

National Senior Citizens Law Center

1101 14th St. NW, Suite 400 • Washington, DC 20005 • (202) 289-6976 • Fax (202) 289-7224 •
<http://www.nslc.org>

October 31, 2001

Dear Representative:

The National Senior Citizens Law Center and the Center for Medicare Advocacy, Inc., organizations that represent Medicare beneficiaries, write to applaud the Amendment in the Nature of a Substitute for H.R. 3046 that would add a pre-service review process for Medicare patients. As you know, among the many improvements to the Medicare program contained in H.R. 3046 are provisions that accord providers additional and expedited appeal rights. Yet in many instances, people who receive Medicare are also left without important rights when Medicare benefits are denied them improperly. The pre-review provisions in the Amendment to H.R. 3046 will address this problem, improving appeal rights and access to care for Medicare patients.

The problem for older people and people with disabilities arises when a doctor, fearful of audits and fraud investigations, gives the Medicare patient an Advanced Beneficiary Notice (ABN) before providing an item or service. The ABN explains that the doctor believes the service will not be paid for by Medicare and tells the beneficiary that she will be responsible for payment. By giving the patient an ABN, the doctor protects him or herself from liability if the carrier agrees with the doctor's assessment of Medicare non-payment.

A Medicare patient who is presented an ABN has two options: (1) she may elect to receive the service, but must pay for it up-front and accept full liability if the Medicare contractor issues an initial determination that Medicare will not pay for the service. Once the carrier issues an initial determination, the patient also has the right to appeal if that determination is unfavorable; or (2) the Medicare patient can refuse the service recommended by the doctor, but loses the ability to submit a Medicare claim for the service, the right to an initial determination from the Medicare contractor, and all appeal rights.

Many individuals, daunted by the potential cost of an item or service, choose not to get care because they fear Medicare will not pay for it, and they cannot afford the cost. As a result, not only do these individuals deprive themselves of the care their doctors have prescribed, they lose the opportunity to have an initial determination made by the carrier as to whether Medicare will pay for the service, and all attendant appeal rights. The consequences are indeed dire. According to CMS, carriers disagreed with doctors' assessments of coverage in over two-thirds of the claims where ABNs were used, paying for services in 23 million out of 32 million claims where ABNs were provided last year. Moreover, we do not even know the number of instances where a beneficiary, fearing Medicare would not cover an item or service, declined to receive care for fear that the cost of the item would be more than they could afford.

Individuals who receive an ABN need a process that allows them to get an initial determination from the carrier as to whether Medicare will pay for the service or item in question before they must decide whether to receive and pay for a service. Pre-service determinations would accord beneficiaries who cannot afford to pay for a service access to care and to review of the prescribed service by Medicare contractors. We, therefore, commend the inclusion of a pre-service review process for beneficiaries in the Amendment in the Nature of a Substitute to HR 3046. As a next step, we also urge Congress to codify existing Center for Medicare and Medicaid Services guidance that requires all Medicare providers and suppliers, not only physicians, to provide ABNs whenever they believe Medicare may not cover a prescribed service for medical necessity reasons.

Older people and people with disabilities need assurances that they, the people for whom the Medicare program was created, will receive all medically necessary services to which they are entitled.

Thank you for your consideration. Please feel free to call us for further information or assistance.

Sincerely,

Kim Glaun, Esq.
National Senior Citizens Law Center

Vicki Gottlich, Esq.
Center for Medicare Advocacy, Inc.