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II

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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Senior Navigation and Planning Act of 2009''.

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

SEC. 2. MEDICARE AND MEDICAID COVERAGE OF ADVANCED ILLNESS CARE MANAGEMENT SERVICES.

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

(1) COVERAGE.—Section 1812(a)(5) of the Social Security Act (42 U.S.C. 1395d(a)(5)) is amended to read as follows:

''(5) for individuals who have a life expectancy of 18 months or less and who have not made an election under subsection (d)(1) to receive hospice care under this part, advanced illness care management services (as defined in section 1861(hhh)).''.

(2) DEFINITION.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Advanced Illness Care Management Services

''(hhh)(1) The term 'advanced illness care management services' means the following services furnished to an individual by a hospice program, as defined in subsection (dd)(2):

''(A) Palliative care consultation services.

''(B) Care planning services.

''(C) Counseling of individual and family members.

''(D) Discussions regarding the availability of supportive services (including information on advance care planning).

''(E) Patient-centered care.

''(F) Family conference services.

''(G) Respite services.

''(H) Onsite caregiver training.

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

''(2) For purposes of paragraph (1)(F), the term 'family conference services' means a family conference held by a hospice program (as so defined) for the individual and the family members of the individual, including services for the facilitation and provision of adequate follow-up to such family conference, which includes additional collaboration and coordination with the hospice phy-

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

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

''(B) For purposes of subparagraph (A), the Secretary shall establish, on an annual basis, a minimum and maximum number of hours (not to exceed 16 hours each month) for which respite services may be provided to individuals eligible to receive such services.

''(C) In subparagraph (A), the term 'activities of daily living' means bathing, transferring, toileting, and feeding.

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

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

''(5) In the case of a hospice program that is furnishing advanced illness care management services to an individual who becomes eligible for hospice care under this title, the hospice program shall notify the individual of such eligibility.''.

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

''(4) The amount paid to a hospice program with respect to the advanced illness care management services (as defined in section 1861(hhh)) for which payment may be made under this part shall be—

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

''(B) with respect to such services, other than respite services, furnished by other hospice personnel, an amount equal to 85 percent of such fee schedule amount; and

''(C) with respect to respite services, payment shall be at an appropriate rate to be determined by the Secretary''.

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

(A) in paragraph (1)—

(i) by striking ''and'' at the end of subparagraph (N);

(ii) by striking the semicolon at the end of subparagraph (O) and inserting '', and''; and

(iii) by adding at the end the following new subparagraph:

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

(B) in paragraph (7), by striking ''or (K)'' and inserting ''(K), or (P)''.

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

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

(1) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

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

(B) in paragraph (27), by striking at the end ''and''; and

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

''(28) advanced illness care management services (as defined in section 1861(hhh)) for individuals described in section 1812(a)(5); and''.

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

(3) EFFECTIVE DATE.—

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

(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 determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), 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.

(c) EDUCATION ON ADVANCED ILLNESS CARE MANAGEMENT SERVICES.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a program under which physicians (as defined in subsection (r) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) are educated on the coverage of advanced illness care management services (as defined in subsection (hhh) of such section) under the Medi-

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

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

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

"PART S—PROGRAMS TO INCREASE AWARENESS OF ADVANCE CARE PLANNING ISSUES

"SEC. 399GG. ADVANCE CARE PLANNING EDUCATION CAMPAIGNS AND INFORMATION PHONE LINE AND CLEARINGHOUSE.

''(a) ADVANCE CARE PLANNING EDUCATION CAMPAIGN.—The Secretary shall, directly or through grants awarded under subsection (c), conduct a national public education campaign—

''(1) to raise public awareness of the importance of planning for care near the end of life;

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

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

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

''(B) other planning tools, such as a physician's orders for life-sustaining treatment (POLST); and

''(4) to educate the public about the availability of hospice care and palliative care.

''(b) INFORMATION PHONE LINE AND CLEARINGHOUSE.—The Secretary, directly or through grants awarded under subsection (c), shall provide for the establishment of a national, toll-free, information telephone line and a clearinghouse that the public and health care professionals may access to find out about State-specific and other information regarding advance directive and end-of-life decisions.

