



September 7, 2004

The Organization of Specialists
in Emergency Medicine

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The Honorable Mark B. McClellan,
Administrator
Centers for Medicare & Medicaid Services
Room 445, Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: CMS-1429-P

Dear Mr. McClellan:

The American Academy of Emergency Medicine (AAEM) appreciates the opportunity to comment on the proposed Revisions to the Payment Policies Under the Physician Fee Schedule for Calendar Year 2005 (69 FR 47487). Specifically, we would like to address Part 424 – Conditions for Medicare Payment (69 FR 47580).

In general, AAEM is pleased with the language suggested under §424.80. However, we strongly believe that the addition of the following language to §424.80 (2)(d)(2) *Access to records* would be of immense benefit:

“The entity shall provide the supplier with itemized monthly reports of the claims submitted and remittances received on behalf of the supplier.”

The proposed language for §424.80 indicates that the supplier shares joint responsibility for Medicare overpayment with the entity submitting claims on their behalf. Given this liability, AAEM believes that claims information should be given directly to the supplier. The Centers for Medicare & Medicaid Services (CMS) is focused on enhanced program integrity oversight. Physicians are interested in protecting themselves from involvement in upcoding activities. Successful achievement of these goals will be improved by the addition of this language. This is especially true in emergency medicine where entities that submit claims on behalf of emergency physician suppliers have already been proven to engage in activities of concern (1). We also believe that requiring the entity to provide a monthly report will not increase costs to the Medicare program.

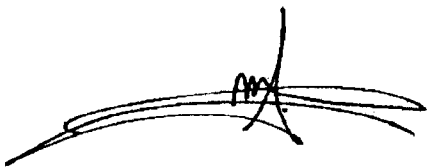
While we support the language of “unrestricted access to claims,” AAEM believes that the additional language is also appropriate given the nature of contractual relationships between physician suppliers and entities. Contracts between physician suppliers and entities generally allow for termination of the physician

without cause or due process. This situation has a chilling effect on physician attempts to access the records regarding claims activity. AAEM has previously supplied CMS with information detailing the actual termination or threat of such for physicians who requested access to their claims data. Other strategies employed by entities include requiring physician suppliers to travel to corporate headquarters to examine this data. Such circumstances may create an environment where the ability of a physician to participate in complying with program integrity efforts exists only on paper.

While the language proposed by CMS does give physicians an avenue of recourse, AAEM's suggested addition will decrease the need for physicians to seek assistance from CMS in this area. Our proposed language would lessen the potential need for future, costly investigations by CMS when physicians meet resistance when attempting to exercise their right to "unrestricted access." We also believe it our proposal will have the effect of improving Medicare program integrity.

The American Academy of Emergency Medicine, a national specialty society representing approximately 5,000 emergency physicians, urges you to consider carefully our suggestion in the interest of our physician members. If you have any questions regarding our comments or would like more information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'AK', with several long, sweeping horizontal strokes underneath.

Antoine Kazzi, MD, FAAEM
President, AAEM

cc: Dr. Robert McNamara, FAAEM
Ms. Kathleen A. Ream

(1) April 6, 2000 statement regarding "Medicare: Third-Party Billing Companies" by Lewis Morris, Assistant Inspector General for Legal Affairs, Office of Inspector General, U.S. Department of Health and Human Services in testimony before the House Committee on Commerce, Subcommittee on Oversight and Investigations . Mr. Lewis detailed the upcoding activities of two firms: Gottlieb Financial Services, Inc. and Emergency Physician Billing Services, Inc. that provided billing services for entities contracting with emergency physician suppliers. Each firm paid \$15 million to settle its liability.