105TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 105–46
Part 1

ASSISTED SUICIDE FUNDING RESTRICTION ACT OF 1997

APRIL 8, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1003]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1003) to clarify Federal law with respect to restricting the use of Federal funds in support of assisted suicide, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, after the item in the table of contents relating to section 11, insert the following:

Sec. 12. Suicide prevention (including assisted suicide).

Page 4, line 20, strike "create" and insert "apply to or to affect".

Page 21, after line 2, insert the following new section:

SEC. 12. SUICIDE PREVENTION (INCLUDING ASSISTED SUICIDE).

(a) PURPOSE.—The purpose of this section is to reduce the rate of suicide (including assisted suicide) among persons with disabilities or terminal or chronic illness by furthering knowledge and practice of pain management, depression identification and treatment, and issues related to palliative care and suicide prevention.

(b) RESEARCH AND DEMONSTRATION PROJECTS.—Section 781 of the Public Health Service Act (42 U.S.C. 295) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection:

"(e) RESEARCH AND DEMONSTRATION PROJECTS ON SUICIDE PREVENTION (INCLUDING ASSISTED SUICIDE).—

"(1) RESEARCH.—The Secretary may make grants to and enter into contracts with public and private entities for conducting research intended to reduce the rate of suicide (including assisted suicide) among persons with disabilities or terminal or chronic illness. The Secretary shall give preference to research that aims—

"(A) to assess the quality of care received by patients with disabilities or terminal or chronic illness by measuring and reporting specific outcomes;

"(B) to compare coordinated health care (which may include coordinated rehabilitation services, symptom control, psychological support, and community-based support services) to traditional health care delivery systems; or

"(C) to advance biomedical knowledge of pain management.

"(2) TRAINING.—The Secretary may make grants and enter into contracts to assist public and private entities, schools, academic health science centers, and hospitals in meeting the costs of projects intended to reduce the rate of suicide (including assisted suicide) among persons with disabilities or terminal or chronic illness. The Secretary shall give preference to qualified projects that will—

"(A) train health care practitioners in pain management, depression identification and treatment, and issues related to palliative care and suicide prevention;

"(B) train the faculty of health professions schools in pain management, depression identification and treatment, and issues related to palliative care and suicide prevention; or

"(C) develop and implement curricula regarding disability issues, including living with disabilities, living with chronic or terminal illness, attendant and personal care, assistive technology, and social support services.

"(3) DEMONSTRATION PROJECTS.—The Secretary may make grants to and enter into contracts with public and nonprofit private entities for the purpose of conducting demonstration projects that will—

"(A) reduce restrictions on access to hospice programs; or

"(B) fund home health care services, community living arrangements, and attendant care services.

"(4) PALLIATIVE MEDICINE.—The Secretary shall emphasize palliative medicine among its funding and research priorities.".

(c) REPORT BY GENERAL ACCOUNTING OFFICE.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report providing an assessment of programs under subsection (e) of section 781 of the Public Health Service Act (as added by subsection (b) of this section) to conduct research, provide training, and develop curricula and of the curricula offered and used by schools of medicine and osteopathic medicine in pain management, depression identification and treatment, and issues related to palliative care and suicide prevention. The purpose of the assessment shall be to determine the extent to which such programs have furthered knowledge and practice of pain management, depression identification and treatment, and issues related to palliative care and suicide prevention.

PURPOSE AND SUMMARY

The principal purpose of H.R. 1003, the Assisted Suicide Funding Restriction Act of 1997, is to maintain current Federal policy by explicitly providing that Federal funds may not be used to pay for items and services the purpose of which is to cause or assist in causing the suicide, euthanasia, or mercy killing of a person. The prohibition on Federal funding provided by H.R. 1003 applies to all Federal financial assistance, including the direct purchase of assisted suicide services and the involvement of Federal personnel or Federal facilities in the provision of such services. H.R. 1003 also prohibits the use of Federal funds for advocacy and legal activities that would assist in or support assisted suicide, euthanasia, or mercy killing.

H.R. 1003 establishes that the Act's prohibitions do not pertain to the withholding or withdrawing of medical treatment or care, nutrition, or hydration, or to the provision of such end-of-life care as pain alleviation. Withholding or withdrawing treatment or nourishment is generally not considered an act of assisted suicide, nor is treatment aimed solely at the alleviation of suffering that may nonetheless shorten life, unless such measures are undertaken with the specific purpose of causing death.

BACKGROUND AND NEED FOR LEGISLATION

Almost all States ban assisted suicide either by statute or court decision. However, four State statutory bans are currently involved in litigation challenging such prohibitions. Among these legal actions are two cases currently before the U.S. Supreme Court, one before the Ninth Circuit Court of Appeals, and one before the Supreme Court of the State of Florida.

These cases have raised questions concerning the potential use of Federal funds to cover the cost of assisted suicide in those States where it is or may be determined, legislatively or judicially, to be legal. This question was first raised in 1994 when the then-director of Oregon's Medicaid program expressed the expectation that Medicaid funds would likely be used to fund assisted suicide once the Oregon referendum measure legalizing assisted suicide was implemented. (Although that referendum passed, it has not yet been implemented pending legal action.) There is concern that a judicial finding that strikes existing State bans on assisted suicide or that affirmatively permits assisted suicide could result in the use of Federal funding to pay the costs of assisted suicide.

Under current Federal law, policy, and practice, no Federal funds are used to provide or pay for assisted suicide. Among programs in the jurisdiction of this Committee that provide direct health care to patients, for example, the National Institutes of Health and the Indian Health Service do not permit their health care providers to assist suicide or "hasten the moment of death." Nor does either the Medicare or the Medicaid program pay for physician-assisted suicide. In a May 1, 1996 letter provided to the Committee, the Health Care Financing Administration stated that neither the statutory criteria of the Medicare program nor the President's FY 1998 budget proposal provide for Federal funding of assisted suicide.

In the event that ongoing legal actions could result in the legalization of assisted suicide in various States, H.R. 1003 reinforces current policy and clarifies Federal law by establishing current practice in Federal statute. Specifically, the provisions of H.R. 1003 preserve the current interpretation of Federal law that Federal funding may not be used to pay for items and services intended to cause or assist in causing the suicide, euthanasia, or mercy killing of a person. The Act does not, however, limit the availability or use of Federal funding relating to such practices of end-of-life care as the withholding or withdrawal of medical treatment, nutrition, or hydration. The Act also does not limit funding to the provision of pain management services that may increase the risk of death, so long as such practices do not have the purpose of causing or assisting in causing death.

In addition, H.R. 1003 would prohibit the use of Federal funds for advocacy to assist in or support assisted suicide, euthanasia, or mercy killing, or to bring suit or provide any form of legal assistance for assisted suicide, euthanasia, or mercy killing. The Act also specifies that Medicare and Medicaid rules pertaining to advance directives would not require a provider or organization to inform or counsel any individual about assisted suicide, euthanasia, or mercy killing. It would also clarify that Federal law does not require providers or organizations to follow the provisions of an advance directive that directs the purposeful causing of death.

The provisions of H.R. 1003 prohibiting the use of Federal funding for purposes related to assisted suicide extend to numerous Federal health programs and facilities, including but not limited to the following: the Medicare program, the Medicaid program, the Social Services Block Grant, the Maternal and Child Health Block Grant, the Public Health Service Act, the Indian Health Care Improvement Act, the Federal Employees Health Benefits Program, the military health care system (including the TRICARE and CHAMPUS programs), veterans' medical care, health services for Peace Corps volunteers, medical services for Federal prisoners, the Developmental Disabilities and Bill of Rights Act, the Protection and Advocacy for Mentally Ill Individuals Act, protection and advocacy systems under the Rehabilitation Act, the Older Americans Act, and the Legal Services Program.

H.R. 1003 would become effective upon the date of enactment and would apply to payments made on or after enactment. The provisions of the Act also would apply to contracts entered into or renewed after enactment as well as to contracts entered into before the date of enactment to the extent permitted under such contracts.

