

Congress of the United States
Washington, DC 20515

February 10, 2014

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20001

Dear Secretary Sebelius:

Providing Medicare beneficiaries with the services they deserve is of paramount importance to the Congress. It is in light of this obligation that we write to express our concerns regarding the Recovery Audit Contractor (RAC) program and the problems facing both Medicare beneficiaries and providers of Medicare inpatient services, hospitals and health systems.

As you know, Recovery Audit Contractors (RACs) are tasked with evaluating the accuracy of Medicare payments to providers. Although the intent of the program is laudable, operational problems within the program have persisted without corrective action by the Centers on Medicaid and Medicare Services (CMS). RACs are able to audit medical records and claims three years after services have been provided. They are paid a commission on the dollar amount of the claims they deny, which ranges between 9 and 12.5 percent. Due to this payment structure, RACs are incentivized to deny claims, even when the claims are correct. In fact, according to a November 2012 OIG report, 72 percent of hospital Medicare Part A appeals that have reached the third level of the Medicare appeals process are overturned in favor of the hospital. Without more oversight measures in place, RACs have imposed a huge administrative burden on hospitals, which must spend valuable time and resources to appeal denied claims in order to be reimbursed for Medicare services provided.

Furthermore, Medicare beneficiaries suffer when their inpatient stay is inaccurately denied by a RAC. They pay higher out-of-pocket expenses under Medicare Part B and are sometimes held financially responsible for the post-acute care services they require. This is not the way the Medicare program was intended to operate.

The need for reform of the RAC program has been further illuminated by a recent announcement from the Department of Health and Human Services Office of Medicare Hearings and Appeals (OMHA) that it has suspended assignment of claim appeals to an Administrative Law Judge (ALJ) for at least the next two years. It states that this temporary halt was “necessitated by a dramatic increase in the number of decisions being appealed to OMHA”. In its notice, OMHA further reveals that from 2010 to 2013, its claim and entitlement workload has grown by 184 percent and that it has accumulated a backlog of 460,000 claims for services and entitlement in just under two years. Even more alarming, OMHA operates with 65 Administrative Law Judges, who already have 375,000 claims currently before them.

In closing, we strongly recommend that CMS consider dedicating additional resources to help resolve OMHA’s backlog issue in order for the claims appeal process to resume as usual. Furthermore, we strongly urge CMS to immediately reform the RAC process. We believe CMS should implement reforms to ensure that auditors are charged with identifying real claim coding and medical documentation errors, as well as provide a more transparent mechanism through which providers can be informed of errors so as

to avoid them in the future. An alternative payment arrangement with auditors should be considered by the Congress and CMS in order to ensure RACs are not improperly incentivized to deny claims for profit and to ensure they focus on prevention of errors. This can be accomplished by paying RACs a retainer, as many other government contractors are paid. We also urge CMS to adopt the commonsense reforms supported by 184 bipartisan Members of Congress that are contained in the Medicare Audit Improvement Act of 2013 (H.R. 1250).

Medicare beneficiaries and those who provide them with care have an important stake in ensuring the RAC auditing process is fair and effective. We urge you to take immediate action before we see further problems with the RAC auditing program.

