EXTENSIONS OF REMARKS

PROHIBITING HMO'S FROM USING TAXPAYER MONEY TO LOBBY FOR HIGHER MEDICARE PAYMENTS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 14, 1999

Mr. STARK. Mr. Speaker, Medicare HMOs are lobbying Congress, saying they are not being paid enough. The following memo shows that we are in fact overpaying most HMOs, largely due to the fact that most of them are enrolling much healthier than average Medicare beneficiaries.

Nevertheless, a number of HMOs are recruiting enrollees to send in form letters to Members of Congress urging higher payment rates. What is annoying is that they are spending some Medicare money on this lobbying.

They can lobby out of their profits and their CEO salaries if they want, but I don't think they should finance their lobbying out of taxpayer-Medicare payments. The enclosed letter from the Office of the Inspector General describes the problem.

I am introducing legislation to correct the problem identified by the OIG. The bill will save the taxpayer from financing lobbying to spend more taxpayer money. It might also cause some of those lobbying HMOs to spend money on health care rather than lobbying. That would be nice.

DEPARTMENT OF HEALTH
HUMAN SERVICES,
Washington, DC, September 11, 1998.

HON. FORTNEY H. (PETE) STARK,
Subcommittee on Health, Committee on Ways and Means, House of Representatives, Washington, DC

DEAR MR. STARK: This responds to your letter of August 25, regarding a news report that the American Association of Health Plans (AAHP) was urging its member HMO's to compile lists of enrollees, one purpose of which was to encourage enrollees to write letters to Congress regarding pending managed care legislation. You raised concerns about the rights of the approximately 5 million Medicare beneficiaries enrolled in managed care plans.

Your first question asks whether it is ''legal or appropriate under Medicare's patient privacy provisions to be contacting beneficiaries for purposes of lobbying?'' While we share your concern about the appropriateness of contacting Medicare beneficiaries to encourage them to lobby Congress, the practice itself does not appear to be illegal. As long as no Federal funds themselves are used to support lobbying, we are aware of no restriction in the Medicare law on what a plan, provider, or supplier may communicate to a Medicare beneficiary.

Your second question asks, ''are the companies which are participating in this lobbying campaign assigning any part of the cost of the Medicare program?'' Specifically, you ask whether the administrative costs of lobbying are included in the adjusted community rate (ACR) of the Medicare plans. Under the current ACR process, such costs might indeed be included in a plan's ACR proposal, since the proposal is based upon amounts that would be charged if the plan furnished the Medicare covered services package to its general membership. The law does not restrict a plan from including costs in its ACR proposal that would be considered unallowable under Medicare principles or the Federal Acquisition Regulations. In a recent audit report (Review of the Administrative Costs Component of the Adjusted Community Rate Proposal, A–14–97–00205), we have raised concerns about the present system's inclusion of such costs, especially including lobbying costs, in the ACR proposal. The effect of including these additional administrative costs may be to limit the amount by which enrollees' premiums would be reduced, the amounts of extra noncovered Medicare benefits afforded enrollees, or amounts otherwise credited to the program.

Again, we share the concerns raised in your letter. If you would like additional information about our work with regard to Medicare managed care, please let us know.

Sincerely,

JUNE GIBBS BROWN,
Inspector General.

CURRENT MEDICARE OVERPAYMENTS TO MANAGED CARE PLANS

[Prepared by Rep. Pete Stark's staff]

Source of overpayment	Cost of Medicare	Source of analysis
Overpayments due to BBA change that removed HCFA's ability to recover overpayments when health care inflation is lower than expected.	$800 million in 1997	Congressional Budget Office.
	$8.7 billion over 5 years	
	$31 billion over 10 years	
Overpayments due to lack of risk adjustment	5–6% overpayment to HMOs per beneficiary who is enrolled	Physician Payment Review Commission (now MedPAC) 1996 Annual Report.
Overpayment due to inflation of Medicare's share of plan administrative costs	More than $1 billion annually	HHS Office of Inspector General July 1998.
Overpayments doe to inclusion of fraud, waste and abuse dollars from FFS payments. Managed care plans should better ''manage'' and therefore avoid such fraud, waste and abuse.	7% annual overpayment	HHS Office of Inspector General Sept. 11, 1998.
	Annual savings with a corrected 1997 base year would be:	
	$5 billion in 2002	
	$10 billion in 2007	

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DISALLOWING COSTS THAT ARE UNALLOWABLE UNDER MEDICARE PRINCIPLES OR THE FEDERAL ACQUISITION REGULATION IN COMPUTING THE ADJUSTED COMMUNITY RATE FOR MEDICARE+CHOICE PLANS.

(A) IN GENERAL.—Section 1854(f) of the Social Security Act (42 U.S.C. 1395w–24(f)) is amended by adding at the end the following new paragraph:

''(5) EXCLUSION OF CERTAIN COSTS IN DETERMINING ADJUSTED COMMUNITY RATE.—In determining the adjusted community rate for an organization, there shall not be included any costs of the organization which would not be allowable costs under cost-reimbursement principles applied under this title or under the Federal Acquisition Regulation. Specifically, in carrying out this paragraph, the Secretary shall not permit inclusion of costs of lobbying, political contributions, or communications with plan members to urge them to lobby or to carry out other political activities.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to determinations of adjusted community rates made after June 14, 1999.

''LET'S KEEP CHINESE SPYING IN PERSPECTIVE''

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, June 14, 1999

Mr. CRANE. Mr. Speaker, as evidenced by the debate in the House, all of us have serious concerns about the espionage activities that resulted in the theft of U.S. military secrets. On a daily basis, as Chairman of the Ways and Means Trade Subcommittee, I discuss, and contemplate, the complex but critically important issues involving the United States and the People's Republic of China. In my discussions, I try to articulate what I believe should be our response to the situation in which we find ourselves. However, I had not found a written piece that provided a reasoned and concise response to the allegations of spying until I read an opinion written by former President Jimmy Carter in the May 28th edition of USA Today. I completely agree with his views and I strongly urge my colleagues to read his comments which I have included for the RECORD.

[From the USA Today, May 28, 1999]

LET'S KEEP CHINESE SPYING IN PERSPECTIVE

(By Jimmy Carter)

Recent revelations about Chinese espionage are a justifiable cause for alarm among all those who are concerned about the protection of America's military secrets. But it is also important to keep this issue in perspective as it affects already strained U.S.-Sino relations and to remember how nations traditionally react to security breaches.

The bipartisan report of the House select committee, which seems to be thorough and accurate, warrants immediate corrective action and, as a secondary priority, an effort to affix blame on those who may have violated the law or been derelict in their duties. However, the revelations have also aroused reactions that are ill-advised, counterproductive