

MOTOR LIVING WILLS

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To: Congressman Sandy Levin

From: Jacquelyn Suarez

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As a Member of Congress during the Terri Schiavo case, you are acutely aware of the problems associated with not having a living will. Your drive to help alleviate these issues can be achieved by implementing Motor Living Wills. This program will significantly increase the number of living wills in existence by allowing adults to obtain and submit a living will form through the Department of Motor Vehicles (DMV). Therefore, the normal benefits of a living will, such as respecting patient wishes, removing the burden of making difficult decisions from the family, and reducing pain and suffering, are more widely seen. In addition, the Motor Living Wills program will solve two problems H.R. 6331, the Medicare Improvements for Patients and Providers Act of 2008, fails to address: 1) making known the existence of the living will; and 2) the living will is easily accessible to physicians. Aside from these benefits to constituents, the federal government will save approximately \$16 billion dollars from Medicare.

Congressman's Position:

Rep. Levin, your pro-living will stance is evident. With your support of H.R. 6331, the Medicare Improvements for Patients and Providers Act of 2008, in the 110th Congress and your introduction of the Advance Directive Promotion Act of 2008, it is clear that you want to ensure the protection of an individual's right to express their health care wishes and have them respected.

Congressman's Political Situation:

Health care reform is a major issue across the nation. Many legislators, as well as constituents, support such reform. However, the revamping of our current system will take billions of dollars to accomplish. The Motor Living Wills program will give you the opportunity to emerge as a leader in advancing solutions to pay for such reform. As mentioned earlier, this program is estimated to save \$16 billion, a potential pay-go for comprehensive healthcare.

Legislative Proposal:

Summary:

I propose the creation of the Motor Living Wills program. This program advances the understanding of what living wills are, how they can be implemented and why they are important. However, the benefits to Motor Living Wills do not end there. After educating others about living wills, the program would make living wills easier for adults to submit, readily accessible to doctors and its existence obviously known.

The idea can be seen as a hybrid between organ donation and the Motor Voter Act. When renewing your license you would have the opportunity to submit a simple living will. After doing so, an icon of a scroll would appear in the upper right corner of your license confirming the fact that you have a living will (see exhibit 1). In addition, your living will would appear on a national registry accessible to doctors.

1. Make creating living wills and health care proxy forms easier to accomplish
 - a. Provide the forms for creating a living will and designating a health care proxy available at all DMVs

- b. Allow all license and non-Driver ID holders to submit their living wills and health care proxy forms through the DMV when obtaining a new license or ID card.
 - c. Upon license and ID renewal, ask individuals if they would like to update their living will or health care proxy form.
2. Make having a living will clearly evident. When an individual submits a living will through the DMV, an icon will appear on their license exemplifying the existence of a living will.
3. Make living wills easily accessible to physicians. After an individual submits a living will at the DMV, the document will be uploaded onto a national registry – accessible to physicians at all times.

It is clear that simply increasing awareness of living wills is not effective. While educating constituents on the importance of living wills is beneficial, better solutions can address the problems education alone cannot. Motor Living Wills is one such solution. This program will increase the number of adults with a living will, make the existence of living wills clearly evident, and make the documents accessible to medical doctors. In addition to solving these existing problems, Motor Living Wills can address two prospective problems: 1) forgetting to update one's existing living will or health care proxy form; and 2) the lack of funding for comprehensive health care.

Citizens across the United States view living wills as a very important part of getting ready for later life. According to a study conducted by the National Council on Aging, 74 percent of Americans said preparing a living will is “very important.” In fact, adults said preparing a living will ties with building up savings as the most important

preparation one can make. And, people aged 65-74 said living wills were the most important preparation for later life, even more important than savings. Yet, studies indicate that only 25-40 percent of Americans have a living will. One explanation for this disconnect is the lack of access to creating a living will, something Motor Living Wills will solve.

Even after an individual drafts a living will, obstacles continue to prevent the execution of the document. In most instances a physician never even sees the living will. Sometimes patients forget to give a copy to their doctor. Other times family members are unaware that such a document exists. In some instances former health care providers forget to forward the document to the new provider. And, in certain cases, family members may not want to provide the living will. Motor Living Wills addresses this issue by making living wills accessible to physicians via a national registry. Therefore, doctors will not need to go through family members, patients or other health care providers for such an important document.

According to the *Journal of the American Medical Association's* article, "The Inaccessibility of Advance Directives on Transfer from Ambulatory to Acute Care Setting," even in instances where patients had completed living wills before being hospitalized, their medical charts "contained accurate information about their directives only 26 percent of the time, and only 16 percent of the charts contained the actual form." This problem stems from two issues: 1) a lack of awareness that the document exists; and 2) a lack of access to the document. Again, the Motor Living Wills program will address both problems. With the icon on your primary form of identification, it is clear

that you possess a living will. Upon realizing the existence of the document, the physician can then access the national registry and upload your living will.

