

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. ADVANCE CARE PLANNING CONSULTATION.**

6 (a) **MEDICARE.**—

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

9 (A) in subsection (s)(2)—

10 (i) by striking “and” at the end of  
 11 subparagraph (DD);

12 (ii) by adding “and” at the end of  
 13 subparagraph (EE); and

14 (iii) by adding at the end the fol-  
 15 lowing new subparagraph:

16 “(FF) advance care planning consultation (as  
 17 defined in subsection (hhh)(1));” and

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

20 “Advance Care Planning Consultation

21 “(hhh)(1) Subject to paragraphs (3) and (4), the  
 22 term ‘advance care planning consultation’ means a con-  
 23 sultation between the individual and a practitioner de-  
 24 scribed in paragraph (2) regarding advance care planning,  
 25 if, subject to paragraph (3), the individual involved has

1 not had such a consultation within the last 5 years. Such  
2 consultation shall include the following:

3           “(A) An explanation by the practitioner of ad-  
4 vance care planning, including key questions and  
5 considerations, important steps, and suggested peo-  
6 ple to talk to.

7           “(B) An explanation by the practitioner of ad-  
8 vance directives, including living wills and durable  
9 powers of attorney, and their uses.

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

12           “(D) The provision by the practitioner of a list  
13 of national and State-specific resources to assist con-  
14 sumers and their families with advance care plan-  
15 ning, including the national toll-free hotline, the ad-  
16 vance care planning clearinghouses, and State legal  
17 service organizations (including those funded  
18 through the Older Americans Act of 1965).

19           “(E) An explanation by the practitioner of the  
20 continuum of end-of-life services and supports avail-  
21 able, including palliative care and hospice, and bene-  
22 fits for such services and supports that are available  
23 under this title.

1           “(F)(i) Subject to clause (ii), an explanation of  
2 orders regarding life sustaining treatment or similar  
3 orders, which shall include—

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

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

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

22           “(ii) The Secretary shall limit the requirement  
23 for explanations under clause (i) to consultations  
24 furnished in a State—

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

5           “(II) that has in effect a program for or-  
6 ders for life sustaining treatment described in  
7 clause (iii).

8           “(iii) A program for orders for life sustaining  
9 treatment for a States described in this clause is a  
10 program that—

11           “(I) ensures such orders are standardized  
12 and uniquely identifiable throughout the State;

13           “(II) distributes or makes accessible such  
14 orders to physicians and other health profes-  
15 sionals that (acting within the scope of the pro-  
16 fessional’s authority under State law) may sign  
17 orders for life sustaining treatment;

18           “(III) provides training for health care  
19 professionals across the continuum of care  
20 about the goals and use of orders for life sus-  
21 taining treatment; and

22           “(IV) is guided by a coalition of stake-  
23 holders includes representatives from emergency  
24 medical services, emergency department physi-  
25 cians or nurses, state long-term care associa-

1           tion, state medical association, state surveyors,  
2           agency responsible for senior services, state de-  
3           partment of health, state hospital association,  
4           home health association, state bar association,  
5           and state hospice association.

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

7           “(A) a physician (as defined in subsection  
8           (r)(1)); and

9           “(B) a nurse practitioner or physician’s assist-  
10          ant who has the authority under State law to sign  
11          orders for life sustaining treatments.

12          “(3)(A) An initial preventive physical examination  
13          under subsection (WW), including any related discussion  
14          during such examination, shall not be considered an ad-  
15          vance care planning consultation for purposes of applying  
16          the 5-year limitation under paragraph (1).

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

1       “(4) A consultation under this subsection may in-  
2 clude the formulation of an order regarding life sustaining  
3 treatment or a similar order.

4       “(5)(A) For purposes of this section, the term ‘order  
5 regarding life sustaining treatment’ means, with respect  
6 to an individual, an actionable medical order relating to  
7 the treatment of that individual that—

8           “(i) is signed and dated by a physician (as de-  
9 fined in subsection (r)(1)) or another health care  
10 professional (as specified by the Secretary and who  
11 is acting within the scope of the professional’s au-  
12 thority under State law in signing such an order, in-  
13 cluding a nurse practitioner or physician assistant)  
14 and is in a form that permits it to stay with the in-  
15 dividual and be followed by health care professionals  
16 and providers across the continuum of care;

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

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

4           “(B) The level of treatment indicated under subpara-  
5           graph (A)(ii) may range from an indication for full treat-  
6           ment to an indication to limit some or all or specified  
7           interventions. Such indicated levels of treatment may in-  
8           clude indications respecting, among other items—

9           “(i) the intensity of medical intervention if the  
10          patient is pulse less, apneic, or has serious cardiac  
11          or pulmonary problems;

12          “(ii) the individual’s desire regarding transfer  
13          to a hospital or remaining at the current care set-  
14          ting;

15          “(iii) the use of antibiotics; and

16          “(iv) the use of artificially administered nutri-  
17          tion and hydration.”.

