

## **Section 1. Title**

### ***Advance Directives Improvement and Education Act of 2005***

## **Section 2. Findings and Purpose**

### **(a) Findings:**

Every year 2,500,000 people die in the United States. Eighty percent of those people die in institutions such as hospitals, nursing homes, and other facilities. Chronic illnesses, such as cancer and heart disease, account for 2 out of every 3 deaths.

In January 2004, a study published in the Journal of the American Medical Association concluded that many people dying in institutions have unmet medical, psychological, and spiritual needs. Moreover, family members of decedents who received care at home with hospice services were more likely to report a favorable dying experience.

In 1997, the Supreme Court of the United States, in its decisions in *Washington v. Glucksberg* and *Vacco v. Quill*, reaffirmed the constitutional right of competent adults to refuse unwanted medical treatment. In those cases, the Court stressed the use of advance directives as a means of safeguarding that right should those adults become incapable of deciding for themselves.

A study published in 2002 estimated that the overall prevalence of advance directives is between 15 and 20 percent of the general population, despite the passage of the Patient Self-Determination Act in 1990, which requires that health care providers tell patients about advance directives.

Competent adults should complete advance care plans stipulating their health care decisions in the event that they become unable to speak for themselves. Through the execution of advance directives, including living wills and durable powers of attorney for health care according to the laws of the State in which they reside, individuals can protect their right to express their wishes and have them respected.

### **(b) Purpose:**

The purposes of this Act are to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decision-making so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

## **Section 3. Medicare Coverage of End-Of-Life Planning and Consultations**

This section provides that all Medicare beneficiaries have access to physician consultation and advice when preparing their advance directives so they are aware of their medical options and their legal rights. Medicare would cover a visit to a beneficiary's primary care physician (PCP) so that physicians can spend time with their patients to help them understand situations in which an advance directive would be useful, medical options, the Medicare hospice benefit and other concerns.

#### **Section 4. Improvement of Policies Related to the Use and Portability of Advance Directives**

This section makes all advance directives “portable,” that is, useful from one state to another. As long as the documents were lawfully executed in the state of origin, they must be accepted and honored in the state in which they are presented, unless to do so would violate state law.

#### **Section 5. Increasing Awareness of the Importance of End-Of-Life Planning**

This section will provide funds for the Department of Health and Human Services to conduct a public education campaign to raise awareness of the importance of planning for care near the end of life. This campaign would explain what advance directives are, where they are available, what questions need to be asked and answered, and what to do with the executed documents. HHS, directly or through grants, would also establish an information clearinghouse where consumers could receive state-specific information and consumer-friendly documents and publications.

#### **Section 6. GAO Studies and Reports on End-Of-Life Planning Issues**

##### **(a) Study and Report on Compliance with Advance Directives and Other Advance Planning Documents**

This section requires the GAO to conduct a study on the effectiveness of advance directives in making patients’ wishes known and honored by health care providers. The report will be due 18 months after the enactment of the bill.

##### **(b) Study and Report on Implementation of the Medicare Coverage for End of Life Planning Consultations**

This section requires the GAO to conduct a study on the implementation of the new Medicare coverage for end of life planning consultations. The report will be due 2 years after the enactment of the bill.

##### **(c) Study and Report on Establishment of National Advance Directives Registry**

This section requires the GAO to conduct a study on the feasibility of a national registry for advance directives, taking into consideration the constraints created by the privacy

provisions in the Health Insurance Portability and Accountability Act. The report will be due 18 months after the enactment of the bill.