

112TH CONGRESS
2D SESSION

S. 3684

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2012

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

A BILL

To amend title XVIII of the Social Security Act to provide for advanced illness care coordination 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 2012”.

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. Findings.

Sec. 3. Medicare and Medicaid coverage of advanced illness care coordination services.

- Sec. 4. Increasing awareness of the importance of advance care planning.
- Sec. 5. Inclusion of advance care planning materials in the Medicare & You handbook.
- Sec. 6. Senior Navigation Advisory Board.
- Sec. 7. Improvement of policies related to the use and portability of advanced directives.
- Sec. 8. Additional requirements for facilities.
- Sec. 9. Incentives for accreditation and certification in hospice and palliative care.
- Sec. 10. Discharge checklist pilot program.
- Sec. 11. Web-based materials and grants.
- Sec. 12. HHS study and report on the storage of advanced directives.
- Sec. 13. GAO study and report on the provisions of, and amendments made by, this Act.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Whereas the population of the United
 4 States is estimated to age rapidly, with the number
 5 of people over the age of 65 set to double to more
 6 than 72,000,000, or 1 in 5 Americans, over the next
 7 two decades.

8 (2) Whereas Americans today are living longer
 9 and healthier lives than ever before in the history of
 10 the United States yet are also facing increased inci-
 11 dence of multiple chronic conditions as aging pro-
 12 gresses. Advanced illness occurs when one or more
 13 conditions become serious enough that general
 14 health and functioning decline and quality of life in-
 15 creasingly becomes the primary focus of care.

16 (3) Whereas older Americans with advanced ill-
 17 ness face an increasingly complicated and frag-
 18 mented system of care delivery and are at greater
 19 risk for repeat hospitalizations, adverse drug reac-

1 tions, and conflicting medical advice that may be
2 overwhelming to individuals and families.

3 (4) Whereas the progression of advanced illness
4 over time leads to more intense needs that require
5 greater time and assistance from that individual's
6 caregiver, be it a family member or a direct care
7 worker and significantly increased medical needs, in-
8 cluding the need to see multiple specialists across
9 the health care system, which often results in unco-
10 ordinated care, making individuals more prone to
11 adverse health outcomes, increased frustration, and
12 decreased satisfaction.

13 (5) Whereas advanced illness imposes financial
14 and emotional burdens on families, friends, and co-
15 workers, in addition to leading to billions per year
16 in lost productivity due to caregivers having to take
17 time off of work to care for frail and elderly loved
18 ones.

19 (6) Whereas numerous private sector leaders,
20 including hospitals, health systems, home health
21 agencies, hospice programs, long-term care pro-
22 viders, employers, and other entities, have put in
23 place innovative solutions to providing more com-
24 prehensive and coordinated care for Americans living
25 with advanced illness.

1 (7) Whereas hospice programs, as one of the
 2 longest standing Medicare care coordination benefits
 3 that entails administering a comprehensive set of
 4 services via an interdisciplinary team working to
 5 provide person-centered care to the frailest and most
 6 vulnerable individuals in our communities, can help
 7 serve as a model for advanced illness care delivery.

8 (8) Whereas the Government of the United
 9 States, as the Nation’s largest purchaser of health
 10 care services, must learn from these innovators and
 11 encourage health care providers to furnish more sup-
 12 portive and comprehensive advanced illness care co-
 13 ordination services to improve individual’s experi-
 14 ences and ensure a more sustainable system of care
 15 delivery for generations of Americans to come.

16 **SEC. 3. MEDICARE AND MEDICAID COVERAGE OF AD-**
 17 **VANCED ILLNESS CARE COORDINATION**
 18 **SERVICES.**

19 (a) MEDICARE COVERAGE OF ADVANCED ILLNESS
 20 CARE COORDINATION SERVICES.—

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

24 “(5) for individuals with advanced illness (as
 25 determined under section 1861(iii)(2)) who have not

1 made an election under subsection (d)(1) to receive
2 hospice care under this part, advanced illness care
3 coordination services (as defined in section
4 1861(iii)(1)).”.

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

8 “Advanced Illness Care Coordination Services

9 “(iii)(1) The term ‘advanced illness care coordination
10 services’ means the following services furnished to an indi-
11 vidual with advanced illness by an applicable provider:

12 “(A) Palliative care consultation services.