''(c) GRANTS.—

''(1) IN GENERAL.—The Secretary shall use funds appropriated under subsection (d) for the purpose of awarding grants to public or nonprofit private entities (including States or political subdivisions of a State), or a consortium of any of such en-

tities, for the purpose of conducting education campaigns under subsection (a).

''(2) PERIOD.—Any grant awarded under paragraph (1) shall be for a period of 3 years.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

''(1) for purposes of carrying out subsection (b), $5,000,000 for fiscal year 2010 and each subsequent year; and

''(2) for purposes of making grants under subsection (c), $10,000,000 for fiscal year 2010, to remain available until expended.''.

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

(a) IN GENERAL.—Section 1804(a) of the Social Security Act (42 U.S.C. 1395b–2(a)) is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(3) by inserting after paragraph (3) the following new paragraph:

''(4) information on advance directives, other end-of-life planning tools, and the hospice care benefit under this title.''.

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

SEC. 5. SENIOR NAVIGATION ADVISORY BOARD.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish the Senior Navigation Advisory Board (in this section referred to as the ''Advisory Board'').

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

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

(1) increase patients' quality of life;

(2) reduce current legal hurdles to the enforcement of advance directives;

(3) encourage provider participation in educational and training activities surrounding advanced illnesses and end-of-life care planning;

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

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

(5) determine what information should be discussed in discharge planning; and

(6) enhance advance care planning.

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

(e) PAY AND REIMBURSEMENT.—

(1) NO COMPENSATION FOR MEMBERS OF ADVISORY BOARD.—Except as provided in paragraph (2), a member of the Advisory Board may not receive pay, allowances, or benefits by reason of their service on the Board.

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

(f) REPORT.—Not later than 3 years after the establishment of the Advisory Board, the Advisory Board shall submit to Congress a final report containing the findings and conclusions of the Advisory Board, together with recommendations for such legislation and administrative actions as the Advisory Board considers appropriate.

(g) TERMINATION.—The Advisory Board shall terminate 30 days after submitting the report under subsection (f).

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

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.

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

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

''(1) IN GENERAL.—No payment may be made under this title to a physician (as defined in section 1861(r)) or a nurse practitioner (as defined in section 1861(aa)(5)(A)) for items and services furnished on or after January 1, 2014, unless the physician or nurse practitioner agrees (under a process established by the Secretary) to provide individuals

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

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

''(A) metastatic solid organ cancer;

''(B) congestive heart failure;

''(C) end stage renal disease;

''(D) a progressive neurodegenerative disorder;

''(E) oxygen dependent chronic pulmonary disease; or

''(F) any other condition with a similar level of medical necessity determined appropriate by the Secretary.''.

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

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

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting ''and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

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

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (3), by striking ''a written'' and inserting ''an''; and

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

''(5)(A) In addition to the requirements of paragraph (1), a provider of services, Medicare Advantage organization, or prepaid or eligible organization (as the case may be) shall give effect to an advance directive executed outside the State in which such directive is presented, even

one that does not appear to meet the formalities of execution, form, or language required by the State in which it is presented to the same extent as such provider or organization would give effect to an advance directive that meets such requirements, except that a provider or organization may decline to honor such a directive if the provider or organization can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care. Nothing in this paragraph shall be construed to authorize the administration of medical treatment otherwise prohibited by the laws of the State in which the directive is presented.

''(B) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

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

(1) in paragraph (1)—

(A) in subparagraph (B)—

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

nent part of the individual's current medical record''; and

(ii) by inserting ''and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

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

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (4), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following paragraph:

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

State in which such directive is presented, even one that does not appear to meet the formalities of execution, form, or language required by the State in which it is presented to the same extent as such provider or organization would give effect to an advance directive that meets such requirements, except that a provider or organization may decline to honor such a directive if the provider or organization can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care. Nothing in this paragraph shall be construed to authorize the administration of medical treatment otherwise prohibited by the laws of the State in which the directive is presented.

''(B) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(c) EFFECTIVE DATES.—

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

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

(2) 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 subsection (b), 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.

SEC. 8. ADDITIONAL REQUIREMENTS FOR FACILITIES.