HEARINGS

The Subcommittee on Health and Environment held a hearing on assisted suicide on March 6, 1997. The Subcommittee received testimony from: Cardinal Bernard Law, Archbishop of Boston; Rabbi A. James Rudin, Director of Interfaith Relations, American Jewish Committee; Reverend David L. Adams, Executive Director, Office of Government Information, The Lutheran Church-Missouri Synod; Reverend Dr. Stanley Harakas on behalf of the Greek Orthodox Church Archdiocese of America; Dr. N. Gregory Hamilton, Cofounder, Physicians for Compassionate Care; Dr. Lonnie Bristow, Immediate Past President, American Medical Association; Ms. Felicia Cohn, Center to Improve Care of the Dying, George Washington University Medical Center; Dr. Nancy J. Osgood, Virginia Commonwealth University, Medical College of Virginia; Dr. Ira R. Byock, The Palliative Care Service; Mr. Cornelius Baker, Executive Director, National Association of People with AIDS; Mr. Mark Shaffer on behalf of The Consortium for Citizens with Disabilities, Rights Task Force; Mr. Justin Dart, private citizen; Ms. Barbara Coombs Lee, Executive Director, Compassion in Dying; Dr. Daniel P. Sulmasy, Center for Clinical Bioethics, Georgetown University; Mr. Robert J. Castagna, Oregon Catholic Conference; and Dr. Henk Jochemsen, G.A. Lindeboom Institute Center for Medical Ethics, The Netherlands.

COMMITTEE CONSIDERATION

On Thursday, March 13, 1997, the Subcommittee on Health and Environment met in open markup session and approved H.R. 1003 for Full Committee consideration, amended, by a voice vote. On Thursday, March 20, 1997, the Full Committee met in open markup session and ordered H.R. 1003 reported to the House, as amended, by a roll call vote of 45 yeas to 2 nays.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The following are the recorded votes on the motion to report H.R. 1003 and on amendments offered to the measure, including the names of those Members voting for and against.

COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #2

BILL: H.R. 1003, Assisted Suicide Funding Restriction Act of 1997

AMENDMENT: Amendment by Mr. Brown re: require schools of medicine and osteopathic medicine, as a condition for the receipt of Federal funds, to include training in pain management in their curricula.

DISPOSITION: NOT AGREED TO, by a roll call vote of 17 yeas to 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley				Mr. Markey			
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Schaefer		X		Mr. Boucher			
Mr. Barton				Mr. Manton	X		
Mr. Hastert		X		Mr. Towns			
Mr. Upton		X		Mr. Pallone	X		
Mr. Stearns		X		Mr. Brown	X		
Mr. Paxon		X		Mr. Gordon	X		
Mr. Gillmor		X		Ms. Furse	X		
Mr. Klug				Mr. Deutsch	X		
Mr. Greenwood		X		Mr. Rush	X		
Mr. Crapo		X		Ms. Eshoo	X		
Mr. Cox				Mr. Klink	X		
Mr. Deal		X		Mr. Stupak	X		
Mr. Largent		X		Mr. Engel	X		
Mr. Burr		X		Mr. Sawyer	X		
Mr. Bilbray		X		Mr. Wynn	X		
Mr. Whitfield		X		Mr. Green	X		
Mr. Ganske		X		Ms. McCarthy			
Mr. Norwood		X		Mr. Strickland	X		
Mr. White				Ms. DeGette	X		
Mr. Coburn		X					
Mr. Lazio		X					
Mrs. Cubin		X					
Mr. Rogan		X					
Mr. Shimkus		X					

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COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #3

BILL: H.R. 1003, Assisted Suicide Funding Restriction Act of 1997

AMENDMENT: Amendment by Ms. Eshoo re: require the Secretary of Health and Human Services to establish guidelines relating to palliative care.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley				Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Schaefer		X		Mr. Boucher	X		
Mr. Barton				Mr. Manton	X		
Mr. Hastert		X		Mr. Towns			
Mr. Upton		X		Mr. Pallone	X		
Mr. Stearns		X		Mr. Brown	X		
Mr. Paxon		X		Mr. Gordon	X		
Mr. Gillmor		X		Ms. Furse	X		
Mr. Klug				Mr. Deutsch	X		
Mr. Greenwood		X		Mr. Rush	X		
Mr. Crapo		X		Ms. Eshoo	X		
Mr. Cox		X		Mr. Klink	X		
Mr. Deal		X		Mr. Stupak	X		
Mr. Largent		X		Mr. Engel	X		
Mr. Burr		X		Mr. Sawyer	X		
Mr. Bilbray	X			Mr. Wynn	X		
Mr. Whitfield		X		Mr. Green	X		
Mr. Ganske		X		Ms. McCarthy	X		
Mr. Norwood		X		Mr. Strickland	X		
Mr. White		X		Ms. DeGette	X		
Mr. Coburn		X					
Mr. Lazio		X					
Mrs. Cubin		X					
Mr. Rogan		X					
Mr. Shimkus		X					

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COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #4

BILL: H.R. 1003, Assisted Suicide Funding Restriction Act of 1997

MOTION: Motion by Mr. Bliley to order H.R. 1003 reported to the House, as amended.

DISPOSITION: AGREED TO, by a roll call vote of 45 yeas to 2 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley	X			Mr. Dingell	X		
Mr. Tauzin	X			Mr. Waxman		X	
Mr. Oxley				Mr. Markey	X		
Mr. Bilirakis	X			Mr. Hall	X		
Mr. Schaefer	X			Mr. Boucher	X		
Mr. Barton				Mr. Manton	X		
Mr. Hastert	X			Mr. Towns			
Mr. Upton	X			Mr. Pallone	X		
Mr. Stearns	X			Mr. Brown	X		
Mr. Paxon	X			Mr. Gordon	X		
Mr. Gillmor	X			Ms. Furse	X		
Mr. Klug				Mr. Deutsch	X		
Mr. Greenwood	X			Mr. Rush	X		
Mr. Crapo	X			Ms. Eshoo	X		
Mr. Cox	X			Mr. Klink	X		
Mr. Deal	X			Mr. Stupak	X		
Mr. Largent	X			Mr. Engel	X		
Mr. Burr	X			Mr. Sawyer	X		
Mr. Bilbray	X			Mr. Wynn	X		
Mr. Whitfield	X			Mr. Green	X		
Mr. Ganske	X			Ms. McCarthy	X		
Mr. Norwood	X			Mr. Strickland	X		
Mr. White	X			Ms. DeGette		X	
Mr. Coburn	X						
Mr. Lazio	X						
Mrs. Cubin	X						
Mr. Rogan	X						
Mr. Shimkus	X						

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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R 1003 would result in no new or increased budget authority or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 4, 1997.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1003, a bill to clarify federal law with respect to restricting the use of federal funds in support of assisted suicide.

If you wish for further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff Lemieux.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 1003—A bill to clarify Federal law with respect to restricting the use of Federal funds in support of assisted suicide

CBO estimates that enactment of this bill would have no budgetary impact.

The bill would ensure that federal funds were not used to purchase or provide health care items or services for the purpose of causing or assisting the death of any individual, such as by as-

sisted suicide, euthanasia, or mercy killing. Because no federal funds appropriated for health care providers, facilities, insurance programs, or other programs would be used for those purposes under current law, the bill would not affect the federal budget.

This bill contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) because it would prohibit funds, employees, and facilities of the District of Columbia from being involved in the suicide, euthanasia, or mercy killing of an individual, including assistance and advocacy. This mandate would impose no costs on the District of Columbia because such activities are currently illegal in that jurisdiction. Furthermore, because euthanasia is currently illegal in every state except Oregon (where a ballot measure allowing euthanasia is held up by a court injunction), this bill's provisions limiting the use of federal government funds would not result in costs for other state, local, or tribal governments. H.R. 1003 does not include any private sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for the estimate is Jeff Lemieux. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

Current law

No provision.

