GOLD AND LIEBENGOOD, INC.
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(202) 639-8899

February 20, 1987

Mr. Samuel Chilcote
The Tobacco Institute
1875 I Street, N.W.
Suite 800
Washington, D.C. 20006

Dear Sam:

I very much appreciate the time you and Bob Lewis spent with me yesterday discussing the circumstances of Gold and Liebengood, Inc. I trust you understand that our sense of commitment to the tobacco industry, and TI in particular, is both genuine and unequivocal. I do believe the facts and circumstances surrounding our current predicament are worthy of further explanation.

When Gold and Liebengood, Inc., was formed in August, 1984, our initial clients included both TI and the College of American Pathologists. Marty Gold was responsible for the latter account during his tenure at Gray and Company (which also represented TI during that time). In addition to our representation of the Pathologists, the firm was retained by the Ophthalmologists. John Scruggs of our firm, a former Assistant Secretary at HHS, has handled the Ophthalmology account. During the course of our representation of these clients, Messrs. Gold and Scruggs developed a well-deserved reputation for expertise on a range of medical compensation issues, particularly the RAP-DRG issue directly impacting the Pathologists and indirectly posing a threat to the entire medical community. Growing concern within that community has driven the RAP-DRG issue to the forefront of the American Medical Association agenda. At the urging of several medical disciplines, including the Pathologists and Ophthalmologists, the AMA decided to augment their lobbying resources with outside counsel for the purpose of arguing against RAP-DRG's. Our firm, because of our experience and expertise on that issue, was selected by the AMA for this undertaking.

The negotiations with the AMA were handled by both Marty Gold and John Scruggs. Both made it clear to the AMA from the onset that we represented the Tobacco Institute on all of their issues and that we in no way could undertake any AMA representation inimical to those interests. Further, Gold and Liebengood, Inc., assured the AMA that in no way would our assistance to them on RAP-DRG compromise the vigor of our opposition to them on tobacco related issues. The AMA accepted these ground rules. Accordingly, we felt no genuine conflict of interest precluded our representation. In as much as our registration, the filing of which is required by law, on behalf of the AMA must also reflect the issue we are lobbying on their behalf, i.e. RAP-DRG, we did not anticipate that our representation would in any way be an embarrassment to you.

Since learning that our assumptions (which I still believe are correct) were not shared by you, I have agonized over the proper course of action. After discussing the issue with all in our firm, and deliberating over the dilemma for several evenings, I must advise that we feel Gold and Liebengood, Inc., has a commitment to the AMA on this limited issue that should be honored. To do otherwise, given our assessment of no genuine conflict, would be unfair to elements of our firm who have labored hard to develop medical expertise and reputation. Furthermore, although we have yet to file a registration, we believe it would be inappropriate to back away from our commitment to the AMA and to do so would be potentially embarrassing to all parties, including TI. Therefore, we anticipate filing a registration for the AMA next week.

The above decision was reached with more than a little trepidation. We never dreamed that this limited AMA representation might jeopardize our relationship with you or cause any discomfort whatsoever within the tobacco industry. Your conversation of yesterday made it abundantly clear that our assumptions were erroneous. I take full responsibility for misreading your position and deeply regret causing a problem for TI.

We have taken great pride in our representation of tobacco and very much desire to continue our relationship. We are grateful for the opportunities that you have afforded us and would appreciate every consideration regarding ongoing representation.

Best personal regards.

Sincerely,

Howard

Howard S. Liebengood

HSL:cjp

cc: Bob Lewis

IX. Physician Reimbursement, Fees and Mandated Assignment

Background

Over the past three years Congress has limited Medicare payments for physician services as a short term method to achieve budgetary savings, while striving to discover a permanent solution reforming the physician reimbursement system (i.e. commissioning the RVS study). The recent budget proposal calling for implementation of a prospective reimbursement system for inpatient services of radiologists, anesthesiologists and pathologists (RAP DRGs) is only the first of a long list of anticipated "reform" proposals. These proposals will be destructive of quality patient care.

While several Members of Congress have denounced OMB's proposal, other payment limits such as mandatory assignment under Medicare continue to receive significant attention. Rising health costs and increasing pressures on Congress to control the deficit will insure Medicare's place in the budgetary limelight. A recent AMA survey revealed that a majority of physicians already feel unduly pressured by the Hospital DRG program to discharge patients prematurely.

