

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend title XVIII of the Social Security Act to encourage Medicare beneficiaries to voluntarily adopt advance directives guiding the medical care they receive.

---

IN THE SENATE OF THE UNITED STATES

---

Mr. CASSIDY (for himself and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

---

**A BILL**

To amend title XVIII of the Social Security Act to encourage Medicare beneficiaries to voluntarily adopt advance directives guiding the medical care they receive.

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 “Medicare Advance  
5 Planning for Care Act” or the “MAP for Care Act”.

1 **SEC. 2. MEDICARE ADVANCE DIRECTIVE CERTIFICATION**  
2 **PROGRAM.**

3 Part B of title XVIII of the Social Security Act (42  
4 U.S.C. 1395j et seq.) is amended by adding at the end  
5 the following new section:

6 “MEDICARE ADVANCE DIRECTIVE CERTIFICATION  
7 PROGRAM

8 “SEC. 1849. (a) IN GENERAL.—

9 “(1) ESTABLISHMENT OF PROGRAM.—The Sec-  
10 retary shall establish and implement an Advance Di-  
11 rective Certification Program (in this section re-  
12 ferred to as the ‘Program’) under which the Sec-  
13 retary shall encourage eligible beneficiaries to adopt  
14 and maintain certified advance directives to guide  
15 the delivery of health care to such beneficiaries. The  
16 Secretary shall implement the Program not later  
17 than 5 years after the date of enactment of this sec-  
18 tion.

19 “(2) DEFINITIONS.—In this section:

20 “(A) CERTIFIED ADVANCE DIRECTIVE.—  
21 The term ‘certified advance directive’ means an  
22 electronically stored written instruction by an  
23 eligible beneficiary, such as a living will or du-  
24 rable power of attorney for health care, recog-  
25 nized under State law (whether statutory or as  
26 recognized by the courts of the State) and relat-

1           ing to the provision of such care when the indi-  
2           vidual is incapacitated that—

3                   “(i) provides instructions that outline  
4                   the kind of medical treatments and care  
5                   that such beneficiary would want or not  
6                   want under particular conditions, and may  
7                   also include the identification of a health  
8                   care proxy or legal representative to make  
9                   medical treatment decisions for the bene-  
10                  ficiary if the beneficiary becomes unable to  
11                  make or communicate those decisions on  
12                  their own; and

13                   “(ii) is offered by an entity that has  
14                   received accreditation from the Secretary  
15                   under subsection (c).

16                  “(B) ELIGIBLE BENEFICIARY.—The term  
17                  ‘eligible beneficiary’ means an individual enti-  
18                  tled to, or enrolled for benefits, under part A or  
19                  enrolled for benefits under this part.

20                  “(C) PROGRAM PARTICIPANT.—The term  
21                  ‘Program participant’ means an eligible bene-  
22                  ficiary who is enrolled in the Program.

23                  “(3) VOLUNTARY PARTICIPATION.—An eligible  
24                  beneficiary who has registered a certified advance di-  
25                  rective with a advance directive vendor accredited

1 under subsection (c) may disenroll and terminate  
2 such directive at any time.

3 “(4) BEST PRACTICES.—In establishing and im-  
4 plementing the Program, the Secretary shall con-  
5 sider best practices—

6 “(A) within existing advance directive reg-  
7 istry technologies, programs, and systems, in-  
8 cluding web-based or cloud-based advance direc-  
9 tive technologies—

10 “(i) which may utilize time and date  
11 stamps, video, or other innovative meas-  
12 ures to protect the authenticity, improve  
13 the quality of, and enhance the security of  
14 such directives; and

15 “(ii) which may utilize secure email  
16 and messaging technologies and nationally  
17 recognized health care information tech-  
18 nology standards to improve the accessi-  
19 bility and interoperability of such direc-  
20 tives; and

21 “(B) for educating beneficiaries on ways  
22 to—

23 “(i) communicate their authenticated  
24 wishes to applicable family members, legal  
25 representatives, and providers or health

1 care proxies, including through the use of  
2 email or other mail formats; and

3 “(ii) access certified advance direc-  
4 tives, including through the use of mobile  
5 devices.

