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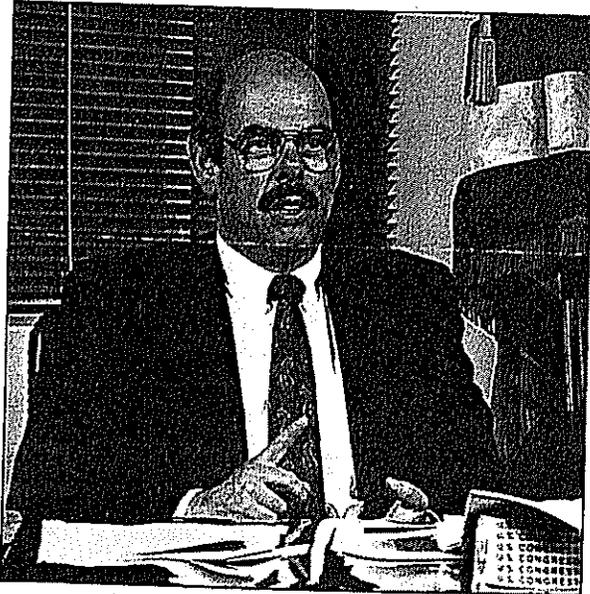
SEPTEMBER 23, 1991



Congressman Henry Waxman speaks out on the inequity of the current RBRVS proposal, how he feels it will be resolved, and why YOUR letters to Congress made a difference

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Describing how HCFA missed the boat on setting the conversion factor, speculating on the future of RBRVS implementation and providing an inside glimpse of Congress' mindset — LACMA Physician presents...



An Interview With Congressman Henry Waxman

Subcommittee on Health and the Environment of the Committee on Energy and Commerce. Congressman Waxman has been a key player in the Medicare arena for years, and has consistently supported a fair and equitable environment for Medicare patients and the physicians providing that care. At the time of this interview, the Health Care Financing Administration had closed its comment period three days earlier and was reviewing responses, which reportedly numbered near 100,000. Subsequent to this interview, a report appeared in the Washington Post indicating that HCFA may be ready to revise its conversion factor figure. At presstime, no further comments had been issued from HCFA.

The interview was conducted by Michael Villaire, managing editor, and Bob Holt, LACMA's director of Professional Relations. Photos are by Loren Franch.

Editor's note: On Thursday, August 8, LACMA Physician interviewed Rep. Henry Waxman (D-Los Angeles), who chairs the

LACMA Physician: Back on June 5th, when HCFA released its Notice of Proposed Rule Making in the *Federal Register*, a lot of people in the healthcare arena were shocked, to put it mildly, to find that the conversion factor was being reduced by 16%. And a lot of people were saying that HCFA had betrayed them and had strayed away from the original intent of Congress. Tell us about your involvement in this area, and also give us a sense of Congress' feeling on this issue.

Congress Henry Waxman: We were shocked to see the proposed rule come in from the Health Care Financing Administration as well. What they're proposing is inconsistent with what Congress intended. We tried to be very explicit that it was supposed to have been budget neutral. We were rearranging the

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distribution of the pie, but not reducing the pie in enacting the resource based relative value system. We feel outraged by the HCFA proposal, not only because it was inconsistent with what Congress intended, but because it undermines the ability of this reform to succeed.

The resource based relative value system change was supported by the physician

The reason this is a significant question is that, if they feel that the law is written technically in a way that requires a reduction in the total amount to go for physician reimbursement, then Congress would have to act. And under the new budget rules, based on the budget agreement that was adopted by Congress last year, Congress would have to come up with this \$7 billion somewhere to

have joined in a letter with members of the California delegation, and I think we have practically every member of Congress from California on this letter telling the administration that the regulations they have proposed are unacceptable.

LACMA Physician: So at this point, if HCFA does stand its ground, do you envision congressional relief on this?

Congressman Waxman: Congress will have to act if HCFA does not change its mind. We cannot let this proposal stand. But it will be much more difficult for us to act legislatively because first, we need the president to sign the bill, and second, according to the budget rules under which we're operating, we would have to figure out some way to raise \$7 billion to make up for what HCFA proposes to cut. And I think that puts us at a disadvantage.

LACMA Physician: Do you have a sense of how this is going to play out in the next few months?

Congressman Waxman: I expect that we are going to hear from Dr. Wilensky within the next several weeks as to the administration's position. I also sense they are feeling the outrage from the physician community and from Congress, and the pressure that that is bringing to bear on them. So I am hopeful that they will change their minds.

LACMA Physician: One of the elements of the reduction of the conversion factor is the volume offset Congress had originally proposed. This was later replaced by the Medicare Volume Performance Standard. Do you have a preference?