Explanation of provision

This section states that the Act may be cited as the "Assisted Suicide Funding Restriction Act of 1997" and sets forth the table of contents.

SECTION 2. FINDINGS AND PURPOSE

Current law

No provision.

Explanation of provision

This section contains a description of the findings of the bill, including the finding that Congress is not currently providing Federal financial assistance in support of assisted suicide, euthanasia, or mercy killing and intends that Federal funds not be used to promote such activities.

This section also states that the principal purpose of the bill is to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services the purpose of which is to cause or assist in causing the suicide, euthanasia, or mercy killing of any individual.

Webster's Third New International Dictionary Unabridged (Merriam-Webster, 1986) defines "suicide" in relevant part as "the act or an instance of taking one's own life voluntarily and intentionally; self-destruction." It defines "euthanasia" in relevant part as "the act or practice of painlessly putting to death persons suffering from incurable conditions or diseases." By "assisted suicide," the bill describes provision of any means (including, but not limited to, a lethal drug overdose) to another person with the intent of enabling or assisting that person to kill himself or herself (as by ingesting the lethal overdose). By "euthanasia" and "mercy killing," the bill more generally describes the use of active means by one person to cause the death of another person (as by lethal injection) because, as a result of illness, injury, or disability, either the person is deemed to be dying or suffering or the person is considered to be a "burden" on family, community or society. It should be emphasized that euthanasia or mercy killing can occur whether or not the person who is killed consents to be killed.

SECTION 3. RESTRICTION ON USE OF FEDERAL FUNDS UNDER HEALTH CARE PROGRAMS

Current law

There is neither an explicit statutory provision restricting the use of Federal funds for items and services the purpose of which is to cause or assist in causing the suicide, euthanasia, or mercy killing of any individual, nor any provision providing Federal funds for such items and services.

Explanation of provision

Subsection (a) generally would prohibit funds appropriated by Congress for the purpose of paying for health care services to be used: (1) to provide any health care item or service furnished for the purpose of causing or assisting in causing the death of any in-

dividual, such as by assisted suicide, euthanasia, or mercy killing; (2) to pay for an item or service furnished for the purpose of causing or assisting in causing the death of any individual, such as by assisted suicide, euthanasia, or mercy killing, either directly, through Federal financial participation or other matching payments, or otherwise; or (3) to pay in whole or in part for health benefit coverage that includes any coverage of an item or service furnished for the purpose of causing or assisting in causing the death of any individual, such as by assisted suicide, euthanasia, or mercy killing, or of any expenses relating to such an item or service.

As stated above, the purpose of H.R. 1003 is to explicitly provide that Federal funds may not be used to pay for items and services for the purpose of causing or assisting in causing the suicide, euthanasia, or mercy killing of any individual. Section 3 places no restrictions on State-financed or privately financed assisted suicide, however, and is not intended to penalize an entire program through loss of Federal funds if some component of the program exclusively uses private or State funds for items and services for the purpose of causing or assisting in causing the suicide, euthanasia, or mercy killing of any individual. Because the bill provides only that no Federal funds may be used in any way for such activities, a program would lose its Federal funding if it could not be demonstrated that the funds used for items and services for the purpose of causing or assisting in causing the suicide, euthanasia, or mercy killing of any individual were State or private funds used exclusive of Federal funds.

In this section, the term "health care item or service" is used in order to include any lethal agent and the prescribing of such an agent; therefore, the provisions prohibit reimbursement for the cost of such an agent and the cost of prescribing such agent to a person for the purpose of causing or effecting death. In addition, use of the term "expenses relating to such an item or service" is intended to preclude reimbursement for a process that may be required before such an agent is delivered. Thus, for example, neither a "prescription for medication" provided to a patient (such as pursuant to the Oregon Death with Dignity Act legalizing assisted suicide; *See* Or. Rev. Stat. §§ 127.805, 127.815(7), and 127.840) in order that a patient might commit suicide nor the cost of the medication provided would be reimbursable.

Payment for related services and activities is also prohibited. For example, Oregon law also requires the "attending physician" (Id. § 127.800(2)) and "consulting physician" (Id. § 127.800(3)) to follow certain procedures before a "prescription for medication" may be provided (e.g., determining whether the patient has a terminal disease, is capable of making decisions, and has made a request for suicide assistance voluntarily; providing information necessary to informed consent; referral to a consulting physician; possible referral for psychological evaluation; request that the patient notify next of kin; and other formalities necessary for compliance with the Oregon Act). Id. § 127.815. Since these services are provided in contemplation of and in preparation for issuing a "prescription for medication" to assist suicide, they would not be reimbursable. Section 3(a) of H.R. 1003 would preclude reimbursement both for pro-

viding the means to secure a lethal agent with which to commit suicide (or to perform euthanasia or mercy killing) and for services of a physician or other health care provider in connection with such acts.

As used in this section, the term "to pay (in whole or in part) for health benefit coverage" is intended to prevent the disbursement of Federal funds for payment of assisted suicide, euthanasia, or mercy killing. With respect to health coverage of Federal employees, this section prohibits the use of any Federal funds for any health benefits package or health coverage that includes assisted suicide, euthanasia, or mercy killing, or for the administration of such health coverage. Therefore, Federal employees who seek coverage for assisted suicide, euthanasia, or mercy killing may choose to use their own private funds to pay for such a procedure or purchase separate coverage for it. The same principle applies to patients whose health care is provided by the Federally funded Medicare program.

The term "to pay (in whole or in part) for health benefit coverage" also applies to cases in which a State may seek Federal reimbursement for the capitation fees needed to provide membership in managed care plans for its Medicaid population: Federal funds could not be used to pay part of these fees if they are used to purchase a health coverage which provides assisted suicide, euthanasia, or mercy killing, or are used to pay for any part of the administration of such health coverage. To be eligible for such Federal funds, a State could contract solely with managed care plans that do not cover assisted suicide, euthanasia, or mercy killing, or work out an arrangement by which they are subsidized from a segregated fund containing only State or private funds.

Subsection (b) provides that nothing in the Act shall be construed as creating any limitation relating to (1) the withholding or withdrawing of medical treatment or medical care; (2) the withholding or withdrawing of nutrition or hydration; (3) abortion; or (4) the use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, so long as they are not furnished for the purpose of causing or assisting in causing death.

This subsection clarifies the limitations on the scope of the bill—that is, what procedures and services are not intended to fall within the prohibitions on the use of Federal funds. Thus, for example, the withholding or withdrawing of any form of medical treatment or care, as well as the withholding or withdrawing of nutrition or hydration, are specifically excluded from the scope of the prohibitions on Federal funding in the bill. The bill is intended only to encompass the use of active means of causing death such as by lethal injection or the provision of a lethal oral drug overdose. It is not intended to encompass decisions not to provide or to continue to provide treatment or care even if, in some circumstances, some might deem such decisions as a form of passive euthanasia or mercy killing.

The limitation provided by section 3(b)(4) of the bill is intended to assure that methods "furnished for the purpose of alleviating pain or discomfort" are not encompassed within the funding restrictions of the bill even if their use might as an unintended effect "increase the risk of death." Thus, for example, the administration of

morphine for the purpose of alleviating pain may continue to be paid for by Federal funds even if its use might risk causing death or risk shortening life because it might also have the side effect of suppressing respiratory functions. Nevertheless, section 3(b)(4) would not permit Federal funding of methods to cause death used on the pretext of pain relief. Thus, it states that pain relief methods may be funded "so long as" the methods are "not also furnished for the purpose of causing, or the purpose of assisting in causing death, for any reason." Methods that are used both to alleviate pain or discomfort and "also" purposefully to cause death would not be funded under the Act. In addition, methods that purposefully cause death in order to alleviate pain or discomfort would not be funded under the Act.