6 “(5) STATE LAW.—The provisions of this sec-  
7 tion shall not preempt any State or local law re-  
8 quirement governing advance directives.

9 “(6) DISPLAY OF STATUTORY AND ALTER-  
10 NATIVE ADVANCE DIRECTIVE FORMS.—Under the  
11 Program, the Secretary shall provide, on the Inter-  
12 net website of the Centers for Medicare & Medicaid  
13 Services, links to statutory advance directive forms  
14 (as described in subsection (d)(1)(C)), alternative  
15 advance directive forms (as described in subsection  
16 (d)(1)(D)), and a State-by-State index to such forms  
17 to allow a Program participant to create, adopt,  
18 modify, and terminate a certified advance directive  
19 with any content permitted or required under this  
20 section, and in any form authorized by a State.

21 “(b) ENROLLMENT IN THE PROGRAM AND REG-  
22 ISTRATION OF ADVANCE DIRECTIVES.—

23 “(1) REQUIRED INFORMATION.—In addition to  
24 such other information as the Secretary determines  
25 is appropriate, a Program participant seeking to

1 register a certified advance directive under the Pro-  
2 gram shall indicate where the advance directive is  
3 maintained or how it may be accessed.

4 “(2) NOTIFICATION REGARDING PROGRAM.—  
5 During the annual, coordinated election period under  
6 section 1851(e)(3), the Secretary shall notify each  
7 eligible beneficiary of the Program.

8 “(3) PRIVACY AND SECURITY.—

9 “(A) IN GENERAL.—The Secretary shall  
10 ensure that all aspects of the enrollment and  
11 registration system comply with the Federal  
12 regulations (concerning the privacy and security  
13 of individually identifiable health information)  
14 promulgated under the Health Insurance Port-  
15 ability and Accountability Act of 1996 subject  
16 to the access authorized under subsection  
17 (c)(2)(E) and in accordance with subsection  
18 (c)(2)(F).

19 “(B) ACCESS.—The Secretary shall utilize  
20 standardized data protections and privacy  
21 standards, including the Federal regulations de-  
22 scribed in subparagraph (A), to ensure that the  
23 registration record of a Program participant  
24 can only be accessed by—

1 “(i) the Program participant, through  
2 the process established under subsection  
3 (c)(2)(B);

4 “(ii) those authorized to access the  
5 certified advance directive under subsection  
6 (c)(2)(E); and

7 “(iii) providers of services and sup-  
8 pliers participating under this title who  
9 furnish items or services to the Program  
10 participant, through a process established  
11 by the Secretary.

12 “(c) ACCREDITATION.—

13 “(1) IN GENERAL.—

14 “(A) ACCREDITATION BY THE SEC-  
15 RETARY.—Under the Program, the Secretary  
16 shall—

17 “(i) accredit advance directive vendors  
18 and other entities providing advance direc-  
19 tives that meet the accreditation criteria  
20 established under paragraph (2) and any  
21 other criteria determined appropriate by  
22 the Secretary; and

23 “(ii) establish a process whereby ad-  
24 vance directive vendors and other entities

1 providing advance directives may obtain  
2 accreditation under this subsection.

3 “(B) ACCREDITATION BY ADVANCE DIREC-  
4 TIVE ACCREDITATION ORGANIZATION.—The  
5 Secretary may contract with an advance direc-  
6 tive accreditation organization to accredit ad-  
7 vance directive vendors and other entities under  
8 subparagraph (A)(i).

9 “(2) ACCREDITATION CRITERIA.—The Sec-  
10 retary, in consultation with the Comptroller General  
11 of the United States, shall establish accreditation  
12 criteria for advance directive vendors and other enti-  
13 ties providing advance directives to be certified  
14 under the Program. Such criteria shall consist of  
15 each of the following:

16 “(A) CERTIFIED ADVANCE DIRECTIVES.—  
17 The advance directive vendor or other entity  
18 shall agree to offer certified advance directives  
19 to eligible beneficiaries.