13 “(B) Person and family centered care planning
14 services, including information on advance care plan-
15 ning.

16 “(C) Medication management.

17 “(D) Individual and family counseling services,
18 including assistance with the identification of care
19 options and the goals of care.

20 “(E) Culturally and educationally appropriate
21 family caregiver training and support services, in-
22 cluding respite services.

23 “(F) Such other services the Secretary may
24 specify.

1 “(2)(A) An individual is considered to have ‘advanced
2 illness’ if the individual has a medical prognosis that the
3 individual’s life expectancy is 18 months or less or meets
4 other criteria specified by the Secretary in accordance with
5 subparagraph (B).

6 “(B) In specifying criteria under subparagraph (A),
7 the Secretary shall consider—

8 “(i) the severity of illness, including the diag-
9 nosis, stage, comorbidities, functional status, hos-
10 pitalization, and other objective factors determined
11 appropriate by the Secretary;

12 “(ii) the acuity of illness, as measured by the
13 progression of illness and disability over the imme-
14 diately preceding 30- and 90-day periods; and

15 “(iii) treatment response, such as, in the case
16 of cancer, resistance to chemotherapy.

17 “(3) For purposes of this subsection, the term ‘appli-
18 cable provider’ means—

19 “(A) a hospice program (as defined in sub-
20 section (dd)(2)); or

21 “(B) other provider of services or supplier spec-
22 ified by the Secretary.

23 “(4) In the case of an applicable provider that is fur-
24 nishing advanced illness care coordination services to an
25 individual who becomes eligible for hospice care under this

1 title, the applicable provider shall notify the individual of
2 such eligibility.”.

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

7 “(4) The amount paid to an applicable provider with
8 respect to advanced illness care coordination services (as
9 defined in section 1861(iii)) for which payment may be
10 made under this part shall be—

11 “(A) with respect to such services furnished by
12 a physician, an amount equal to the amount that
13 would be paid for an equivalent physician’s service
14 under the fee schedule established under section
15 1848(b);

16 “(B) with respect to such services, other than
17 respite services, furnished by a non-physician practi-
18 tioner, an amount equal to the amount that would
19 be paid for an equivalent service under section
20 1833(a)(1)(O); and

21 “(C) with respect to respite services, payment
22 shall be at an appropriate rate to be determined by
23 the Secretary”.

1 (4) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to services furnished
3 on or after January 1, 2013.

4 (b) MEDICAID COVERAGE OF ADVANCED ILLNESS
5 CARE COORDINATION SERVICES.—

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

9 (A) by redesignating paragraph (29) as
10 paragraph (30);

11 (B) in paragraph (28), by striking at the
12 end “and”; and

13 (C) by inserting after paragraph (28) the
14 following new paragraph:

15 “(29) advanced illness care coordination serv-
16 ices (as defined in section 1861(iii)) for individuals
17 described in section 1812(a)(5); and”.

18 (2) CONFORMING AMENDMENT.—Section
19 1902(a)(10)(A) of the Social Security Act (42
20 U.S.C. 1396a(a)(10)(A)) is amended by striking
21 “and (28)” and inserting “, (28), and (29)”.

22 (3) EFFECTIVE DATE.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), the amendments made by

1 paragraphs (1) and (2) take effect on January
2 1, 2013.

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

22 (c) EDUCATION ON ADVANCED ILLNESS CARE CO-
23 ORDINATION SERVICES.—The Secretary of Health and
24 Human Services (in this section referred to as the “Sec-
25 retary”) shall establish a program under which physicians

1 (as defined in subsection (r) of section 1861 of the Social
 2 Security Act (42 U.S.C. 1395x)) are educated on the cov-
 3 erage of advanced illness care coordination services (as de-
 4 fined in subsection (iii) of such section) under the Medi-
 5 care and Medicaid programs under titles XVIII and XIX,
 6 respectively, of the Social Security Act (42 U.S.C. 1395
 7 et seq.; 1396 et seq.), including the importance of early
 8 intervention in providing such care to individuals.

