WASHINGTON — THE national transplant list just passed a morbid milestone: More than 100,000 people now wait for kidneys.

We are at this point largely because even though demand is growing, donations from living and deceased donors have remained flat, between 16,500 and 17,000 annually, for the past decade. Between now and this time tomorrow, 14 people will die, many after languishing on dialysis for 5 to 10 years, while their names slowly crawled up the queue.

The problem lies in the requirement that all organs be given altruistically (as a friend did for me in donating her right kidney eight years ago). Federal law is widely interpreted as forbidding donors to receive anything of tangible value in return for their lifesaving deeds.

We can’t solve the issue merely by getting
more people to sign organ donor cards — though everyone should — or even by moving to an opt-out system, under which we would harvest people’s organs at death unless they had earlier indicated they didn’t wish to donate them. These solutions can do only so much, because relatively few people die in ways that leave their organs suitable for transplantation.

To make a real impact on kidney shortage, we have to find ways to persuade more healthy young and middle-aged people to give a kidney to a stranger.

Here is a plan to do just that. Donors would not get a lump sum of cash; instead, a governmental entity, or a designated charity, would offer them in-kind rewards, like a contribution to the donor’s retirement fund, an income tax credit or a tuition voucher.

Meanwhile, imposing a waiting period of at least six months would ensure that donors didn’t act impulsively and that they were giving fully informed consent. Prospective compensated donors would be carefully screened for physical and emotional health, as is done for all donors now.

These arrangements would screen out financially desperate individuals who might otherwise rush to donate for a large sum of instant cash and later regret it.

The donors’ kidneys would be distributed to people on the waiting list, according to the rules now in place. (People who wanted to donate a kidney to a specific person — say, a father to a son — would still be able to, outside this system.) Finally, all rewarded donors would be guaranteed follow-up medical care for any complications, which is not ensured now.

Plans like this have been in the air for decades, but physicians and policy makers have been wary of creating an ethically fraught organ market.

But as their patients succumb to the wait, more and more physicians are seeing the unintended cruelty of an altruism-only regime. A 2009 poll of the membership of the American Society of Transplant Surgeons revealed that 80 percent supported or were neutral toward the
provision of tax credits for donors.

Others have been held back by their reading of the law. For three decades, physicians, ethicists and many policy makers have interpreted the 1984 National Organ Transplant Act as making it a felony to provide any form of enrichment for donors.

It is far from clear, though, that the statute sweeps so broadly. In truth, it prohibits only the acquisition, receipt or transfer of “valuable consideration,” a term that it never defines.

In contract law, the term “consideration” usually refers to a bargained-for exchange between a buyer and seller, not an in-kind benefit provided by a third party. A 2007 Department of Justice memo concluded that the legislative history of the bill “does not suggest that any Member of Congress understood the bill as addressing non-monetary or otherwise non-commercial transfers.”

Indeed, the event that led lawmakers to adopt the felony provision suggests that they had something else in mind. In the fall of 1983, while the bill was being drafted, Al Gore, then a representative from Tennessee and the bill’s lead sponsor, learned that H. Barry Jacobs, a Virginia physician, was planning to recruit people from poor countries, fly them to the United States and pay them for one of their kidneys while collecting a brokerage fee of $2,000 to $5,000 (Medicare accepted) from patients in need.

Dr. Jacobs’s “business plan” — herding indigent people onto a plane to fly to a foreign operating room for a surgical procedure they barely understood — became the lightning rod for a general outcry against the idea of paying for and brokering organs.

Mr. Gore and his fellow sponsors wanted to prevent buyers from paying cash for kidneys, with wealthy purchasers’ taking advantage of poorer patients and enabling profiteering by intermediaries. They also, understandably, wanted to give altruism a chance — the main function of the act, after all, was to create a national network of voluntary organ procurement and distribution and maintain a federally overseen list.
However, Mr. Gore was thinking ahead. He spoke of moving to “a voucher system or a tax credit to a donor’s estate” if “efforts to improve voluntary donation are unsuccessful.”

On the 30th anniversary of the National Organ Transplant Act, in the shadow of the relentless waiting list, we must finally acknowledge that altruism isn’t enough. In-kind incentives provided by the government or a charity almost surely offer the best solution to the dire kidney shortfall. Let’s test compensation, rather than wait for another 100,000 people to join the queue.

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