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October 23, 2006

The Honorable Daniel R. Levinson, Esq.
Inspector General
Department of Health and Human Services
Room 5250, Wilbur J. Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Levinson,

The American Academy of Emergency Medicine (AAEM) is a national specialty society of board certified Emergency Medicine physicians, a democratic organization with over 5,000 members. It is our understanding that, according to the Office of the Inspector General (OIG) in Opinion 98-4, when a contract management company is paid a percentage of the physician fees, the OIG has determined that such an arrangement may be in violation of the anti-kickback statute contained in the Social Security Act. AAEM certainly acknowledges the safe harbor criteria associated with this Opinion, that fees for management expenses and overhead must be based on fair market value.

It is AAEM's opinion that, problems with fee-splitting arrangements in emergency medicine are rampant. We believe that up to half of emergency physicians are having an excess amount of their professional fee taken illegally. It is known to AAEM that there exist EM contracts where 30% or more of the net revenue is taken by the contract group for providing little more than a scheduling function.

We appreciate that the OIG has authority to impose civil monetary penalties against providers who participate in unlawful kickback schemes and that affirmative enforcement actions by the OIG are being stepped up. We congratulate the OIG on the \$5.9M settlement agreement with PharMerica, the largest civil monetary penalty for a kickback case to date. AAEM believes that there are even greater financial recovery opportunities in emergency medicine for the OIG to consider.

For instance, EmCare, one of the largest providers of emergency physician services, with 329 contracts in 39 states, is responsible for over 5 million annual patient visits and employs 4,500 physicians. The primary revenue source is emergency physician fees, and the total compensation of its non-physician CEO reported in 2005 was \$23M. This corporation, responsible for a large portion of the emergency medicine "safety net," is owned by venture capitalists. The following passage in EmCare's 2005 SEC filing relays its own valid concerns. "Regulatory authorities or other parties, including our affiliated physicians, may assert that, we are engaged in the corporate practice of medicine or that our contractual arrangements with affiliated physician groups constitute unlawful fee-splitting. In this event, we could be subject to adverse judicial or administrative interpretations, to civil or criminal penalties, our contracts could be found legally invalid and unenforceable or we could be required to restructure our contractual arrangements with our affiliated physician groups."

The Organization of Specialists in Emergency Medicine

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This summer, the Institute of Medicine released “The Future of Emergency Care in the United States Health System”, emphasizing the degree of patient overcrowding we are experiencing. HHS published a related report on September 28, 2006, stating that up to half of emergency departments experienced overcrowding in 2003 and 2004, defined in part as situations where urgent patients wait more than an hour. Both studies overlooked an important cause of overcrowding – intentional understaffing of emergency physicians by emergency services contracts holders, a typical consequence of fee-splitting. By eliminating fee-splitting from the cycle of emergency patient care, resources for care delivery can be increased at essentially no additional cost to the general public.

To repair the frayed emergency medicine safety net, profit derived from fee-splitting must be reclaimed and used to fortify emergency physician staffing levels, the primary factor in patient safety. AAEM urges the OIG to enforce existing laws prohibiting fee-splitting and hold those contract management groups accountable. We would welcome your response to our concerns and would be happy to assist you in facilitating these efforts in any way we can.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Scaletta", with a long horizontal flourish extending to the right.

Tom Scaletta, MD FAAEM
President

c: Leslie V. Norwalk, Esq., Acting Administrator, CMS