(a) REQUIREMENTS.—

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

(A) in subsection (a)(1)—

(i) in subparagraph (U), by striking ''and'' at the end;

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

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

''(W) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to provide individuals receiving care by or through the provider (and their caregivers and families, with the patient's consent, or their surrogate decision-makers) with the opportunity to discuss the general course of treatment expected, the likely impact on length of life and function, and the procedures they should use to secure help if an unexpected situation arises, and

''(X) in the case of hospitals, skilled nursing facilities, and hospice programs, to—

''(i) provide for an assessment of each individual (at the time of discharge from the pro-

vider) using an assessment instrument that is at least as informative as the continuity assessment record and evaluation (CARE) instrument developed by the Centers for Medicare & Medicaid Services; and

"(ii) include the results of such assessment in the individual's medical record.".

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

(b) HHS STUDY AND REPORT ON APPROPRIATE ASSESSMENTS AT DISCHARGE.—

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

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

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

SEC. 9. REQUIREMENT FOR MEDICARE PROVIDERS TO HONOR WRITTEN ORDERS FOR MEDICAL CARE.

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

''(o) REQUIREMENT TO HONOR WRITTEN ORDERS FOR MEDICAL CARE.—No payment may be made under this title to a provider of services or a supplier for items and services furnished on or after January 1, 2013, unless the provider or supplier agrees (under a process established by the Secretary) to, in the case of an individual with a written order for medical care (such as a physician's orders for life-sustaining treatment (POLST)), follow such order when furnishing items and services to the individual.''.

SEC. 10. INCENTIVES FOR ACCREDITATION AND CERTIFICATION IN HOSPICE AND PALLIATIVE CARE.

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

''(o) INCENTIVES FOR ACCREDITATION IN PALLIATIVE CARE.—

''(1) INCENTIVE PAYMENT.—

''(A) IN GENERAL.—Subject to subparagraph (3), with respect to inpatient hospital services and inpatient critical access hospital services furnished by an eligible hospital during a payment year, if the eligible hospital has in place an accredited palliative care program (as determined by the Secretary) with respect to such year and meets utilization criteria for such program (as established by the Secretary) with respect to such year, in addition to the amount otherwise paid under this section or section 1814, there shall also be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to the applicable percent of the amount that would otherwise be paid under this section or section 1814 for such services for the hospital for such year.

''(B) APPLICABLE PERCENT DEFINED.—The term 'applicable percent' means—

''(i) for fiscal years 2011 through 2016, 2 percent; and

''(ii) for fiscal years 2017 through 2020, 1 percent.

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

''(2) INCENTIVE PAYMENT ADJUSTMENT.—Subject to paragraph (3), with respect to inpatient hospital services and inpatient critical access hospital services furnished by an eligible hospital during a fiscal year after fiscal year 2020, if the eligible hospital does not have in place an accredited palliative care program (as determined by the Secretary) with respect to such fiscal year, the amount otherwise paid under this section or section 1814 for such services for the hospital for the year shall be reduced by 1 percent.

''(3) EXCEPTION.—In the case of an eligible hospital with fewer than 50 beds, such hospital shall be deemed to meet the requirement in paragraphs (1)(A) and (2) if, in lieu of having in place an accredited palliative care program, the hospital provides patients and family members with access to a local or regional accredited palliative care team or program.

''(4) DEFINITIONS.—In this subsection:

''(A) ELIGIBLE HOSPITAL.—The term 'eligible hospital' means—

''(i) a hospital (as defined in section 1861(e)); and

''(ii) a critical access hospital (as defined in section 1861(mm)(1)).

''(B) PAYMENT YEAR.—The term 'payment year' means fiscal years 2011 through 2020.

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

''(A) the methodology and standards for determining payment amounts under paragraph (1) and payment adjustments under paragraph (2);

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

''(C) the application of the exception under paragraph (3).''.

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

''(f) INCENTIVES FOR ACCREDITATION IN PALLIATIVE CARE.—

''(1) INCENTIVE PAYMENT.—

''(A) IN GENERAL.—Subject to subparagraph (3), with respect to covered skilled nursing facility services (as defined in subsection (e)(2)(A)) furnished by a skilled nursing facility during a payment year, if the facility has in place an accredited palliative care program (as determined by the Secretary) with respect to such year and meets utilization criteria for such program (as established by the Secretary) with respect to such year, in addition to the amount otherwise paid under this subsection (e), there shall also be paid to the facility, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to the applicable percent of the amount that would otherwise be paid under subsection (e) for such services for the facility for such year.

