

(202) 378-8863

July 29, 2015

**Re: Coverage of Advance Care Planning Services
Under the Medicare Program (H.R. 3251)**

Dear Member of Congress:

On July 8, 2015, the Center for Medicare and Medicaid Services (CMS) issued a proposed rule (to take effect January 1, 2016) to pay doctors for “advance care planning” in Medicare. Although many advance care planning proponents give lip service to honoring individual preferences, in practice its pervasive focus is to ‘nudge’ patients to agree to forego life-saving treatment and even assisted feeding through the use of unbalanced, distorted, and even inaccurate information. Advance care planning is openly promoted as a means of slashing health care spending.

Congressman Steve King has introduced a bill, H.R. 3251, that would prevent Medicare from paying for these new and potentially biased advance care planning sessions. Advance care planning refers to counseling potential patients on deciding when to accept or reject life-preserving medical treatment and advising on legal documents embodying that decision.

The National Right to Life Committee (NRLC), the nationwide federation of state right-to-life organizations, urges you to do everything you can to advance this legislation, including adding your name as a cosponsor if you have not already done so. NRLC is regularly updating our affiliates nationwide on the status of the cosponsorship drive.

Far from opposing the concept of advance directives concerning treatment, the National Right to Life Committee provides a ‘Will to Live’ version on www.nrlc.org/medethics/willtolive/ and supports alternatives that provide truly informed consent to decisions about medical treatment. But we must fight the tax funding and promotion of advance care planning counseling that cannot be adequately monitored for bias and that typically is less about discovering and applying patients’ own wishes than about pushing them to accept premature death.

The Powell Center recently released a report entitled “The Bias Against Life-Preserving Treatment in Advance Care Planning,” available at <http://www.nrlc.org/uploads/communications/advanceplanningbias2015.pdf>.

The report cites a 2013 Health Affairs article entitled “Decision Aids: When ‘Nudging’ Patients to Make A Particular Choice Is More Ethical Than Balanced, Nondirective Content,” which gave this advice on how to get people with prostate cancer to agree not to have costly surgery:

[I]f incontinence and impotence are presented as plainly stated—that is, with no detailed description of these risks—men with early-stage prostate cancer may be swayed toward the option of surgery. If instead those possible effects of surgery are presented vividly via personal stories, men may be swayed away from the surgery option.

The Powell Center report gives multiple examples of advance care planning materials in widespread use that violate the principle of informed consent by selectively presenting facts in a distorted and unbalanced manner to “nudge” unwary patients to reject cardio-pulmonary resuscitation (CPR), IV fluids, and medically assisted feeding. Other advance care planning materials, it documents, describe disabilities and illnesses in an inaccurately repugnant way so as to induce people to agree that a low “quality of life” is not worth living.

The Powell Center report notes that providers of advance care planning materials to health insurers frequently tout the money it saves them. For example, to implement an advance care planning program Aetna hired the “Center to Advance Palliative Care,” which proudly reported that the result of its efforts was an average reduction of more than \$12,000 annually in benefits for senior citizens covered by the insurance company.

The Powell Center report concludes, “Significant safeguards would need to be incorporated in any governmental program promoting . . . advance care planning in order for [it] to be truly protective of the values and intent of patients, and to ensure they are not pressured into rejecting treatment against their wishes...all in the name of cost-savings.” The proposed rule would give a blank check to use tax funds for advance care planning without any safeguards against the widespread bias against choosing life-saving care that is tragically so pervasive.

Thank you for your consideration of our request that you co-sponsor this vital legislation.

Respectfully,



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