

116TH CONGRESS
2D SESSION

S. 4945

To improve end-of-life care.

IN THE SENATE OF THE UNITED STATES

DECEMBER 2, 2020

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To improve end-of-life care.

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

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Compassionate Care Act”.

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

Sec. 1. Short title.

Sec. 2. Definitions.

TITLE I—ADVANCE CARE PLANNING

Subtitle A—Consumer Education

Sec. 101. Advance care planning guidelines.

Sec. 102. National public education campaign.

Subtitle B—Provider Education

- Sec. 111. Public provider advance care planning website.
- Sec. 112. Advance care curricula pilot program.
- Sec. 113. Development of core end-of-life care quality measures across each relevant provider setting.
- Sec. 114. Continuing education for qualified health care providers.

Subtitle C—Medicare Amendments

- Sec. 121. Permanent extension of authorization for use of telehealth to conduct face-to-face encounter prior to recertification of eligibility for hospice care.
- Sec. 122. Improvements to advance care planning through telehealth.

TITLE II—REPORTS, RESEARCH, AND EVALUATIONS

- Sec. 201. Study and report by the Secretary regarding the establishment and implementation of a national uniform policy on advance directives.
- Sec. 202. GAO study and report on establishment of national advance directive registry; other studies.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **ADVANCE CARE PLANNING.**—The term “ad-
 4 vance care planning” means the process of discus-
 5 sion of care in the event that an individual is unable
 6 to make treatment decisions on their own behalf,
 7 clarification of related values and goals, and embodi-
 8 ment of preferences and decision making through
 9 written documents and medical orders.

10 (2) **ADVANCE DIRECTIVE.**—The term “advance
 11 directive” means a written or otherwise recorded in-
 12 struction, such as a living will or durable power of
 13 attorney for health care, recognized under the law of
 14 the State in which it was executed (whether statu-
 15 tory or as recognized by the courts of the State) and

1 relating to the provision of such care when the indi-
2 vidual is incapacitated.

3 (3) CERTIFIED CHAPLAIN.—The term “certified
4 chaplain” means a member of clergy who has met
5 the requirements under the Common Qualifications
6 and Competencies for Professional Chaplains and is
7 board certified by a national chaplaincy organiza-
8 tion.

9 (4) CHIP.—The term “CHIP” means the
10 State Children’s Health Insurance Program under
11 title XXI of the Social Security Act (42 U.S.C.
12 1397aa et seq.)

13 (5) END-OF-LIFE CARE.—The term “end-of-life
14 care” means all aspects of care of a patient with a
15 potentially fatal condition, and includes care that is
16 focused on preparations for an impending death.

17 (6) HEALTH CARE AGENT.—The term “health
18 care agent” means the person, designated in a
19 health care power of attorney, who is selected to
20 make medical decisions on behalf of the person who
21 executed such power of attorney, in the case of inca-
22 pacity of such person who executed the power of at-
23 torney.

24 (7) HEALTH CARE POWER OF ATTORNEY.—The
25 term “health care power of attorney” means a legal

1 document that identifies the health care agent of the
2 person executing such document.

3 (8) LIVING WILL.—The term “living will”
4 means a written document or a video statement
5 about the kinds of medical care or other care a per-
6 son does or does not want under certain specific con-
7 ditions, in the event that such person no longer is
8 able to express those wishes.

9 (9) MEDICAID.—The term “Medicaid” means
10 the program established under title XIX of the So-
11 cial Security Act (42 U.S.C. 1396 et seq.).

12 (10) MEDICARE.—The term “Medicare” means
13 the program established under title XVIII of the So-
14 cial Security Act (42 U.S.C. 1395 et seq.).

15 (11) ORDERS FOR LIFE-SUSTAINING TREAT-
16 MENT.—The term “orders for life-sustaining treat-
17 ment” means a set of portable medical orders (such
18 as physician orders for life-sustaining treatment or
19 similar portable medical orders) that address key
20 medical decisions consistent with the patient’s goals
21 of care and results from a clinical process designed
22 to facilitate shared, informed medical decision mak-
23 ing and communication between qualified health care
24 professionals and patients with serious, progressive
25 illness or frailty.

1 (12) QUALIFIED HEALTH CARE PROVIDER.—

2 The term “qualified health care provider” means a
 3 medical doctor, doctor of osteopathy, nurse, physi-
 4 cian assistant, nurse practitioner, social worker,
 5 home health aide, palliative care professional, com-
 6 munity health worker, community health educator,
 7 or individual in a similar position, as designated by
 8 the Secretary.

9 (13) SECRETARY.—The term “Secretary”
 10 means the Secretary of Health and Human Services.

