

Support H.R. 4059 and S. 2297 to Provide Equal Access to Pro-Treatment Advance Directives Under Medicare

Background:

- Effective in 2016, the Obama Administration is reimbursing health care providers to conduct “advance care planning” with older Americans covered by Medicare. Advance care planning counsels patients on deciding whether to choose or reject life-preserving medical treatment (and even food and fluids) and advises on preparing legal documents called “advance directives” implementing those decisions in circumstances in which the patient is not able to communicate them at the time. It is good to help people to prepare advance directives, like NRLC’s Will to Live (www.nrlc.org/medethics/willtolive), that set forth treatment decisions *based on what are genuinely their own values and preferences*. In practice, however, advance care planning is typically less about discovering and applying patients’ own wishes than about pushing them to accept premature death.
- Many “decision aids” in widespread use are suffused with vivid, emotional, and distorted presentations designed to persuade individuals to forego life-preserving medical treatment.
- Significant factual inaccuracies have been documented in materials dealing with cardiopulmonary resuscitation and medically assisted nutrition and hydration. Many decision aids paint unquestionably slanted and negative pictures of the quality of life one would have if one’s life is preserved in what one packet called “Conditions Worse Than Death.”
 - Detailed documentation can be found in the Powell Center report entitled “The Bias Against Life-Preserving Treatment in Advance Care Planning,” available at <http://www.nrlc.org/medethics/advancecareplanning/>

What the Medicare Choices Empowerment and Protection Act Would Do:

- Give Medicare beneficiaries and others online access to a website with state-specific model advance directives that choose life-saving treatment, food and fluids equally with those that reject them.
- Place in the *Medicare and You* handbook senior citizens receive annually a carefully crafted statement about preparing advance directives that links to the website while emphasizing, “You should not feel pressured to violate your own values and preferences, and you are entitled to implement them without discrimination based on age or degree of disability.”
- Ensure that certified online providers of advance directives provide access to the website and provide only forms that comply with the relevant state law. This would safeguard people in states that have effective informed consent requirements – like those that require a specific checkoff in order for a patient to be denied assisted food and fluids instead of lumping nutrition and hydration in with all forms of life-preserving treatment. At present, many are pushing “generic” advance directives without such safeguards that too many health care providers implement without regard to whether they are valid under the state’s law.
- In cases of dispute over treatment, give family members access to the patient’s actual advance directive, which may allow them to dispute claims by a health care agent that the patient didn’t want life-saving treatment.

The Medicare Choices Empowerment and Protection Act can help offset the widespread efforts to “nudge” people to agree to forego life-saving treatments, providing needed tools to protect the right to choose life.