Subsection (c) provides that no health care item or service furnished by or in a health care facility owned or operated by the Federal government or by any physician or other individual employed by the Federal government to provide health care services may be furnished for the purpose of causing or assisting in causing the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

Subsection (d) lists programs within the jurisdiction of the Committee on Commerce and of other Committees of the House to which these restrictions apply, including but not limited to: the Medicare program, the Medicaid program, the Social Services Block Grant, the Maternal and Child Health Block Grant, the Public Health Service Act, the Indian Health Care Improvement Act, the Federal Employees Health Benefits Program, the military health care system (including the TRICARE and CHAMPUS programs), veterans' medical care, health services for Peace Corps volunteers, medical services for Federal prisoners, the Developmental Disabilities and Bill of Rights Act, the Protection and Advocacy for Mentally Ill Individuals Act, protection and advocacy systems under the Rehabilitation Act, the Older Americans Act, and the Legal Services Program.

Reasons for change

To this point, Federal law has not been interpreted to allow Federal funding for assisted suicide, euthanasia, and mercy killing. However, these activities may soon become legal in one or more States. This could result in the courts being asked to reinterpret current Federal policy regarding payment for assisted suicide or other related activities. In the absence of statutory clarification, this could result in court decisions that overturn the current Medicare policy which does not consider assisted suicide as medically necessary, and so does not pay for services that would be related to such an activity.

There are two cases before the Supreme Court in which plaintiffs are contending they have a constitutional right to physician assisted suicide. Both the 2nd Circuit and the 9th Circuit have struck down State laws that outlawed assisted suicide in the States of New York and Washington on the grounds that these State laws violate the Due Process Clause or the Equal Protection Clause of the U.S. Constitution. *Washington* v. *Glucksberg*, No. 96-110; *Vacco* v. *Quill*, No. 95–185 8 (U.S.; oral argument heard January 8, 1997).

If these Circuit Court decisions are upheld, there could be a nationwide Constitutional right to assisted suicide, euthanasia, and mercy-killing and Federal funding—under Medicare, Medicaid, Title XX, and other programs—for such actions would be at issue.

In addition, Oregon has passed the Oregon Death with Dignity Act, Or. Rev. Stat. §§ 127.800 through 127.995 (1995), which legalizes assisted suicide in certain circumstances. Oregon's Medicaid director and its Health Services Commission chair both have said recently that once assisted suicide is legal it will be covered by the State's Medicaid plan.

In May, the Florida Supreme Court will hear oral arguments on an appeal from a lower court ruling that, if upheld, would legalize assisting suicide in that State. *Krischer* v. *McIver,* No. 89,837 (Fl. Appeal granted Feb. 17, 1997). If upheld by the State Supreme Court, this decision will raise the question of State and Federal funding in matching programs such as Medicaid, and raise questions about the permissibility of assisted suicide in Federally-owned health care institutions in that State.

Despite the fact that Federal health programs do not currently fund assisted suicide, most Federal programs have no written policy on assisted suicide because such restrictions were unnecessary when such activities were illegal in every State. Those Federal policies which do exist generally are stated through internal program guidelines or interpretive memoranda that are inherently changeable and may lack the force of law.

Section 1862(a)(1)(A) of the Social Security Act states that payment may be made under Part A or Part B of the Medicare program for expenses incurred for items or services which are: "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. * * *"

Further, Section 1862(a)(1)(C) states that payment may be made under Part A or Part B for expenses incurred for items or services which in the case of hospice care are: "reasonable and necessary for the palliation or management of terminal illness. * * *"

The Health Care Financing Administration (HCFA) has taken the position that:

> [T]he Medicare statute limits Medicare coverage to items and services that "are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." Physician assisted suicide, even if allowed under State law, does not meet these statutory criteria. As such, the program is prohibited from making payment for it. (May 1, 1996, Letter of Debbie Chang, Director, Office of Legislative and Intergovernmental Affairs, Health Care Financing Administration.)

The Committee agrees that HCFA's views are consistent with the intent of Congress that assisted suicide, euthanasia, and mercy killing are not appropriately regarded as medical treatments for illness or injury or as palliation or management of terminal illness and thus that payment is precluded for them under Medicare and other Federal programs. However, the Committee believes that, be-

cause the Medicare statute and other Federal laws do not explicitly prohibit the use of Federal funds for the funding or advocacy of assisted suicide, lawsuits still may be brought by beneficiaries or physicians in States where assisted suicide is legal, to compel funding based on the claim that assisted suicide is indeed "reasonable and necessary for the * * * treatment of illness or injury" or that such actions are "reasonable and necessary for the palliation or management of terminal illness."

It is the intent of the Committee to preclude such claims by providing a clarification of existing Federal law and to make explicit that Federal funds may not be used for assisted suicide, euthanasia, or mercy killing.

Section 3(a)(1) prevents the use of funds to provide health care items or services "furnished for the purpose of causing * * * the death of any individual, such as by assisted suicide, euthanasia, or mercy killing." This broader language is used in this section of the bill, as in sections 4 and 7 of the bill, primarily because proponents of assisted suicide, mercy killing, and euthanasia often use other terms to describe these activities, such as "physician-aid-in-dying." In fact, the Oregon Death with Dignity Act, which legalizes these actions under certain circumstances, specifically provides that "[a]ctions taken in accordance with [this law] shall not, for any purpose, constitute assisted suicide, mercy killing, or homicide under the law." Or. Rev. Stat. § 127.880 (1995).

This broad language is used with regard to the general prohibition on health care funding (section 3) and the prohibition on the use of funds under the Developmental Disabilities Assistance Act (section 4) and the Patient Self-Determination Act (section 7) to ensure that the activities and actions intended to be prohibited by the legislation are in fact prohibited. This broad language is necessary because euthanasia, mercy killing, and assisted suicide are often described by other terms or other State-law definitions. The Committee does not believe that this language will have unintended consequences because the programs covered in these instances are clearly and narrowly defined.

The narrow language specifically prohibiting the use of Federal funds for "assisted suicide, euthanasia, or mercy killing" found in the bill's "findings and purposes" provisions (section 2), restrictions on advocacy programs (section 5), and restrictions on funding for mercy killing, euthanasia, and assisted suicide in other Federal programs (section 6) is used because the Committee believes the broad language, if applied to these programs, could have unintended consequences. For example, if the broad language were used with respect to military operations, it might have the effect of prohibiting legitimate national defense activities. If the broad language were used with respect to criminal justice enforcement, it might have the effect of prohibiting capital punishment.

The Committee emphasizes that the use of narrow rather than broad language is strictly to avoid unintended consequences, not to authorize the use of Congressionally appropriated funds for what might be termed "physician aid-in-dying," "self-deliverance," or any other practice that has traditionally been deemed assisted suicide, euthanasia, or mercy killing, even if such an alternative name is specifically intended to evade limitations on what is generally un-

derstood to be encompassed by the terms "assisted suicide," "euthanasia," or "mercy killing."

SECTION 4. RESTRICTION ON USE OF FEDERAL FUNDS UNDER CERTAIN GRANT PROGRAMS UNDER THE DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT

Current law

Part B of the Developmental Disabilities Assistance and Bill of Rights Act guarantees Federal assistance to State Developmental Disabilities Councils; Part D of that Act provides for grants to university affiliated programs to promote independence, productivity, and integration of individuals with developmental disabilities; and Part E of that Act provides for grants and contracts for projects of national significance to promote these purposes.

Explanation of provision

Section 4 of H.R. 1003 would prohibit funds appropriated to carry out Parts B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act to support or fund any program or service which has a purpose of assisting in procuring any item, benefit, or service for the purpose of causing or assisting in causing the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

In the absence of Section 4, it is possible that some might attempt to use Federal funds under these programs for such purposes as training individuals to assist suicide, advocating the legalization of assisted suicide, or researching methods of assisting suicide. It is the opinion of the Committee that such purposes are not consistent with Congressional intent in enacting the Developmental Disabilities Assistance and Bill of Rights Act.

The funding restrictions of Section 4 are intended to require that programs receiving Federal funds maintain objective integrity and independence from other programs that include the prohibited activities, through the use of separate facilities, personnel, and accounting records. Employees of the entity conducting the program are free to advocate and encourage the activities at issue at any time, except when they are acting within the scope of employment in programs receiving Federal funds.