The AMA encourages all medical societies to have programs which will refer Medicare patients to physicians who will accept the Medicare approved fee. Many medical societies work with senior citizens groups in operating these programs. Mandatory assignment is not necessary since, currently, physicians accept the Medicare approved fee on over 70% of claims. Mandated assignment could reduce access of Medicare beneficiaries to their physician of choice.

Environment

Efforts will be made to further reduce health costs through reduction in physician payments under Medicare.

Recommendations

1. The AMA strongly urges Congress to reject MD DRGs in any form because it is a payment system that will inhibit a physicians' duty to act as the patient's advocate. In view of the experience with hospital DRGs (i.e., undue pressure on physicians for quicker discharges of patients), it would be ill-advised to place physicians under the same incentives as hospitals.

2. Congress and the Administration are urged to continue to reject mandatory assignment proposals. Assignment is accepted for over two-thirds of all part B claims under the current voluntary system, and mandated assignment could actually reduce physician participation in the Medicare program.

3. While Congress has the right to determine what amount the government will pay, physicians should retain the right to set their own charges. Existing limits on nonparticipating physician charges should be removed, allowing market forces to work.

4. In the short-term, a fee schedule should be developed to achieve moderate and realistic budget savings. The Harvard/AMA RVS project funded by HCFA will establish a compre- hensive methodology to implement physician payment reform. Payments would be based on resource costs after a thorough evaluation process.

5. All physicians should receive an equal fee increase to account for inflation. Practice expenses for personnel and liability insurance do not vary according to a physician's status as a participating or nonparticipating physician.

C. Healthy Lifestyles

Background

There are many actions that individuals can take to improve their health status. For example, stopping smoking, not drinking and driving, and exercising are all steps that people can choose that will have positive results for their health.

The role of the federal government is often one of advice and education on these issues. Private sector activities, such as AMA's health education programs, are also very important. However, for certain issues such as drunk driving, governmental intervention is appropriate and essential.

Environment

The public is increasingly conscious about the need to adopt lifestyles that promote good health. Many individuals have taken steps, such as jogging or stopping smoking, that can improve their well being. Much more needs to be done to increase scientific knowledge about disease prevention and health promotion and to impart this information to the public.

The government's role is extremely important as an adjunct to education. Effective enforcement of drinking and driving statutes, illegal drug laws, and traffic safety standards are all needed to improve public health standards. All these areas, and more, need work.

AMA Recommendations (See XII - Tobacco)

1. Taxes on tobacco and alcohol should be increased.

2. Traffic safety laws, such as those on drunk driving and speeding, should be vigorously enforced by state and local government.

3. Research into problems of drug and alcohol abuse should be supported by the federal government at increased funding levels.

4. Working with the private sector, the government should act as a clearinghouse for information on good health practices.

5. The use of seat belts in automobiles should be mandated by the government as an effective method of reducing deaths and injuries when accidents occur. The use of passive restraints, especially air cushions, should also be promoted through regulation. Seatbelts should be required on public use vehicles, such as taxis and school buses.

XII. Tobacco

Background

The death toll due to cigarette smoking continues to rise. The most recent Surgeon General's Report details the serious health consequences of exposure to cigarette smoke on non-smokers. The American Medical Association supports the goal of a smoke-free society by the year 2000 and has actively sought legislation with this goal in mind. The 99th Congress held several hearings on various aspects of our greatest "preventable" health crisis.

Environment

This could be a spectacular year in Congress. The Surgeon General's latest report helps to heighten public and Congressional attention, making some action likely.

The issue of smoking on commercial airline flights will be joined between industry and health advocates, possibly in the House Public Works and Transportation Subcommittee on Aviation. The tobacco industry is expected to continue to resist any action on this issue.

The constitutionality of a tobacco ban remains a concern, although recent Supreme Court action in the Posadas case is encouraging.

Recommendations

1. Legislation should be enacted to ban all forms of tobacco advertising and promotion. Such a ban would recognize the drain on public health programs attributed to smoking related deaths. Arguments protesting infringement of first amendment rights are specious.

2. Smoking should be banned entirely on all commercial airline flights.

3. Tobacco excise taxes should be increased to reflect increased public expenditures used to treat smoking related illnesses.

4. The tobacco price support program should be ended.

5. In trade talks, U.S. diplomats should not be allowed to encourage foreign nations to import tobacco.

6. Efforts should be continued to limit smoking in public places.

7. The sale of low-cost or subsidized tobacco products in military commissaries or exchanges should be ended.