Congressman Waxman: I think that the administration's proposal on the volume offset provision is troubled. They are working on assumptions that doctors can perform a greater number of services if there is a



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community and others as a way to bring rationality to the physician reimbursement system under Medicare. I think it's important to work with the physician community in making this transition successful. I feel strongly that the proposal should not stand.

Our subcommittee held a hearing with Dr. Gail Wilensky, who is the head of HCFA, about these proposed regulations. She admitted to us that they never envisioned that the proposal was to have been anything other than budget neutral. The administration is now trying to decide whether they can change the regulation on their own.

add to what would be going into the funding for this budget neutrality that we expected had been there from the start.

The American Medical Association, among others, sought a legal opinion as to the meaning of the statute that was adopted. And they concluded, as we have concluded, that the intent was clear that there should not be a reduction in physician reimbursement as a result of the payment reforms.

We are pressing that position very strongly to the administration. I have written to Dr. Wilensky along with the leadership of my committee, both Democrats and Republicans. I

reduction in the level of reimbursement. I think if you take that assumption, you might well want to look at the flip side of it and decide if there are going to be fewer services performed if there's a higher level of reimbursement. I think there's a flawed set of assumptions upon which the administration is operating. We expressed our concerns to them on this point as well.

LACMA Physician: The history on the asymmetry seems to be that Congress intended some of that to be there. Is that an accurate assessment?

Congressman Waxman: We wanted a transition to physician payment changes to be as orderly as possible. I think it's important for the success of physician payment reform that we not have these kinds of proposals from the Health Care Financing Ad-

ministrations that are offensive, I think that it tends to bring about resentment toward the whole reform, disruption of the orderly transition and thereby undermines the success of what all of us in the physician community and Congress hope to accomplish in switching over to a resource based relative value system.

LACMA Physician: Is there a general sense of unity within Congress along these lines? Have you served in any capacity to encourage that unity?

Congressman Waxman: I feel very strongly that what the administration is proposing is inequitable and unfair, and inconsistent with our congressional intent. And those of us who were involved in the reform feel very strongly that what's being proposed is something that we can't allow to stand. For that

pull back from what they proposed. We held hearings on the subject to highlight our objections to the proposal. We have organized letter writing campaigns from our colleagues both on the committee and from the council of delegations in order to show the clear bipartisan opposition to what is being proposed.

LACMA Physician: So there is no discernible partisan line on this?

Congressman Waxman: No. I don't think that even the Republicans in the Congress are going to support the Republican administration's proposal as they have in the past. I think that there is a clear bipartisan feeling in the Congress that we made a proposal, we enacted legislation, and that we didn't expect the administration proposals that followed from that legislation to be inconsistent with what we attempted.

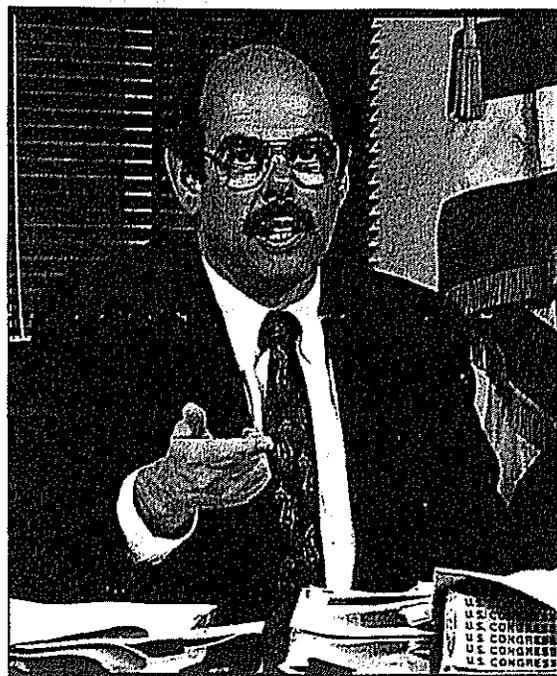
LACMA Physician: Speaking of letter writing campaigns, can you comment on what sort of response you have gotten from your constituency in terms of volume of mail and calls, what the tone of those responses have been, and how it's impacted on you?

Congressman Waxman: I've gotten an enormous amount of letters, from my constituents and from many others within a broader constituency whom I feel I represent in this state — people involved in the health field who are concerned about the proposed regulations and communicated with me, probably more than with other members of Congress, because they know that I will fight to get this proposal overturned.

LACMA Physician: What group have you heard from most?

Congressman Waxman: I've heard more from physicians than any other group, but I know that others are concerned as well. If we

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ministration and the Bush administration that will cause disruption. If they make assump-

tion, I think some of us have been more vocal than others in trying to get the administration to

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start cutting back on physician reimbursement beyond what we've already provided for in cuts over the last five years or more, I think that we're going to reduce the quality of, and access to, care for the Medicare population. That means we're turning our backs on the promises that Medicare made

sector?