SECTION 5. RESTRICTION ON USE OF FEDERAL FUNDS BY ADVOCACY PROGRAMS

Current law

There are a variety of Federal laws providing funds to assist individuals in obtaining health care and other services.

Explanation of provision

The explicitly stated purpose of this section is to prohibit the use of any congressionally appropriated funds for legal or other assistance "for the purpose of * * * (1) securing or funding * * * (2) compelling any person, institution, [or] governmental entity * * * or (3) asserting or advocating a legal right" in the relevant context. An advocacy program could provide factual answers to a client's questions about a State law on assisting suicide, since that alone

would not be providing assistance for such purposes. Similarly, these provisions do not prohibit such programs from counseling clients about alternatives to assisted suicide, such as pain management, mental health care, and community-based services for people with disabilities. Advocacy programs could not, however, use congressionally appropriated funds to write letters, make telephone calls, or file suit to facilitate obtaining assisted suicide, euthanasia, or mercy killing; to compel an entity to provide or fund any item or service to be used for assisted suicide, euthanasia, or mercy killing; or to refer a client to some other person or entity for such purpose.

Subsection (a) would prohibit the use of funds appropriated by Congress to assist in, support, or fund any activity or service which has a purpose of assisting in or providing any form of legal assistance for the purpose of (1) securing or funding items, benefits, programs or services furnished for the purpose of causing the suicide, euthanasia, or mercy killing of any individual; (2) compelling any person, institution, or government entity to provide or fund any item, benefit, program or service furnished for the purpose of causing the suicide, euthanasia, or mercy killing of any individual; or (3) advocating a legal right to cause or assist in causing the suicide, euthanasia, or mercy killing of any individual.

The prohibition in paragraph (1) of subsection (a) encompasses, for example, the provision of any assistance to obtain the means of death (such as lethal drugs), the aid of a person or institution (such as a physician or hospital), or the means to finance such a practice. It likewise prohibits the use of Federal funds, for example, to assist in the execution of an advance directive to secure death by assisted suicide, euthanasia, or mercy killing. It should be noted, however, by virtue of Section 3(b) of the Act (Construction and Treatment of Certain Services), the bill would not foreclose the use of Federal funds to assist in the execution of an advance directive to withhold or withdraw medical treatment or care. The prohibition in paragraph (2) means, for example, that legal assistance could not be provided to an individual for the purpose of suing a public or private hospital to permit the individual to receive assistance in committing suicide in its facilities. The prohibition in paragraph (3) means, for example, that legal assistance could not be provided to argue that a law or regulation prohibiting or regulating assisted suicide, euthanasia, or mercy killing was unconstitutional or otherwise in violation of the law.

Subsection (b) includes an illustrative list of programs to which these restrictions apply, including protection and advocacy programs, legal services, and ombudsman programs funded by the Developmental Disabilities Assistance and Bill of Rights Act, Advocacy for Mentally Ill Individuals Act, Rehabilitation Act of 1973, Older Americans Act, and Legal Assistance Corporation Act. However, the listed programs are not exclusive.

Reasons for change

This section of the bill is intended to prohibit the use of Federal funds to promote and facilitate assisted suicide. It places no restrictions on State-financed or privately financed advocacy. Moreover, Section 5 is not intended to have the effect of de-funding an entire

program, such as a Legal Services program or other legal or advocacy program, simply because some State or privately funded portion of that program may advocate for or file suit to compel funding or services for assisted suicide. This section is intended only to restrict Federal funds from being used for such activities.

SECTION 6. RESTRICTION ON USE OF OTHER FEDERAL FUNDS

Current law

No provision.

Explanation of provision

This section would provide that certain other Federal funds may not be used to provide, procure, furnish, or fund items, goods, benefits, activities, or services furnished or performed for the purpose of causing or assisting in causing suicide, euthanasia, or mercy killing. Among other areas, this provision would apply (instead of restrictions in previous sections) to Department of Defense activities (other than military health) and criminal justice activities (other than prison health).

SECTION 7. CLARIFICATION WITH RESPECT TO ADVANCE DIRECTIVES

Current law

Under the Medicare and Medicaid programs, hospitals, skilled nursing facilities, home health agencies, hospice programs, and prepaid health plans are required to provide written information to all adults receiving medical care through the provider or organization about the rights of such adults under State law to make decisions concerning the acceptance or refusal of medical treatment and to prepare advance directives, such as so-called "living wills," concerning the acceptance or refusal of medical treatment; to describe the provider's or organization's policies towards implementing advance directives; to document in the medical record whether there is an advance directive; not to discriminate against patients based on expectation of an advance directive; to ensure compliance with State laws on advance directives; and to provide education concerning advance directives. It has been contended that, in a State in which assisted suicide has been legalized, these existing provisions of Federal law would require medical care facilities to advise patients of their right to assisted suicide, euthanasia, and mercy killing, and to appoint a witness to witness written requests for such services.

Explanation of provision

This section would clarify that the advance directive provisions of the Medicare and Medicaid laws, sections 1866(f) and 1902(w) of the Social Security Act, shall not be construed (1) to require any provider or organization, or employee of such provider or organization, to inform or counsel any individual about any right to obtain an item or services furnished for the purpose of causing or assisting in causing the death of an individual, such as by assisted suicide, euthanasia, or mercy killing; or (2) to require providers or organizations to follow a portion of an advance directive that directs

the purposeful causing, or assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

Reasons for change

Section 7 of the bill is intended to specify that the advance directive provisions of Medicare and Medicaid law (Sections 1866(f) and 1902(w) of the Social Security Act, respectively) shall not be construed to require providers or organizations to counsel an individual about a right to assisted suicide. This section of the bill goes further to release providers or organizations from any Federal obligation to follow portions of advance directives that direct assisted suicide, euthanasia, or mercy killing.

However, it is not the Committee's intent to prohibit providers, organizations, or their employees acting under State law from counseling about assisted suicide or following advance directives that direct assisted suicide. Nor is this section of the bill intended to restrict the scope of any State law on assisted suicide or the content of advance directives. Under Section 7, health care facilities, organizations, and their employees will remain free, if they choose, to provide information about assisting suicide or euthanasia to patients. States will be free to mandate that health care facilities in the State provide such information. Section 7 simply clarifies that there is no Federal requirement to do so.

It is the view of the Committee that the Federal government should not promote assisting suicide by requiring that every patient seen by a health care provider who receives Medicare or Medicaid reimbursement be told that assisted suicide is one of his or her options simply because State law may make it legal. Many hospitals and other health care providers consider assisting suicide fundamentally unethical. They should not be compelled to violate their consciences by being forced to publicize the availability of assisted suicide.

SECTION 8. APPLICATION TO DISTRICT OF COLUMBIA

Current law

The annual Federal payment to the District of Columbia is authorized under Title V of the District of Columbia Self-Government and Governmental Reorganization Act.

Explanation of provision

For the purposes of the Act, this section would treat funds appropriated to the District of Columbia as Federally appropriated funds and make District employees and facilities subject to the same restrictions as employees and facilities of the Federal Government.

SECTION 9. CONFORMING AMENDMENTS

Current law

No provision.

Explanation of provision

This provision contains conforming amendments to various Federal laws and programs, including the Medicare program, the Medicaid program, the Maternal and Child Health Block Grant pro-

gram, the Public Health Service Act, the Indian Health Care Improvement Act, the Federal Employees Health Benefit Program, the Military Health Care Program, and the Veterans' Medical Care Program. This list and the provisions in this section are not intended to be exclusive.

Reasons for change

These amendments are necessary to ensure that the bill's provisions are incorporated into Medicare, Title XX, and other provisions of current Federal law.

SECTION 10. RELATION TO OTHER LAWS

Current law

No provision.

