ISSUE BACKGROUND
Patient Self-Determination (Health Care Advance Planning)

Our Goal
NAELA supports legislation and policies that encourage all adults to plan for future health care decisions through advance care planning discussions with family and physicians and the use of Advance Directives, particularly the Health Care Power of Attorney.

History
Since the 1990 Patient Self-Determination Act amendments to Medicare and Medicaid, federal law has required that in-patients be asked whether they have an advance directive and be given information about them at the time of admission. But that approach never succeeded in making sure that patient’s wishes are known and honored, because it was little more than a check-off box on admission’s forms.

Legislation intended to strengthen advance care planning has been introduced several times over the last decade. Most recently, a provision was included in the House version of Health Care Reform that would have provided physician reimbursement under Medicare for voluntary “advance care planning consultations.” This provision was scuttled in the Senate because of a surge of media misinformation that peaked in the summer of 2009, calling the provision a mandate for “government-encouraged euthanasia” of old people and the use of “death panels.” In reality, these provisions did:

- not involve government at all in end-of-life decision-making.
- not require patients to decide how they want to die.
- not encourage patients to decline treatments in order to die sooner and save Medicare money.

The practical reality seniors face today in health care is that they don’t really know their care options, because no one takes the time to counsel them – especially when the individual faces serious, chronic, and eventually fatal conditions. Worse, their doctors often don’t know their patient’s treatment wishes or goals of care. Consequently, the care patients get or don’t get is too often dictated by others without the voice of the patient being heard.

Action NAELA Supports
The following bills in the current Congress further the objective NAELA supports:

- Sen. Rockefeller’s (D-WV) S. 1150, and Rep. Blumenauer’s (D-OR) H.R. 2911, the Advance Planning and Compassionate Care Act of 2009
If favorable action on these bills is not possible in the remaining months of this Congress, we encourage support for reintroduction of these or similar bills that accomplish the following:

1. Provide physician reimbursement under Medicare for voluntary “advance care planning consultations.”

2. These consultations should include discussion of Physician Orders for Life Sustaining Treatment for seriously chronically ill patients in states that recognize POLST. POLST or OLST stands for Physician “Orders for Life-Sustaining Treatment,” a protocol that originated in Oregon in the early 1990s. It started with the recognition that patient wishes, no matter how communicated, will have little impact unless they are systematically factored into or translated into the medical decision-making engine of the health care system.

   - This occurs by making sure:
     - patient’s goals and wishes are translated into a standardized medical order form that covers certain high-probability treatment scenarios,
     - incorporates the patient’s goals of care, and
     - follows the patient across care settings.

   - The form is outcome neutral. It can indicate maximum to minimum utilization of any or all treatments. It does not promote a particular outcome. Note: OLST is not an advance directive, but rather a set of doctor’s orders that reflects the patient’s here-and-now goals for medical decisions that could confront the patient in the immediate future. It builds upon one’s advance directive but can also benefit those patients who refrain from using advance directives. Research on POLST has shown positive outcomes in ensuring treatment consistent with patients’ wishes. See the research bibliography at POLST.org

3. Ensure portability of advance directives across state lines.

4. Ensure that the implementation of electronic medical records include and integrate timely information about patient proxy designations, care goals and preferences, and medical orders for life-sustaining treatment.

5. Support research, education, and development of quality measures and best practices relating to advance care planning and care implementation for persons with life-limiting illnesses across care settings.

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