Congressman Waxman: I think that most congressmen probably don't understand some of the sophisticated nuances of the Medicare and Medicaid programs and some of the reimbursement issues and other questions on the quality of care and the access to

the inflation rate.

But I have to worry that those who look only at the budget cuts forget the health quality consequences of these cuts. They don't understand that at some point Medicare is vulnerable to being undermined. I genuinely fear that some of these proposals could



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to the elderly and disabled in this country, the promise that they would have access to mainstream medicine. But if the reimbursement rates are too low, if the feeling from the physicians in the healthcare community is that they're not being treated fairly, I think we are going to see large numbers of providers step away from treating Medicare patients. And I think that would be a tragedy. We don't want Medicare to be like Medi-Cal, which is a second-class healthcare system.

LACMA Physician: We've worked out reimbursements for certain procedures, and indeed, some fall below Medi-Cal levels, which raises the access issue. Do you think Congress accepts, or understands, that Medicaid nationally has created such an access problem that if Medicare goes down to that level, we may see similar access problems in that

care. But because Medicaid is tied to welfare, there's a feeling that we can continue to cut that program without any real damage. That's wrong. Those who think that are wrong. Medicaid has been cut to the point where it is a second-class healthcare system. Those who are eligible for it don't have access to all the healthcare services they need, and often-times, the service is not of the best quality.

I fear that many of my colleagues don't understand that Medicare is at risk. Every year, the administration has proposed deep cuts in the Medicare program, and they have succeeded in achieving cuts that are so deep they are irresponsible. Medicare has become an attractive project to cut in government spending because it's a big program, it spends a lot of money, and it has been increasing every year, far beyond

make Medicare like Medicaid. I don't think we need a better example of what would happen if Medicare is undermined than to look at the Medicaid program. If anything, we ought to be changing Medicaid to make it more like Medicare, rather than the other way around.

LACMA Physician: What is the rationale behind the decision to reduce Medicare payments to physicians in their first year of practice to 80% of the fee schedule?

Congressman Waxman: In 1987 the administration recommended to Congress that the customary charges of physicians entering practice should be initially established at 80% of the prevailing charge for a service in the locality where the physician is providing services. This was intended to replace the policy of setting initial customary charges at the 50th percentile of average

customaries in the area. While this policy was included in the Omnibus Budget Reconciliation Act of 1987, I supported amendments that exempted primary care services and services provided in rural health manpower shortage areas from this limitation.

In subsequent budget bills, this policy was expanded, again at the insistence of the administration, to limit initial customary charges under Medicare for the first four years of practice to 80%, 85%, 90% and 95%, respectively, of the local prevailing charge or fee schedule amount. Apart from budget savings, the administration argued that new physicians, like other professionals, do not generally command the same level of compensation as those whose experience and length of practice extends over a period of many years. Again, I supported exemptions to these limitations for primary care services and services in rural health manpower shortage areas.

As a result of the intense budgetary pressures — particularly on the Medicare program — during recent years, Congress has been faced with increasingly distasteful choices. In my view, Medicare payment reductions have been excessive. They risk compromises in beneficiary access and the quality of care available to patients. While I do not support additional Medicare cuts, I do not expect the budgetary climate to improve in the next few years to permit increased program expenditures above current projections.

LACMA Physician: Can you give us a look ahead to what you foresee with payment reform, as well as other healthcare issues Congress is dealing with?

Congressman Waxman: I expect we are going to get by this immediate crisis in the very near future, and I think we are going to restore the provisions of what Congress intended, one way or the other. But as I look down the road, we are hoping for some

major information that would be helpful to us as a country from the increased federal research on medical effectiveness in development of clinical practice guidelines. I think that this is going to be important as we advocate enhanced quality assurance and disseminate more widely what are appropriate patterns of practice.

Then we have the mega-issue of health insurance reform. Something like 34 million-plus Americans have no access to healthcare because they have no insurance coverage. I'm supporting legislation that would enact the recommendations of the Pepper Commission, which would build on our existing healthcare system. Most people would get their insurance through their jobs and it would require employers to either cover their employees or to buy them into a public program. I

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Letter to HHS from Congressman Waxman

(Following is the text of a July 26 letter sent to Health and Human Services Secretary Louis W. Sullivan MD and signed by Congressman Waxman, along with 17 other members of the California delegation.)

Dear Dr. Sullivan:

We are writing to express our concern regarding the Notice of Proposed Rule Making (NPRM) to implement the Medicare resource based relative value scale (RBRVS), published on June 5, 1991.