18           (2) PAYMENT.—Section 1848(j)(3) of such Act  
19           (42 U.S.C. 1395w-4(j)(3)) is amended by inserting  
20           “(2)(FF),” after “(2)(EE),”.

21           (3) FREQUENCY LIMITATION.—Section 1862(a)  
22           of such Act (42 U.S.C. 1395y(a)) is amended—

23           (A) in paragraph (1)—

24           (i) in subparagraph (N), by striking

25           “and” at the end;

1 (ii) in subparagraph (O) by striking  
2 the semicolon at the end and inserting “,  
3 and”; and

4 (iii) by adding at the end the fol-  
5 lowing new subparagraph:

6 “(P) in the case of advance care planning  
7 consultations (as defined in section  
8 1861(hhh)(1)), which are performed more fre-  
9 quently than is covered under such section;”;  
10 and

11 (B) in paragraph (7), by striking “or (K)”  
12 and inserting “(K), or (P)”.

13 (4) EFFECTIVE DATE.—The amendments made  
14 by this subsection shall apply to consultations fur-  
15 nished on or after January 1, 2011.

16 (b) EXPANSION OF PHYSICIAN QUALITY REPORTING  
17 INITIATIVE FOR END OF LIFE CARE.—

18 (1) PHYSICIAN’S QUALITY REPORTING INITIA-  
19 TIVE.—Section 1848(k)(2) of the Social Security Act  
20 (42 U.S.C. 1395w–4(k)(2)) is amended by adding at  
21 the end the following new paragraphs:

22 “(3) PHYSICIAN’S QUALITY REPORTING INITIA-  
23 TIVE.—

24 “(A) IN GENERAL.—For purposes of re-  
25 porting data on quality measures for covered

1 professional services furnished during 2011 and  
2 any subsequent year, to the extent that meas-  
3 ures are available, the Secretary shall include  
4 quality measures on end of life care and ad-  
5 vanced care planning that have been adopted or  
6 endorsed by a consensus-based organization, if  
7 appropriate. Such measures shall measure both  
8 the creation of and adherence to orders for life-  
9 sustaining treatment.

10 “(B) PROPOSED SET OF MEASURES.—The  
11 Secretary shall publish in the Federal Register  
12 proposed quality measures on end of life care  
13 and advanced care planning that the Secretary  
14 determines are described in subparagraph (A)  
15 and would be appropriate for eligible profes-  
16 sionals to use to submit data to the Secretary.  
17 The Secretary shall provide for a period of pub-  
18 lic comment on such set of measures before fi-  
19 nalizing such proposed measures.”.

20 (c) INCLUSION OF INFORMATION IN MEDICARE &  
21 YOU HANDBOOK.—

22 (1) MEDICARE & YOU HANDBOOK.—

23 (A) IN GENERAL.—Not later than 1 year  
24 after the date of the enactment of this Act, the  
25 Secretary of Health and Human Services shall

1 update the online version of the Medicare &  
2 You Handbook to include the following:

3 (i) An explanation of advance care  
4 planning and advance directives, includ-  
5 ing—

6 (I) living wills;

7 (II) durable power of attorney;

8 (III) orders of life-sustaining  
9 treatment; and

10 (IV) health care proxies.

11 (ii) A description of Federal and State  
12 resources available to assist individuals  
13 and their families with advance care plan-  
14 ning and advance directives, including—

15 (I) available State legal service  
16 organizations to assist individuals  
17 with advance care planning, including  
18 those organizations that receive fund-  
19 ing pursuant to the Older Americans  
20 Act of 1965 (42 U.S.C. 93001 et  
21 seq.);

22 (II) website links or addresses for  
23 State-specific advance directive forms;  
24 and

1 (III) any additional information,  
2 as determined by the Secretary.

3 (B) UPDATE OF PAPER AND SUBSEQUENT  
4 VERSIONS.—The Secretary shall include the in-  
5 formation described in subparagraph (A) in all  
6 paper and electronic versions of the Medicare &  
7 You Handbook that are published on or after  
8 the date that is 1 year after the date of the en-  
9 actment of this Act.

10 **SEC. 1234. PART B SPECIAL ENROLLMENT PERIOD AND**  
11 **WAIVER OF LIMITED ENROLLMENT PENALTY**  
12 **FOR TRICARE BENEFICIARIES.**

13 (a) PART B SPECIAL ENROLLMENT PERIOD.—

14 (1) IN GENERAL.—Section 1837 of the Social  
15 Security Act (42 U.S.C. 1395p) is amended by add-  
16 ing at the end the following new subsection:

17 “(1)(1) In the case of any individual who is a covered  
18 beneficiary (as defined in section 1072(5) of title 10,  
19 United States Code) at the time the individual is entitled  
20 to hospital insurance benefits under part A under section  
21 226(b) or section 226A and who is eligible to enroll but  
22 who has elected not to enroll (or to be deemed enrolled)  
23 during the individual’s initial enrollment period, there  
24 shall be a special enrollment period described in paragraph  
25 (2).