April 19, 2005

The Honorable
United States Senate
Washington, D.C. 20510

Dear Senator,

We understand that the Senate may soon consider a legislative proposal that would amend what is popularly known as the Hyde/Weldon Amendment to the 2005 Consolidated Appropriations Act, Public Law 108-447. While the American Bar Association has not taken a position favoring or opposing the Weldon Amendment, it has adopted policy regarding access to medically appropriate health care that we believe may be helpful as you consider this proposed revision to the Weldon Amendment or other similar legislation affecting the delivery of healthcare.

It is firmly established in law that every competent individual has the right to make decisions about his or her health care. The physician’s duty to advise his or her patient about treatment options and to obtain the patient’s informed consent to proposed treatment is at the core of this right. The patient’s right to decide and the physician’s concomitant obligation to inform are grounded in the common-law right of bodily integrity and self-determination, as well as liberty interests protected by the Fourteenth Amendment. In Schloendorff v. Society of New York Hospital, Judge Cardozo eloquently explained: “Every human being of adult years and sound mind has a right to determine what shall be done with his own body.” 211 N.Y., 125, 129-30, 105 N.E. 92, 93 (1914). Patients cannot make informed decisions unless their health care providers offer complete, accurate, unbiased and timely information about their treatment options, and about how alternative treatments may be accessed.

In furtherance of these principles, the ABA opposes governmental actions and policies that interfere with patients’ abilities to receive from their healthcare providers, including healthcare professionals and entities, in a timely manner: (a) all of the relevant and medically accurate information necessary for fully informed healthcare decisionmaking; and (b) information with respect to their
access to medically appropriate care, as defined by the applicable medical standard of care, whether or not the provider chooses to offer such care.

By its terms, the Weldon Amendment applies to referrals but does not appear to impinge upon the ability of patients to receive information. However, were the referral language of the Weldon Amendment or any other legislation interpreted or applied to limit the ability of patients to obtain from their health care providers all of the relevant and medically accurate information they need about how to access health care services that their provider does not offer, such interpretation or application would undermine the basic principles of informed consent and would be opposed by the ABA.

Please feel free to contact Ellen McBarnette, Legislative Counsel, at mcbarnee@staff.abanet.org, if we can provide additional assistance.

Sincerely,

Robert D. Evans