

110TH CONGRESS  
2D SESSION

# H. R. 7181

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.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2008

Mr. BLUMENAUER (for himself, Mr. KIND, Mr. McDERMOTT, Mr. FATAH, Ms. HOOLEY, and Mr. WU) 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 2008”.

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 be done to educate them about  
11 treatment choices and help individuals communicate  
12 to health providers what care they want or do not  
13 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 statewide programs for orders for life  
21 sustaining treatment: California, Colorado, Georgia,  
22 Florida, Hawaii, Idaho, Louisiana, Michigan, Mis-  
23 souri, Nebraska, New Hampshire, New York, North  
24 Carolina, Ohio, Oregon, Tennessee, Texas, Utah,  
25 Washington, and West Virginia. Localities within

1 Maine, Minnesota, Nevada, North Dakota, Pennsyl-  
2 vania, and Wisconsin have implemented or are devel-  
3 oping programs for orders for life sustaining treat-  
4 ment.

5 (8) Programs for orders for life sustaining  
6 treatment provide valuable services to individuals,  
7 their families, and health care providers through  
8 educational materials, professional training on ad-  
9 vance care planning, coordinating and collaborating  
10 with hospitals, skilled nursing facilities, hospice pro-  
11 grams, home health agencies, and emergency med-  
12 ical services to implement such orders across the  
13 continuum of care, and monitoring the success of  
14 the program.

15 (9) Medicare pays for acute care services pro-  
16 vided to beneficiaries, but does not pay for informed  
17 discussions between beneficiaries and health pro-  
18 viders to allow beneficiaries the opportunity to deter-  
19 mine if they desire such acute care in the last  
20 months and years of life.

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

24 (a) IN GENERAL.—Section 1861 of the Social Secu-  
25 rity Act (42 U.S.C. 1395x), as amended by sections

1 101(a), 144(a), and 152(b) of the Medicare Improvements  
2 for Patients and Providers Act of 2008 (Public Law 110–  
3 275), is amended—

4 (1) in subsection (s)(2)—

5 (A) by striking “and” at the end of sub-  
6 paragraph (DD);

7 (B) by adding “and” at the end of sub-  
8 paragraph (EE); and

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

11 “(FF) consultations regarding an order for  
12 life sustaining treatment (as defined in sub-  
13 section (hhh)(1)) for qualified individuals (as  
14 defined in subsection (hhh)(3));” and

15 (2) by adding at the end the following new sub-  
16 section:

17 “Consultation Regarding an Order for Life Sustaining  
18 Treatment

19 “(hhh)(1) The term ‘consultation regarding an order  
20 for life sustaining treatment’ means, with respect to a  
21 qualified individual, consultations between the individual  
22 and the individual’s physician (as defined in subsection  
23 (r)(1)) (or other health care professional described in  
24 paragraph (2)(A)) and, to the extent applicable, registered  
25 nurses, nurse practitioners, physicians’ assistants, and so-

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

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

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

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

24           The Secretary may limit consultations regarding an  
25 order regarding life sustaining treatment to con-

1       sultations furnished in States, localities, or other ge-  
2       ographic areas in which such orders have been wide-  
3       ly adopted.

4       “(2) The terms ‘order regarding life sustaining treat-  
5       ment’ means, with respect to an individual, an actionable  
6       medical order relating to the treatment of that individual  
7       that—

8               “(A) is signed by a physician (as defined in  
9       subsection (r)(1)) or another health care professional  
10       (as specified by the Secretary and who is acting  
11       within the scope of the professional’s authority  
12       under State law in signing such an order) and is in  
13       a form that permits it to be followed by health care  
14       professionals and providers across the continuum of  
15       care, including hospitals, nursing facilities, and  
16       emergency medical technicians;

17               “(B) effectively communicates the individual’s  
18       preferences regarding life sustaining treatment, in-  
19       cluding an indication of the treatment and care de-  
20       sired by the individual;

21               “(C) is uniquely identifiable and standardized  
22       within a given locality, region, or State (as identified  
23       by the Secretary);

24               “(D) is portable across care settings; and

1           “(E) may incorporate any advance directive (as  
2           defined in section 1866(f)(3)) if executed by the in-  
3           dividual.

4           “(3) The term ‘qualified individual’ means an indi-  
5           vidual who a physician (as defined in subsection (r)(1))  
6           (or other health care professional described in paragraph  
7           (2)(A)) determines has a chronic, progressive illness and,  
8           as a consequence of such illness, is as likely as not to die  
9           within 1 year.

10          “(4) The level of treatment indicated under para-  
11          graph (2)(B) may range from an indication for full treat-  
12          ment to an indication to limit some or all or specified  
13          interventions. Such indicated levels of treatment may in-  
14          clude indications respecting, among other items—

15                 “(A) the intensity of medical intervention if the  
16                 patient is pulseless, apneic, or, has serious cardiac  
17                 or pulmonary problems;

18                 “(B) the individual’s desire regarding transfer  
19                 to a hospital or remaining at the current care set-  
20                 ting;

21                 “(C) the use of antibiotics; and

22                 “(D) the use of artificially administered nutri-  
23                 tion.”.

24                 (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 a States or lo-  
25 calities;

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 hospitals, skilled nursing facilities, hospice  
13           programs, home health agencies, and emergency  
14           medical technicians within the area;

15           (2) securing consultative services and advice  
16           from institutions with experience in developing and  
17           managing such programs; and

18           (3) expanding an existing program for orders  
19           regarding life sustaining treatment to serve more pa-  
20           tients or enhance the quality of services, including  
21           educational services for patients and patients' fami-  
22           lies or training of health care professionals.

23           (c) DISTRIBUTION OF FUNDS.—In funding grants  
24           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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