The Motor Living Wills program will also save money. It comes as no surprise that the number of in hospital deaths has continued to increase over the years. *The Journal of Geriatrics Society* published a five-hospital study that said the costs of “‘futile’, last-minute medical care for patients with near-death diagnoses who died in the hospitals averaged \$10,400 per patient.” The *Journal* also mentioned that intensive care costs during the last month of a patient’s life can exceed \$100,000. The Department of Health and Human Services released a study that said approximately 13 percent of Medicare is spent during the last year of patients’ lives.

Patients who discussed their living wills with physicians used less “intensive care, underwent fewer procedures, and experienced shorter final stays in the hospital than those without living wills,” reported a study in the *Archive of Internal Medicine*. According to these findings the average cost of treating patients with a living will was two-thirds less than the average cost of other patients in their age group.

The number of Medicare patients that die in hospitals each year is rising. The above findings, coupled with this fact, suggest that the Motor Living Wills system could reduce Medicare costs by approximately 3.3 percent each year. Living wills eliminate a great deal of unwanted or unnecessary medical care which saves billions of dollars. Using the Kaiser Family Foundation’s Medicare spending projections of \$506.8 billion for 2009, the federal government would see a savings of approximately \$16.7 billion by implementing the Motor Living Wills program. This figure does not include additional savings such as reduced health care costs for private insurance companies which will

result in lower premiums for consumers, or the reduction in court costs from instances of family members litigating over the rights to make medical decisions on behalf of a loved one.

In addition, a solution that will have long term effects will best suit you as a legislator. Aside from authoring a program that will benefit your constituents greatly, you have the opportunity to lead Capitol Hill in developing a pay-for to help cover the costs of comprehensive health care. It is evident that implementing Motor Living Wills will better the quality of life for constituents while simultaneously saving the nation billions of dollars.

The Problem:

Constituents of Michigan's 12th congressional district, as well as Americans across the country, face the pain and difficult decisions associated with the lack of living wills every day. When a loved one fails to create a living will or forgets to inform family members or doctors of the document's existence, problems arise. Family members often disagree over medical decisions, something the entire nation witnessed with the Terri Schiavo case. Court battles may ensue over the medical care and life saving measures wanted. And most importantly, the individual's wishes may not be adhered to. Without a living will you are leaving medical decisions that will affect you up to others; and in some instances, those making decisions for you could be complete strangers.

Agenda Setting:

The focusing event for this problem has been the Terri Schiavo case. While this tragic situation may have occurred four years ago, thousands of families face similar situations across the United States every year. Every family will face the death of a loved

one. And, with the number of elderly patients dying in hospitals on the rise and the advances in modern medicine to sustain life, the need for living wills has only increased. Without a living will, medical decisions are left up to the family and physicians. Therefore, the individual loses the right to have his or her wishes respected.

As exemplified by the Terri Schiavo case, without a living will your wishes regarding life and medical treatment are unclear. This lack of certainty not only negatively affects the individual, but places the burden of making such difficult decisions upon the family.

Since this issue spans from coast to coast, it is something that most congressional leaders want to remedy. Constituents across the entire United States are looking for solutions. Although not directly related to living wills, many legislators are looking for pay-fors to mitigate the costs of comprehensive health care; Motor Living Wills can be one such pay-for. As a result, proposed legislation to help increase the number of living wills, while simultaneously saving funds from a federal program already in existence, should be a high priority on the congressional agenda.

Policy Legitimation:

Proposing legislation that will make creating living wills simpler for constituents will most likely see bipartisan support. However, Republicans may balk at the legislation since it will raise funds for comprehensive health care. Rep. Levin, you have already introduced legislation that would increase awareness and education on living wills. The Advance Directives Improvement and Education Act of 2007 introduced in the 109th Congress and the Advance Directive Promotion Act of 2008 introduced in 110th Congress, saw 33 and 18 co-sponsors respectively. Senator Nelson of Florida also

introduced comparable legislation in the Senate. Sen. Nelson's bills also saw 14 co-sponsors in the 109th Congress, with support from both sides of the aisle.

While some Republicans may not want to support legislation that they see as pro-universal healthcare, the Republican Party has often supported cutting government spending on Medicare. Since Motor Living Wills would reduce Medicare spending, some Republicans may decide to support the bill. In addition, Democrats currently control the House. Therefore, should the Motor Living Wills bill fail to gain bipartisan support, it can still pass through the House. The Senate, on the other hand, may require bipartisan support. Looking at the co-sponsors from Senator Nelson's previous bills, it appears as though bipartisanship in the Senate will be an easier feat since he had Republican co-sponsorship for his previous legislation.

