

H.R.5835

Omnibus Budget Reconciliation Act of 1990 (Enrolled Bill [Final as Passed Both House and Senate] - ENR)

SEC. 4206. MEDICARE PROVIDER AGREEMENTS ASSURING THE IMPLEMENTATION OF A PATIENT'S RIGHT TO PARTICIPATE IN AND DIRECT HEALTH CARE DECISIONS AFFECTING THE PATIENT.

(a) IN GENERAL- Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)) is amended-

- (1) in subsection (a)(1)--
 - (A) by striking `and' at the end of subparagraph (O),
 - (B) by striking the period at the end of subparagraph (P) and inserting `, and', and
 - (C) by inserting after subparagraph (P) the following new subparagraph:
 - `(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of subsection (f) (relating to maintaining written policies and procedures respecting advance directives).'; and
 - (2) by inserting after subsection (e) the following new subsection:
 - `(f)(1) For purposes of subsection (a)(1)(Q) and sections 1819(c)(2)(E), 1833(r), 1876(c)(8), and 1891(a)(6), the requirement of this subsection is that a provider of services or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization--
 - `(A) to provide written information to each such individual concerning--
 - `(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and
 - `(ii) the written policies of the provider or organization respecting the implementation of such rights;
 - `(B) to document in the individual's medical record whether or not the individual has executed an advance directive;
 - `(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;
 - `(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and
 - `(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

` (2) The written information described in paragraph (1)(A) shall be provided to an adult individual--

` (A) in the case of a hospital, at the time of the individual's admission as an inpatient,

` (B) in the case of a skilled nursing facility, at the time of the individual's admission as a resident,

` (C) in the case of a home health agency, in advance of the individual coming under the care of the agency,

` (D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

` (E) in the case of an eligible organization (as defined in section 1876(b)) or an organization provided payments under section 1833(a)(1)(A), at the time of enrollment of the individual with the organization.

` (3) In this subsection, the term ` advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.'.

(b) APPLICATION TO PREPAID ORGANIZATIONS-

(1) ELIGIBLE ORGANIZATIONS- Section 1876(c) of such Act (42 U.S.C. 1395mm(c)) is amended by adding at the end the following new paragraph:

` (8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).'

(2) OTHER PREPAID ORGANIZATIONS- Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

` (r) The Secretary may not provide for payment under subsection (a)(1)(A) with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).'

(c) EFFECT ON STATE LAW- Nothing in subsections (a) and (b) shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.

(d) CONFORMING AMENDMENTS-

(1) Section 1819(c)(1) of such Act (42 U.S.C. 1395i-3(c)(1)) is amended by adding at the end the following new subparagraph:

` (E) INFORMATION RESPECTING ADVANCE DIRECTIVES- A skilled nursing facility must comply with the requirement of

section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).'

(2) Section 1891(a) of such Act (42 U.S.C. 1395bbb(a)) is amended by adding at the end the following:

`(6) The agency complies with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).'

(e) EFFECTIVE DATES-

(1) The amendments made by subsections (a) and (d) shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to contracts under section 1876 of the Social Security Act and payments under section 1833(a)(1)(A) of such Act as of first day of the first month beginning more than 1 year after the date of the enactment of this Act.