

April 3, 2001

The Honorable Daniel Akaka
United States Senate
141 Hart Senate Office Building
Washington, DC 20510

Letter sent to entire House & Senate

Dear Senator Abraham:

The undersigned national medical organizations would like to express our support of and urge your cosponsorship of the bipartisan “Medicare Education and Regulatory Fairness Act of 2001” (MERFA). MERFA would require HCFA contractors to educate physicians and providers regarding complex Medicare requirements, while ensuring that these physicians and providers have basic due process rights if they are faced with an audit for inadvertent overpayments. Recently, physicians in different communities have made the difficult decision not to see new Medicare patients, precisely because they fear they will be targeted for Medicare audits and will have little recourse against the system.

We would like to share with you the following true story:

- A Medicare carrier audited a sample of 80 claims and demanded that the physician provide the supporting records and documentation within 45 days. The physician complied.
- The carrier said that, based on its extrapolation from the alleged errors in the audited claims, the physician owed between \$99,000 and \$285,000. The carrier indicated that it would accept the lower figure, and demanded repayment of the \$99,000 within 30 days.
- The physician asked for an extension to allow time to get the money, but the carrier demanded that the physician obtain letters from financial institutions denying loan applications—also within 30 days—to justify the extension. Due to the considerable additional paperwork and time involved in applying for loans and obtaining these responses, the physician’s practice could not meet this demand. It paid the entire amount within 30 days.
- The physician appealed the audit findings, and a full three years after the original audit, an administrative law judge decided there had been no overpayment and the full amount was refunded to the physician (without interest).

MERFA would ensure that this practice could go through the appeals process prior to being forced to repay alleged overpayments – much as taxpayers have the right to do today. If the physician or provider was unsuccessful on appeal, they would have to repay the overpayment *with interest*. MERFA would also provide a modest range of basic due process rights for physicians and providers undergoing post-payment audits. It would also create useful education tools for physicians and providers to ask HCFA contractors questions upon which they could rely if audited in the future. If the carriers and fiscal intermediaries could target these physicians and providers for investigation based on their education efforts, these educational tools would remain unused.

Recently, allegations have been made that MERFA could adversely impact fraud enforcement efforts. We strongly dispute this assertion. HCFA contractors have been instructed to “identify cases of suspected fraud and to make referrals of all such cases to the OIG, regardless of dollar thresholds or subject matter.” (Section 10.1, *Medicare Program Integrity Manual*, revised 11/22/00). We support this type of immediate referral, and the legislation does not attempt to change this process.

Rather, MERFA would impact overpayment audits where the *carrier or fiscal intermediary* has alleged that inadvertent overpayment has occurred. The bill would not have any effect on cases that are *referred to the Office of the Inspector General*.

We urge you to cosponsor this essential reform legislation, which would provide immediate reform for this nation’s physicians and providers.

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 Otolaryngic Allergy
American Academy of Otolaryngology-Head and Neck Surgery
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 Nuclear Physicians
American College of Obstetricians and Gynecologists
American College of Osteopathic Emergency Physicians
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 Group Association
American Osteopathic Association
American Psychiatric Association
American Society for Gastrointestinal Endoscopy
American Society for Therapeutic Radiology and Oncology
American Society of Anesthesiologists
American Society of Cataract and Refractive Surgery
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
Medical Group Management Association
North American Society for Pacing and Electrophysiology
Renal Physicians Association
Society of Cardiovascular and Interventional Radiology
Society of General Internal Medicine
Society of Nuclear Medicine
Society of Thoracic Surgeons