

Excerpted from HR 3200 Proposed Health Care Reform Bill

SEC. 1233. ADVANCE CARE PLANNING CONSULTATION.

(a) Medicare-

(1) IN GENERAL- Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended--

(A) in subsection (s)(2)--

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

(ii) by adding `and' at the end of subparagraph (EE); and

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

`(FF) advance care planning consultation (as defined in subsection (hhh)(1));'; and

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

` Advance Care Planning Consultation

`(hhh)(1) Subject to paragraphs (3) and (4), the term `advance care planning consultation' means a consultation between the individual and a practitioner described in paragraph (2) regarding advance care planning, if, subject to paragraph (3), the individual involved has not had such a consultation within the last 5 years. Such consultation shall include the following:

`(A) An explanation by the practitioner of advance care planning, including key questions and considerations, important steps, and suggested people to talk to.

`(B) An explanation by the practitioner of advance directives, including living wills and durable powers of attorney, and their uses.

`(C) An explanation by the practitioner of the role and responsibilities of a health care proxy.

`(D) The provision by the practitioner of a list of national and State-specific resources to assist consumers and their families with advance care planning, including the national toll-free hotline, the advance care planning clearinghouses, and State legal service organizations (including those funded through the Older Americans Act of 1965).

˘ (E) An explanation by the practitioner of the continuum of end-of-life services and supports available, including palliative care and hospice, and benefits for such services and supports that are available under this title.

˘ (F)(i) Subject to clause (ii), an explanation of orders regarding life sustaining treatment or similar orders, which shall include--

˘ (I) the reasons why the development of such an order is beneficial to the individual and the individual's family and the reasons why such an order should be updated periodically as the health of the individual changes;

˘ (II) the information needed for an individual or legal surrogate to make informed decisions regarding the completion of such an order; and

˘ (III) the identification of resources that an individual may use to determine the requirements of the State in which such individual resides so that the treatment wishes of that individual will be carried out if the individual is unable to communicate those wishes, including requirements regarding the designation of a surrogate decisionmaker (also known as a health care proxy).

˘ (ii) The Secretary shall limit the requirement for explanations under clause (i) to consultations furnished in a State--

˘ (I) in which all legal barriers have been addressed for enabling orders for life sustaining treatment to constitute a set of medical orders respected across all care settings; and

˘ (II) that has in effect a program for orders for life sustaining treatment described in clause (iii).

˘ (iii) A program for orders for life sustaining treatment for a State described in this clause is a program that--

˘ (I) ensures such orders are standardized and uniquely identifiable throughout the State;

˘ (II) distributes or makes accessible such orders to physicians and other health professionals that (acting within the scope of the professional's authority under State law) may sign orders for life sustaining treatment;

˘ (III) provides training for health care professionals across the continuum of care about the goals and use of orders for life sustaining treatment; and

` (IV) is guided by a coalition of stakeholders includes representatives from emergency medical services, emergency department physicians or nurses, state long-term care association, state medical association, state surveyors, agency responsible for senior services, state department of health, state hospital association, home health association, state bar association, and state hospice association.

` (2) A practitioner described in this paragraph is--

` (A) a physician (as defined in subsection (r)(1)); and

` (B) a nurse practitioner or physician's assistant who has the authority under State law to sign orders for life sustaining treatments.

` (3)(A) An initial preventive physical examination under subsection (WW), including any related discussion during such examination, shall not be considered an advance care planning consultation for purposes of applying the 5-year limitation under paragraph (1).

` (B) An advance care planning consultation with respect to an individual may be conducted more frequently than provided under paragraph (1) if there is a significant change in the health condition of the individual, including diagnosis of a chronic, progressive, life-limiting disease, a life-threatening or terminal diagnosis or life-threatening injury, or upon admission to a skilled nursing facility, a long-term care facility (as defined by the Secretary), or a hospice program.

` (4) A consultation under this subsection may include the formulation of an order regarding life sustaining treatment or a similar order.