11 **TITLE I—ADVANCE CARE** 12 **PLANNING**

13 **Subtitle A—Consumer Education**

14 **SEC. 101. ADVANCE CARE PLANNING GUIDELINES.**

15 It is the sense of the Senate that, to the extent prac-
 16 ticable, advance care planning should—

17 (1) occur with an individual and such individ-
 18 ual’s health care agent, primary clinician, other au-
 19 thorized decisionmaker, or members of the entire
 20 interdisciplinary health care team;

21 (2) be recorded and updated as needed; and

22 (3) allow for flexible decision making in the
 23 context of the patient’s medical situation, in accord-
 24 ance with best practice guidelines provided by the
 25 Secretary.

1 **SEC. 102. NATIONAL PUBLIC EDUCATION CAMPAIGN.**

2 (a) NATIONAL PUBLIC EDUCATION CAMPAIGN.—

3 (1) IN GENERAL.—Not later than January 1,
4 2021, the Secretary, acting through the Director of
5 the Centers for Disease Control and Prevention and
6 in consultation with public and private entities,
7 shall, directly or through grants, contracts, or inter-
8 agency agreements, develop and implement a na-
9 tional campaign to inform the public of the impor-
10 tance of advance care planning and of an individ-
11 ual's right to direct and participate in health care
12 decisions affecting such individual.

13 (2) CONTENT OF EDUCATIONAL CAMPAIGN.—
14 The national public education campaign established
15 under paragraph (1) shall—

16 (A) employ the use of various media, in-
17 cluding social media platforms and televised
18 public service announcements;

19 (B) provide culturally and linguistically ap-
20 propriate information;

21 (C) be conducted continuously over a pe-
22 riod of not less than 5 years;

23 (D) identify and promote the advance care
24 planning information available on the internet
25 websites of the Department of Health and
26 Human Service's National Clearinghouse for

1 Long-Term Care Information, the Administra-
2 tion for Children and Families, the Administra-
3 tion for Community Living, and the Centers for
4 Medicare & Medicaid Services;

5 (E) address the importance of individuals
6 speaking to family members, health care prox-
7 ies, and qualified health care providers as part
8 of an ongoing dialogue regarding health care
9 choices;

10 (F) address the need for individuals to use
11 portable, interoperable, and accessible methods
12 to communicate their health care decisions
13 through a variety of means, using legally effec-
14 tuated documents that express their health care
15 decisions in the form of advance directives (in-
16 cluding living wills, orders for life-sustaining
17 treatment, and durable powers of attorney for
18 health care);

19 (G) raise public awareness regarding the
20 availability of hospice and palliative care and
21 the quality of life benefits of early use of such
22 services;

23 (H) encourage individuals to speak with
24 qualified health care professionals about their
25 options and intentions for end-of-life care; and

1 (I) adhere to evidence-based research on
 2 the most effective ways to communicate the ne-
 3 cessity and benefits of advance care planning.

4 (3) EVALUATION.—Not later than July 1,
 5 2023, the Secretary shall report to the appropriate
 6 committees of Congress on the effectiveness of the
 7 public education campaign under this section, and
 8 include in such report any recommendations that the
 9 Secretary determines appropriate regarding the need
 10 for continuation of legislative or administrative
 11 changes to facilitate changing public awareness, atti-
 12 tudes, and behaviors regarding advance care plan-
 13 ning.

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

17 (b) REPEAL.—Section 4751(d) of the Omnibus
 18 Budget Reconciliation Act of 1990 (42 U.S.C. 1396a note;
 19 Public Law 101–508) is repealed.

20 **Subtitle B—Provider Education**

21 **SEC. 111. PUBLIC PROVIDER ADVANCE CARE PLANNING** 22 **WEBSITE.**

23 (a) DEVELOPMENT.—Not later than January 1,
 24 2022, the Secretary, acting through the Administrator of
 25 the Centers for Medicare & Medicaid Services and the Di-

1 rector of the Agency for Healthcare Research and Quality,
 2 shall establish an, or expand upon an existing, internet
 3 website for providers under Medicare, Medicaid, CHIP,
 4 the Indian Health Service (including contract providers),
 5 and other qualified health care providers, including quali-
 6 fied health care providers receiving assistance under the
 7 Older Americans Act of 1965 (42 U.S.C. 3002 et seq.)
 8 to serve older individuals, on each individual's right to
 9 make decisions concerning medical care, including the
 10 right to accept or refuse medical or surgical treatment,
 11 and engage in advance care planning.

12 (b) MAINTENANCE.—The internet website described
 13 in subsection (a) shall be maintained and publicized by
 14 the Secretary on an ongoing basis.