9 **SEC. 4. INCREASING AWARENESS OF THE IMPORTANCE OF**
 10 **ADVANCE CARE PLANNING.**

11 Title III of the Public Health Service Act (42 U.S.C.
 12 241 et seq.) is amended by adding at the end the following
 13 new part:

14 **“PART W—PROGRAMS TO INCREASE AWARENESS**
 15 **OF ADVANCE CARE PLANNING ISSUES**

16 **“SEC. 3990O. ADVANCE CARE PLANNING EDUCATION CAM-**
 17 **PAIGNS AND INFORMATION PHONE LINE AND**
 18 **CLEARINGHOUSE.**

19 “(a) ADVANCE CARE PLANNING EDUCATION CAM-
 20 PAIGN.—The Secretary shall, directly or through grants
 21 awarded under subsection (c), conduct a national public
 22 education campaign—

23 “(1) to raise public awareness of the impor-
 24 tance of planning for care throughout the life cycle
 25 and as illness progresses;

1 “(2) to explain the need for readily available
2 legal documents and medical orders that express an
3 individual’s wishes 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 Physi-
8 cian’s Orders for Life-Sustaining Treatment
9 (POLST) or a State authorized portable order;
10 and

11 “(3) to educate the public about the availability
12 of advanced illness care, palliative care, and hospice
13 care.

14 “(b) COMMUNICATIONS RESOURCES.—The Sec-
15 retary, directly or through grants awarded under sub-
16 section (c), shall provide for multiple, innovative commu-
17 nications resources, including a toll-free information tele-
18 phone line, that the public and health care professionals
19 may access to find out about State-specific information re-
20 garding advance directives and end-of-life decisions.

21 “(c) GRANTS.—

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

1 sions of a State), or a consortium of any of such en-
 2 tities, for the purpose of conducting education cam-
 3 paigns under subsection (a).

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

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

8 “(1) for purposes of carrying out subsection
 9 (b), \$5,000,000 for fiscal year 2013 and each subse-
 10 quent year; and

11 “(2) for purposes of making grants under sub-
 12 section (c), \$10,000,000 for fiscal year 2013, to re-
 13 main available until expended.”.

14 **SEC. 5. INCLUSION OF ADVANCE CARE PLANNING MATE-**
 15 **RIALS IN THE MEDICARE & YOU HANDBOOK.**

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

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

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

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

1 “(4) information on advanced illness care co-
 2 ordination, palliative care, other end-of-life planning
 3 tools, and the hospice care benefit under this title.”.

4 (b) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to notices distributed on or after
 6 January 1, 2013.

7 **SEC. 6. SENIOR NAVIGATION ADVISORY BOARD.**

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

12 (b) MEMBERSHIP.—The Board shall be comprised of
 13 advocates, consumer representatives, researchers, govern-
 14 ment officials, health care providers, ethicists, members of
 15 the faith-based community, family caregivers, medical pro-
 16 viders, and other individuals with expertise in issues re-
 17 lated to end-of-life care.

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

- 21 (1) improve the quality of life for beneficiaries;
- 22 (2) reduce current legal barriers to the enforce-
- 23 ment of advance directives;

1 (3) encourage provider participation in edu-
2 cational and training activities surrounding ad-
3 vanced illnesses and personal care planning;

4 (4) develop quality and outcome measures that
5 applicable programs should report for advanced ill-
6 ness care coordination services (as defined in section
7 1861(iii) of the Social Security Act, as added by sec-
8 tion 3);

9 (5) determine what information should be dis-
10 cussed in discharge planning;

11 (6) enhance advance care planning; and

12 (7) develop and sustain an optimal service array
13 for implementing quality care coordination services.

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

17 (e) PAY AND REIMBURSEMENT.—

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

23 (2) TRAVEL EXPENSES.—Each member shall
24 receive travel expenses, including per diem in lieu of

1 subsistence under subchapter I of chapter 57 of title
2 5, United States Code.

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

9 (g) TERMINATION.—The Advisory Board shall termi-
10 nate 30 days after submitting the report under subsection
11 (f).

