



**Association of  
American Medical Colleges**  
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June 3, 2015

The Honorable Orrin Hatch  
Chairman  
Senate Finance Committee  
U.S. Senate  
Washington, DC 20510

The Honorable Ron Wyden  
Ranking Member  
Senate Finance Committee  
U.S. Senate  
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of the Association of American Medical Colleges (AAMC), I write to commend you for introducing “The Audit and Appeal Fairness, Integrity and Reforms in Medicare (AFIRM) Act of 2015.”

The AAMC is a not-for-profit association representing all 141 accredited medical schools; nearly 400 major teaching hospitals and health systems, including 51 Department of Veterans Affairs medical centers; and nearly 90 academic and scientific societies. Through these institutions and organizations, the AAMC represents 148,000 faculty members, 83,000 medical students, and 115,000 resident physicians.

The AFIRM Act takes important steps to reform the Medicare appeals and audit process. The legislation includes policies intended to streamline the audit and appeals process with the goal of making it less costly and less burdensome for providers and beneficiaries. The legislation aims to increase oversight of Medicare audit contractor programs and address ongoing concerns about the significant Medicare appeals backlog. The AAMC appreciates the Committee’s focus on addressing these very serious issues.

The AAMC would like to specifically thank the Committee for seeking stakeholder input as the AFIRM Act was developed. We greatly appreciate that stakeholders were invited to discuss the proposals under consideration and that stakeholder comments were considered as the legislation was refined.

In particular, the AAMC supports the removal of the concept of establishing a refundable filing fee, which was included in the initial draft of the legislation. A fee of this nature would have unfairly penalized many providers that are simply responding to overly aggressive Recovery Audit Contractor (RAC) review. There is already an incentive for providers not to file frivolous appeals as the adjudication process is time-consuming and costly. A filing fee would have inappropriately added to providers’ burden and discouraged legitimate appeals, particularly among smaller providers.

Additionally, the AAMC appreciates the Committee removing initially proposed policies that would have required decisions made by Qualified Independent Contractors (QICs) to be considered an opinion. This revision is important to ensure that hospitals get a fair hearing before Administrative Law Judges (ALJs). The AAMC is also pleased with the Committee's commitment to requiring an adjudicator obtain the consent of the appellant before using statistical sampling or extrapolation methodologies for requests for review or appeals. Finally, we welcome the allowing the use of extrapolation or sampling could expedite review and lead to efficiency, but strongly believe that individual appellants must be afforded the right to refuse being included in such a process, if necessary.

We would also like to comment on additional improvements we would request as the legislation moves forward. Specifically, in Section 2 of the bill regarding Medicare Magistrates, we urge the Committee to ensure the independence of the magistrate or other decision-making official. Beyond Medicare statute, policy, and procedure expertise, the adjudicator must be independent from the Department of Health and Human Services (HHS) to ensure a fair review. It is also worth noting that a low dollar amount in controversy does not necessarily mean that the underlying legal issue is not complex, and therefore, still requires the same independent review afforded higher-dollar cases.

In Section 9 regarding Review Program Improvements, the AAMC is thankful for the Committee's careful consideration of ways to increase the transparency and accuracy of reviews and to reduce improper denials and associated provider burden. Several of the proposals outlined in this section are important steps toward these admirable goals. At the same time, the AAMC continues to assert that meaningful reform of the review program will only be achieved with additional reforms to the RAC contingency fee payment system. Specifically, the AAMC continues to urge the Committee to hold RACs more accountable for improper denials.

One way to achieve this goal is to reduce RAC contingency fees for RACs with an "overturn" rate above a certain threshold. This recommendation has been put forward by the Medicare Payment Advisory Commission (MedPAC) and would fall squarely within the tasks outlined in the Chairman's Mark that require the Secretary of HHS (or a designated point of contact) to "[d]etermine whether additional punitive actions against review entity contractors could be used to promote the accuracy of a review entity's reviews." The AAMC continues to urge the Committee to explicitly establish penalties for RACs with high overturn rates as a way to increase fairness and accountability in the Medicare audit system.

Regarding the proposals outlined in Section 11 of the Chairman's Mark, the AAMC continues to believe that the only way that Part B rebilling could serve as an effective means for hospitals to seek appropriate compensation for improper denials, without having to go through the burdensome and costly appeals process, is to lengthen the Part B rebilling window. Limiting the RAC look back period alone will not provide the needed flexibility or timeframe to rebill an improper denial. The most effective remedy would be to extend the Part B rebilling window through exhaustion of the appeals process. At a minimum, the rebilling window should start after the RAC denies the inpatient stay, rather than the date of service.

Finally, the AAMC recommends inclusion of the Heller, Stabenow, and Cardin Amendments. The Heller Amendment to Section 12 would ensure that only an independent validation contractor could make the determination that a RAC has a 95 percent accuracy rate, and therefore, could be eligible to request additional medical records. The Stabenow amendment would make important modifications to remove the opportunity for RACs to review more hospital medical records. Finally, the Cardin amendment is necessary to correct CMS' accounting of RAC performance rates and ensure that future analysis is accurate.

Thank you again for the opportunity to comment on this important Medicare appeals and audit reform legislation. The AAMC appreciates your leadership on this issue and looks forward to continuing to work with you as the legislation moves forward. Please contact me or Leonard Marquez, AAMC Director of Government Relations, at [lmarquez@aamc.org](mailto:lmarquez@aamc.org) or 202-862-6281, with any questions or concerns.

Sincerely,

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

Atul Grover, M.D., Ph.D.  
Chief Public Policy Officer