

From: Chuck.Grassley@grassley.senate.gov
Subject: Senator Chuck Grassley's response to your email.
Date: Thu, 10 Dec 2009 13:04:35 -0500

Thank you for contacting me about proposals for advance care planning consultations in health care reform legislation. Please accept my apologies for the delay for my response.

First, before discussing the role of government in advance care planning, let me say that I support the use of advance directives. These important documents allow an individual to give family members and health care providers much needed guidance on end-of-life care wishes. I also believe that decisions on end-of-life care are so important they should be examined earlier in life, if possible, and that these decisions should be communicated with family and loved ones.

Congress enacted limited provisions related to advance directives in 1990 in the Patient Self-Determination Act (PSDA). This law is focused on providing information to patients and insuring their rights are protected. The law requires Medicare and Medicaid providers to: (1) provide adult individuals with written information regarding their rights under state law to make decisions concerning medical care; (2) document in the individual's medical record whether or not the individual has executed an advance directive; (3) not condition the provision of care or otherwise discriminate against an individual based on whether or not they have executed an advance directive; (4) ensure compliance with requirements of state law respecting advance directives; and (5) provide education for staff and the community on issues concerning advance directives. The PSDA also requires that providers distribute information to patients about advance directives at certain times such as when a patient is admitted to the hospital.

In 2003, Congress revisited the issue but still enacted only a narrow provision that is tailored to terminally ill patients. Specifically, that provision, which was enacted in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), which I supported, included coverage for hospice consultation services for terminally ill Medicare beneficiaries, but only when provided by a health care provider with expertise in end-of-life issues such as a hospice physician. These services include a pain and care management evaluation, counseling about hospice care and other optional services such as advice on advance care planning. This provision was designed to assure that advice on advance care planning in this context is only offered by qualified professionals and done in an appropriate manner.

The broader issue with regard to advance care planning is what role, if any, the government should play. When the government gets involved in these sensitive decisions, it raises the possibility that the government's interests may be different and potentially incompatible with the patient's interests.

When provisions to increase the government role in advance care planning are included alongside cost containment provisions, it raises the concern that the purpose for the proposal is to save money rather than to ensure appropriate care at the end of life. For example, encouraging living wills was proposed by the Carter Administration in 1977 as an option to produce both Federal and system-wide savings in health expenditures. More recently, the Urban Institute published a paper in July 2009 that identified proposals like advance care planning consultations as a way to help cut costs to offset spending for health care reform.

Compassion and Choices (formerly known as the Hemlock Society) has also advocated for the inclusion of advance care planning consultations in health care reform legislation. A provision for advance care planning consultations is included in the House of Representatives version of health care reform, the Affordable Health Care for America Act, H.R. 3296, which that body passed by a vote of 220-215.

This summer, as you may know, this issue came up at one of my town hall meetings. In my answer to that question, I commented that the combination of the expanded role of government in health care generally plus funding for advance care planning consultations alongside cost containment proposals was a legitimate cause for concern. Some commentators took my comments and twisted them and even quoted me as saying the House health care reform bill would establish death panels, and this was incorrect. I said no such thing. As I said then, putting end-of-life consultations alongside cost containment and government-run health care causes legitimate concern.

This issue also came up earlier this year while I was involved in efforts to craft health care reform legislation with Sen. Max Baucus (D-MT), the Chair of the Senate Committee on Finance, and other Senators. During those negotiations, we discussed a proposal to include similar provisions on advance care planning consultations. As we always do, we were working hard to avoid unintended consequences by methodically working through the complexities of all of these issues and policy options. We saw the potential unintended consequences posed to patients by an increased government role in advance care planning, particularly in the context of health care reform legislation. In the end, a bipartisan decision was made to not include these proposals in the bill because of the way they could be misinterpreted and implemented incorrectly.

Thank you again for contacting me about such an important issue. I appreciate the opportunity to give my views to you. Please do not hesitate to contact me if I may be of assistance with any federal matter. My offices in Iowa, as well as in Washington, D.C., are here to serve you. Keep in touch!

Sincerely,
Chuck

*****Please note that this account is not monitored for incoming mail. If you would like to reach me via email please visit my website at <http://grassley.senate.gov/> and click on "Contact". Thank you.*****