111TH CONGRESS
1ST SESSION

H. R. 1898

To amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program for consultations regarding orders for life sustaining treatment and to provide grants for the development and expansion of programs for such orders.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Mr. BLUMENAUER (for himself, Mr. BOUSTANY, Mr. DAVIS of Kentucky, Mr. KIND, Mr. TIBERI, and Mr. YARMUTH) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program for consultations regarding orders for life sustaining treatment and to provide grants for the development and expansion of programs for such orders.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the ''Life Sustaining Treat-
5 ment Preferences Act of 2009''.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

3 (1) Serious illness, death, and dying are often
4 difficult subjects to talk about for individuals, their
5 families, and health care professionals.

6 (2) Poor communication about preferences for
7 care at the end of life can cause distress for both pa-
8 tients and their families.

9 (3) As individuals approach the last chapter of
10 their life, more can and should be done to educate
11 them about treatment choices and help individuals
12 communicate to health providers what care they
13 want or do not want to receive.

14 (4) A decade of research has demonstrated that
15 orders for life sustaining treatment effectively convey
16 treatment preferences, guiding medical personnel in
17 providing or withholding interventions.

18 (5) Orders for life sustaining treatment differ
19 from advance directives. Advance directives (includ-
20 ing living wills and durable powers of attorney for
21 health care) must be completed while individuals
22 have the capacity to complete them and generally
23 apply to future, hypothetical medical circumstances
24 when decisionmaking capacity is lost. Patients' val-
25 ues, goals, and preferences, as expressed in advance
26 directives, require a thoughtful interpretive process

1 to apply to specific medical circumstances in real
2 time. Yet, patients and proxy decisionmakers are
3 often uncertain how to apply and implement pa-
4 tients' values and goals in unfamiliar health care
5 settings when real treatment plans and complicated
6 decisions need to be made.

7 (6) Orders for life sustaining treatment com-
8 plement advances directives by providing a process
9 to focus patients' values, goals, and preferences on
10 current medical circumstances and to translate them
11 into visible and portable medical orders applicable
12 across care settings, including home, long-term care,
13 emergency medical services, and hospitals. Without
14 such medical orders emergency medical personnel
15 may be required to provide treatments that may not
16 be consistent with the individual's preferences. Com-
17 pletion of such an order is equally valuable to pa-
18 tients who have not executed advance directives.

19 (7) The following States have implemented or
20 are developing orders for life sustaining treatment
21 programs at the local or statewide level: Alaska,
22 California, Colorado, Florida, Georgia, Hawaii,
23 Idaho, Iowa, Kansas, Louisiana, Maine, Massachu-
24 setts, Michigan, Minnesota, Missouri, Montana, Ne-
25 braska, Nevada, New Hampshire, New York, North

1 Carolina, North Dakota, Ohio, Oregon, Pennsyl-
2 vania, Tennessee, Texas, Utah, Washington, West
3 Virginia, Wisconsin and Wyoming.
4 (8) Programs for orders for life sustaining
5 treatment provide valuable services to individuals,
6 their families, and health care providers through
7 educational materials, professional training on ad-
8 vance care planning, coordinating and collaborating
9 with hospitals, skilled nursing facilities, hospice pro-
10 grams, home health agencies, and emergency med-
11 ical services to implement such orders across the
12 continuum of care, and monitoring the success of
13 the program.
14 (9) Medicare pays for acute care services pro-
15 vided to beneficiaries, but generally does not pay for
16 informed discussions between beneficiaries and
17 health providers to allow beneficiaries the oppor-
18 tunity to determine if they desire such acute care in
19 the last months and years of life.

