

Advance Care Planning / EOL Care
Excerpts H.L.C.

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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

To provide affordable, quality health care for all Americans and reduce the growth in health care spending, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. DINGELL (for himself, Mr. RANGEL, Mr. WAXMAN, Mr. GEORGE MILLER of California, Mr. STARK, Mr. PALLONE, and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on

A BILL

To provide affordable, quality health care for all Americans and reduce the growth in health care spending, 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 DIVISIONS, TITLES,**
4 **AND SUBTITLES.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Affordable Health Care for America Act”.

1 **SEC. 240. DISSEMINATION OF ADVANCE CARE PLANNING**
2 **INFORMATION.**

3 (a) IN GENERAL.—The QHBP offering entity —

4 (1) shall provide for the dissemination of infor-
5 mation related to end-of-life planning to individuals
6 seeking enrollment in Exchange-participating health
7 benefits plans offered through the Exchange;

8 (2) shall present such individuals with—

9 (A) the option to establish advanced direc-
10 tives and physician's orders for life sustaining
11 treatment according to the laws of the State in
12 which the individual resides; and

13 (B) information related to other planning
14 tools; and

15 (3) shall not promote suicide, assisted suicide,
16 euthanasia, or mercy killing.

17 The information presented under paragraph (2) shall not
18 presume the withdrawal of treatment and shall include
19 end-of-life planning information that includes options to
20 maintain all or most medical interventions.

21 (b) CONSTRUCTION.— Nothing in this section shall
22 be construed—

23 (1) to require an individual to complete an ad-
24 vanced directive or a physician's order for life sus-
25 taining treatment or other end-of-life planning docu-
26 ment;

1 (2) to require an individual to consent to re-
2 strictions on the amount, duration, or scope of med-
3 ical benefits otherwise covered under a qualified
4 health benefits plan; or

5 (3) to promote suicide, assisted suicide, eutha-
6 nasia, or mercy killing.

7 (c) **ADVANCED DIRECTIVE DEFINED.**—In this sec-
8 tion, the term “advanced directive” includes a living will,
9 a comfort care order, or a durable power of attorney for
10 health care.

11 (d) **PROHIBITION ON THE PROMOTION OF ASSISTED**
12 **SUICIDE.**—

13 (1) **IN GENERAL.**—Subject to paragraph (3),
14 information provided to meet the requirements of
15 subsection (a)(2) shall not include advanced direc-
16 tives or other planning tools that list or describe as
17 an option suicide, assisted suicide, euthanasia, or
18 mercy killing, regardless of legality.

19 (2) **CONSTRUCTION.**—Nothing in paragraph (1)
20 shall be construed to apply to or affect any option
21 to—

22 (A) withhold or withdraw of medical treat-
23 ment or medical care;

24 (B) withhold or withdraw of nutrition or
25 hydration; and

1 (C) provide palliative or hospice care or
2 use an item, good, benefit, or service furnished
3 for the purpose of alleviating pain or discom-
4 fort, even if such use may increase the risk of
5 death, so long as such item, good, benefit, or
6 service is not also furnished for the purpose of
7 causing, or the purpose of assisting in causing,
8 death, for any reason.

9 (3) NO PREEMPTION OF STATE LAW.—Nothing
10 in this section shall be construed to preempt or oth-
11 erwise have any effect on State laws regarding ad-
12 vance care planning, palliative care, or end-of-life de-
13 cision-making.

14 **Subtitle E—Governance**

15 **SEC. 241. HEALTH CHOICES ADMINISTRATION; HEALTH** 16 **CHOICES COMMISSIONER.**

17 (a) IN GENERAL.—There is hereby established, as an
18 independent agency in the executive branch of the Govern-
19 ment, a Health Choices Administration (in this division
20 referred to as the “Administration”).

21 (b) COMMISSIONER.—

22 (1) IN GENERAL.—The Administration shall be
23 headed by a Health Choices Commissioner (in this
24 division referred to as the “Commissioner”) who

1 (ii) by inserting “and at a time” after
2 “form and manner”; and
3 (3) in subsection (h)(4)(E), by striking “lesser”
4 and inserting “greater”.