` (5)(A) For purposes of this section, the term `order regarding life sustaining treatment' means, with respect to an individual, an actionable medical order relating to the treatment of that individual that--

` (i) is signed and dated by a physician (as defined in subsection (r)(1)) or another health care professional (as specified by the Secretary and who is acting within the scope of the professional's authority under State law in signing such an order, including a nurse practitioner or physician assistant) and is in a form that permits it to stay with the individual and be followed by health care professionals and providers across the continuum of care;

- ˆ (ii) effectively communicates the individual's preferences regarding life sustaining treatment, including an indication of the treatment and care desired by the individual;
 - ˆ (iii) is uniquely identifiable and standardized within a given locality, region, or State (as identified by the Secretary); and
 - ˆ (iv) may incorporate any advance directive (as defined in section 1866(f)(3)) if executed by the individual.
- ˆ (B) The level of treatment indicated under subparagraph (A)(ii) may range from an indication for full treatment to an indication to limit some or all or specified interventions. Such indicated levels of treatment may include indications respecting, among other items--
- ˆ (i) the intensity of medical intervention if the patient is pulse less, apneic, or has serious cardiac or pulmonary problems;
 - ˆ (ii) the individual's desire regarding transfer to a hospital or remaining at the current care setting;
 - ˆ (iii) the use of antibiotics; and
 - ˆ (iv) the use of artificially administered nutrition and hydration.'
- (2) PAYMENT- Section 1848(j)(3) of such Act (42 U.S.C. 1395w-4(j)(3)) is amended by inserting ` (2)(FF),' after ` (2)(EE),'.
- (3) FREQUENCY LIMITATION- Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended--
- (A) in paragraph (1)--
 - (i) in subparagraph (N), by striking ` and' at the end;
 - (ii) in subparagraph (O) by striking the semicolon at the end and inserting ` , and'; and
 - (iii) by adding at the end the following new subparagraph:
 - ˆ (P) in the case of advance care planning consultations (as defined in section 1861(hhh)(1)), which are performed more frequently than is covered under such section;'; and
 - (B) in paragraph (7), by striking ` or (K)' and inserting ` (K), or (P)'.
- (4) EFFECTIVE DATE- The amendments made by this subsection shall apply to consultations furnished on or after January 1, 2011.
- (b) Expansion of Physician Quality Reporting Initiative for End of Life Care-

(1) Physician'S QUALITY REPORTING INITIATIVE- Section 1848(k)(2) of the Social Security Act (42 U.S.C. 1395w-4(k)(2)) is amended by adding at the end the following new paragraphs:

^ (3) Physician'S QUALITY REPORTING INITIATIVE-

^ (A) IN GENERAL- For purposes of reporting data on quality measures for covered professional services furnished during 2011 and any subsequent year, to the extent that measures are available, the Secretary shall include quality measures on end of life care and advanced care planning that have been adopted or endorsed by a consensus-based organization, if appropriate. Such measures shall measure both the creation of and adherence to orders for life-sustaining treatment.

^ (B) PROPOSED SET OF MEASURES- The Secretary shall publish in the Federal Register proposed quality measures on end of life care and advanced care planning that the Secretary determines are described in subparagraph (A) and would be appropriate for eligible professionals to use to submit data to the Secretary. The Secretary shall provide for a period of public comment on such set of measures before finalizing such proposed measures.'

(c) Inclusion of Information in Medicare & You Handbook-

(1) MEDICARE & YOU HANDBOOK-

(A) IN GENERAL- Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall update the online version of the Medicare & You Handbook to include the following:

(i) An explanation of advance care planning and advance directives, including--

(I) living wills;

(II) durable power of attorney;

(III) orders of life-sustaining treatment;

and

(IV) health care proxies.

(ii) A description of Federal and State resources available to assist individuals and their families with advance care planning and advance directives, including--

(I) available State legal service

organizations to assist individuals with

advance care planning, including those organizations that receive funding pursuant to the Older Americans Act of 1965 (42 U.S.C. 93001 et seq.); (II) website links or addresses for State-specific advance directive forms; and (III) any additional information, as determined by the Secretary.

(B) UPDATE OF PAPER AND SUBSEQUENT VERSIONS- The Secretary shall include the information described in subparagraph (A) in all paper and electronic versions of the Medicare & You Handbook that are published on or after the date that is 1 year after the date of the enactment of this Act.