

1 2012, or 2013, to be excluded from the
2 phase-in (or the remainder of the phase-
3 in)”; and

4 (ii) by adding at the end the fol-
5 lowing: “for such year and for each subse-
6 quent year during the phase-in described
7 in clause (i)”; and

8 (B) in the second sentence—

9 (i) by striking “January 1, 2011” and
10 inserting “the first date of such year”; and

11 (ii) by inserting “and at a time” after
12 “form and manner”; and

13 (3) in subsection (h)(4)(E), by striking “lesser”
14 and inserting “greater”.

15 **SEC. 1233. ADVANCE CARE PLANNING CONSULTATION.**

16 (a) MEDICARE.—

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

19 (A) in subsection (s)(2)—

20 (i) by striking “and” at the end of
21 subparagraph (DD);

22 (ii) by adding “and” at the end of
23 subparagraph (EE); and

24 (iii) by adding at the end the fol-
25 lowing new subparagraph:

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

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

5 “Advance Care Planning Consultation

6 “(hhh)(1) Subject to paragraphs (3) and (4), the
7 term ‘advance care planning consultation’ means a con-
8 sultation between the individual and a practitioner de-
9 scribed in paragraph (2) regarding advance care planning,
10 if, subject to paragraph (3), the individual involved has
11 not had such a consultation within the last 5 years. Such
12 consultation shall include the following:

13 “(A) An explanation by the practitioner of ad-
14 vance care planning, including key questions and
15 considerations, important steps, and suggested peo-
16 ple to talk to.

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

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

22 “(D) The provision by the practitioner of a list
23 of national and State-specific resources to assist con-
24 sumers and their families with advance care plan-
25 ning, including the national toll-free hotline, the ad-

1 vance care planning clearinghouses, and State legal
2 service organizations (including those funded
3 through the Older Americans Act of 1965).

4 “(E) An explanation by the practitioner of the
5 continuum of end-of-life services and supports avail-
6 able, including palliative care and hospice, and bene-
7 fits for such services and supports that are available
8 under this title.

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

12 “(I) the reasons why the development of
13 such an order is beneficial to the individual and
14 the individual’s family and the reasons why
15 such an order should be updated periodically as
16 the health of the individual changes;

17 “(II) the information needed for an indi-
18 vidual or legal surrogate to make informed deci-
19 sions regarding the completion of such an
20 order; and

21 “(III) the identification of resources that
22 an individual may use to determine the require-
23 ments of the State in which such individual re-
24 sides so that the treatment wishes of that indi-
25 vidual will be carried out if the individual is un-

1 able to communicate those wishes, including re-
2 quirements regarding the designation of a sur-
3 rogate decisionmaker (also known as a health
4 care proxy).

5 “(ii) The Secretary shall limit the requirement
6 for explanations under clause (i) to consultations
7 furnished in a State—

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

12 “(II) that has in effect a program for or-
13 ders for life sustaining treatment described in
14 clause (iii).

15 “(iii) A program for orders for life sustaining
16 treatment for a States described in this clause is a
17 program that—

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

20 “(II) distributes or makes accessible such
21 orders to physicians and other health profes-
22 sionals that (acting within the scope of the pro-
23 fessional’s authority under State law) may sign
24 orders for life sustaining treatment;

1 “(III) provides training for health care
2 professionals across the continuum of care
3 about the goals and use of orders for life sus-
4 taining treatment; and

5 “(IV) is guided by a coalition of stake-
6 holders includes representatives from emergency
7 medical services, emergency department physi-
8 cians or nurses, state long-term care associa-
9 tion, state medical association, state surveyors,
10 agency responsible for senior services, state de-
11 partment of health, state hospital association,
12 home health association, state bar association,
13 and state hospice association.