20 “(B) PROCEDURES FOR ENROLLMENT.—

21 “(i) IN GENERAL.—The advance di-  
22 rective vendor or other entity shall estab-  
23 lish procedures that—

24 “(I) allow for a Program partici-  
25 pant to—

1                   “(aa) enroll in and disenroll  
2                   from the Program; and

3                   “(bb) register or update a  
4                   certified advance directive adopt-  
5                   ed by the participant; and

6                   “(II) ensure that a Program par-  
7                   ticipant is able to—

8                   “(aa) create, adopt, modify,  
9                   update, amend, or terminate a  
10                  certified advance directive in a  
11                  timely and secure manner;

12                  “(bb) update previously reg-  
13                  istered information; and

14                  “(cc) indicate that a pre-  
15                  viously registered certified ad-  
16                  vance directive has been termi-  
17                  nated.

18                  “(ii) ONLINE ENROLLMENT AND REG-  
19                  ISTRATION.—The procedures established  
20                  pursuant to clause (i) shall ensure that  
21                  such enrollment and registration is avail-  
22                  able through an online process, or other  
23                  means determined appropriate by the ad-  
24                  vance directive vendor or other entity.

25                  “(C) QUALITY REVIEW.—

1           “(i) IN GENERAL.—For purposes of  
2           determining compliance with the require-  
3           ments of this section, the advance directive  
4           vendor or other entity shall comply with an  
5           annual quality review to be conducted by  
6           the Secretary.

7           “(ii) ENFORCEMENT.—If the Sec-  
8           retary determines that an advance directive  
9           vendor or other entity is not in compliance  
10          with the requirements of this section, the  
11          Secretary shall remove any certified ad-  
12          vance directive of such advance directive  
13          vendor or other entity from the Internet  
14          website of the Centers for Medicare &  
15          Medicaid Services.

16          “(D) USE OF STATUTORY AND ALTER-  
17          NATIVE ADVANCE DIRECTIVE FORMS.—The ad-  
18          vance directive vendor or other entity shall  
19          allow a Program participant to—

20                 “(i) access, complete, modify, and  
21                 adopt any advance directive forms de-  
22                 scribed in subparagraphs (C) and (D) of  
23                 subsection (d)(1); and

24                 “(ii) search for such forms by State.



1 vance directive of the Program participant  
2 to a provider of services or supplier.

3 “(F) PRIVACY PROTECTIONS.—

4 “(i) IN GENERAL.—The advance di-  
5 rective vendor or other entity shall comply  
6 with the Federal regulations (concerning  
7 the privacy of individually identifiable  
8 health information) promulgated under  
9 section 264(c) of the Health Insurance  
10 Portability and Accountability Act of 1996,  
11 subject to the access authorized under sub-  
12 paragraph (E).

13 “(ii) ACCESS.—Such vendor or entity  
14 shall comply with standardized data pro-  
15 tections and privacy standards, including  
16 the Federal Regulations described in clause  
17 (i), to ensure that the content of a Pro-  
18 gram participant’s certified advance direc-  
19 tive is owned and maintained by the partic-  
20 ipant and can only be accessed by those  
21 authorized to access the advance directive  
22 under subparagraph (E).

23 “(G) SECURITY AND TESTING.—The ad-  
24 vance directive vendor or other entity shall cer-  
25 tify that—

1           “(i) all data management and data  
2 transfer elements involved in adopting,  
3 maintaining, and accessing a certified ad-  
4 vance directive of a Program participant—

5                   “(I) have successfully passed rig-  
6 orous independent testing regarding  
7 standards of timeliness, accuracy, and  
8 efficiency; and

9                   “(II) meet widely accepted indus-  
10 try security standards (as determined  
11 by the Secretary); and

12           “(ii) the system that provides access  
13 to a certified advance directive of a Pro-  
14 gram participant has passed real-time tests  
15 simulating a realistic volume of Program  
16 participants, their family members, legal  
17 representatives, and legally designated  
18 health care proxies, providers of services,  
19 and suppliers accessing such directives si-  
20 multaneously.