The Medicare Physician Payment Reform legislation enacted by Congress in 1989 rationalizes Medicare payments to physicians.

The RBRVS component of the payment reform legislation was enacted on a budget neutral basis. It was scored as providing neither additional costs nor savings by both the Congressional Budget Office and the Office of Management and Budget.

The objectives of this landmark reform are now being threatened by the draft regulations to implement the RBRVS.

The NPRM, as you know, provides a 16% reduction in the conversion factor used to calculate payments. This policy will result in a reduction in payments to physicians by billions of dollars over the next five years.

This reduction clearly ignores the congressional intent that the RBRVS be implemented on a budget neutral basis. In particular, the behavioral offset policy violates the congressional intent that any increase in the volume of physician services resulting from the implementation of the RBRVS would be recovered in later years through the Medicare Volume Performance Standard system.

We strongly urge you to revise the regulations to be consistent with the original legislative intent and to establish the RBRVS on a budget neutral basis.

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insist, however, that a public program not be like Medicaid but be much more like Medicare, and not be tied in any way to the welfare system. A public program would cover those employees whose employers bought them into the system and those who are not in the work force.

I am also pleased to see that the American Medical Association and the medical community generally support this kind of a reform. But the greatest difficulty we're having in moving toward major reform of the healthcare system is that we have not been able to get the Bush administration engaged in the issue. I think that this is unfortunate. It certainly makes it difficult, maybe impossible, to enact needed legislation.

On the other hand, the issue is growing. The medical community, the business community, and the public at large are demanding that we do something to provide access to healthcare to the uninsured and to figure out ways to hold down the healthcare costs in this nation.

LACMA Physician: What do you think of CMA's ABC proposal?

Congressman Waxman: I haven't reviewed that proposal in detail, but I think it is very close to what we are talking about at the national level. And I think we need reform at the national level. That would be my preference because of the national programs that are now in effect both in Medicare and ERISA and some of these other laws that have such an impact on healthcare insurance.

LACMA Physician: Do you see Congress taking any action in the next five years in implementing a national health insurance program?

Congressman Waxman: I see a chance for real reform in the healthcare system within the next several years. The leadership in both the House and the Senate are giving it high priority. Senator

Mitchell and a number of leaders in the Senate are backing a proposal similar to that of the Pepper Commission. In the House we're trying to develop a consensus as well. I think we've got to get beyond rhetorical statements of being for access to healthcare for all Americans. I think we've got to get proposals on the table and start working out the compromises. It would certainly be easier if we had some leadership from the administration, but without it we need to continue to try to work to develop a consensus and engage them in this process somewhere down the road.

LACMA Physician: How important to you are constituent letters?

Congressman Waxman: I think it's tremendously important for members of Congress to hear from the people who have firsthand experience in changing the healthcare system. Members of Congress need to understand the real-world impact of some of these proposals, what they will mean to the patients and what they will mean to those who are providing care to those patients. If we don't hear from the people who are the most knowledgeable about what the consequences are going to be, both intended and unintended, we can't do our jobs adequately.

LACMA Physician: Other than RBRVS, what are some of the issues that are high on your agenda?

Congressman Waxman: We're facing a number of issues in Congress today that are frustrating because of the administration's subservience to the right-wing ideologues on abortion and abortion-related subjects. I'm astounded to find that the Bush administration is supporting this gag rule on family planning which would prevent even a physician from mentioning the word "abortion" and talking about that as an option in dealing with

an unintended pregnancy. In effect, the gag rule would require that physicians and others commit what would be tantamount to medical malpractice.

The other real-world consequence of this proposal is that family planning clinics are forced to stop taking federal dollars, to be unable to serve the population for which they were intended to provide contraceptive services, and thus more women are going without those services, getting pregnant and having more abortions.

Another area where we have seen this Bush administration position which is so troubling is in the area of fetal tissue transplant research at the National Institutes of Health. We see the Bush administration censoring research in ways that I find offensive. Fetal tissue transplant research holds a lot of promise for cures for Parkinson's, diabetes, and Alzheimer's. To stop that research because of the notion that women are going to have more abortions to support research is inconceivable. The only reason they are putting this kind of a ban on research is for political purposes, and I think that's inconsistent with what biomedical research is all about.

LACMA Physician: And of course, our final obligatory question —

Congressman Waxman: Yes?

LACMA Physician: — about your political aspirations. Are we going to see you in your current seat for quite some time, or do you aspire to other posts?

Congressman Waxman: I'm doing exactly what I want to do. I'm chairman of the subcommittee that I sought to be involved with when I came to Congress. The health and environment subcommittee offers me an enormous challenge. I plan to continue to work on these issues in the House of Representatives as long as my constituents want me to. ■