Explanation of provision

The section states that provisions of the Act supersede other Federal laws (including subsequent laws) except to the extent specifically superseded. The Committee recognizes that any future Congress could elect to repeal or modify the restrictions on Federal funding contained in this bill, or to create new programs that specifically authorize Federal funding of assisted suicide, euthanasia, or mercy killing in them. However, in circumstances in which a future Congress creates new programs which simply authorize funding in broad, general terms (for example, for "medical treatment"), it is the intent of the Committee in this section to ensure that the more specific limitations in this Act apply to Federal funding under such programs.

SECTION 11. EFFECTIVE DATE

Current law

No provision.

Explanation of provision

The bill would take effect upon enactment and applies to payments made on or after enactment for items and services provided after enactment. It also would apply to contracts entered into or renewed after enactment and to current contracts to the extent the application of the provisions is permitted under the contracts.

SECTION 12. SUICIDE PREVENTION (INCLUDING ASSISTED SUICIDE)

Current law

No provision.

Explanation of provision

The bill includes several provisions designed to reduce the rate of suicide, including assisted suicide, among persons with disabilities or terminal or chronic illness, by furthering knowledge and practice of pain management, depression identification, palliative care, and other issues related to suicide prevention.

The bill amends the Public Health Service Act to establish research, training, and demonstration projects intended to help

achieve the goal of reducing the rate of suicide (including assisted suicide). It authorizes the Secretary of Health and Human Services (the Secretary) to use resources already provided in Section 781 of the Act to support research projects, with preference given to those that assess the quality of care received by patients with disabilities or terminal or chronic illness, compare coordinated health care services to traditional health care delivery systems, or advance biomedical knowledge of pain management. The bill also authorizes the Secretary to use these resources to support training initiatives in such institutions as academic health centers and hospitals, with preference given to those that train health care practitioners and health professions faculty in pain management, depression identification, and issues related to palliative care and suicide prevention, or develop curricula regarding a broad range of issues relevant to individuals with disabilities, including the physical and psychosocial effects of living with disabilities, the need for and benefits of attendance and personal care services, and the types of assistive technologies available to people with disabilities. Finally, the bill authorizes the Secretary to use these resources to support demonstration projects that reduce restrictions on access to hospice programs, or fund home health care services, community living arrangements, and attendant care services.

H.R. 1003 also includes a provision directing the General Accounting Office (GAO) to analyze the effectiveness and achievements of the grant programs it authorizes the Secretary to undertake. Under this provision, GAO is required to report back to Congress not later than one year after the Secretary awards the first of these grants. It is the Committee's intention to undertake whatever action it deems necessary to achieve the purpose of this section. With the knowledge the Committee expects to gain from the GAO analysis, the Committee anticipates that it will then be able to accurately determine whether and what any additional action is needed to further the knowledge and practice of pain management, depression identification, and issues related to palliative care and suicide prevention.

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 8, 1997.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, House Committee on Commerce, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BLILEY: I write regarding further consideration of H.R. 1003, the Assisted Suicide Funding Restriction Act of 1997. The bill, as introduced, was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, and others. On March 20, 1997, the Committee on Commerce ordered the bill favorably reported to the House, as amended.

H.R. 1003 generally would prohibit Federal Funds from being used for the purpose of causing or assisting in causing the death of any individual by assisted suicide, euthanasia, or mercy killing. The restriction on Federal funding would apply to both Medicare (Title XVIII of the Social Security Act) and to the Title XX Social Services Block Grant (Title XX of the Social Security Act). The bill

would further clarify Medicare rules regarding advance directives. As you know, both Medicare and Title XX fall within the jurisdiction of the Committee on Ways and Means.

On March 18, 1997, the bill was ordered favorably reported by the Ways and Means Health Subcommittee to the full Committee by voice vote. A copy of the Subcommittee report has been forwarded to you. Under normal circumstances the full Committee would meet to consider the bill. However, it is my understanding that there is a desire to consider the bill on the floor as early as this week.

Therefore, in order to expedite the consideration of this legislation, because the legislation in its current form is noncontroversial, and after consultation with the Minority, I do not believe a markup by the full Committee on Ways and Means will be necessary. However, this is being done with the understanding that the Committee will be treated without prejudice in the future as to its jurisdictional prerogatives on this or similar provisions, and it should not be considered as precedent for consideration of matters of jurisdictional interest to the Committee on Ways and Means in the future.

Finally, I would appreciate your response to this letter, confirming this understanding with respect to H.R. 1003, and would ask that a copy our exchange of letters on this matter be included in the Committee on Commerce's report on H.R. 1003.

Thank you for your cooperation and assistance on this matter. With best personal regards,

Sincerely,

BILL ARCHER, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, April 8, 1997.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 1003, the Assisted Suicide Funding Restriction Act of 1997.

I acknowledge your interest in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forgo further action on the bill will not prejudice the Ways and Means Committee with respect to its jurisdictional prerogatives on this or similar provisions.

Thank you again for your cooperation.

Sincerely,

TOM BLILEY, *Chairman.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

AUTHORIZATION OF APPROPRIATIONS

SEC. 501. (a) To improve the health of all mothers and children consistent with the applicable health status goals and national health objectives established by the Secretary under the Public Health Services Act for the year 2000, there are authorized to be appropriated $705,000,000 for fiscal year 1994 and each fiscal year thereafter—

(1) * * *

* * * * * * *

Funds appropriated under this section may only be used in a manner consistent with the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * * * *

PART C—MISCELLANEOUS PROVISIONS

* * * * * * *

EXCLUSIONS FROM COVERAGE AND MEDICARE AS SECONDARY PAYER

SEC. 1862. (a) Notwithstanding any other provision of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1) * * *

* * * * * * *

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph), services described by section 1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist, and which are furnished to an individual who is a patient of a hospital or rural primary care hospital by an entity other than the hospital or rural primary care hospital, unless the services are furnished under arrangements (as defined in section 1861(w)(1)) with the entity made by the hospital or rural primary care hospital; **[**or**]**

(15)(A) which are for services of an assistant at surgery in a cataract operation (including subsequent insertion of an intraocular lens) unless, before the surgery is performed, the appropriate utilization and quality control peer review organization (under part B of title XI) or a carrier under section 1842 has approved of the use of such an assistant in the surgical

procedure based on the existence of a complicating medical condition, or

(B) which are for services of an assistant at surgery to which section 1848(i)(2)(B) applies**[**.**]***; or*

(16) in the case in which funds may not be used for such items and services under the Assisted Suicide Funding Restriction Act of 1997.

Paragraph (7) shall not apply to Federally qualified health center services described in section 1861(aa)(3)(B).

* * * * * * *

AGREEMENTS WITH PROVIDERS OF SERVICES

SEC. 1866. (a) * * *

* * * * * * *

(f)(1) For purposes of subsection (a)(1)(Q) and sections 1819(c)(2)(E), 1833(s), 1876(c)(8), and 1891(a)(6), the requirement of this subsection is that a provider of services or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) * * *

* * * * * * *

(4) For construction relating to this subsection, see section 7 of the Assisted Suicide Funding Restriction Act of 1997 (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).

* * * * * * *

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

* * * * * * *

SEC. 1902. (a) * * *

* * * * * * *

(w)(1) For purposes of subsection (a)(57) and sections 1903(m)(1)(A) and 1919(c)(2)(E), the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) * * *

* * * * * * *

(5) For construction relating to this subsection, see section 7 of the Assisted Suicide Funding Restriction Act of 1997 (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).

* * * * * * *

PAYMENT TO STATES

SEC. 1903. (a) * * *

* * * * * * *

(i) Payment under the preceding provisions of this section shall not be made—

(1) * * *

* * * * * * *

(14) with respect to any amount expended on administrative costs to carry out the program under section 1928; [or]

(15) with respect to any amount expended for a single-antigen vaccine and its administration in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary)[.]*; or*

(16) with respect to any amount expended for which funds may not be used under the Assisted Suicide Funding Restriction Act of 1997.

Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this title that are not reasonable in amount, duration, and scope to achieve their purpose.

