



October 13, 2006

Daniel R. Levinson
Inspector General
Office of Inspector General
U. S. Department of Health and Human Services

Room 5541 Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Levinson:

We request you investigate the process by which HHS reviewed and subsequently rejected our request to be named a standard code set for processing electronic transactions mandated under HIPAA. We maintain that the HHS review from which the Secretary made his decision is flawed and apparently influenced by a statutory monopoly. We communicated specifics to the Secretary and managers at CMS and have been ignored.

Your immediate oversight is needed to assure Alaska Medicaid is authorized to continue using ABC codes to process care from paraprofessionals who are treating critically ill patients in bush and rural communities (see excerpts from Alaska Medicaid in Attachment 1). The state processes over a half million claims a year using ABC codes and has expanded code use to its school-based Medicaid program. CMS plans to modify existing CPT and HCPCS II codes to meet Alaska's needs by making modifications to time increments. However, the state has told us that CPT and HCPCS II codes are not designed for documenting paraprofessional care. Our hope is that CMS does not assume its modifications will work without addressing Alaska's issues with CPT and HCPCS II codes. Regardless, Alaska will require use of ABC codes from October 16, 2006 until January 1, 2007 when all organizations in the U.S. are required to make annual updates to codes.

Our specific issues are:

(1) ABC codes represent interventions provided by licensed healthcare practitioners who are not conventional physicians. ABC codes provide a needed solution to our nation's inability to cost-effectively manage the healthcare supply chain. Over 3 million caregivers lack sufficient codes to bill for the healthcare they are licensed to provide. The gaps in coding affects efficient billing and tracking of their care and excludes them from the benefits of electronic commerce which we view as restriction of trade since electronic commerce is required by Medicare and Medicaid and most other insurance payors. ABC codes are developed in conjunction with subject matter experts in non-medical fields. The codes are market-ready to help address critical healthcare needs.

(2) An exception under HIPAA to use ABC codes in electronic transactions mandated under HIPAA was initially granted by former Secretary Tommy Thompson on January 16, 2003. The



Page 2
October 12, 2006
Inspector General
U.S. Department of Health and Human Services

exception allowed us to gather data from October 2003-October 2005 and report on cost-benefits associated with a proposed modification to current HIPAA code sets and transactions. We relied on directions provided by the Secretary that supplemented HIPAA requirements (Attachment 2) and reported our findings in October of 2004 (full report available upon request). We felt that sufficient information was available to conclude that ABC codes provide significant cost benefits to the U.S. healthcare system. We gathered empirical data from Alaska Medicaid, including more than 500,000 successful HIPAA transactions (processed from 2004-2005) and also from a Medicare Advantage plan in New Mexico which began using ABC codes in 1999. Additionally, we provided cost modeling to show how ABC codes are designed to save in excess of \$51 billion per year when implemented nationally. HHS convened a committee to review our report in early 2005 and submitted its finding to Secretary Leavitt in May of 2005.

(3) Upon reading the report generated by the review committee, we immediately asked for corrections. Uncorrected and false statements made by HHS reviewers have led to negative conclusions by the Secretary and other CMS officers.

(4) In August of 2006, we discovered that HHS has an ongoing contract with the American Medical Association (AMA) that prohibits HHS from developing a competing code set to the AMA's CPT codes (see <http://www.aapsonline.org/medicare/hcfaama.txt>). Senator Lott had previously voiced his concern to former Secretary Tommy Thompson about the AMA's "statutory monopoly" granted by HHS (see <http://www.aapsonline.org/medicare/lottcptletter.htm>). The agreement (first signed in 1983) limits HHS from developing or supporting competing codes for physicians. However, in practice and on its web site, CMS has expanded this agreement to include practitioners who are not physicians. In a letter to the Secretary dated August 25, 2006, we pointed out that the HHS/AMA agreement poses a conflict of interest within HHS in conducting an impartial review of ABC codes. In addition to asking the Secretary to reconsider adopting ABC codes as a HIPAA standard, we also asked him to grant a five-year extension to use ABC codes in HIPAA transactions (Attachment 3).

(5) Subsequently, we received a rejection letter to our requests from Anthony Trenkle, Director of the Office of E-Standards and Security at CMS (Attachment 4). We are now submitting our issues to you, Congressional leaders, our attorneys and our constituents.

We cannot assume what course of action will be taken by your Office. However, we suggest that you appoint a coding subject matter expert(s) outside of HHS to review a code crosswalk we submitted to CMS, first in 2002 and again in 2003. This code crosswalk can provide a foundation for any future reviews. We submitted this crosswalk to CMS in order to pre-determine what constitutes a duplicate code in ABC codes related to the HCPCS codes. We knew that, without this



Page 3
October 12, 2006
Inspector General
U.S. Department of Health and Human Services

joint determination, CMS and/or the American Medical Association could reverse engineer ABC codes as we collected cost benefit data and that this would create a moving target for us while data was being collected. In fact, Mr. Trenkle stated that plans to modify CPT and HCPCS II codes to meet Alaska Medicaid's needs are underway.

Your investigation will uncover the reason the American Nurses Association (representing over 2.7 million nurses) and many other practitioner groups (whose members are not conventional physicians) support naming ABC codes a HIPAA standard. We would also like to know why the HHS reviewers did not reflect this and other industry support in their report to the Secretary.

Finally, Alaska's success in conducting 500,000 HIPAA transactions per year proves that any HIPAA-compliant "covered entity" can use the ABC codes for filing professional claims (ANSI X12 837P) and for processing electronic claim payments (ANSI X12 835). It is imperative for the Secretary to understand that, unlike the drug codes that HHS adopted and then had to remove from the claims and payment standards, adoption of ABC codes will not require re-engineering of systems used by the insurance industry to process ANSI X12 transactions. Thus, Alaska's implementation of ABC codes is extremely relevant to a cost-benefit analysis, regardless of CMS's determination that the content of the ABC codes used by the state can be modified.

I cannot sufficiently emphasize the urgency of our request. HHS apparent malfeasance has extremely negative consequences to the American public and over three million practitioners who are not conventional physicians.

Thank you for your timely response to this request,

Melinna Giannini
President

Cc: Secretary of the Department of Health and Human Services, Michael O. Leavitt and Acting Director of the Centers for Medicare and Medicaid, Leslie Norwalk; members of the Senate Finance Committee; the House Committees on Energy and Commerce and the Ways and Means Subcommittee on Health; Senators Ted Stevens, Lisa Murkowski, Pete Domenici, Michael Enzi, George Allen, Mary Landrieu, Hillary Clinton, John McCain, and John Kerry; and Representative Dan Burton and Governor Frank Murkowski; managers at Aetna, Alaska Medicaid, American Healthcare Alliance, Administaff, Preferred Health Systems, the American Nurses Association, the Coalition for Patient's Rights, the National Foundation for Women Legislators, the ChiroCode Institute, MetaNexus Institute, and Zebec Data Systems.