

November 29, 2001

The Honorable Max Baucus
Chairman, Senate Finance Committee
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Baucus:

On behalf of the 115,000 physicians and medical students of the American College of Physicians-American Society of Internal Medicine (ACP-ASIM), I am writing to applaud you for sponsoring S. 1738, the Medicare Appeals, Regulatory and Contracting Improvements Act of 2001, along with Senators Kerry, Murkowski, and Grassley. While this legislation would address many of the regulatory burdens on the country's physicians, and introduce greater due process rights and fairness into the Medicare claims payment review system, we recommend several improvements be made to address issues that go beyond the scope of the current bill.

In particular, ACP-ASIM appreciates the inclusion of provisions in S. 1738 that address:

Written Responses. Carriers are required to issue written, correct and consistent responses to questions from physicians within 45 days of the date of receipt. Providers that reasonably rely on the written responses will not be subject to any new penalty or interest if the guidance or response from the carrier was in error. Carriers would also be required to establish toll-free telephone numbers for inquiries, and a system for identifying employees who provide information.

Overpayments. Physicians and other Medicare providers are prohibited from remitting an alleged overpayment to the Centers for Medicare and Medicaid Services (CMS) until reconsideration at the Qualified Independent Contractor (QIC) level of appeal.

Repayment Plans. The Secretary of Health and Human Services is allowed to develop standards for providers for the use of a repayment plan for at least one year, but no longer than 3 years. We support language that gives the physician up to 3 years to repay the overpayment, or the option of an offset plan against future Medicare payments unless there is evidence of fraud.

Over the last several months, ACP-ASIM has been actively working with the committees of jurisdiction on similar regulatory reform proposals introduced in the House of Representatives, including H.R. 2768, the Medicare Regulatory and Contracting Reform Act (MRCRA), and H.R. 3046, the Medicare Regulatory, Appeals, Contracting and Education Reform Act (RACER). We appreciate the opportunity to work with the Senate Finance Committee as well, to ensure that the most comprehensive regulatory relief proposal will ultimately be enacted into law. Therefore, we strongly encourage you to add the following improvements to S. 1738:

Extrapolation. We support language that eliminates the extrapolation of alleged overpayment amounts to other non-audited claims for post-payment audits the first time a physician or other health care provider is assessed an alleged overpayment, unless fraud is suspected.

E&M Pilot Projects. H.R. 3046 and H.R. 2768 would prohibit CMS from establishing new evaluation and management (E&M) documentation guidelines before they have been assessed by physician organizations and a number of pilot tests – including one recommended by ACP-ASIM on the use of patient encounter time – have been completed. Instituting a time-based E&M pilot test supports a proposal to use patient encounter time as a simpler alternative to other documentation guidelines. While CMS has stated its commitment to instituting new E&M demonstration programs, we strongly support permanent statutory authorization of these initiatives to ensure long term commitment that would withstand possible changes in leadership within the agency.

Emergency Medical Treatment and Active Labor Act (EMTALA). S.1738 includes a provision that applies a prudent layperson standard test for emergency services under the Medicare fee-for-service program. To address the over-expansive nature of EMTALA, ACP-ASIM recommends the inclusion of language in H.R. 3046 that also requires the establishment of an EMTALA task force, peer review organization review prior to provider terminations, and notification of physicians and providers when an EMTALA investigation has been closed.

Physician Review of Physician Determinations. S. 1738 contains language that would require Medicare Qualified Independent Contractors (QIC) reviewers, which includes physicians and other health professionals, to meet requirements for expertise, independence, and to prevent conflicts of interest. We urge the inclusion of provisions included in H.R. 3046 that ensure QIC reviewers would be physicians to the extent they are reviewing items and services provided to patients by physicians.

Once again, we thank you for your leadership in this area, and for seeking the input of ACP-ASIM prior to formal introduction of the proposal. We look forward to working with you to enact meaningful and comprehensive regulatory relief legislation.

Sincerely,

William J. Hall, MD, FACP
President