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REVIEW & OUTLOOK | DECEMBER 17, 2008

Wait-Listed to Death

Improving incentives for organ donations.

Article

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The United States recently passed a tragic milestone. For the first time, there are more than 100,000 Americans waiting for an organ transplant. If recent history is any guide, more than 6,000 of them will die waiting this year.



Sen. Arlen Specter.

The outrage is that the federal government makes it extremely difficult to find a donor. A law to prevent the buying and selling of organs has had the unintended consequence of discouraging almost all incentives to donate, including state tax deductions. Arlen Specter (R., Pa.) is trying to convince his Senate colleagues to pass a life-saving rewrite.

It wasn't supposed to be this way when Congress passed the National Organ Transplant Act of 1984, sponsored by then-Senator Al Gore. As federal laws go, this one isn't our favorite, creating as it did a national bureaucracy to allocate donated livers, kidneys, hearts and other organs. But Senator Gore correctly stated at the time that if voluntary efforts failed to provide enough organs to save patients, then incentives should be created to encourage donation.

The problem occurred when Congress added a provision subjecting donors and patients to criminal penalties of up to five years in prison and a \$50,000 fine if "valuable consideration" was provided to a donor. Members wanted to prevent for-profit businesses from paying poor people in the Third World to give up their livers for rich American patients. But since "valuable consideration" carries the threat of jail time, it has encouraged everyone involved to make an overly broad interpretation.

After Pennsylvania passed a pilot program in 1994 to pay burial expenses for organ donors, state employees refused to implement the law for fear of federal prosecution. The impact of the federal statute is as appalling as it is ironic. Kidney transplant recipient Sally Satel has noted that burial and cremation expenses can be provided when a body is donated to science -- as long as it isn't used to save the life of a current patient.

In Today's Opinion Journal

REVIEW & OUTLOOK

While the chilling effect of the federal ban has remained since 1994, the national transplant waiting list has more than quadrupled. This may be why organizations

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like the National Kidney Foundation, which has previously opposed all incentives to encourage the gift of life, are now reconsidering. NKF tells us that board members will review its position at a meeting next month.

Only half of families now choose to donate the organs of a deceased loved one, adding up to about 8,000 deceased donors each year. While about 6,000 living donors choose each year to help friends and family, fewer than 100 Good Samaritans show up each year at transplant centers to make living donations to strangers. Despite the growing transplant waiting list, the total number of organ donors decreased slightly in 2007.

Mr. Specter has gone to some lengths to assure potential critics that after his bill passes, nobody will be allowed to offer lungs on eBay. His bill not only maintains the ban on buying and selling, but increases the criminal penalties, adding a seven-year sentence for organ trafficking. We're not sure that an organ market wouldn't save more lives, but that's a debate for another day. The Specter bill would simply clarify that states may provide incentives such as tax deductions to encourage donations that could save thousands of lives each year.

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