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

15 **SEC. 7. IMPROVEMENT OF POLICIES RELATED TO THE USE**
16 **AND PORTABILITY OF ADVANCED DIREC-**
17 **TIVES.**

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

20 (1) in paragraph (1)—

21 (A) in subparagraph (B), by inserting
22 “and if presented by the individual (or on be-
23 half of the individual), to include the content of
24 such advance directive in a prominent part of
25 such record” before the semicolon at the end;

1 (B) in subparagraph (D)—

2 (i) by inserting “paragraph (5) and
3 applicable” after “requirements of”; and

4 (ii) by striking “and” after the semi-
5 colon at the end;

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

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

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

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

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

19 “(5)(A) An advance directive or State authorized
20 portable order validly executed outside of the State in
21 which the directive or order is presented shall be given
22 effect by a provider of services or organization (as the case
23 may be) to the same extent as an advance directive or
24 order validly executed under the law of the State in which
25 it is presented.

1 “(B) In the absence of knowledge to the contrary,
 2 a physician or other health care provider or a provider
 3 of services or organization may presume that a written
 4 advance health care directive or similar instrument or a
 5 State authorized portable order, regardless of where exe-
 6 cuted, is valid.

7 “(C) In the absence of a validly executed advance di-
 8 rective or State authorized portable order, a provider of
 9 services or organization shall honor any authentic expres-
 10 sion of an individual’s wishes with respect to health care.

11 “(D) The provisions of this paragraph shall preempt
 12 any State law with respect to advance directive portability
 13 to the extent such law is inconsistent with such provisions.
 14 Nothing in this paragraph shall be construed to authorize
 15 the administration of health care treatment otherwise pro-
 16 hibited by the laws of the State in which the directive is
 17 presented.”.

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

20 (1) in paragraph (1)—

21 (A) in subparagraph (B)—

22 (i) by striking “in the individual’s
 23 medical record” and inserting “in a promi-
 24 nent part of the individual’s current med-
 25 ical record”; and

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

6 (B) in subparagraph (D)—

7 (i) by inserting “paragraph (6) and
8 applicable” after “requirements of”; and

9 (ii) by striking “and” after the semi-
10 colon at the end;

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

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

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

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

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

24 “(6)(A) An advance directive or State authorized
25 portable order validly executed outside of the State in

1 which the directive is presented shall be given effect by
 2 a provider of services or organization (as the case may
 3 be) to the same extent as an advance directive or order
 4 validly executed under the law of the State in which it
 5 is presented.

6 “(B) In the absence of knowledge to the contrary,
 7 a physician or other health care provider or a provider
 8 of services or organization may presume that a written
 9 advance health care directive or similar instrument or a
 10 State authorized portable order, regardless of where exe-
 11 cuted, is valid.

12 “(C) In the absence of a validly executed advance di-
 13 rective or State authorized portable order, a provider of
 14 services or organization shall honor any authentic expres-
 15 sion of an individual’s wishes with respect to health care.

16 “(D) The provisions of this paragraph shall preempt
 17 any State law with respect to advance directive portability
 18 to the extent such law is inconsistent with such provisions.
 19 Nothing in this paragraph shall be construed to authorize
 20 the administration of health care treatment otherwise pro-
 21 hibited by the laws of the State in which the directive is
 22 presented.”.

23 (c) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Subject to paragraph (2),
 25 the amendments made by subsections (a) and (b)

1 shall apply to provider agreements and contracts en-
2 tered into, renewed, or extended under title XVIII of
3 the Social Security Act (42 U.S.C. 1395 et seq.),
4 and to State plans under title XIX of such Act (42
5 U.S.C. 1396 et seq.), on or after such date as the
6 Secretary of Health and Human Services specifies,
7 but in no case may such date be later than 1 year
8 after the date of enactment of this Act.

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

1 of the session is considered to be a separate regular
 2 session of the State legislature.