15 (c) CONTENT.—The internet website shall include
 16 content, tools, and resources necessary to do the following:

17 (1) Inform qualified health care providers and
 18 certified chaplains about the advance directive re-
 19 quirements under the health care programs de-
 20 scribed in subsection (a) and State and Federal laws
 21 and regulations related to advance care planning.

22 (2) Educate qualified health care providers and
 23 certified chaplains about advance care planning
 24 quality improvement activities.

1 (3) Provide assistance to qualified health care
2 providers to—

3 (A) integrate advance care planning docu-
4 ments into electronic health records; and

5 (B) develop and disseminate advance care
6 planning informational materials for patients.

7 (4) Inform qualified health care providers about
8 advance care planning continuing education require-
9 ments and opportunities.

10 (5) Encourage qualified health care providers to
11 discuss advance care planning with patients of all
12 ages, as appropriate.

13 (6) Assist qualified health care providers and
14 certified chaplains in understanding the continuum
15 of end-of-life care services and supports available to
16 patients, including palliative care and hospice.

17 (7) Inform qualified health care providers of
18 best practices for discussing end-of-life care with pa-
19 tients who have a serious or terminal diagnosis or
20 prognosis and their loved ones.

21 **SEC. 112. ADVANCE CARE CURRICULA PILOT PROGRAM.**

22 (a) IN GENERAL.—The Secretary, in consultation
23 with appropriate professional associations, shall establish
24 a pilot program by which the Secretary awards grants to
25 eligible entities for purposes of supporting such entities

1 in establishing end-of-life training requirements in the en-
2 tities' applicable degree programs.

3 (b) ELIGIBILITY.—To be eligible to participate in the
4 pilot program under this section, an entity shall—

5 (1) be a school of medicine, school of osteo-
6 pathic medicine, a physician assistant education pro-
7 gram (as defined in section 799B(3) of the Public
8 Health Service Act (42 U.S.C. 295p(3))), a school of
9 allied health (as defined in section 799B(4) of the
10 Public Health Service Act (42 U.S.C. 295p(4))), a
11 school of nursing, a school of social work, a graduate
12 medical education program accredited by the Accred-
13 itation Council for Graduate Medical Education or
14 the American Osteopathic Association, or other
15 school, as the Secretary determines appropriate;

16 (2) be staffed by teaching health professionals
17 who have experience or training in palliative medi-
18 cine;

19 (3) provide training in palliative medicine
20 through a variety of service rotations, such as con-
21 sultation services, acute care services, extended care
22 facilities, ambulatory care and comprehensive eval-
23 uation units, hospice, home health, and community
24 care programs;

1 (4) develop specific performance-based meas-
2 ures to evaluate the competency of trainees; and

3 (5) ensure that by not later than the end of the
4 2-year period beginning on the date of enactment of
5 this Act, professionals who are applicable faculty at
6 the entity, or others as determined appropriate by
7 the Secretary, shall be offered retraining in hospice
8 and palliative medicine.

9 (c) TRAINING.—Eligible entities participating in the
10 pilot program under this section shall require minimum
11 training for trainees that includes—

12 (1) training in how to discuss and help patients
13 and their loved ones with advance care planning;

14 (2) with respect to trainees who will work with
15 children, specialized pediatric training;

16 (3) training in the continuum of end-of-life
17 services and supports, including palliative care and
18 hospice;

19 (4) training in how to discuss end-of-life care
20 with dying patients and their loved ones;

21 (5) medical and legal issues training associated
22 with end-of-life care;

23 (6) training in linguistic and cultural com-
24 petency; and

1 (7) in the case of a graduate medical education
 2 program accredited by the Accreditation Council for
 3 Graduate Medical Education or the American Osteo-
 4 pathic Association, a longitudinal component of at
 5 least 6 months.

6 (d) REPORTS.—Each recipient of a grant under this
 7 section shall report to the Secretary on the outcomes of
 8 the program within 18 months of receipt of the final allot-
 9 ment of grant funds. Not later than 1 year after receipt
 10 of all such reports, the Secretary shall submit to Congress
 11 a report compiling such results from all grant recipients.

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

15 **SEC. 113. DEVELOPMENT OF CORE END-OF-LIFE CARE**
 16 **QUALITY MEASURES ACROSS EACH REL-**
 17 **EVANT PROVIDER SETTING.**

18 (a) IN GENERAL.—The Secretary, acting through the
 19 Director of the Agency for Healthcare Research and Qual-
 20 ity (in this section referred to as the “Director”) and in
 21 consultation with the Administrator of the Centers for
 22 Medicare & Medicaid Services, shall require the develop-
 23 ment of specific end-of-life quality measures for each rel-
 24 evant qualified health care provider setting, as identified

1 by the Director, in accordance with the requirements of
2 subsection (b).