20 **SEC. 3. MEDICARE COVERAGE OF CONSULTATION REGARD-**
21 **ING ORDERS FOR LIFE SUSTAINING TREAT-**
22 **MENT.**

23 (a) IN GENERAL.—Section 1861 of the Social Secu-
24 rity Act (42 U.S.C. 1395x), as amended by sections
25 101(a), 144(a), and 152(b) of the Medicare Improvements

for Patients and Providers Act of 2008 (Public Law 110–275), is amended—

(1) in subsection (s)(2)—

(A) by striking "and" at the end of subparagraph (DD);

(B) by adding "and" at the end of subparagraph (EE); and

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

"(FF) consultations regarding an order for life sustaining treatment (as defined in subsection (hhh)(1)) for qualified individuals (as defined in subsection (hhh)(3));"; and

(2) by adding at the end the following new subsection:

"Consultation Regarding an Order for Life Sustaining Treatment

"(hhh)(1) The term 'consultation regarding an order for life sustaining treatment' means, with respect to a qualified individual, consultations between the individual and the individual's physician (as defined in subsection (r)(1)) (or other health care professional described in paragraph (2)(A)) and, to the extent applicable, registered nurses, nurse practitioners, physicians' assistants, and social workers, regarding the establishment, implementation,

1 and changes in an order regarding life sustaining treat-
2 ment (as defined in paragraph (2)) for that individual.
3 Such a consultation may include a consultation regard-
4 ing—

5 ‘‘(A) the reasons why the development of
6 such an order is beneficial to the individual and
7 the individual’s family and the reasons why
8 such an order should be updated periodically as
9 the health of the individual changes;

10 ‘‘(B) the information needed for an indi-
11 vidual or legal surrogate to make informed deci-
12 sions regarding the completion of such an
13 order; and

14 ‘‘(C) the identification of resources that an
15 individual may use to determine the require-
16 ments of the State in which such individual re-
17 sides so that the treatment wishes of that indi-
18 vidual will be carried out if the individual is un-
19 able to communicate those wishes, including re-
20 quirements regarding the designation of a sur-
21 rogate decisionmaker (also known as a health
22 care proxy).

23 The Secretary may limit consultations regarding an
24 order regarding life sustaining treatment to con-
25 sultations furnished in States, localities, or other ge-

1 ographic areas in which such orders have been wide-
2 ly adopted.
3 ''(2) The terms 'order regarding life sustaining treat-
4 ment' means, with respect to an individual, an actionable
5 medical order relating to the treatment of that individual
6 that—
7 ''(A) is signed and dated by a physician (as de-
8 fined in subsection (r)(1)) or another health care
9 professional (as specified by the Secretary and who
10 is acting within the scope of the professional's au-
11 thority under State law in signing such an order)
12 and is in a form that permits it to stay with the pa-
13 tient and be followed by health care professionals
14 and providers across the continuum of care, includ-
15 ing home care, hospice, long-term care, community
16 and assisted living residences, skilled nursing facili-
17 ties, inpatient rehabilitation facilities, hospitals, and
18 emergency medical services;
19 ''(B) effectively communicates the individual's
20 preferences regarding life sustaining treatment, in-
21 cluding an indication of the treatment and care de-
22 sired by the individual;
23 ''(C) is uniquely identifiable and standardized
24 within a given locality, region, or State (as identified
25 by the Secretary);

1 ‘‘(D) is portable across care settings; and
2 ‘‘(E) may incorporate any advance directive (as
3 defined in section 1866(f)(3)) if executed by the in-
4 dividual.
5 ‘‘(3) The term ‘qualified individual’ means an indi-
6 vidual who a physician (as defined in subsection (r)(1))
7 (or other health care professional described in paragraph
8 (2)(A)) determines has a chronic, progressive illness and,
9 as a consequence of such illness, is as likely as not to die
10 within 1 year.
11 ‘‘(4) The level of treatment indicated under para-
12 graph (2)(B) may range from an indication for full treat-
13 ment to an indication to limit some or all or specified
14 interventions. Such indicated levels of treatment may in-
15 clude indications respecting, among other items—
16 ‘‘(A) the intensity of medical intervention if the
17 patient is pulseless, apneic, or, has serious cardiac
18 or pulmonary problems;
19 ‘‘(B) the individual’s desire regarding transfer
20 to a hospital or remaining at the current care set-
21 ting;
22 ‘‘(C) the use of antibiotics; and
23 ‘‘(D) the use of artificially administered nutri-
24 tion and hydration.’’.
25 (b) PAYMENT.—

