



Marijuana/Medicare Audits

VOICES OF MEDICINE



By Del Meyer, MD

Noteworthy articles from Humboldt, Del Norte and San Joaquin Counties.

"THE BULLETIN" of the Humboldt-Del Norte County Medical Society has been publishing a dialogue on "Medical Marijuana: An Oxymoron," by Denver Nelson, MD. Tate Minckler, MD, an editorial board member of The Bulletin, has expounded further on this proposal for legalization of marijuana which he thinks physicians should take more seriously.

"Our national experience with an attempt to prohibit another recreational drug (alcohol) was not only totally unsuccessful, but also is a continuing unmitigated disaster. We not only did not stop the consumption of alcohol, but placed the determined drinkers at real risk from adulterated and incompetently produced 'booze'; we also lost huge tax income for our state and federal governments.

"However, the worst of the negative effects of Prohibition was the creation of vast criminal empires which catered to the demand. The most important of these is the Mafia, still with us today, almost eighty years after Prohibition gave them a fabulous financial jump start."

Minckler feels that attempts to prohibit marijuana are following the same paths: A) We have not significantly dented the use of marijuana. B) We spend tremendous sums of tax moneys on interdiction rather than actually collect taxes on the drug. C) We have created a large international population of 'criminal' growers, transporters, pushers and users. D) We have a very real problem with related illegal activities, including occasional murders.

Minckler does not claim that legalizing marijuana solves all the problems. "It does take these recreation drugs out of the black market, it wipes out almost all of the criminal incentive, it adds to the tax base, and will provide very important relief to the prison system which is now crowded with illicit drug criminals, most of whom are there for marijuana infractions. It is not a perfect solution, but it is a better solution than that which we now suffer."

He concludes that "legalization is a reachable goal; prohibition is the impossible dream."

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Tate also reports that Americans throw away millions of tons of disposable, non-biodegradable diapers each year. A University of Wisconsin food scientist suggests that the 20 million tons of unwanted fish caught yearly by the commercial fishing industry can be "processed" into an odorless biodegradable protein gel from which diapers can be

made. The gel absorbs up to 600 times its weight in liquid and degrades in about 30 days. It would help not only the wasted fish problem, but the growing landfill problem.

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John Kiraly, III, MD, reports in the San Joaquin Physician on "Anatomy of a Medicare Audit." In April 1999, he received a request for medical records for 30 patients, including exact copies of all consults, progress notes, treatment records, laboratory reports and flow sheets. He was to reply to National Heritage Insurance Company, the Medicare fiscal intermediary, in 30 days. When his office manager called NHIC, the LVN assigned to the case stated, "Dr. Kiraly made too much money last year." He was an outlier - but for the wrong specialty in the wrong community. Medicare never got his correct forwarding address. He meticulously compiled and sent the records, confident the auditor would only come up with a trivial sum.

Six months later he received a "Preliminary Notice of Audit Results" that he had been overpaid \$34,806.93, with an "Extrapolated Overpayment: \$57,975.93." The auditor had systematically down-coded nearly every service and denied payments on others. Overpayments were extrapolated by use of "Statistically Valid Random Sampling," for a 66.6 percent increase.

After two sleepless nights, Dr. Kiraly mobilized his team for the ordeal - office manager, practice consultant and, later, a statistician. He covered all expenses, including airline travel. For three solid days and much of the nights, the team compiled a detailed rebuttal.

Six months later, the "Final Notice of Audit Results" arrived. The actual overpayment had been reduced to \$13,194.37, with a "Statistically Valid Random Sampling" increase of 80 percent extrapolated to \$23,576.61; a payment was due in 30 days, after which interest would apply.

Dr. Kiraly canceled staff bonuses and pension contributions and requested a hearing; it occurred five months later. He again made preparations with his office manager and practice consultant. Dressed professionally, he made an introductory statement. The chairman of the society's reimbursement committee testified to his character. His team then performed a code-by-code defense; Dr Kiraly contends physicians are too emotionally caught up to speak on their own behalf.

Two weeks later, the actual overpayment was reduced to \$667.60, with a 417 percent extrapolation to \$3,454.33. Kiraly appealed to an administrative law judge and requested a refund. He received \$20,031.28 - without interest.

To prepare for court, he hired an academic mathematician who found that the extrapolation formula was statistically biased against the physician, and that the carrier had failed to properly follow HCFA guidelines.

He arrived at the Social Security office in Sacramento on the appointed day, was electronically frisked for weapons (his team was not), and led through a series of locked doors to a miniature courtroom. After being sworn in, the team challenged the extrapolation formula and a denied procedure never announced in the Medicare Carrier's newsletter. They conceded the \$667.60.

Three weeks later, the judge's "Notice of Decision" found entirely in Dr. Kiraly's favor and even returned the \$667.60, finding that recovery of overpayment would be against ""equity and good conscience."

Dr. Kiraly feels the \$10,000 he spent was worth it. He recommends a consultant first be hired for a pre-audit, to determine if our records meet requirements. If audited, hire a consultant to assemble records; properly detailed and organized records are essential from the outset. A lawyer is generally unnecessary, unless fraud is alleged. Most of all, he urges not surrendering without a fight. Don't be one of the 70 percent who writes that check

immediately. Remember, 90 percent win something back if they appeal.

He reminds us that Medicare is voluntary. Many of his colleagues are deserting Medicare because of absurd intrusions. He feels practices are in a critical condition. Medical school applications are down and 30 percent of practicing physicians are expected to retire in the next five years. He urges us to join in the fight before medicine declines into a spiritless mediocrity.

delmeyer@healthcarecom.net

Sierra Sacramento Valley Medical Society
5380 Elvas Avenue #100 • Sacramento, CA 95819
916.452.2671 PH • 916.452.2690 FX • Email: info@ssvms.org

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