* * * * * * *

TITLE XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

* * * * * * *

LIMITATIONS ON USE OF GRANTS

SEC. 2005. (a) Except as provided in subsection (b), grants made under this title may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this title—

(1) * * *

* * * * * * *

(8) for the provision of cash payments as a service (except as otherwise provided in this section); [or]

(9) for payment for any item or service (other than an emergency item or service) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded under this title or title V, XVIII, or XIX pursuant to section 1128, 1128A, 1156, or 1842(j)(2), or

(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded under this title or title V, XVIII, or XIX pursuant to section 1128, 1128A, 1156, or 1842(j)(2) and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person)[.]*; or*

(10) in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

PUBLIC HEALTH SERVICE ACT

* * * * * * *

TITLE II—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

* * * * * * *

PART B—MISCELLANEOUS PROVISIONS

* * * * * * *

SEC. 246. RESTRICTION ON USE OF FUNDS FOR ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING.

Appropriations for carrying out the purposes of this Act shall not be used in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

TITLE VII—HEALTH PROFESSIONS EDUCATION

* * * * * * *

PART F—MISCELLANEOUS PROGRAMS

SEC. 781. RESEARCH ON CERTAIN HEALTH PROFESSIONS ISSUES.

(a) * * *

* * * * * * *

(e) RESEARCH AND DEMONSTRATION PROJECTS ON SUICIDE PREVENTION (INCLUDING ASSISTED SUICIDE).—

(1) RESEARCH.—The Secretary may make grants to and enter into contracts with public and private entities for conducting research intended to reduce the rate of suicide (including assisted suicide) among persons with disabilities or terminal or chronic illness. The Secretary shall give preference to research that aims—

(A) to assess the quality of care received by patients with disabilities or terminal or chronic illness by measuring and reporting specific outcomes;

(B) to compare coordinated health care (which may include coordinated rehabilitation services, symptom control, psychological support, and community-based support services) to traditional health care delivery systems; or

(C) to advance biomedical knowledge of pain management.

(2) TRAINING.—The Secretary may make grants and enter into contracts to assist public and private entities, schools, academic health science centers, and hospitals in meeting the costs of projects intended to reduce the rate of suicide (including assisted suicide) among persons with disabilities or terminal or chronic illness. The Secretary shall give preference to qualified projects that will—

(A) train health care practitioners in pain management, depression identification and treatment, and issues related to palliative care and suicide prevention;

(B) train the faculty of health professions schools in pain management, depression identification and treatment, and issues related to palliative care and suicide prevention; or

(C) develop and implement curricula regarding disability issues, including living with disabilities, living with chronic or terminal illness, attendant and personal care, assistive technology, and social support services.

(3) DEMONSTRATION PROJECTS.—The Secretary may make grants to and enter into contracts with public and nonprofit private entities for the purpose of conducting demonstration projects that will—

(A) reduce restrictions on access to hospice programs; or

(B) fund home health care services, community living arrangements, and attendant care services.

(4) PALLIATIVE MEDICINE.—The Secretary shall emphasize palliative medicine among its funding and research priorities.

[(e)**]** *(f)* AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $4,000,000 for each of the fiscal years 1993 through 1995.

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INDIAN HEALTH CARE IMPROVEMENT ACT

* * * * * * *

TITLE II—HEALTH SERVICES

* * * * * * *

LIMITATION ON USE OF FUNDS

SEC. 225. Amounts appropriated to carry out this title may not be used in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

SECTION 8902 OF TITLE 5, UNITED STATES CODE

§ 8902. Contracting authority

(a) * * *

* * * * * * *

(o) A contract may not be made or a plan approved which includes coverage for any benefit, item, or service for which funds may not be used under the Assisted Suicide Funding Restriction Act of 1997.

SECTION 1073 OF TITLE 10, UNITED STATES CODE

§ 1073. Administration of this chapter

Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter for the armed forces under his jurisdiction, the Secretary of Transportation shall administer

this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter for the National Oceanic and Atmospheric Administration and the Public Health Service. *This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997.*

TITLE 38, UNITED STATES CODE

* * * * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER I—GENERAL

Sec.
1701. Definitions.

* * * * * * *

1707. Restriction on use of funds for assisted suicide, euthanasia, or mercy killing.

* * * * * * *

SUBCHAPTER I—GENERAL

* * * * * * *

§ 1707. Restriction on use of funds for assisted suicide, euthanasia, or mercy killing

Funds appropriated to carry out this chapter may not be used for purposes that are inconsistent with the Assisted Suicide Funding Restriction Act of 1997.

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SECTION 5 OF THE PEACE CORP ACT

PEACE CORPS VOLUNTEERS

(a) * * *

* * * * * * *

(e) Volunteers shall receive such health care during their service, applicants for enrollment shall receive such health examinations preparatory to their service, applicants for enrollment who have accepted an invitation to begin a period of training under section 8(a) of this Act shall receive such immunization and dental care preparatory to their service, and former volunteers shall receive such health examination within six months after termination of their service, as the President may deem necessary or appropriate. Subject to such conditions as the President may prescribe, such health care may be provided in any facility of any agency of the United States Government, and in such cases the appropriation for maintaining and operating such facility shall be reimbursed from appropriations available under this Act. *Health care may not be provided under this subsection in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997.*

SECTION 4005 OF TITLE 18, UNITED STATES CODE

§ 4005. Medical relief; expenses

(a) Upon request of the Attorney General *and to the extent consistent with the Assisted Suicide Funding Restriction Act of 1997*, the Federal Security Administrator shall detail regular and reserve commissioned officers of the Public Health Service, pharmacists, acting assistant surgeons, and other employees of the Public Health Service to the Department of Justice for the purpose of supervising and furnishing medical, psychiatric, and other technical and scientific services to the Federal penal and correctional institutions.

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DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT

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SEC. 122. STATE PLAN.

(a) * * *

* * * * * * *

(c) STATE PLAN REQUIREMENTS.—In order to be approved by the Secretary under this section, a State plan shall meet the requirements in paragraphs (1) through (5).

(1) * * *

* * * * * * *

(5) ASSURANCES.—The plan shall contain or be supported by the assurances described in subparagraphs (A) through (N), which are satisfactory to the Secretary.

(A) USE OF FUNDS.—With respect to the funds paid to the State under section 125, the plan shall provide assurances that—

(i) * * *

* * * * * * *

(vi) not less than 65 percent of the amount available to the State under section 125 shall be expended for activities in the Federal priority area of employment activities, and, at the discretion of the State, activities in any or all of the three other Federal priority areas and an optional State priority area; **[**and**]**

(vii) the remainder of the amount available to the State from allotments under section 125 (after making expenditures required by clause (vi)) shall be used for the planning, coordination, administration, and implementation of priority area activities, and other activities relating to systemic change, capacity building, and advocacy to implement the responsibilities of the State Developmental Disabilities Council pursuant to section 124(c)**[**.**]***; and*

(viii) such funds will be used consistent with the section 4 of the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

SEC. 142. SYSTEM REQUIRED.

(a) * * *

* * * * * * *

(h) LEGAL ACTION.—

(1) * * *

* * * * * * *

(3) LIMITATION.—The systems may only use assistance provided under this chapter consistent with section 5 of the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

SEC. 152. GRANT AUTHORITY.

(a) * * *

(b) TRAINING PROJECTS.—

(1) * * *

* * * * * * *

(5) PROHIBITED ACTIVITIES.—Grants awarded under this subsection shall not be used for administrative expenses for the university affiliated program under subsection (a). *Such grants shall not be used in a manner inconsistent with section 4 of the Assisted Suicide Funding Restriction Act of 1997.*

* * * * * * *

SEC. 162. GRANT AUTHORITY.