''(B) DEFINITIONS.—In this subsection:

''(i) APPLICABLE PERCENT.—The term 'applicable percent' means—

''(I) for fiscal years 2011 through 2016, 2 percent; and

''(II) for fiscal years 2017 through 2020, 1 percent.

''(ii) PAYMENT YEAR.—The term 'payment year' means fiscal years 2011 through 2020.

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

''(2) INCENTIVE PAYMENT ADJUSTMENT.—Subject to paragraph (3), with respect to covered skilled nursing facility services (as defined in subsection (e)(2)(A)) furnished by a skilled nursing facility during a fiscal year after fiscal year 2020, if the facility does not have in place an accredited palliative care program (as determined by the Secretary) with respect to such fiscal year, the amount otherwise paid under subsection (e) for such services for the facility for the year shall be reduced by 1 percent.

''(3) EXCEPTION.—In the case of a skilled nursing facility with fewer than 60 beds, such facility shall be deemed to meet the requirement in paragraphs (1)(A) and (2) if, in lieu of having in place an accredited palliative care program, the facility provides patients and family members with access to

a local or regional accredited palliative care team or program.

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

''(A) the methodology and standards for determining payment amounts under paragraph (1) and payment adjustments under paragraph (2);

''(B) the methodology and standards for determining whether the skilled nursing facility has in place an accredited palliative care program; and

''(C) the application of the exception under paragraph (3).''.

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

''(p) INCENTIVES FOR CERTIFICATION IN HOSPICE AND PALLIATIVE CARE.—

''(1) INCENTIVE PAYMENT.—

''(A) IN GENERAL.—With respect to physicians' services furnished by a physician during a payment year, if the physician is certified in hospice and palliative care (as determined by

the Secretary) with respect to such year, in addition to the amount otherwise paid under this part, there shall also be paid to the physician, from the Federal Supplementary Medical Insurance Trust Fund established under section 1841, an amount equal to the applicable percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all covered professional services (as defined in subsection (k)(3)) furnished by the physician during such year.

''(B) DEFINITIONS.—In this subsection:

''(i) APPLICABLE PERCENT.—The term 'applicable percent' means—

''(I) for 2011 through 2016, 2 percent; and

''(II) for 2017 through 2020, 1 percent.

''(ii) PAYMENT YEAR.—The term 'payment year' means 2011 through 2020.

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

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

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

''(A) the methodology and standards for determining payment amounts under paragraph (1); and

''(B) the methodology and standards for determining whether the physician is certified in hospice and palliative care.''.

SEC. 11. DISCHARGE CHECKLIST PILOT PROGRAM.

(a) ESTABLISHMENT.—Not later than July 1, 2010, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct a pilot program under title XVIII of the Social Security Act to test the use of the Centers for Medicare and Medicaid Services' discharge checklist included in the publication entitled ''Planning for Your Discharge: A checklist for patients and caregivers preparing to leave a hospital, nursing home, or other health care setting''.

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

(c) REPORT.—Not later than 6 months after the completion of the pilot program under this section, the Secretary shall submit to Congress a final report on the pilot program, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(d) FUNDING.—There are authorized to be appropriated such sums as may be necessary for purposes of conducting the pilot program under this section.

SEC. 12. OFFICE OF MEDICARE/MEDICAID INTEGRATION.

(a) ESTABLISHMENT.—The Secretary shall establish or designate an Office on Medicare/Medicaid Integration (in this subsection referred to as the ''Office'') for the purpose of aligning Medicare and Medicaid program policies and procedures and developing tools to support State integration efforts in order to—

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

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

(3) eliminate cost shifting between the Medicare and Medicaid programs and among related care providers;

(4) eliminate regulatory conflicts between Medicare and Medicaid program rules; and

(5) improve total cost and quality performance.

