

Sent to Members of the Senate Finance Committee, the House Ways and Means Committee, and the House Energy and Commerce Committee

July 30, 2001

The Honorable William M. Thomas
Chairman, House Ways & Means Committee
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Thomas:

As your Committee continues its consideration of regulatory relief for physicians and providers, the undersigned national medical and provider organizations urge you to ensure that legislation contains several broad principles as set forth in the “Medicare Education and Regulatory Fairness Act of 2001.” These changes are essential to ensuring that effective regulatory relief occurs and that physicians and providers can exercise due process rights when faced with contractor overpayment investigations.

Due Process During Appeals

We strongly urge your Committee to establish a set of due process protections for physicians and providers faced with contractor post-payment audits. It must be emphasized that these audits are to recover alleged overpayments - not to proceed against suspected fraudulent behavior – and that physicians and providers in these situations should not be required to waive their due process rights. We believe that the following elements are essential to safeguard due process rights:

- **Fair Repayment Plans –**
 - **Exhaustion of Appeals** - Physicians/providers should not be forced to pay contractors for alleged overpayments (which can be hundreds of thousands of dollars because of extrapolation) before they have exhausted their administrative appeals. The length of time it takes to complete the appeals and the high percentage of reversals of contractors’ overpayment allegations illustrate the inequity of these repayment demands. If they choose to appeal, physicians and providers should pay interest on the overpayment allegations if their appeals are unsuccessful. Quite simply, we believe that physicians and providers should have the opportunity to exercise their due process rights before assuming financial liability.
 - **Repayment Plans** – Physicians/providers should be entitled to repayment plans if their overpayments exceed a certain threshold that would severely impact the financial well-being of the practice or provider. Contractors currently give physicians and providers 30 days to repay overpayments in full (which can be hundreds of thousands of dollars because of extrapolation). Unless the physician or provider has demonstrated in some manner that it is not a reliable source of repayment, they should be given flexibility in repaying overpayment amounts.

- **Extrapolation**

We are very concerned about the contractors' use of extrapolation from probe samples. Contractors conduct these probe samples on 15-40 claims over a one to two year period and then use the alleged overpayment to extrapolate to all claims submitted during that one to two year period. Using 15-40 claims in a probe sample over such a long time period is not a valid method to determine an alleged overpayment for the rest of the claims. Contractor errors regarding payment in the probe sample, which are often overturned through administrative appeal, can result in enormous extrapolated overpayment allegations. Even more egregious, often the first notice that physicians and providers receive regarding alleged overpayments is a letter demanding this extrapolated overpayment amount. We strongly urge the Committee to ensure that extrapolation does not occur unless the contractor has provided prior, documented education to the physician or provider.

Reliable Pathways for Questions

One of the principal problems with today's Medicare system is that physicians and providers cannot obtain reliable information about their questions relating to complex and confusing Medicare program guidances, program memoranda, and regulations. The contractors will often not provide written confirmation of conversations nor will contractor personnel even release their own names. Thus, physicians and providers have nothing to rely upon if they are later audited for alleged overpayments. We strongly believe that physicians and providers must have a route to obtain information from their contractors upon which they can rely. The Committee should create a mechanism to obtain this type of information about conflicting and confusing policies, while ensuring that those who ask questions are not targeted for audits solely as a result of their inquiries.

Evaluation and Management (E&M) Documentation Guidelines

E&M documentation guidelines have an extremely broad impact on physicians as they govern how physicians must document for office visits in order to receive Medicare reimbursement. To date, the Center for Medicare and Medicaid Services (CMS) has not been able to set forth E&M guidelines to accurately reflect the services provided during a physician office visit. Secretary Thompson and Administrator Scully have announced the creation of a task force that will work with the agency to reexamine the documentation requirements. Once the task force and the agency complete their review, we believe that pilot tests will be needed to ensure that proposed new guidelines accurately reflect physician visits. Documentation requirements should not be implemented as national policy before pilot tests have been completed. In addition, physicians participating in a pilot test of any new guidelines should not have the claims that are part of the pilot test subject to being downcoded by the contractor or used as the basis for audits. Protection during their participation in the pilot projects is especially important as the purpose of the pilot tests will be for both physicians and carriers to learn whether the documentation guidelines are appropriate. This limited protection is the only way to ensure physician participation and accurate documentation/coding in the pilot projects.

Voluntary Repayment

Physicians and providers who receive mistaken overpayments currently return these payments with the fear that they will be audited by contractors simply for having returned the overpayment. These repayments, if they occur before they are noticed by the contractors, should be encouraged. Physicians and providers should not have to fear that they will be audited for being good actors.

Random Prepayment Audits

We strongly urge the Committee to direct the Secretary to establish uniform standards for random prepayment audits. Currently, contractors have complete discretion regarding how to structure and implement these random audits, and we believe that physicians and providers should be have guideposts with the general conditions under which these audits may occur.

Application to All Providers, Physicians and Suppliers

We urge the Committee to ensure that these reforms apply to all providers, physicians, and suppliers. All groups are entitled to the same level of due process protections and education regarding Medicare's complex rules and regulations.

In closing, we very much appreciate the Committee devoting so much consideration to this issue. As you know, these problems impact the vast majority of physicians and providers – especially those with high Medicare patient populations. We urge you to ensure that the legislation emerging from your Committee contains the principles listed above, and we look forward to working closely with you on this and other issues in the coming months.

Sincerely,

American Academy of Child and Adolescent Psychiatry
American Academy of Dermatology Association
American Academy of Facial Plastic and Reconstructive Surgery
American Academy of Family Physicians
American Academy of Neurology
American Academy of Ophthalmology
American Academy of Otolaryngology - Head and Neck Surgery
American Academy of Physical Medicine and Rehabilitation
American Academy of Sleep Medicine
American Association for Homecare
American Association for Thoracic Surgery
American Association of Clinical Endocrinologists
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American College of Cardiology
American College of Chest Physicians
American College of Emergency Physicians
American College of Obstetricians and Gynecologists
American College of Osteopathic Family Physicians
American College of Osteopathic Surgeons

American College of Physicians-American Society of Internal Medicine
American College of Radiology
American College of Rheumatology
American College of Surgeons
American Gastroenterological Association
American Geriatrics Society
American Medical Association
American Medical Directors Association
American Medical Group Association
American Osteopathic Association
American Psychiatric Association
American Society for Therapeutic Radiology and Oncology
American Society of Anesthesiologists
American Society of Cataract and Refractive Surgery
American Society of Clinical Pathologists
American Society of General Surgeons
American Society of Hematology
American Society of Plastic Surgeons
American Thoracic Society
American Urological Association
Association of American Medical Colleges
College of American Pathologists
Congress of Neurological Surgeons
Infectious Diseases Society of America
Medical Group Management Association
National Medical Association
North American Society of Pacing and Electrophysiology
Renal Physicians Association
Society for Critical Care Medicine
Society of Cardiovascular and Interventional Radiology
Society of General Internal Medicine
Society of Thoracic Surgeons