Sincerely,



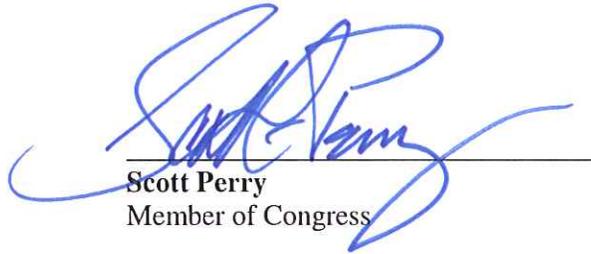
Sam Graves
Member of Congress



Adam B. Schiff
Member of Congress



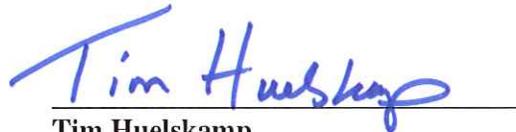
Jim Langevin
Member of Congress



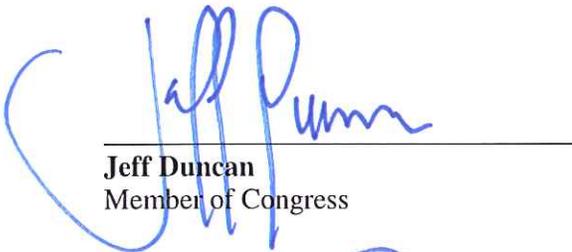
Scott Perry
Member of Congress



Glenn Thompson
Member of Congress



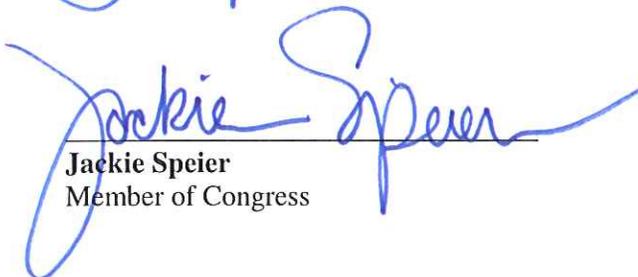
Tim Huelskamp
Member of Congress



Jeff Duncan
Member of Congress



Lou Barletta
Member of Congress



Jackie Speier
Member of Congress



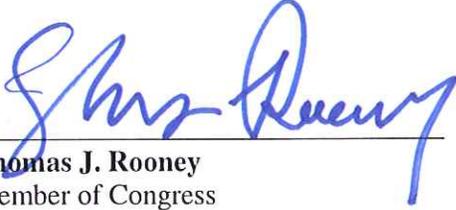
Steve Daines
Member of Congress



Marsha Blackburn
Member of Congress



Todd Rokita
Member of Congress



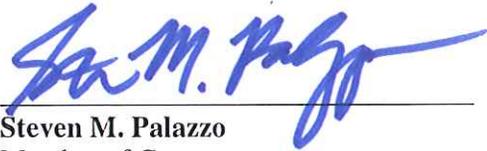
Thomas J. Rooney
Member of Congress



Chuck Fleischmann
Member of Congress



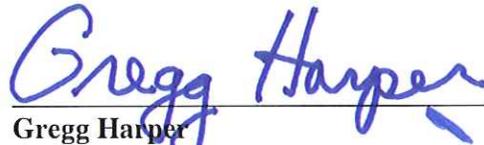
Scott Tipton
Member of Congress



Steven M. Palazzo
Member of Congress



Daniel T. Kildee
Member of Congress



Gregg Harper
Member of Congress



Richard L. Hanna
Member of Congress



Peter T. King
Member of Congress



Brett Guthrie
Member of Congress



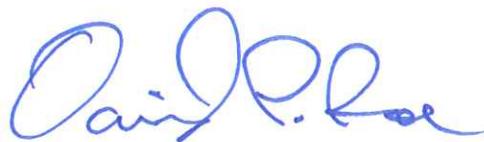
Thomas Massie
Member of Congress



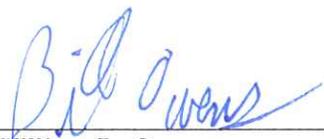
Pete Olson
Member of Congress



Candice S. Miller
Member of Congress



David P. Roe
Member of Congress



William L. Owens
Member of Congress



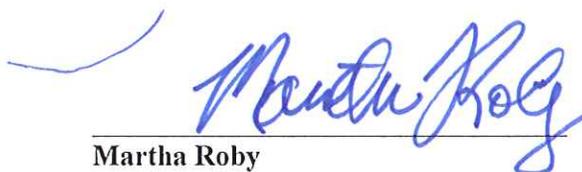
Jackie Walorski
Member of Congress



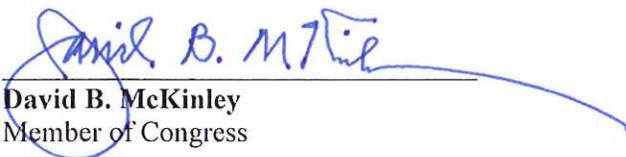
Scott DesJarlais
Member of Congress



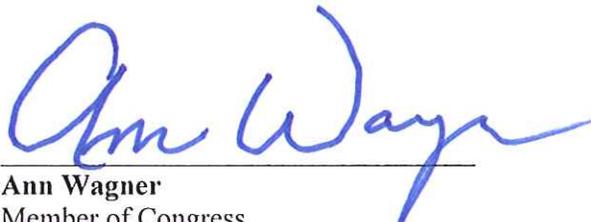
Daniel B. Maffei
Member of Congress



Martha Roby
Member of Congress



David B. McKinley
Member of Congress



Ann Wagner
Member of Congress



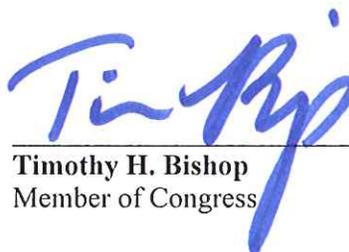
Alan S. Lowenthal
Member of Congress



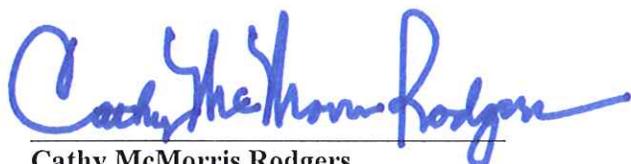
Austin Scott