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

15 “(A) a physician (as defined in subsection
16 (r)(1)); and

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

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

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

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

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

17 “(i) is signed and dated by a physician (as de-
18 fined in subsection (r)(1)) or another health care
19 professional (as specified by the Secretary and who
20 is acting within the scope of the professional’s au-
21 thority under State law in signing such an order, in-
22 cluding a nurse practitioner or physician assistant)
23 and is in a form that permits it to stay with the in-
24 dividual and be followed by health care professionals
25 and providers across the continuum of care;

1 “(ii) effectively communicates the individual’s
2 preferences regarding life sustaining treatment, in-
3 cluding an indication of the treatment and care de-
4 sired by the individual;

5 “(iii) is uniquely identifiable and standardized
6 within a given locality, region, or State (as identified
7 by the Secretary); and

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

11 “(B) The level of treatment indicated under subpara-
12 graph (A)(ii) 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 “(i) the intensity of medical intervention if the
17 patient is pulse less, apneic, or has serious cardiac
18 or pulmonary problems;

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

22 “(iii) the use of antibiotics; and

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

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

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

6 (A) in paragraph (1)—

7 (i) in subparagraph (N), by striking
8 “and” at the end;

9 (ii) in subparagraph (O) by striking
10 the semicolon at the end and inserting “,
11 and”; and

12 (iii) by adding at the end the fol-
13 lowing new subparagraph:

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

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

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

24 (b) EXPANSION OF PHYSICIAN QUALITY REPORTING
25 INITIATIVE FOR END OF LIFE CARE.—

1 (1) PHYSICIAN’S QUALITY REPORTING INITIA-
2 TIVE.—Section 1848(k)(2) of the Social Security Act
3 (42 U.S.C. 1395w–4(k)(2)) is amended by adding at
4 the end the following new paragraphs:

5 “(3) PHYSICIAN’S QUALITY REPORTING INITIA-
6 TIVE.—

7 “(A) IN GENERAL.—For purposes of re-
8 porting data on quality measures for covered
9 professional services furnished during 2011 and
10 any subsequent year, to the extent that meas-
11 ures are available, the Secretary shall include
12 quality measures on end of life care and ad-
13 vanced care planning that have been adopted or
14 endorsed by a consensus-based organization, if
15 appropriate. Such measures shall measure both
16 the creation of and adherence to orders for life-
17 sustaining treatment.

18 “(B) PROPOSED SET OF MEASURES.— The
19 Secretary shall publish in the Federal Register
20 proposed quality measures on end of life care
21 and advanced care planning that the Secretary
22 determines are described in subparagraph (A)
23 and would be appropriate for eligible profes-
24 sionals to use to submit data to the Secretary.
25 The Secretary shall provide for a period of pub-

1 lic comment on such set of measures before fi-
2 nalizing such proposed measures.”.

3 (c) INCLUSION OF INFORMATION IN MEDICARE &
4 YOU HANDBOOK.—

5 (1) MEDICARE & YOU HANDBOOK.—

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

11 (i) An explanation of advance care
12 planning and advance directives, includ-
13 ing—

14 (I) living wills;

15 (II) durable power of attorney;

16 (III) orders of life-sustaining
17 treatment; and

18 (IV) health care proxies.

19 (ii) A description of Federal and State
20 resources available to assist individuals
21 and their families with advance care plan-
22 ning and advance directives, including—

23 (I) available State legal service
24 organizations to assist individuals
25 with advance care planning, including

1 those organizations that receive fund-
2 ing pursuant to the Older Americans
3 Act of 1965 (42 U.S.C. 93001 et
4 seq.);

5 (II) website links or addresses for
6 State-specific advance directive forms;
7 and

8 (III) any additional information,
9 as determined by the Secretary.

10 (B) UPDATE OF PAPER AND SUBSEQUENT
11 VERSIONS.—The Secretary shall include the in-
12 formation described in subparagraph (A) in all
13 paper and electronic versions of the Medicare &
14 You Handbook that are published on or after
15 the date that is 1 year after the date of the en-
16 actment of this Act.

17 **SEC. 1234. PART B SPECIAL ENROLLMENT PERIOD AND**
18 **WAIVER OF LIMITED ENROLLMENT PENALTY**
19 **FOR TRICARE BENEFICIARIES.**

20 (a) PART B SPECIAL ENROLLMENT PERIOD.—

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

24 “(l)(1) In the case of any individual who is a covered
25 beneficiary (as defined in section 1072(5) of title 10,