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

4 (a) REQUIREMENTS.—

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

8 (A) in subparagraph (V), by striking
 9 “and” at the end;

10 (B) in subparagraph (W), as added by sec-
 11 tion 3005(1)(C) of the Patient Protection and
 12 Affordable Care Act (Public Law 111–148), by
 13 redesignating such subparagraph as subpara-
 14 graph (X), moving such subparagraph to follow
 15 subparagraph (V), moving such subparagraph 2
 16 ems to the left, and striking the period at the
 17 end and inserting a comma;

18 (C) in subparagraph (W), as added by sec-
 19 tion 6406(b)(3) of the Patient Protection and
 20 Affordable Care Act (Public Law 111–148), by
 21 redesignating such subparagraph as subpara-
 22 graph (Y), moving such subparagraph to follow
 23 subparagraph (X), as added by subparagraph
 24 (B), moving such subparagraph 2 ems to the

1 left, and striking the period at the end and in-
 2 serting “, and”; and

3 (D) by inserting after subparagraph (Y)
 4 the following new subparagraphs:

5 “(Z) in the case of hospitals, skilled nursing fa-
 6 cilities, home health agencies, and hospice programs,
 7 to provide an individual (and the caregivers and
 8 family of the individual, with the individual’s con-
 9 sent, and the legal representative of the individual)
 10 who is receiving care by or through the provider with
 11 the opportunity to discuss the general course of
 12 treatment expected, the likely impact on length of
 13 life and function, and the procedures they should use
 14 to secure help if an unexpected situation arises, and

15 “(AA) in the case of hospitals, skilled nursing
 16 facilities, home health agencies, hospice programs,
 17 and applicable providers of advanced illness care co-
 18 ordination services (as defined in section
 19 1861(iii)(3)) to—

20 “(i) provide for an assessment of each indi-
 21 vidual (at the time of discharge from the pro-
 22 vider) using an assessment instrument that is
 23 at least as informative as the continuity assess-
 24 ment record and evaluation (CARE) instrument

1 developed by the Centers for Medicare & Med-
 2 icaid Services; and

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

5 (2) EFFECTIVE DATE.—The amendments made
 6 by this subsection shall apply to agreements entered
 7 into or renewed on or after January 1, 2014.

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

10 (1) STUDY.—The Secretary of Health and
 11 Human Services shall conduct a study on the extent
 12 to which the assessment of individuals by hospitals,
 13 skilled nursing facilities, hospice programs, home
 14 health agencies, and applicable providers of ad-
 15 vanced illness care coordination services under sec-
 16 tion 1886(a)(1)(AA) of the Social Security Act, as
 17 added by subsection (a), accurately reflects the ac-
 18 tual diagnosis and care plan, including care coordi-
 19 nation, of the individual at the time of discharge.
 20 Such study shall include an analysis of how success-
 21 ful the hospital, skilled nursing facility, hospice pro-
 22 gram, home health agency, or applicable provider is
 23 in converting care goals and preferences expressed
 24 by the individual into a valid advance directive.

1 (2) REPORT.—Not later than January 1, 2016,
 2 the Secretary of Health and Human Services shall
 3 submit to Congress a report on the study conducted
 4 under paragraph (1) together with recommendations
 5 for such legislation and administrative action as the
 6 Secretary determines to be appropriate.

7 **SEC. 9. INCENTIVES FOR ACCREDITATION AND CERTIFI-**
 8 **CATION IN HOSPICE AND PALLIATIVE CARE.**

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

12 “(t) INCENTIVES FOR ACCREDITATION IN PALLIA-
 13 TIVE CARE.—

14 “(1) INCENTIVE PAYMENT.—

15 “(A) IN GENERAL.—Subject to paragraph
 16 (3), with respect to inpatient hospital services
 17 and inpatient critical access hospital services
 18 furnished by an eligible hospital during a pay-
 19 ment year, if the eligible hospital has in place
 20 an accredited palliative care program (as deter-
 21 mined by the Secretary) with respect to such
 22 year and meets utilization criteria for such pro-
 23 gram (as established by the Secretary) with re-
 24 spect to such year, in addition to the amount
 25 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 2013 through 2018, 2 percent; and

“(ii) for fiscal years 2019 through 2022, 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 2022, if the eligible hospital does not have in place an accredited palliative care program (as determined by the Secretary) with

1 respect to such fiscal year, the amount otherwise
 2 paid under this section or section 1814 for such
 3 services for the hospital for the year shall be reduced
 4 by 1 percent.

5 “(3) EXCEPTION.—In the case of an eligible
 6 hospital with fewer than 50 beds, such hospital shall
 7 be deemed to meet the requirement in paragraphs
 8 (1)(A) and (2) if, in lieu of having in place an ac-
 9 credited palliative care program, the hospital pro-
 10 vides individuals and family members with access to
 11 a local or regional accredited palliative care team or
 12 program.