5 **SEC. 1233. VOLUNTARY ADVANCE CARE PLANNING CON-**
6 **SULTATION.**

7 (a) IN GENERAL.—Section 1861 of the Social Secu-
8 rity Act (42 U.S.C. 1395x) is amended—

9 (1) in subsection (s)(2)—

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

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

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

16 “(FF) voluntary advance care planning con-
17 sultation (as defined in subsection (hhh)(1));” and

18 (2) by adding at the end the following new sub-
19 section:

20 “Voluntary Advance Care Planning Consultation

21 “(hhh)(1) Subject to paragraphs (3) and (4), the
22 term ‘voluntary advance care planning consultation’
23 means an optional consultation between the individual and
24 a practitioner described in paragraph (2) regarding ad-

1 vance care planning. Such consultation may include the
2 following, as specified by the Secretary:

3 “(A) An explanation by the practitioner of ad-
4 vance care planning, including a review of key ques-
5 tions and considerations, advance directives (includ-
6 ing living wills and durable powers of attorney) and
7 their uses.

8 “(B) An explanation by the practitioner of the
9 role and responsibilities of a health care proxy and
10 of the continuum of end-of-life services and supports
11 available, including palliative care and hospice, and
12 benefits for such services and supports that are
13 available under this title.

14 “(C) An explanation by the practitioner of phy-
15 sician orders regarding life sustaining treatment or
16 similar orders, in States where such orders or simi-
17 lar orders exist.

18 “(2) A practitioner described in this paragraph is—

19 “(A) a physician (as defined in subsection
20 (r)(1)); and

21 “(B) another health care professional (as speci-
22 fied by the Secretary and who has the authority
23 under State law to sign orders for life sustaining
24 treatments, such as a nurse practitioner or physician
25 assistant).

1 “(3) An individual may receive the voluntary advance
2 care planning care planning consultation provided for
3 under this subsection no more than once every 5 years
4 unless there is a significant change in the health or health-
5 related condition of the individual.

6 “(4) For purposes of this section, the term ‘order re-
7 garding life sustaining treatment’ means, with respect to
8 an individual, an actionable medical order relating to the
9 treatment of that individual that effectively communicates
10 the individual’s preferences regarding life sustaining treat-
11 ment, is signed and dated by a practitioner, and is in a
12 form that permits it to be followed by health care profes-
13 sionals across the continuum of care.”.

14 (b) CONSTRUCTION.—The voluntary advance care
15 planning consultation described in section 1861(hhh) of
16 the Social Security Act, as added by subsection (a), shall
17 be completely optional. Nothing in this section shall—

18 (1) require an individual to complete an ad-
19 vance directive, an order for life sustaining treat-
20 ment, or other advance care planning document;

21 (2) require an individual to consent to restric-
22 tions on the amount, duration, or scope of medical
23 benefits an individual is entitled to receive under
24 this title; or

1 (3) encourage the promotion of suicide or as-
2 sisted suicide.

3 (e) PAYMENT.—Section 1848(j)(3) of such Act (42
4 U.S.C. 1395w-4(j)(3)) is amended by inserting “(2)(FF),”
5 after “(2)(EE),”.

6 (d) FREQUENCY LIMITATION.—Section 1862(a) of
7 such Act (42 U.S.C. 1395y(a)) is amended—

8 (1) in paragraph (1)—

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

11 (B) in subparagraph (O) by striking the
12 semicolon at the end and inserting “, and”; and

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

15 “(P) in the case of voluntary advance care
16 planning consultations (as defined in paragraph
17 (1) of section 1861(hhh)), which are performed
18 more frequently than is covered under such sec-
19 tion;”; and

20 (2) in paragraph (7), by striking “or (K)” and
21 inserting “(K), or (P)”.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to consultations furnished on or
24 after January 1, 2011.

1 of any funds in the Treasury not otherwise appro-
2 priated, there are appropriated to the Secretary of
3 Health and Human Services \$2,000,000 for each of
4 the fiscal years 2010 through 2014.”.

5 **SEC. 1442. DEVELOPMENT OF NEW QUALITY MEASURES;**
6 **GAO EVALUATION OF DATA COLLECTION**
7 **PROCESS FOR QUALITY MEASUREMENT.**

8 Part E of title XI of the Social Security Act, as added
9 by section 1441, is amended by adding at the end the fol-
10 lowing new sections:

11 **“SEC. 1192. DEVELOPMENT OF NEW QUALITY MEASURES.**

12 **“(a) AGREEMENTS WITH QUALIFIED ENTITIES.—**

13 **“(1) IN GENERAL.—**The Secretary shall enter
14 into agreements with qualified entities to develop
15 quality measures for the delivery of health care serv-
16 ices in the United States.

17 **“(2) FORM OF AGREEMENTS.—**The Secretary
18 may carry out paragraph (1) by contract, grant, or
19 otherwise.

20 **“(3) RECOMMENDATIONS OF CONSENSUS-**
21 **BASED ENTITY.—**In carrying out this section, the
22 Secretary shall—

23 **“(A) seek public input; and**

1 “(B) take into consideration recommenda-
2 tions of the consensus-based entity with a con-
3 tract with the Secretary under section 1890(a).