3 (b) REQUIREMENTS.—For purposes of subsection
4 (a), the requirements specified in this subsection are the
5 following:

6 (1) Selection of the specific measure or meas-
7 ures for an identified provider setting shall be based
8 on an assessment of what is likely to have the great-
9 est positive impact on quality of end-of-life care in
10 that setting, and made in consultation with affected
11 providers, patients, and private organizations, that
12 have developed such measures.

13 (2) The measures may be structure-oriented,
14 process-oriented, or outcome-oriented, as determined
15 appropriate by the Director, and shall be patient-ori-
16 ented.

17 (3) The Director shall ensure that reporting re-
18 quirements related to such measures—

19 (A) are imposed consistently with other ap-
20 plicable laws and regulations, and in a manner
21 that takes into account existing measures, the
22 needs of patient populations, the specific serv-
23 ices provided, and the potential administrative
24 burden to providers; and

1 (B) include demographic information to ac-
 2 count for race, ethnicity, age, and gender, and
 3 other appropriate categories.

4 (4) Not later than—

5 (A) January 1, 2022, the Secretary shall
 6 disseminate the reporting requirements to all
 7 affected providers and provide for a 60-day pe-
 8 riod for public comment; and

9 (B) January 1, 2023, initial reporting by
 10 health care providers relating to the measures
 11 shall begin.

12 **SEC. 114. CONTINUING EDUCATION FOR QUALIFIED**
 13 **HEALTH CARE PROVIDERS.**

14 (a) IN GENERAL.—Not later than January 1, 2021,
 15 the Secretary, acting through the Administrator of the
 16 Health Resources and Services Administration, shall de-
 17 velop or enhance new and existing curricula on advance
 18 care planning and end-of-life care for continuing education
 19 that States may adopt for qualified health care providers.

20 (b) CONSULTATION.—In carrying out subsection (a),
 21 the Secretary, acting through the Administrator of the
 22 Health Resources and Services Administration, may con-
 23 sult with qualified health care providers, applicable profes-
 24 sional clinician associations, institutions of higher edu-

1 cation, State boards of medicine and nursing, and other
 2 professionals, as the Secretary determines appropriate.

3 (c) CONTENT.—The continuing education curriculum
 4 developed or enhanced under subsection (a) shall, at a
 5 minimum, include—

6 (1) a description of the meaning and impor-
 7 tance of advance care planning;

8 (2) a description of advance care planning doc-
 9 uments, including living wills and durable powers of
 10 attorney, and the use of such directives;

11 (3) the appropriate use of orders for scope of
 12 treatment;

13 (4) counseling skills for when and how to intro-
 14 duce and engage in advance care planning with pa-
 15 tients and their loved ones;

16 (5) palliative care principles and approaches to
 17 care;

18 (6) the continuum of end-of-life services and
 19 supports, including palliative care and hospice; and

20 (7) the importance of introducing palliative care
 21 and hospice early in illness in order to improve qual-
 22 ity of life.

1 **Subtitle C—Medicare Amendments**

2 **SEC. 121. PERMANENT EXTENSION OF AUTHORIZATION** 3 **FOR USE OF TELEHEALTH TO CONDUCT** 4 **FACE-TO-FACE ENCOUNTER PRIOR TO RE-** 5 **CERTIFICATION OF ELIGIBILITY FOR HOS-** 6 **PICE CARE.**

7 Section 1814(a)(7)(D)(i)(II) of the Social Security
 8 Act (42 U.S.C. 1395f(a)(7)(D)(i)(II)) is amended by in-
 9 serting “and after” after “during”.

10 **SEC. 122. IMPROVEMENTS TO ADVANCE CARE PLANNING** 11 **THROUGH TELEHEALTH.**

12 Section 1834(m) of the Social Security Act (42
 13 U.S.C. 1395m(m)) is amended—

14 (1) in paragraph (2)(B)(i), in the matter pre-
 15 ceding subclause (I), by striking “and paragraph
 16 (6)(C)” and inserting “, paragraph (6)(C), and
 17 paragraph (9)(B)”;

18 (2) in paragraph (4)(C)—

19 (A) in clause (i), in the matter preceding
 20 subclause (I), by striking “and (7)” and insert-
 21 ing “(7), and (9)”; and

22 (B) in clause (ii)(X), by inserting “or
 23 paragraph (9)” before the period; and

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

1 “(9) TREATMENT OF ADVANCE CARE PLANNING
 2 SERVICES.—The requirements described in para-
 3 graph (4)(C)(i) shall not apply with respect to tele-
 4 health services furnished on or after January 1,
 5 2021, for purposes of furnishing advance care plan-
 6 ning services, as determined by the Secretary.”.