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

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

16 “(i) a hospital (as defined in section
 17 1861(e)); and

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

20 “(B) PAYMENT YEAR.—The term ‘payment
 21 year’ means fiscal years 2013 through 2022.

22 “(5) LIMITATIONS ON REVIEW.—There shall be
 23 no administrative or judicial review under section
 24 1869, section 1878, or otherwise, of—

1 “(A) the methodology and standards for
 2 determining payment amounts under paragraph
 3 (1) and payment adjustments under paragraph
 4 (2);

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

8 “(C) the application of the exception under
 9 paragraph (3).”.

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

13 “(g) INCENTIVES FOR ACCREDITATION IN PALLIA-
 14 TIVE CARE.—

15 “(1) INCENTIVE PAYMENT.—

16 “(A) IN GENERAL.—Subject to paragraph
 17 (3), with respect to covered skilled nursing fa-
 18 cility services (as defined in subsection
 19 (e)(2)(A)) furnished by a skilled nursing facility
 20 during a payment year, if the facility has in
 21 place an accredited palliative care program (as
 22 determined by the Secretary) with respect to
 23 such year and meets utilization criteria for such
 24 program (as established by the Secretary) with
 25 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 2013 through 2018, 2 percent; and

“(II) for fiscal years 2019 through 2022, 1 percent.

“(ii) PAYMENT YEAR.—The term ‘payment year’ means fiscal years 2013 through 2022.

“(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 2022, 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 individuals 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

1 has in place an accredited palliative care pro-
2 gram; and

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

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

8 “(q) INCENTIVES FOR CERTIFICATION IN HOSPICE
9 AND PALLIATIVE CARE.—

10 “(1) INCENTIVE PAYMENT.—

11 “(A) IN GENERAL.—With respect to physi-
12 cian’s services furnished by a physician during
13 a payment year, if the physician is certified in
14 hospice and palliative care (as determined by
15 the Secretary) with respect to such year, in ad-
16 dition to the amount otherwise paid under this
17 part, there shall also be paid to the physician,
18 from the Federal Supplementary Medical Insur-
19 ance Trust Fund established under section
20 1841, an amount equal to the applicable per-
21 cent of the Secretary’s estimate (based on
22 claims submitted not later than 2 months after
23 the end of the payment year) of the allowed
24 charges under this part for all covered profes-

1 sional services (as defined in subsection (k)(3))
 2 furnished by the physician during such year.

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

4 “(i) APPLICABLE PERCENT.—The
 5 term ‘applicable percent’ means—

6 “(I) for 2013 through 2018, 2
 7 percent; and

8 “(II) for 2019 through 2022, 1
 9 percent.

10 “(ii) PAYMENT YEAR.—The term
 11 ‘payment year’ means 2013 through 2022.

12 “(C) FORM OF PAYMENT.—The payment
 13 under this subsection for a payment year may
 14 be in the form of a single consolidated payment
 15 or in the form of such periodic installments as
 16 the Secretary may specify.

17 “(2) LIMITATIONS ON REVIEW.—There shall be
 18 no administrative or judicial review under section
 19 1869, section 1878, or otherwise, of—

20 “(A) the methodology and standards for
 21 determining payment amounts under paragraph
 22 (1); and

23 “(B) the methodology and standards for
 24 determining whether the physician is certified
 25 in hospice and palliative care.”.

1 **SEC. 10. DISCHARGE CHECKLIST PILOT PROGRAM.**

2 (a) ESTABLISHMENT.—Not later than July 1, 2013,
3 the Secretary of Health and Human Services (in this sec-
4 tion referred to as the “Secretary”) shall conduct a pilot
5 program under title XVIII of the Social Security Act to
6 test the use of the Centers for Medicare and Medicaid
7 Services’ discharge checklist included in the publication
8 entitled “Planning for Your Discharge: A checklist for in-
9 dividuals and caregivers preparing to leave a hospital,
10 nursing home, or other health care setting” and the con-
11 tinuity assessment record and evaluation (CARE) instru-
12 ment development by the Centers for Medicare and Med-
13 icaid Services.

