
7 term “dual eligible” means an individual who is—

8           (1) entitled to, or enrolled for, benefits under  
9 part A of title XVIII of the Social Security Act or  
10 enrolled for benefits under part B of such title; and

11           (2) entitled to medical assistance under a State  
12 plan under title XIX of such Act.

13           (d) STUDY.—Not later than January 1, 2011, the  
14 Secretary of Health and Human Services, in consultation  
15 with private health information technology stakeholders  
16 and in coordination with other Federal health information  
17 technology efforts, shall conduct a study to determine the  
18 data that the Office should collect and analyze in order  
19 to improve health care outcomes, create efficiencies in care  
20 delivery, and impact Federal health care spending.

21           (e) FUNDING.—There are authorized to be appro-  
22 priated such sums as may be necessary to carry out the  
23 provisions of this section.

1 **SEC. 13. WEB-BASED MATERIALS AND GRANTS.**

2 (a) WEB-BASED MATERIALS.—The Secretary of  
3 Health and Human Services (in this section referred to  
4 as the “Secretary”) shall establish and maintain a website  
5 that provides information, online training, and instruc-  
6 tional materials for entities, including faith-based organi-  
7 zations, on end-of-life issues, which shall include content  
8 addressing—

9 (1) advance care planning, including common  
10 issues and questions regarding advance directives  
11 and their uses;

12 (2) hospice benefits under Medicare, Medicaid,  
13 and the State Children’s Health Insurance Program  
14 established under the Social Security Act, including  
15 information on how hospice care is administered and  
16 provided to terminally ill individuals;

17 (3) palliative care, including information on  
18 services that palliative care units provide for termi-  
19 nally ill patients; and

20 (4) any additional information related to end-  
21 of-life care and associated issues, as determined by  
22 the Secretary.

23 (b) GRANTS.—

24 (1) HOSPICE CARE GRANT PROGRAM.—

25 (A) GRANTS AUTHORIZED.—The Secretary  
26 is authorized to award grants to entities, in-

1 including faith-based organizations, to develop  
2 and provide services for terminally ill individ-  
3 uals who are receiving hospice care in their own  
4 homes.

5 (B) REQUIREMENTS.—

6 (i) DURATION.—The grant program  
7 shall be conducted for a 5-year period, be-  
8 ginning not later than January 1, 2011.

9 (ii) AMOUNT OF GRANTS.—An entity  
10 may be awarded a grant under this para-  
11 graph for a fiscal year that is not less than  
12 \$5,000 and not more than \$250,000.

13 (iii) NUMBER OF GRANTS.—The Sec-  
14 retary shall award grants under this para-  
15 graph to not more than 100 entities.

16 (C) ADDITIONAL MEDICAID FUNDS.—A  
17 State may elect to provide additional funds to  
18 recipients of a grant under this section, with  
19 such funds to be considered as amounts ex-  
20 pended for the proper and efficient administra-  
21 tion of the State plan under title XIX of the  
22 Social Security Act for purposes of the State  
23 receiving payments under section 1903(a)(7) of  
24 that Act.

1           (D) USE OF FUNDS.—Grants awarded  
2 pursuant to this paragraph shall be used by en-  
3 tities to develop and provide end-of-life support  
4 services for terminally ill individuals who are re-  
5 ceiving care in their own homes, including—

6                   (i) support for caregivers;

7                   (ii) if the entity is a hospice program  
8 under the Medicare program, any addi-  
9 tional hospice care determined appropriate  
10 by the Secretary; and

11                   (iii) any additional end-of-life informa-  
12 tion or materials relating to support serv-  
13 ices determined appropriate by the Sec-  
14 retary.

15           (E) APPLICATION.—Each entity desiring a  
16 grant under this paragraph shall submit an ap-  
17 plication to the Secretary at such time, in such  
18 manner, and accompanied by such information  
19 as the Secretary may reasonably require.

20           (F) AUTHORIZATION OF APPROPRIA-  
21 TIONS.—For the purpose of carrying out the  
22 grant program established under this para-  
23 graph, there is authorized to be appropriated  
24 \$15,000,000 for the period of fiscal years 2011  
25 through 2015.

1           (2) END-OF-LIFE EDUCATIONAL GRANT PRO-  
2           GRAM.—

3           (A) GRANTS AUTHORIZED.—The Secretary  
4           is authorized to award grants to entities, in-  
5           cluding faith-based organizations and religious  
6           educational institutions, to develop and provide  
7           appropriate training and educational programs  
8           addressing end-of-life care issues.

9           (B) REQUIREMENTS.—

10           (i) DURATION.—The grant program  
11           shall be conducted for a 5-year period, be-  
12           ginning not later than January 1, 2011.

13           (ii) AMOUNT OF GRANTS.—An entity  
14           may be awarded a grant under this para-  
15           graph for a fiscal year that is not less than  
16           \$5,000, and not more than \$50,000.

17           (iii) NUMBER OF GRANTS.—The Sec-  
18           retary shall award grants under this para-  
19           graph to not more than 100 entities.

20           (C) USE OF FUNDS.—Grants awarded pur-  
21           suant to this paragraph shall be used by enti-  
22           ties to develop appropriate training and edu-  
23           cation programs addressing end-of-life care  
24           issues and include such programs as part of

1           their educational curriculum, continuing edu-  
2           cation programs, or vocational training.

3           (D) APPLICATION.—Each entity desiring a  
4           grant under this paragraph shall submit an ap-  
5           plication to the Secretary at such time, in such  
6           manner, and accompanied by such information  
7           as the Secretary may reasonably require.

8           (E) AUTHORIZATION OF APPROPRIA-  
9           TIONS.—For the purpose of carrying out the  
10          grant program established under this para-  
11          graph, there is authorized to be appropriated  
12          \$10,000,000 for the period of fiscal years 2011  
13          through 2015.

14 **SEC. 14. HHS STUDY AND REPORT ON THE STORAGE OF AD-**  
15 **VANCE DIRECTIVES.**

16          (a) STUDY.—The Secretary of Health and Human  
17          Services shall conduct a study on the best methods of stor-  
18          ing completed advance directives. Such study shall include  
19          an analysis of the feasibility of establishing a national reg-  
20          istry for completed advance directives, taking into consid-  
21          eration the constraints created by the privacy provisions  
22          enacted as a result of the Health Insurance Portability  
23          and Accountability Act of 1996 (Public Law 104–191).

24          (b) REPORT.—Not later than January 1, 2012, the  
25          Secretary of Health and Human Services shall submit to

1 Congress a report on the study conducted under sub-  
2 section (a) together with recommendations for such legis-  
3 lation and administrative action as the Secretary deter-  
4 mines to be appropriate.

5 **SEC. 15. GAO STUDY AND REPORT ON THE PROVISIONS OF,**  
6 **AND AMENDMENTS MADE BY, THIS ACT.**

7 (a) STUDY.—The Comptroller General of the United  
8 States (in this section referred to as the “Comptroller  
9 General”) shall conduct a study on the provisions of, and  
10 amendments made by, this Act, including the quality and  
11 costs (such as patient and family experience, patient un-  
12 derstanding of treatment choices, and any decrease in  
13 avoidable hospital admissions) associated with such provi-  
14 sions and such amendments.

15 (b) REPORT.—Not later than January 1, 2012, the  
16 Comptroller General shall submit to Congress a report  
17 containing the results of the study conducted under sub-  
18 section (a), together with recommendations for such legis-  
19 lation and administrative action as the Comptroller Gen-  
20 eral determines appropriate.

○