



Written by [Michael Tennant](#) on December 28, 2010

## ObamaCare 2: Return of the Death Panels

Likewise, after anti-ObamaCare rebels raised a ruckus about the “death panels” they alleged to be part of the original healthcare reform legislation, that language was removed from the final version of the bill. Nevertheless, the Obama administration, reluctant to part with its own instrument of death, has quietly reinstated more or less the same provision via regulation.



[According to the New York Times](#), “under the new policy, outlined in a Medicare regulation, the government will pay doctors who advise patients on options for end-of-life care, which may include advance directives to forgo aggressive life-sustaining treatment.” These discussions of end-of-life treatment are to take place during annual “wellness visits” covered by Medicare, during which “doctors can provide information to patients on how to prepare an ‘advance directive,’ stating how aggressively they wish to be treated if they are so sick that they cannot make health care decisions for themselves,” the report says.

The *Times* acknowledges that the administration’s purpose in issuing the regulation is to perform an end run around Congress: “While the new law does not mention advance care planning, the Obama administration has been able to achieve its policy goal through the regulation-writing process, a strategy that could become more prevalent in the next two years as the president deals with a strengthened Republican opposition in Congress.” (Congress has itself to blame for this situation, having unconstitutionally ceded so much of its power to executive-branch agencies over the years.)

The administration and its fellow travelers are also trying to perform an end run around the American people. In fact, they are being so secretive about the return of the death panels that, according to the *Times*, a celebratory email from Rep. Earl Blumenauer (D-Ore.) specifically asked recipients not to “broadcast this accomplishment out to any of your lists, even if they are ‘supporters’ — e-mails can too easily be forwarded,” adding, “The longer this goes unnoticed, the better our chances of keeping it.” Considering that the administration claims that its regulation is in the best interest of patients, its attempts to keep the new rule out of the public eye are curious indeed.

Is advance care planning a good thing? The administration cites research showing that “advance care planning improves end-of-life care and patient and family satisfaction and reduces stress, anxiety and depression in surviving relatives.” The *Times* reports that Dr. Maria J. Silveira of the University of



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Michigan found in a recent study of 3,700 people near the end of life that “many had ‘treatable, life-threatening conditions’ but lacked decision-making capacity in their final days.” Indeed, it is difficult to see how voluntary, patient-driven advance care planning could be harmful.

However, that is not what is happening under the new Medicare regulation — or what would have happened under section 1233 of the House version of the ObamaCare bill, the portion that was struck before final passage. *Washington Post* Editorial Board member Charles Lane explained his reservations about that section in a 2009 [editorial](#):

Though not mandatory, as some on the right have claimed, the consultations envisioned in Section 1233 aren’t quite “purely voluntary,” as Rep. Sander M. Levin (D-Mich.) asserts. To me, “purely voluntary” means “not unless the patient requests one.” Section 1233, however, lets doctors initiate the chat and gives them an incentive — money — to do so. Indeed, that’s an incentive to insist.

Patients may refuse without penalty, but many will bow to white-coated authority. Once they’re in the meeting, the bill does permit “formulation” of a plug-pulling order right then and there. So when Rep. Earl Blumenauer (D-Ore.) denies that Section 1233 would “place senior citizens in situations where they feel pressured to sign end-of-life directives that they would not otherwise sign,” I don’t think he’s being realistic.

What’s more, Section 1233 dictates, at some length, the *content* of the consultation. The doctor “shall” discuss “advanced care planning, including key questions and considerations, important steps, and suggested people to talk to”; “an explanation of . . . living wills and durable powers of attorney, and their uses” (even though these are legal, not medical, instruments); and “a list of national and State-specific resources to assist consumers and their families.” The doctor “shall” explain that Medicare pays for hospice care (hint, hint).

In short, said Lane, “the measure would have an interested party — the government — recruit doctors to sell the elderly on living wills, hospice care and their associated providers, professions and organizations.” Little wonder, then, that “opponents said the Obama administration was bringing back a procedure [via the new regulation] that could be used to justify the premature withdrawal of life-sustaining treatment from people with severe illnesses and disabilities,” the *Times* reported.

Further indication that the regulation is intended to deny care to certain individuals is the fact that it was issued by Centers for Medicare and Medicaid Services Administrator Dr. Donald Berwick, a well-known proponent of healthcare rationing (i.e., denial). Berwick, the paper notes, once said, “Using unwanted procedures in terminal illness is a form of assault. In economic terms, it is waste. Several techniques, including advance directives and involvement of patients and families in decision-making, have been shown to reduce inappropriate care at the end of life, leading to both lower cost and more humane care.”

Government death panels are an inevitable outcome of government-run healthcare, and the proponents of government healthcare (such as Berwick) know it and celebrate it. For example, *Times* columnist Paul Krugman, who once called Sarah Palin a liar for suggesting that death panels would be part of ObamaCare, [said](#) on ABC’s *This Week* on November 14 that the federal budget could only be brought under control by controlling healthcare costs — which is to say, by rationing healthcare — and specifically argued that “the real solution ... is going to be a combination of death panels and sales taxes.”



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Will the new Medicare regulation really result in death panels? Maybe not directly or immediately, but such panels will come into existence sooner or later; and having pressured many patients into giving the government written excuses for denying care to them when they are critically ill will make issuing their death warrants that much easier. May the Force be with those patients who choose to resist.



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