Member of Congress



Doug LaMalfa
Member of Congress



Timothy H. Bishop
Member of Congress



Cathy McMorris Rodgers
Member of Congress



Cheri Bustos
Member of Congress


Julia Brownley
Member of Congress


Kay Granger
Member of Congress

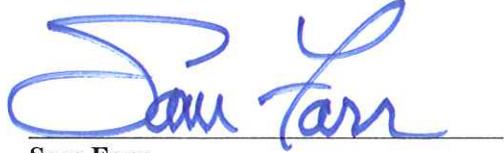

Daniel Webster
Member of Congress

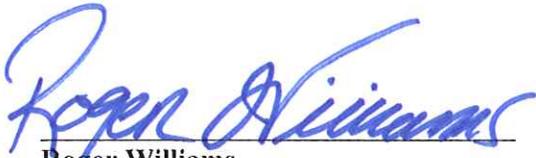

Vicky Hartzler
Member of Congress

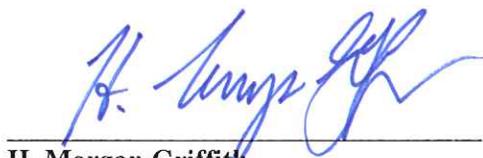

Steve Stivers
Member of Congress


Kevin Cramer
Member of Congress


Bill Flores
Member of Congress


Sam Farr
Member of Congress


Roger Williams
Member of Congress


H. Morgan Griffith
Member of Congress


Chris Collins
Member of Congress


Mike Quigley
Member of Congress


Markwayne Mullin
Member of Congress

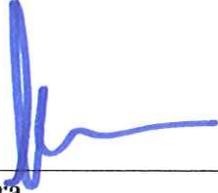

Steve Womack
Member of Congress



Doc Hastings
Member of Congress



Raúl Ruiz
Member of Congress



Ami Bera
Member of Congress



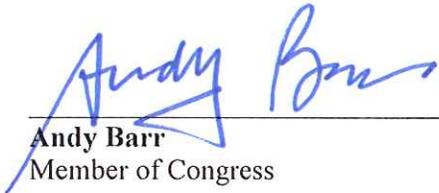
Ed Perlmutter
Member of Congress



Alan Nunnelee
Member of Congress



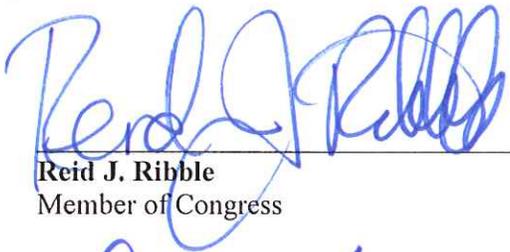
Randy Neugebauer
Member of Congress



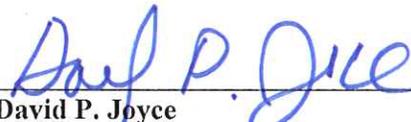
Andy Barr
Member of Congress



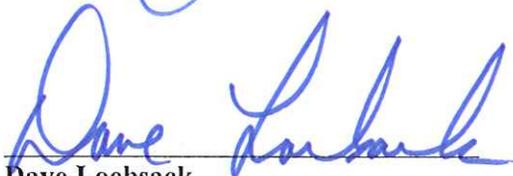
Tony Cárdenas
Member of Congress



Reid J. Ribble
Member of Congress



David P. Joyce
Member of Congress



Dave Loebsack
Member of Congress



Mark Meadows
Member of Congress

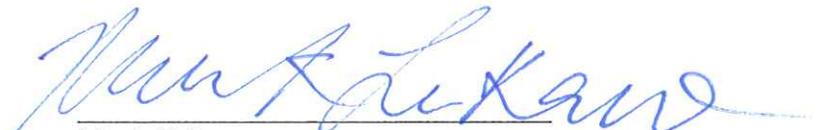


Billy Long
Member of Congress



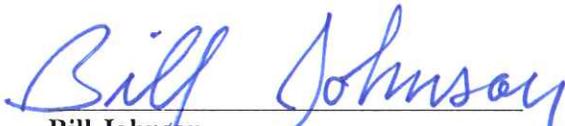
Andy Harris
Member of Congress

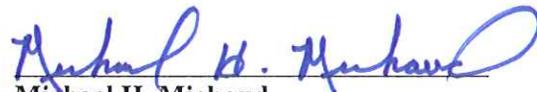

Susan W. Brooks
Member of Congress


Mark Takano
Member of Congress


Juan Vargas
Member of Congress


Betty McCollum
Member of Congress


Bill Johnson
Member of Congress


Michael H. Michaud
Member of Congress