21           “(H) BENEFICIARY SURVEYS.—

22                   “(i) IN GENERAL.—The advance di-  
23 rective vendor or other entity shall admin-  
24 ister an annual survey of Program partici-  
25 pants on the information described in

1 clause (ii) and submit the results of such  
2 survey to the Secretary.

3 “(ii) INFORMATION.—The information  
4 described in this clause, with respect to a  
5 Program participant and a certified ad-  
6 vance directive of such participant, is the  
7 following:

8 “(I) Whether the participant had  
9 to pay any third party for the cre-  
10 ation, storage, or retrieval of the cer-  
11 tified advance directive.

12 “(II) Whether the participant  
13 had a health care encounter or emer-  
14 gency that required the location, ac-  
15 cess, retrieval, or consultation of the  
16 certified advance directive and if so,  
17 whether the certified advance directive  
18 was accessible online and in near real-  
19 time, as required under this section.

20 “(III) Whether the certified ad-  
21 vance directive was sufficiently clear  
22 and actionable.

23 “(IV) Whether medical personnel  
24 followed the certified advance direc-  
25 tive.

1           “(I) PROCESS FOR COMPLYING WITH  
2 STATE LAW.—The advance directive vendor or  
3 other entity shall enable a Program participant  
4 using their services to complete a certified ad-  
5 vance directive that fully complies with the law  
6 governing advance directives of the applicable  
7 State.

8           “(J) ACCESS IN CASES OF DISPUTE OVER  
9 TREATMENT.—

10           “(i) SPECIAL ACCESS.—The advance  
11 directive vendor or other entity shall estab-  
12 lish a process whereby, with respect to a  
13 Program participant, an interested indi-  
14 vidual described in clause (ii) may obtain  
15 access to the certified advance directive of  
16 the Program participant for the purposes  
17 of viewing and sharing such advance direc-  
18 tive when—

19           “(I) the provisions of the cer-  
20 tified advance directive have come into  
21 force under the law of the applicable  
22 State because the Program partici-  
23 pant has become incapable of making  
24 health care decisions on their own or

1 under other circumstances provided  
2 under State law; and

3 “(II) at least 1 person described  
4 in clause (ii) is questioning or dis-  
5 puting the provision, withholding, or  
6 withdrawal of medical treatment,  
7 food, or fluids with respect to the Pro-  
8 gram participant.

9 “(ii) INTERESTED INDIVIDUALS.—

10 “(I) IN GENERAL.—An interested  
11 individual described in this clause,  
12 with respect to a Program participant,  
13 is—

14 “(aa) any individual who is  
15 a member of any class of persons  
16 who, under the law of the appli-  
17 cable State, would potentially be  
18 eligible to serve as a health care  
19 decision maker for the Program  
20 participant if an advance direc-  
21 tive had not been executed, re-  
22 gardless of whether another indi-  
23 vidual would have higher priority  
24 for such eligibility; or

1                   “(bb) if the law of the appli-  
2                   cable State does not designate a  
3                   person or class of persons de-  
4                   scribed in item (aa), any indi-  
5                   vidual related within the third  
6                   degree of consanguinity or affini-  
7                   ty to the Program participant  
8                   identified by the Program partici-  
9                   pant in the certified advance di-  
10                  rective.

11                  “(II) PERIODIC UPDATE.—In the  
12                  case that the law of the applicable  
13                  State does not designate a person or  
14                  class of persons described in subclause  
15                  (I)(aa) and the Program participant  
16                  has identified in a certified advance  
17                  directive an individual within the third  
18                  degree of consanguinity or affinity of  
19                  such participant, the advance directive  
20                  vendor or other entity shall annually  
21                  during the annual, coordinated elec-  
22                  tion period under section 1851(e)(3)  
23                  prompt the Program participant to  
24                  update such individual.

