

# Medicare's end-of-life counseling policy may find acceptance

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In this Feb. 4, 2014, file phot, Rep. Earl Blumenauer, D-Ore. questions Michael Botticelli, deputy director, Office of National Drug Control Policy, during a subcommittee hearing on Capital Hill in Washington. Six years ago, a proposal for Medicare to cover end-of-life counseling touched off a political uproar that threatened to stall President Barack Obama's health care law in Congress. On Wednesday, July 8, 2015, when Medicare finally announced it will make the change, reaction was muted. The Oregon Democrat was the original sponsor of the idea. (AP Photo/Cliff Owen, File)

Six years ago, a proposal for Medicare to cover end-of-life counseling touched off a political uproar that threatened to stall President Barack Obama's health care law in Congress. Wednesday, when Medicare finally announced it will make the change, reaction was muted.

At the time, former Alaska Republican Gov. Sarah Palin's accusation that voluntary counseling could lead to government-sponsored "death panels" dictating the fate of frail elders was widely discredited. But for the Obama administration, end-of-life counseling remained politically radioactive, even as the idea found broader acceptance in society.

Dr. Joe Rotella, chief medical officer of the American Academy of Hospice and Palliative Medicine, called Medicare's move a "little miracle," given the "death panels" furor. He said he believes the controversy has passed.

"I think society's going to get over it this time and see the good in it," said Rotella. "It's really about living in the way that means the most to you to the last moments of your life."

The original sponsor of the idea, Oregon Democratic Rep. Earl Blumenauer, was taking no chances even as he, too, sensed a political shift. Just a few weeks ago at the White House congressional picnic, Blumenauer said he personally lobbied senior officials, handing out pocket-sized cards with his talking points.

"There was a time when the federal government could have been a leader on this, but now it's basically responding to where the rest of America is going," he said.

The policy change, to take effect Jan. 1, was tucked into a massive regulation on payments for doctors. Counseling would be entirely voluntary for patients.

Some doctors already have such conversations with their patients without billing extra. Certain private insurers have begun offering reimbursement. But an opening to roughly 55 million Medicare beneficiaries could make such talks far more common. About three-quarters of the people who die each year in the U.S. are 65 and older, making Medicare the largest insurer at the end of life, according to the Kaiser Family Foundation.

"As a practicing physician, and a son, and someone who has dealt with this in his own family, I would say these are discussions ... that are critical to high-quality care," said Patrick Conway, Medicare's chief medical officer. "I would want any American who wanted to have this conversation with their clinician to have the opportunity to do so."

Medicare is using a relatively new term for end-of-life counseling: advance care planning. That's meant to reflect expert advice that people should make their wishes known about end-of-life care at different stages of their lives, as early as when they get a driver's license.

The counseling aims to discern the type of treatment patients want in their last days, with options ranging from care that's more focused on comfort than extending life to all-out medical efforts to resuscitate a dying patient.

The American Medical Association praised Medicare's decision. "This issue has been mischaracterized in the past and it is time to facilitate patient choices about advance care planning," said Andrew Gurman, the group's president-elect.

Before former Palin ignited the "death panels" outcry, there was longstanding bipartisan consensus about helping people to better understand their end-of-life choices and decisions.

A 1992 law passed under Republican President George H.W. Bush requires hospitals and nursing homes to help patients who want to prepare living wills and advance directives. Similar efforts gained resonance after the 2005 death of Terri Schiavo, the brain-damaged Florida woman whose family fought for years over whether she would have wanted to be kept alive in a vegetative state.

Then-Florida Gov. Jeb Bush got embroiled in the family's ordeal, ordering feeding tubes reinserted for Schiavo against her husband's wishes. The husband ultimately prevailed in a legal battle with Schiavo's parents, who wanted her kept alive.

In 2008, a year before debate over the Affordable Care Act spiraled into tea-party protests, Congress overwhelmingly passed legislation requiring doctors to discuss issues like living wills with new Medicare enrollees.

That history of bipartisanship dissipated almost instantly when Palin said the provision on end-of-life conversations in Obama's health care legislation would result in bureaucrats deciding whether sick people get to live. The language was ultimately removed.

Nothing in the discussions approved by Medicare will be focused on cost, but many experts believe if patients truly understood their alternatives, and doctors listened to them, bills would inherently go down.

A landmark report last year from the Institute of Medicine found that few people make their wishes known and too many deaths are filled with breathing machines, feeding tubes, powerful drugs and other treatments that fail to extend life and make its final chapter more painful and unpleasant. The report was called "Dying in America," and the institute—an independent organization that advises the government—has a section on its website distilling the issues for families.

After the report, Medicare said it would consider a change in policy for 2016.

Supporters say counseling would give patients more control and free families from tortuous decisions. Even so, there are often no simple answers. Patients may want less invasive care if they believe they will soon die, but predicting when death will happen is notoriously inexact. Terminal patients can live for years, potentially complicating a choice of less intensive treatment.

Interested parties will have 60 days to comment on the new regulation before it is finalized.

**More information:** "Dying in America": [tinyurl.com/o7zb4p8](http://tinyurl.com/o7zb4p8)

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