1 (1) IN GENERAL.—Section 1848(j)(3) of such
2 Act (42 U.S.C. 1395w–4(j)(3)), as amended by sec-
3 tions 144(a)(2) and 152(b)(1)(C) of the Medicare
4 Improvements for Patients and Providers Act of
5 2008 (Public Law 110–275), by inserting
6 "(2)(FF)," after "(2)(EE),".
7 (2) CONSTRUCTION.—Nothing in this section
8 shall be construed as preventing the payment for a
9 consultation regarding an order regarding life sus-
10 taining treatment to be made to multiple health care
11 providers if they are providing such consultation as
12 a team, so long as the total amount of payment is
13 not increased by reason of the payment to multiple
14 providers.
15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to consultations furnished on or
17 after January 1, 2010.

18 **SEC. 4. GRANTS FOR PROGRAMS FOR ORDERS REGARDING**
19 **LIFE SUSTAINING TREATMENT.**

20 (a) IN GENERAL.—The Secretary of Health and
21 Human Services shall make grants to eligible entities for
22 the purpose of—
23 (1) establishing new programs for orders re-
24 garding life sustaining treatment in States or local-
25 ities;

1 (2) expanding or enhancing an existing pro-
2 gram for orders regarding life sustaining treatment
3 in States or localities; or
4 (3) providing a clearinghouse of information on
5 programs for orders for life sustaining treatment
6 and consultative services for the development or en-
7 hancement of such programs.
8 (b) AUTHORIZED ACTIVITIES.—Activities funded
9 through a grant under this section for an area may in-
10 clude—
11 (1) developing such a program for the area that
12 includes home care, hospice, long-term care, commu-
13 nity and assisted living residences, skilled nursing
14 facilities, inpatient rehabilitation facilities, hospitals,
15 and emergency medical services within the area;
16 (2) securing consultative services and advice
17 from institutions with experience in developing and
18 managing such programs; and
19 (3) expanding an existing program for orders
20 regarding life sustaining treatment to serve more pa-
21 tients or enhance the quality of services, including
22 educational services for patients and patients' fami-
23 lies or training of health care professionals.
24 (c) DISTRIBUTION OF FUNDS.—In funding grants
25 under this section, the Secretary shall ensure that, of the

1 funds appropriated to carry out this section for each fiscal
2 year—
3 (1) at least two-thirds are used for establishing
4 or developing new programs for orders regarding life
5 sustaining treatment; and
6 (2) one-third is used for expanding or enhanc-
7 ing existing programs for orders regarding life sus-
8 taining treatment.
9 (d) DEFINITIONS.—In this section:
10 (1) The term ''eligible entity'' includes—
11 (A) an academic medical center, a medical
12 school, a State health department, a State med-
13 ical association, a multi-State taskforce, a hos-
14 pital, or a health system capable of admin-
15 istering a program for orders regarding life sus-
16 taining treatment for a State or locality; or
17 (B) any other health care agency or entity
18 as the Secretary determines appropriate.
19 (2) The term ''order regarding life sustaining
20 treatment'' has the meaning given such term in sec-
21 tion 1861(hhh)(2) of the Social Security Act, as
22 added by section 3.
23 (3) The term ''program for orders regarding
24 life sustaining treatment'' means, with respect to an

1 area, a program that supports the active use of or-
2 ders regarding life sustaining treatment in the area.
3 (4) The term ''Secretary'' means the Secretary
4 of Health and Human Services.
5 (e) AUTHORIZATION OF APPROPRIATIONS.—To carry
6 out this section, there are authorized to be appropriated
7 such sums as may be necessary for each of the fiscal years
8 2009 through 2014.

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