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

(1) identify incentives for States to advance the integration of the Medicare and Medicaid programs to improve total cost and quality performance, including shared cost savings among consumers, plans, and Federal and State governments with respect to State initiatives for advancing Medicare and Medicaid program integration;

(2) provide support for coordination of Federal and State contracting and oversight for dual integration programs supportive of the goals described in subsection (a);

(3) serve as a liaison between Centers for Medicare & Medicaid Services central and regional offices to ensure consistent application of Centers for Medicare & Medicaid Services rules, policies, and auditing practices as such rules, policies, and auditing practices pertain to dual eligibles;

(4) monitor total combined Medicare and Medicaid program costs in serving dual eligibles and make recommendations for optimizing total quality and cost performance across both programs; and

(5) identify legislative and administrative changes that are needed to facilitate the integration of benefits and oversight functions of the Medicare and Medicaid programs with respect to dual eligibles.

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

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

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

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

(e) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 13. WEB-BASED MATERIALS AND GRANTS.

(a) WEB-BASED MATERIALS.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish and maintain a website that provides information, online training, and instructional materials for entities, including faith-based organizations, on end-of-life issues, which shall include content addressing—

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

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

(3) palliative care, including information on services that palliative care units provide for terminally ill patients; and

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

(b) GRANTS.—

(1) HOSPICE CARE GRANT PROGRAM.—

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

cluding faith-based organizations, to develop and provide services for terminally ill individuals who are receiving hospice care in their own homes.

(B) REQUIREMENTS.—

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

(ii) AMOUNT OF GRANTS.—An entity may be awarded a grant under this paragraph for a fiscal year that is not less than $5,000 and not more than $250,000.

(iii) NUMBER OF GRANTS.—The Secretary shall award grants under this paragraph to not more than 100 entities.

(C) ADDITIONAL MEDICAID FUNDS.—A State may elect to provide additional funds to recipients of a grant under this section, with such funds to be considered as amounts expended for the proper and efficient administration of the State plan under title XIX of the Social Security Act for purposes of the State receiving payments under section 1903(a)(7) of that Act.

(D) USE OF FUNDS.—Grants awarded pursuant to this paragraph shall be used by entities to develop and provide end-of-life support services for terminally ill individuals who are receiving care in their own homes, including—

(i) support for caregivers;

(ii) if the entity is a hospice program under the Medicare program, any additional hospice care determined appropriate by the Secretary; and

(iii) any additional end-of-life information or materials relating to support services determined appropriate by the Secretary.

(E) APPLICATION.—Each entity desiring a grant under this paragraph shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(F) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out the grant program established under this paragraph, there is authorized to be appropriated $15,000,000 for the period of fiscal years 2011 through 2015.

(2) END-OF-LIFE EDUCATIONAL GRANT PROGRAM.—

(A) GRANTS AUTHORIZED.—The Secretary is authorized to award grants to entities, including faith-based organizations and religious educational institutions, to develop and provide appropriate training and educational programs addressing end-of-life care issues.

(B) REQUIREMENTS.—

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

(ii) AMOUNT OF GRANTS.—An entity may be awarded a grant under this paragraph for a fiscal year that is not less than $5,000, and not more than $50,000.

(iii) NUMBER OF GRANTS.—The Secretary shall award grants under this paragraph to not more than 100 entities.

(C) USE OF FUNDS.—Grants awarded pursuant to this paragraph shall be used by entities to develop appropriate training and education programs addressing end-of-life care issues and include such programs as part of

their educational curriculum, continuing education programs, or vocational training.

(D) APPLICATION.—Each entity desiring a grant under this paragraph shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(E) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out the grant program established under this paragraph, there is authorized to be appropriated $10,000,000 for the period of fiscal years 2011 through 2015.

SEC. 14. HHS STUDY AND REPORT ON THE STORAGE OF ADVANCE DIRECTIVES.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study on the best methods of storing completed advance directives. Such study shall include an analysis of the feasibility of establishing a national registry for completed advance directives, taking into consideration the constraints created by the privacy provisions enacted as a result of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

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

Congress a report on the study conducted under subsection (a) together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

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

(a) STUDY.—The Comptroller General of the United States (in this section referred to as the ''Comptroller General'') shall conduct a study on the provisions of, and amendments made by, this Act, including the quality and costs (such as patient and family experience, patient understanding of treatment choices, and any decrease in avoidable hospital admissions) associated with such provisions and such amendments.

(b) REPORT.—Not later than January 1, 2012, the Comptroller General shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

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