4 “(b) DETERMINATION OF AREAS WHERE QUALITY
5 MEASURES ARE REQUIRED.—Consistent with the na-
6 tional priorities established under this part and with the
7 programs administered by the Centers for Medicare &
8 Medicaid Services and in consultation with other relevant
9 Federal agencies, the Secretary shall determine areas in
10 which quality measures for assessing health care services
11 in the United States are needed.

12 “(c) DEVELOPMENT OF QUALITY MEASURES.—

13 “(1) PATIENT-CENTERED AND POPULATION-
14 BASED MEASURES.—In entering into agreements
15 under subsection (a), the Secretary shall give pri-
16 ority to the development of quality measures that
17 allow the assessment of—

18 “(A) health outcomes, presence of impair-
19 ment, and functional status of patients;

20 “(B) the continuity and coordination of
21 care and care transitions for patients across
22 providers and health care settings, including
23 end of life care;

24 “(C) patient experience and patient en-
25 gagement;

1 “(D) the safety, effectiveness, and timeli-
2 ness of care;

3 “(E) health disparities including those as-
4 sociated with individual race, ethnicity, age,
5 gender, place of residence or language; and

6 “(F) the efficiency and resource use in the
7 provision of care.

8 “(2) USE OF FUNDS.—An entity that enters
9 into an agreement under subsection (a) shall develop
10 quality measures that—

11 “(A) to the extent feasible, have the ability
12 to be collected through the use of health infor-
13 mation technologies supporting better delivery
14 of health care services; and

15 “(B) are available free of charge to users
16 for the use of such measures.

17 “(3) AVAILABILITY OF MEASURES.—The Sec-
18 retary shall make quality measures developed under
19 this section available to the public.

20 “(4) TESTING OF PROPOSED MEASURES.—The
21 Secretary may use amounts made available under
22 subsection (f) to fund the testing of proposed quality
23 measures by qualified entities. Testing funded under
24 this paragraph shall include testing of the feasibility
25 and usability of proposed measures.

1 “(5) UPDATING OF ENDORSED MEASURES.—

2 The Secretary may use amounts made available
3 under subsection (f) to fund the updating (and test-
4 ing, if applicable) by consensus-based entities of
5 quality measures that have been previously endorsed
6 by such an entity as new evidence is developed, in
7 a manner consistent with section 1890(b)(3).

8 “(d) QUALIFIED ENTITIES.—Before entering into
9 agreements with a qualified entity, the Secretary shall en-
10 sure that the entity is a public, private, or academic insti-
11 tution with technical expertise in the area of health quality
12 measurement.

13 “(e) APPLICATION FOR GRANT.—A grant may be
14 made under this section only if an application for the
15 grant is submitted to the Secretary and the application
16 is in such form, is made in such manner, and contains
17 such agreements, assurances, and information as the Sec-
18 retary determines to be necessary to carry out this section.

19 “(f) FUNDING.—

20 “(1) IN GENERAL.—The Secretary shall provide
21 for the transfer, from the Federal Hospital Insur-
22 ance Trust Fund under section 1817 and the Fed-
23 eral Supplementary Medical Insurance Trust Fund
24 under section 1841 (in such proportion as the Sec-
25 retary determines appropriate), of \$25,000,000, to

1 the Secretary for purposes of carrying out this sec-
2 tion for each of the fiscal years 2010 through 2014.

3 “(2) AUTHORIZATION OF APPROPRIATIONS.—
4 For purposes of carrying out the provisions of this
5 section, in addition to funds otherwise available, out
6 of any funds in the Treasury not otherwise appro-
7 priated, there are appropriated to the Secretary of
8 Health and Human Services \$25,000,000 for each
9 of the fiscal years 2010 through 2014.

10 **“SEC. 1193. GAO EVALUATION OF DATA COLLECTION PROC-**
11 **ESS FOR QUALITY MEASUREMENT.**

12 “(a) GAO EVALUATIONS.—The Comptroller General
13 of the United States shall conduct periodic evaluations of
14 the implementation of the data collection processes for
15 quality measures used by the Secretary.

16 “(b) CONSIDERATIONS.—In carrying out the evalua-
17 tion under subsection (a), the Comptroller General shall
18 determine—

19 “(1) whether the system for the collection of
20 data for quality measures provides for validation of
21 data as relevant and scientifically credible;

22 “(2) whether data collection efforts under the
23 system use the most efficient and cost-effective
24 means in a manner that minimizes administrative
25 burden on persons required to collect data and that