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

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

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

1 **SEC. 11. 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 Web
 5 site that provides information, online training, and in-
 6 structional materials for entities, including faith-based or-
 7 ganizations, on advance care planning, which shall include
 8 content addressing—

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

12 (2) Physician Orders for Life-Sustaining Treat-
 13 ment (POLST);

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

19 (4) palliative care, including information on
 20 services that palliative care consultation teams and
 21 designated units provide for terminally ill individ-
 22 uals; and

23 (5) any additional information related to ad-
 24 vanced progressive conditions and associated issues,
 25 as determined by the Secretary.

26 (b) GRANTS.—

1 (1) HOSPICE CARE GRANT PROGRAM.—

2 (A) GRANTS AUTHORIZED.—The Secretary
3 is authorized to award grants to entities, in-
4 cluding faith-based organizations, to develop
5 and provide services for terminally ill individ-
6 uals who are receiving hospice care in their own
7 homes.

8 (B) REQUIREMENTS.—

9 (i) DURATION.—The grant program
10 shall be conducted for a 5-year period, be-
11 ginning not later than January 1, 2013.

12 (ii) AMOUNT OF GRANTS.—An entity
13 may be awarded a grant under this para-
14 graph for a fiscal year that is not less than
15 \$5,000 and not more than \$250,000.

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

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

1 receiving payments under section 1903(a)(7) of
2 that Act (42 U.S.C. 1396b(a)(7)).

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

8 (i) support for family or other des-
9 ignated caregivers; and

10 (ii) any additional information or ma-
11 terials relating to support services deter-
12 mined appropriate by the Secretary.

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

18 (F) AUTHORIZATION OF APPROPRIA-
19 TIONS.—For the purpose of carrying out the
20 grant program established under this para-
21 graph, there is authorized to be appropriated
22 \$15,000,000 for the period of fiscal years 2013
23 through 2017.

24 (2) ADVANCED ILLNESS CARE EDUCATIONAL
25 GRANT PROGRAM.—

1 (A) GRANTS AUTHORIZED.—The Secretary
2 is authorized to award grants to entities, in-
3 cluding faith-based organizations and religious
4 educational institutions, to develop and provide
5 appropriate training and educational programs
6 addressing the care of individuals with ad-
7 vanced illness.

8 (B) REQUIREMENTS.—

9 (i) DURATION.—The grant program
10 shall be conducted for a 5-year period, be-
11 ginning not later than January 1, 2013.

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

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

19 (C) USE OF FUNDS.—Grants awarded pur-
20 suant to this paragraph shall be used by enti-
21 ties to develop appropriate training and edu-
22 cation programs addressing care of individuals
23 with advanced illness and include such pro-
24 grams as part of their educational curriculum,

1 continuing education programs, or vocational
2 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 2013
13 through 2017.

14 **SEC. 12. HHS STUDY AND REPORT ON THE STORAGE OF AD-**
15 **VANCED DIRECTIVES.**

16 (a) STUDY.—The Secretary of Health and Human
17 Services shall conduct a study on State and regional activi-
18 ties with respect to storing completed advance directives
19 and Physician Orders for Life-Sustaining Treatment.
20 Such study shall include an analysis of the practicality and
21 feasibility of establishing a national registry for completed
22 advance directives and Physician Orders for Life-Sus-
23 taining Treatment, taking into consideration the con-
24 straints created by the privacy provisions enacted as a re-

1 sult of the Health Insurance Portability and Account-
2 ability Act of 1996 (Public Law 104–191).

3 (b) REPORT.—Not later than January 1, 2015, the
4 Secretary of Health and Human Services shall submit to
5 Congress a report on the study conducted under sub-
6 section (a) together with recommendations for such legis-
7 lation and administrative action as the Secretary deter-
8 mines to be appropriate.

9 **SEC. 13. GAO STUDY AND REPORT ON THE PROVISIONS OF,**
10 **AND AMENDMENTS MADE BY, THIS ACT.**

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

19 (b) REPORT.—Not later than January 1, 2015, the
20 Comptroller General shall submit to Congress a report
21 containing the results of the study conducted under sub-
22 section (a), together with recommendations for such legis-
23 lation and administrative action as the Comptroller Gen-
24 eral determines appropriate.