7 **TITLE II—REPORTS, RESEARCH,** 8 **AND EVALUATIONS**

9 **SEC. 201. STUDY AND REPORT BY THE SECRETARY RE-** 10 **GARDING THE ESTABLISHMENT AND IMPLE-** 11 **MENTATION OF A NATIONAL UNIFORM POL-** 12 **ICY ON ADVANCE DIRECTIVES.**

13 (a) STUDY.—

14 (1) IN GENERAL.—The Secretary, acting
 15 through the Office of the Assistant Secretary for
 16 Planning and Evaluation, shall conduct a study to
 17 evaluate the barriers to establishing and imple-
 18 menting a national uniform policy on advance direc-
 19 tives and what needs to be done to overcome those
 20 barriers.

21 (2) MATTERS STUDIED.—The matters studied
 22 by the Secretary under paragraph (1) shall include
 23 issues concerning—

1 (A) family satisfaction that a patient's
2 wishes, as stated in the patient's advance direc-
3 tive, were carried out;

4 (B) the usability, accessibility, interoper-
5 ability, and portability of advance directives, in-
6 cluding cases involving the transfer of an indi-
7 vidual from one health care setting to another;

8 (C) the feasibility of establishing an op-
9 tional, national advance directive form deemed
10 valid by any health care entity or qualified
11 health care provider participating in Medicare,
12 Medicaid, or CHIP, regardless of State law;
13 and

14 (D) State variations in advance directive
15 laws that are relevant to the establishment and
16 implementation of a national uniform policy of
17 advance directives.

18 (b) REPORT TO CONGRESS.—Not later than 2 years
19 after the date of enactment of this Act, the Secretary shall
20 submit to Congress a report on the study conducted under
21 subsection (a), together with recommendations for such
22 legislation and administrative actions as the Secretary
23 considers appropriate.

24 (c) CONSULTATION.—In conducting the study and
25 developing the report under this section, the Secretary

1 shall consult with relevant stakeholders and other inter-
2 ested parties.

3 **SEC. 202. GAO STUDY AND REPORT ON ESTABLISHMENT OF**
4 **NATIONAL ADVANCE DIRECTIVE REGISTRY;**
5 **OTHER STUDIES.**

6 (a) STUDY AND REPORT ON ESTABLISHMENT OF NA-
7 TIONAL ADVANCE DIRECTIVE REGISTRY.—

8 (1) STUDY.—The Comptroller General of the
9 United States shall conduct a study on the feasi-
10 bility of a national registry for advance directives,
11 taking into consideration the constraints created by
12 the privacy provisions enacted as a result of the
13 Health Insurance Portability and Accountability Act
14 of 1996 (Public Law 104–191).

15 (2) REPORT.—Not later than 18 months after
16 the date of enactment of this Act, the Comptroller
17 General of the United States shall submit to Con-
18 gress a report on the study conducted under sub-
19 section (a) together with recommendations for such
20 legislation and administrative action as the Comp-
21 troller General of the United States determines to be
22 appropriate.

23 (b) ONC STUDY.—The National Coordinator of the
24 Office of the National Coordinator for Health Information
25 Technology shall conduct a study on the feasibility and

1 impact on advance care planning of requiring that elec-
2 tronic health record vendors seeking certification have a
3 prominent and easily visible field for storing and sharing
4 advance care planning documents and related clinical
5 notes.

6 (c) ONC DEMONSTRATION PROGRAMS.—The Na-
7 tional Coordinator for Health Information Technology, in
8 collaboration with the Director of the National Institute
9 of Standards and Technology, shall initiate 2 demonstra-
10 tion programs to establish best practices and rec-
11 ommended standards to support—

12 (1) usability, portability, and interoperability of
13 advance directives that are accessible to individuals,
14 clinicians, and other authorized individuals; and

15 (2) the use of electronic signatures, electronic
16 authentication of witnesses, and electronic notariza-
17 tion to effectuate advance directives.

18 (d) ADDITIONAL STUDY.—The Comptroller General
19 of the United States shall conduct a study and submit a
20 report to Congress on the incidence of health care, tests,
21 surgeries, drugs, and other services paid provided by quali-
22 fied health care providers and paid for by the Federal Gov-
23 ernment or the patient and that were not the preference

- 1 of the patient or the authorized health care agent of the
- 2 patient.