(a) * * *

* * * * * * *

(c) APPLICATION AND OTHER GRANT REQUIREMENTS.—No grant may be made under subsection (a) unless—

(1) * * *

* * * * * * *

(4) the applicant demonstrates, where appropriate, how the project will address, in whole or part, the needs of individuals with developmental disabilities from racial and ethnic minority backgrounds; **[**and**]**

(5) the Secretary provides to the State Developmental Disabilities Council in such State an opportunity to review the application for such project and to submit its comments on the application**[**.**]***; and*

(6) the applicant provides assurances that the grant will not be used in a manner inconsistent with section 4 of the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

SECTION 105 OF THE PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS ACT OF 1986

SYSTEM REQUIREMENTS

SEC. 105. (a) A system established in a State under section 103 to protect and advocate the rights of individuals with mental illness shall—

(1) * * *

* * * * * * *

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system; [and]

(9) establish a grievance procedure for clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the system and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this title and title III[.]*; and*

(10) not use allotments provided to a system in a manner inconsistent with section 5 of the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

SECTION 509 OF THE REHABILITATION ACT OF 1973

SEC. 509. PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.

(a) * * *

* * * * * * *

(f) APPLICATION.—In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will—

(1) * * *

* * * * * * *

(6) establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with disabilities are afforded equal opportunity to access the services of the system; [and]

(7) provide assurances to the Commissioner that funds made available under this section will be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided[.]*; and*

(8) not use allotments provided under this section in a manner inconsistent with section 5 of the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

OLDER AMERICANS ACT OF 1965

* * * * * * *

TITLE VII—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

* * * * * * *

Subtitle C—General Provisions

* * * * * * *

SEC. 765. FUNDING LIMITATION.

Funds provided under this title may not be used in a manner inconsistent the Assisted Suicide Funding Restriction Act of 1997.

SECTION 1007 OF THE LEGAL SERVICES CORPORATION ACT

GRANTS AND CONTRACTS

SEC. 1007. (a) * * *

(b) No funds made available by the Corporation under this title, either by grant or contract, may be used—

(1) * * *

* * * * * * *

(9) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities; **[**or**]**

(10) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law**[**.**]***; or*

(11) to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997.

* * * * * * *

ADDITIONAL VIEWS

Concern about federal funding for physician-assisted suicide has escalated as a result of fears that current court and State legislative activity could result in legalization of assisted suicide. These concerns persist despite the fact that no current federal policy or extant legislation permits payment or reimbursement for items or activities related to assisted suicide, or for the provision of services intended to result in suicide. In other words, no federal funds support assisted suicide. Thus, H.R. 1003 does not produce a change in current policy or practice, but merely, as the bill states, "continue[s] current policy."

However, there is at stake in this debate a social policy issue that is of great significance. It is the question, raised by every witness the Subcommittee on Health and Environment called to its hearing on assisted suicide, of why people request assisted suicide and what can be done to prevent this. These witnesses—who included health care providers, religious leaders, and advocates for the ill and the disabled—emphasized that people who are desperately ill, severely disabled, exceedingly frail, or in unrelenting severe pain require special care. And the witnesses lamented that, in many cases, such care is not available. This is not because health care providers lack compassion, but because they often are poorly equipped to identify the unique needs of these patient populations and to respond in the most effective ways to those needs. Simply stated, better training of health professionals is needed, in the very specialized and sensitive skills and knowledge needed to provide the best care to people who are dying.

During the mark-up of H.R. 1003, an amendment was offered that was designed to turn this legislation into something that will accomplish a goal more valuable than simply restating the current situation: the goal of preventing assisted suicide by addressing the reasons that people are driven to seek an end to their lives. It would have required that health professions training programs funded by the federal government incorporate training in how to deal with death and dying, and, as well, authorized research, demonstration, and training on related issues. A small part of this amendment, which authorizes further study related to suicide and its causes, was adopted and is included in the legislation the House will consider. Although this is a positive step—and we look forward to working with our Republican colleagues to ensure that funds are allocated for the purpose of supporting these kinds of activities—it falls well short of meaningful public policy designed to prevent the conditions that cause people to seek suicide in the first place.

The part of our amendment which related to appropriate training of health care providers in how to recognize and treat the conditions that lead to suicide, regrettably, failed. This was despite the fact that the provision would have done nothing more than require,

as a condition of receiving federal discretionary grant funds, that grantees include this critically important component in their programs to train primary care providers. This provision would not have prescribed how such training should be provided, or the content of curricula. Nevertheless, the amendment failed by an essentially party-line vote, with every Republican voting against it and every Democratic Member of the Committee except one voting for it.

As legislators and policy makers, we have an obligation to get to the root of a problem and try to solve it. Improving health professions training to achieve more appropriate care of people who are so desperate as to be seeking suicide is a significant positive step. Our amendment could have set us on the road to achieving that goal. It would have been the right thing to do. To quote the Subcommittee's witness, Professor Felicia Cohn of the George Washington University Center to Improve Care of the Dying, this legislation "falls far short of what is needed. Congress has the opportunity—and the obligation—to set policy to improve care at the end of life. The care of persons at the end of their days in this country is a national disgrace. Much can and should be done, and the Congress has special opportunities and obligations to do so." Unfortunately, we have neither seized that opportunity nor fulfilled those obligations in this legislation.

JOHN D. DINGELL.
EDWARD J. MARKEY.
RICK BOUCHER.
THOMAS J. MANTON.
EDOLPHUS TOWNS.
FRANK PALLONE, Jr.
SHERROD BROWN.
BART GORDON.
ELIZABETH FURSE.
PETER DEUTSCH.
RON KLINK.
BART STUPAK.
ELIOT L. ENGEL.
TOM SAWYER.
ALBERT R. WYNN.
GENE GREEN.
KAREN MCCARTHY.
TED STRICKLAND.

DISSENTING VIEWS

The issue of physician-assisted suicide is controversial not merely because it implicates fundamental ethical questions and challenges our social norms, but because our country is in the midst of an unfinished debate over its merits and perils. Patients, families, health care providers, courts and legislatures are all actively engaged in a search for the place of assisted suicide in our society. The Congress has an important role to play in this inquiry, but the bill reported by the Commerce committee is nothing more than a precipitous attempt to curtail exploration of the sensitive ethical and cultural questions raised by assisted suicide.

These questions are critical to an informed public judgment, but are as yet unanswered. Should individuals be entitled to choose for themselves how and when they may end their own lives? Is there a constitutional right to privacy or to equal protection which warrants such a policy? Are health care providers obligated to help mentally competent and terminally ill patients end their lives? What protections are required to assure that such choices are informed and freely made? Would there be a potential for abuse against older Americans and our most vulnerable citizens?

Most importantly, as the witnesses before the committee uniformly emphasized, timely reforms to our systems of health care delivery and medical education would best serve patient interests by averting the pain and despair which so often compel patients to seek an end to their lives. Efforts to increase research and improve education in palliative care, recognition and management of the needs of dying patients, physician-patient communication, and pain management are urgently needed and long overdue. Moreover, as the American Geriatrics Society testified, "Congress should lead these efforts."

Rather than assist in resolving unanswered questions or fulfilling unmet needs, H.R. 1003 simply prohibits Federal funding of assisted suicide. The bill is a solution in search of a problem. Today, assisted suicide is not a legal practice in any jurisdiction in the United States. The courts have enjoined the Oregon referendum legalizing assisted suicide from taking effect. Nor does the federal government or the States subsidize or compensate for the practice of physician-assisted suicide.

For want of any substantial effect, the bill's actual purpose is easier to ascertain. As a congressional statement of disapproval, the bill is meant to curb our society's debate over assisted suicide. Just as the courts and States are engaged in the complex and serious work of establishing law and policy underlying assisted suicide, the Congress intends to restrain this enterprise with premature legislation. George Will recently wrote that we should allow "the 50 state legislatures [to] proceed with the increasingly urgent task of

educating themselves and the public through deliberations" on assisted suicide.

Broad public discussion is precisely what is needed, and what the Congress should encourage. It is not enough for us to ban funding or enact prohibitions. We have an obligation to dedicate time and careful attention to giving every patient a meaningful choice of health care alternatives to assisted suicide. Until then, we have acted too narrowly to protect the interests of patients and their families.

As Justice Brandeis once observed, "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation * * * [W]e must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold."

HENRY A. WAXMAN.
DIANA DEGETTE.

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