

Letter to OIG on the Medicare beneficiary complaint process: A rusty safety valve

March 2, 2001

Mr. Mike Mangano, Acting Inspector General
Office of Inspector General
Department of Health and Human Services
Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Mangano:

The American College of Physicians-American Society of Internal Medicine (ACP-ASIM), representing over 115,000 physicians who practice internal medicine and medical students, is pleased to provide comments on the Office of Inspector General's (OIG) draft inspection report entitled, "The Medicare Beneficiary Complaint Process: A Rusty Safety Valve."

ACP-ASIM agrees with OIG that an effective Medicare beneficiary complaint process can be a vital element in assuring quality of care rendered to this population. It is clear from the draft report, as well as OIG's 1995 report on the same subject, that the beneficiary complaint process appears to be underutilized. We agree that steps should be taken to make the complaint process better known and more accessible to beneficiaries, but without compromising the hard earned trust that has been built between Peer Review Organizations (PROs) and the physician community.

However, we take umbrage with OIG's contention that PROs intentionally under-prioritize the handling of complaints as a way of cottoning favor with the medical community. Also, we believe it is crucial PROs retain their educational, quality improvement orientation, and not take on an enforcement role as suggested by OIG. This would not greatly damage the relationship between PROs and physicians, it would also undermine the trust needed to support reporting of medical errors, critical to the ground swell of patient safety initiatives that have recently come to the fore.

ACP-ASIM feels strongly that the beneficiary complaint process can be vitalized and given the priority it deserves without compromising the positive, pro-quality, non-punitive educational relationship that exists between physicians and PROs. We believe this can be accomplished without significant changes in the PROs' scope of work and/or budget allocations. Our recommendations are as follows:

1. The beneficiary complaint process should be better publicized and made more easy to access and use. We believe HCFA should work with advocacy groups such as the American Association of Retired Persons to publicize the availability of the beneficiary complaint process and develop and distribute easy to use instructions and forms for submitting such complaints to PROs. This would include clear timelines for PROs to complete investigations and report

findings to beneficiaries. However, this must be done in a manner that does not result in an avalanche of specious or misdirected (non quality of care) complaints, triggered by language that unfairly casts mistrust upon providers (as was the case with the initial "Who Pays, You Pay" campaign). As OIG is aware from its analysis of its own 1-800-HHS-TIPS Hotline, the vast majority of calls received are **not** substantive complaints about the quality or legitimacy of care received and billed. This leads to our second recommendation, below.

2. PROs should offer beneficiaries an informal complaint resolution process to try to resolve beneficiary concerns and avert the filing of a formal complaint requiring an in-depth investigation. We believe PROs can do themselves and the beneficiary community a great service by hearing and intervening in beneficiary complaints before they are filed formally. This would help change the perception that PROs are only peer-oriented and would raise their credibility in the beneficiary community. HCFA might have to supplement PRO budgets to handle an increased volume of calls resulting from publicizing the beneficiary complaint process as recommended above, but the benefit would be increased awareness of, and earlier intervention in, problems which are surfaced. Like the OIG Hotline, incoming beneficiary calls could be triaged for most efficient handling (with referrals back to providers or Medicare contractors and carriers for non quality of care issues). For complaints which are filed formally, HCFA might wish to consider installing a PRO mediation process to try to address beneficiary concerns before having to commit PRO resources to a formal investigation process.

3. HCFA should give explicit instructions to PROs on the nature and content of information which can be released to a beneficiary pursuant to a complaint investigation, so that beneficiaries receive substantive information which clearly indicates any breeches of quality which may have occurred. HCFA must also be explicit how PROs can release such information in the absence of physician consent, so that the beneficiary's need to know is still satisfactorily met. It might also be useful for HCFA to serve as a clearinghouse for release of PRO investigative findings, to ensure that all beneficiaries are treated equally, and that there is uniformity in the information PROs release. We believe one of the major impediments to PROs' release of investigative findings has been the fear of compromising physician confidentiality in cases where a physician does not consent to release of personally identifying information. Rather than risk violating this requirement, PROs have taken a conservative approach to releasing investigative findings, sometimes withholding them in full, resulting in unsatisfied complainants, or worse, complainants who take a PRO to court to sue for release of this information. HCFA's clear and precise guidance in what information PROs can release, and possibly serving as a clearinghouse for such information, would go a long way to improving the potency and value of the beneficiary complaint process.

In summary, ACP-ASIM believes the beneficiary complaint process can be fortified in a number of ways which do not compromise the strong bond of trust which exists between physicians and PROs, essential for the vital educational, quality enhancing impact PROs have on health care in their local communities. These fortifications would include expanding beneficiary awareness of the complaint process and making the process more accessible and easy to use, offering an informal PRO complaint resolution process, and specifying in precise fashion which types of information can be released pursuant to a PRO investigation, and ensuring this information is responsive to beneficiary needs. All of these improvements in how PROs respond to beneficiary

complaints will have the added benefit of complimenting the burgeoning array of national patient safety initiatives, as data on systemic sources of error will be easier for PROs to collect when protection of physician confidentiality is not at issue.

As always, ACP-ASIM appreciates the opportunity to work cooperatively with OIG, and is hopeful our recommendations have been helpful. Please contact Mark Gorden, Senior Associate for Managed Care and Regulatory Affairs, at (202) 261-4544, if you have any questions concerning this correspondence.

Sincerely,

Cecil B. Wilson, MD, FACP
Chair, Medical Services Committee