



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAY - 1 2002

The Honorable Henry A. Waxman
House of Representatives
Washington, DC 20515

Dear Mr. Waxman:

Thank you for your letter regarding physicians who offer their patients a package of noncovered services for an annual fee. While the Inspector General and I agree Medicare beneficiaries should enjoy the protections from excessive physicians' charges afforded by the law, it is not clear that such annual retainer agreements necessarily violate the law.

Under current law, physicians have some discretion regarding the patients they choose to accept. While the limiting charge provisions govern physicians' charges for Medicare-covered services, these provisions do not directly affect charges for noncovered services. Insofar as the retainer fee under such an agreement is truly for noncovered services, such fees would not appear to be in violation of Medicare law.

Physicians may proceed with agreements of this type, but they are responsible for complying with applicable Medicare requirements. The Department of Health & Human Services will advise physicians contemplating use of such agreements to seek legal counsel ensuring that the agreements comply with the law. Accordingly, the Centers for Medicare & Medicaid Services has issued the enclosed memorandum to its regional offices to provide guidance on how to respond to queries from physicians and beneficiaries on this issue.

We will continue to monitor the situation carefully - especially for any evidence of coercive activity relating to such agreements - and consider whether any further steps are indicated.

I appreciate your bringing this matter to my attention. Please feel free to call me if you have any questions or concerns. I am sending a similar response to the cosigners of your letter.

Sincerely,

A handwritten signature in cursive script that reads "Tommy G. Thompson".
Tommy G. Thompson

Enclosure