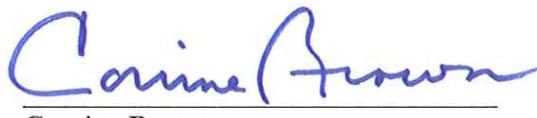

Richard B. Nugent
Member of Congress

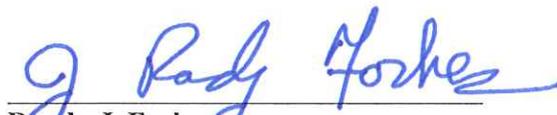

Christopher P. Gibson
Member of Congress


Rick Crawford
Member of Congress

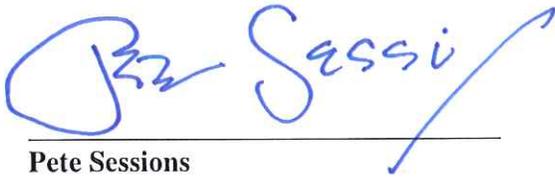

Rodney Davis
Member of Congress


Edward R. Royce
Member of Congress


Corrine Brown
Member of Congress


Randy J. Forbes
Member of Congress


Jim P. Moran
Member of Congress



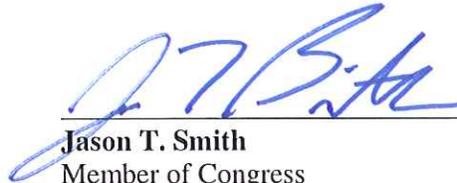
Pete Sessions
Member of Congress



Joe Wilson
Member of Congress



John J. Duncan
Member of Congress



Jason T. Smith
Member of Congress



Tom Latham
Member of Congress



Spencer Bachus
Member of Congress



Bruce L. Braley
Member of Congress



Rubén Hinojosa
Member of Congress



Steve King
Member of Congress



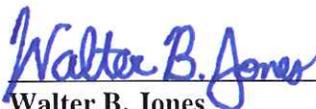
Peter J. Visclosky
Member of Congress



Bob Goodlatte
Member of Congress



Shelley Moore Capito
Member of Congress



Walter B. Jones
Member of Congress



Mac Thornberry
Member of Congress



Nick J. Rahall
Member of Congress



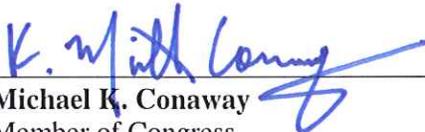
Ed Pastor
Member of Congress



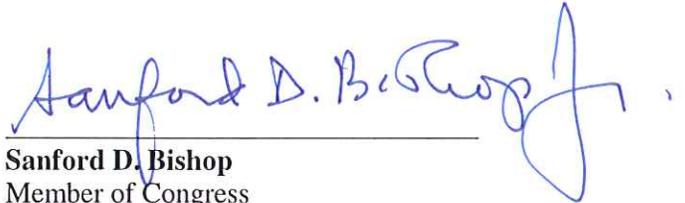
Louise M. Slaughter
Member of Congress



Blaine Luetkemeyer
Member of Congress



Michael K. Conaway
Member of Congress



Sanford D. Bishop
Member of Congress



Ben Ray Lujan
Member of Congress



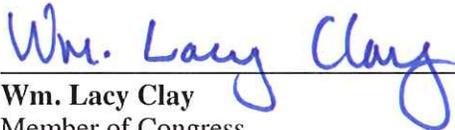
Thomas E. Petri
Member of Congress



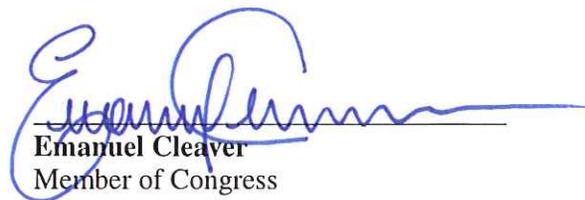
Robert J. Wittman
Member of Congress



Robert E. Latta
Member of Congress



Wm. Lacy Clay
Member of Congress



Emanuel Cleaver
Member of Congress



Harold Rogers
Member of Congress



Collin Peterson
Member of Congress



Peter Welch
Member of Congress



Bill Posey
Member of Congress



Steve Israel
Member of Congress