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Medicare incentive aims to make patients' end-of-life decisions clear

By Mike Wereschagin

The questions are intimate, uncomfortable and among the most consequential a person can answer. When a life nears its end, how far should loved ones go to keep the person's heart beating, or the lungs breathing? Is life worth living if nutrition comes only through a sterile tube? Who should bear the burden of telling doctors, "Enough"?

The Obama administration issued a regulation that took effect Saturday allowing doctors to receive Medicare reimbursement for having these discussions during yearly check-ups, rather than only during an initial Medicare examination. Congress dropped a similar provision from the health care bill last year after opponents said it created "death panels" that would "pull the plug on Grandma."

Few critics went that far this time. In Pennsylvania, which has the fifth-highest number of Medicare patients of any state, the rule could affect 1.9 million people. The voluntary discussions are meant to make clear a person's wishes so that if he or she becomes incapacitated, family members know how far to take treatment.

"Doctors don't like having these discussions, either. It's very uncomfortable. It's uncomfortable for families, it's uncomfortable for doctors, it's uncomfortable for patients," said Arthur Caplan, director of the Center for Bioethics at the University of Pennsylvania. That makes the incentive of a Medicare payment useful, he said. "It's crucially important that you pick a decision-maker."

End-of-life decisions -- laid out in legal documents such as living wills and advance directives -- can be distressingly specific.

A form used in a pilot program at Family Hospice & Palliative Care in Mt. Lebanon includes check boxes beside treatment options: resuscitate or don't, use antibiotics or not, put in a feeding tube or let the patient starve. The form is fuchsia-colored and meant to be posted on a patient's refrigerator so paramedics will see it.

"There have been taboos about discussing those subjects," said Karen Rose, vice president of Family Hospice & Palliative Care. "Everything should be about wellness. But there's a life-intersecting moment where things do change."

Advance directives, which don't take effect until a person becomes unresponsive, began gaining prominence in the 1970s, and interest spiked after Terri Schiavo died in 2005 after a long legal and political battle in Florida over removing her feeding tube.

Few in Pennsylvania used advance directives in the 1990s, when Anthony Cindrich, a World War II paratrooper with the 82nd Airborne, learned he had Alzheimer's disease.

"He could see what was going to come, and he didn't want it," said his son, Robert Cindrich of Butler County, chief legal counsel for the University of Pittsburgh Medical Center and a former federal judge. During his father's 10-year illness, Cindrich partnered with the Allegheny County Bar Association to draft one of the state's first advance directives forms.

When doctors diagnosed Robert Cindrich's mother, Stella, with end-stage liver cancer in November, hospital staff asked her if she prepared advance directives -- a question that "would not have been nearly as prevalent" when his father was diagnosed, he said.

She had, and late at night the family took her home from the hospital. They kept her comfortable for two weeks so children, grandchildren, nephews and nieces could visit. She refused pain medication because it made her fall asleep, and she wanted to stay awake to see them.

When she became too weak to talk, family members did not debate chemotherapy or hospitalization because "she had signed off on the documents," Cindrich said. She died in her bed Nov. 19, with her family present.

About 70 percent of people over 60 who don't live in nursing homes or assisted living facilities have advance directives, according to a University of Michigan study published in the *New England Journal of Medicine* in April.

Part of the annual Medicare checkup is developing an illness prevention plan for each patient, and adding the advance directives discussion will "help the physician to better align the personal prevention plan services with the patient's priorities and goals," federal regulators wrote.

"I think the fear is that our health care system is becoming increasingly money-driven and utilitarian, that those who are most expensive and have the least 'quality of life' should be viewed differently than those who are able-bodied and younger," said Wesley J. Smith, a senior fellow in human rights and bioethics at the Discovery Institute, a conservative Virginia-based policy group. "That can lead to very nasty consequences." Smith and others note that an advance directive doesn't have to be about withholding care.

"Your decision can be, 'I want everything done,' " Rose said.