Aside from policy legitimization via the parties, constituency legitimization should prove easy. Motor Living Wills will enhance the lives of constituents without raising taxes or taking money from another program. A better quality of life, in addition to federal savings, will surely prove legitimate for the residents of your district.

Policy Implementation:

The implementation of Motor Living Wills can occur through two channels. One such way is the Highway Reauthorization Bill. This bill will need to be renewed during the 111th Congress. Therefore, Congress can institute the Motor Living Wills program by attaching it the Highway Reauthorization Bill, making its implementation a contingency for states to receive highway funds. Congress can offer to pay for, say, 80 percent of the program while the states pick up the remaining 20 percent.

Another option is to add the Motor Living Wills program to the Digital Medical Record provision of the American Recovery Act. Since the federal government is already providing funding for this digitalization, it would be simple and effective to add a digital copy of patients' living wills to their online medical record.

Proposal Impediments:

The federal bureaucratic system that this proposal has to go through will likely slow the implementation of this policy. Another issue facing this proposal is packaging the program in a way that will gain a few Republican supporters. In addition, the Motor Living Wills program could be a casualty of the larger health care debate. And, lastly, this issue has insufficient salience.

Prospects for Success:

It is highly likely that our policy will enter the agenda and eventually pass. We can gauge this by the successful implementation of H.R. 6331: Medicare Improvements for Patients and Providers Act of 2008. This piece of legislation requires that physicians discuss living wills and their importance with Medicare patients. It successfully increased the number of living wills created. However, it failed to address two problems that Motor Living Wills does: 1) Make the will's existence clearly known through the license icon; and 2) Make the will easily accessible to physicians via a national registry.

Motor Living Wills has the potential to address all of the issues currently inhibiting the successful use of living wills. Living wills have the support of the medical sector, including the American Medical Association, Hospice, etc. Motor Living Wills will not be a temporary fix. Instead, the program will be a long term solution for

reducing pain and suffering, adhering to patient wishes and bettering the quality of life for constituents and Americans across the country.

Exhibit 1

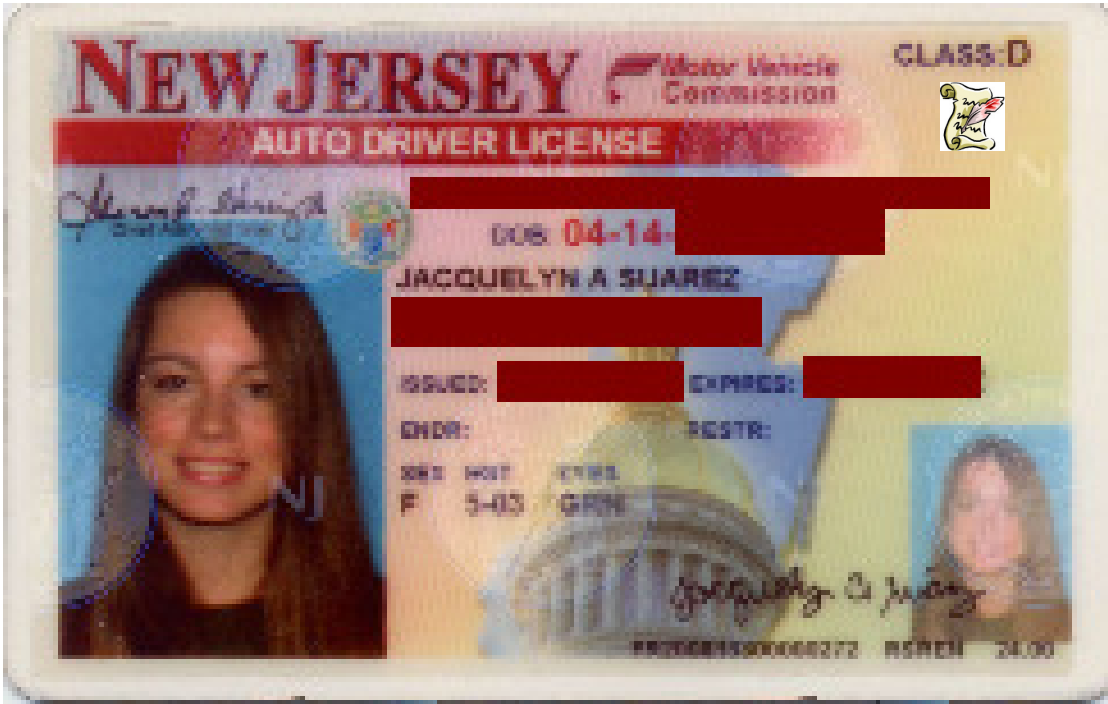


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