25                  “(d) EDUCATION AND OUTREACH.—

1 “(1) IN GENERAL.—The Secretary shall—

2 “(A) include a statement described in  
3 paragraph (3) in the notice described in section  
4 1804(a) and provide for the inclusion of such  
5 statement on the Internet website of the Cen-  
6 ters for Medicare & Medicaid Services;

7 “(B) communicate the benefits of elec-  
8 tronic advance directives services, as they be-  
9 come available;

10 “(C) provide for the inclusion, under the  
11 heading ‘Statutory Advance Directive Forms’,  
12 of any relevant forms, whether mandatory or  
13 optional, specified in the statutes or regulations  
14 of States to be displayed on a such website;

15 “(D) provide for the inclusion, under the  
16 heading ‘Alternative Advance Directive Forms’,  
17 on such website, and in accordance with para-  
18 graph (2)—

19 “(i) of other advance directive forms  
20 submitted to the Secretary by individuals  
21 and groups in an electronic format speci-  
22 fied by the Secretary for which the submit-  
23 ting entity includes, for each form sub-  
24 mitted, an opinion by an attorney licensed  
25 to practice in the relevant State dem-

1           onstrating that the submitted form com-  
2           plies with the law of that State; and

3                   “(ii) of the following disclaimer, which  
4           shall be prominently posted on the website:  
5           ‘This website includes for your consider-  
6           ation alternative advance directive forms  
7           submitted by individuals or groups reflect-  
8           ing different perspectives on advance  
9           health care decisions which you may wish  
10          to review before completing your own ad-  
11          vance directive.’; and

12                   “(E) provide for the inclusion of a user-  
13          friendly index on the such website by State and,  
14          in the case of the ‘Alternative Advance Direc-  
15          tive Forms’, by the name of the individual or  
16          group who provided each alternative advance di-  
17          rective, so that a user may readily access those  
18          statutory and alternative forms.

19                   “(2) ALTERNATIVE ADVANCE DIRECTIVE  
20          FORMS.—

21                   “(A) IN GENERAL.—For purposes of para-  
22          graph (1)(D), the following shall apply:

23                   “(i) Not later than 60 days after re-  
24          ceiving an alternative advance directive  
25          form submitted under such paragraph, the

1 Secretary shall either post the submitted  
2 form on the Internet website of the Cen-  
3 ters for Medicare & Medicaid Services or  
4 provide to the submitting entity an expla-  
5 nation of the basis for the Secretary’s de-  
6 termination that the submitted form does  
7 not comply with relevant State or Federal  
8 law, which determination shall be subject  
9 to judicial review under section 702 of title  
10 5 of the United States Code.

11 “(ii) The Secretary shall either re-  
12 move or refuse to post any submitted form  
13 if provided with an official determination  
14 by the attorney general of the applicable  
15 State that the form is not in compliance  
16 with State law, subject to applicable State  
17 law described in subparagraph (B).

18 “(B) STATE LAW DESCRIBED.—For pur-  
19 poses of subparagraph (A), State law described  
20 in this subparagraph is—

21 “(i) a ruling by a court of the applica-  
22 ble State, or by a Federal court applying  
23 that State’s law, subject to subsequent rul-  
24 ings by a court or courts with authority to  
25 supercede that ruling; or

1                   “(ii) a statute or regulation of the ap-  
2                   plicable State that provides for a specific  
3                   procedure for officially determining wheth-  
4                   er particular advance directive forms com-  
5                   ply with State law.

6                   “(3) STATEMENT.—For purposes of paragraph  
7                   (1)(A), the statement described in this paragraph is  
8                   a statement of the reasons why beneficiaries may  
9                   want to consider advance directives, a suggestion for  
10                  the beneficiary to carefully consider decisions re-  
11                  garding advance directives, and references to re-  
12                  sources about advance directives.

13                  “(e) ADVANCE DIRECTIVE INFORMATION IN MEDI-  
14                  CARE ENROLLMENT FORMS.—After the Secretary imple-  
15                  ments the Program, the Secretary shall include on each  
16                  application for enrollment of an individual in part A, this  
17                  part, or part C a link to an Internet website with resources  
18                  to assist in completing an advance directive.”.