COMMENTS ON "THE MEDICARE PEER REVIEW ORGANIZATIONS' ROLE IN IDENTIFYING AND RESPONDING TO POOR PERFORMERS" (OEI-01-93-00251)

Submitted by Public Citizen's Health Research Group
October 16, 1995

We appreciate this opportunity to comment on this report by the Office of Inspector General ("OIG") of the Department of Health and Human Services ("HHS"). Public Citizen's Health Research Group has been a supporter of the concept of Peer Review Organizations ("PROs") since their inception, and believes that PROs, if strengthened, could serve a vital role in protecting Medicare beneficiaries from poor quality medical care. As the report points out, the main emphasis of PROs has shifted in the past few years from trying to identify and respond to individual physicians and hospitals that are performing poorly, to incorporating the concepts of "continuous quality improvement" and working with the medical community to improve the overall quality of medicine.

We agree with the report that, given this shift in focus, it is important to assess the ability of the PROs to continue to perform their "policing" role. We disagree, however, with the policy options suggested by the report, particularly Option One -- to eliminate the PROs' role in identifying and responding to individual poor performers, and to focus only on improvement in the overall practice of medicine. While "continuous quality improvement" is a welcome addition to the methods of protecting Medicare beneficiaries, it does not, and *cannot*, replace the necessary task of detecting poor performers. Improving the overall practice of medicine may incidently identify some poor performers, but such is not its primary goal, and in order to fully protect Medicare beneficiaries, the government must continue to seek out those doctors and hospitals who cause needless suffering because of unnecessary or poor quality medical care. At present, there is no organization or agency that adequately protects Medicare beneficiaries or the broader patient population from poorly performing physicians and hospitals. What protection does exist comes from a variety of groups, such as state medical boards, hospital quality assurance departments, accreditation organizations, and others, which at best offer only a patchwork of protection. Each group has a different mission and focus, and each protects the medical consumer to only a limited degree.

• **State medical boards**, the first line of defense against poorly performing physicians, have a mixed record in protecting the public. Each year, Public Citizen's Health Research Group compares the performance of the various state medical boards by analyzing the rate at which doctors are disciplined in each state. We have found an enormous variation among the different state licensing boards: in 1994, for example, the Kentucky Medical Board had a rate of 9.62 serious disciplinary actions per 1000 doctors, while the Pennsylvania Medical Board had a rate of only 2.04 serious disciplinary actions per 1000 doctors. Thus, while some state boards may offer reasonable protection to citizens in that state, other boards discipline so few physicians that they offer almost no protection at all.

• **Hospital quality assurance departments**, another possible line of defense against poor performance, conduct their business behind a shroud of secrecy, making it hard to assess

the success of their efforts. As of December 1993, however, seventy-five percent of the hospitals in this country had not reported to the National Practitioner Data Bank even one adverse action taken against a doctor. Given the very limited number of reports filed by hospitals -- reports mandated by law -- there is reason to question whether hospitals are actively identifying and responding to poor performing doctors, and to be concerned about the level of protection provided to patients.

• **Accrediting organizations that inspect hospitals** -- the most important being the Joint Commission on the Accreditation of Healthcare Organizations ("JCAHO") -- offer little to instill confidence in the public. Like hospital quality assurance departments, the JCAHO maintains the results of its inspections in secrecy, and rarely refuses accreditation to a hospital. Public Citizen's Health Research Group has long been critical of the fact that the JCAHO, a private organization dominated by the industry it is supposed to be regulating, has been given so large a role in "protecting" Medicare beneficiaries from poorly performing hospitals.

Option One in this report includes the suggestion that the Health Care Financing Administration consider ways for the federal government to support the efforts of organizations that are more focused on addressing individual cases of poor care -- this is an idea that we support, but not at the cost of PROs' "policing role." Even with the existence of PROs, the system for identifying and responding to poorly performing physicians and hospitals is hardly a seamless web. Without PROs, there will be even less protection for Medicare beneficiaries.

Option Two suggests studying the PROs to determine whether they can perform both roles at the same time, and if so, how best to do so. While we support further study to determine ways to improve PROs, we would like to point out that most of the problems identified in this report have been identified before in the series of OIG reports cited in Footnote 2. While the PROs' shift in focus may have exacerbated some of their problems in identifying and responding to poor performers, the nature of the problems has not changed. To boost the performance of PROs, therefore, we suggest that some of the recommendations of previous reports be vigorously implemented, in particular:

• HHS should propose legislation requiring PROs to provide case information to State medical boards when PROs have confirmed that a physician is responsible for poor quality of care resulting in harm to the patient. The legislation proposed should resolve the confusion caused by OBRA '90, (PL 101-508), which requires "notice and hearing" before PROs share case information.

• HHS should seek legislative change that would permit PROs to provide and receive data from the National Practitioner Data Bank. One of the problems identified in the report is the difficulty of a PRO determining whether poor behavior is part of a pattern or merely an isolated incident, and access to other information collected in the National Practitioner Data Bank would assist in such a determination.

- HHS should seek legislative change to increase the amount of monetary penalties permitted in order to make them a more meaningful sanction. Current law limits monetary penalties to the amount of the medically unnecessary or improper service -- an amount too small to serve as an adequate sanction or deterrent.

- HHS should seek legislation to repeal the requirement that physicians or hospitals which have violated Medicare obligations may be sanctioned only if they demonstrate an "unwillingness or inability" to comply with Medicare obligations. OIG reports since at least 1988 have identified this "unwilling or unable" requirement as a major impediment to PROs exercising their sanction referral authority, and have recommended deletion of this requirement.

- HHS should increase educational and outreach efforts to inform Medicare beneficiaries of the existence and functions of PROs. Beneficiary complaints will become an even more important source of leads for PROs as the random sample medical record review is phased out.

PROs can serve a vital role in protecting Medicare beneficiaries from poor quality medical care, but they have not yet lived up to their potential. Over the past years, PROs' use of their sanction authority has dwindled, and now with the shift in focus to "continuous quality improvement" and education, we fear that PROs will become less effective unless the recommendations made in previous OIG reports, and repeated here in our comments, are implemented.

We are not unmindful of the difficulties PROs may have as their resources are shifted more and more towards enforcing their mandate to improve the general practice of medicine. This focus, however, cannot replace the necessary task of identifying individual poor performers -- both physicians and hospitals -- in the medical field. The two approaches deal with different aspects of quality problems, and no matter how much "continuous quality improvement" is able to raise general standards of medical care, there will always be poor performers who injure individual patients and who must be detected and sanctioned. PROs, in order to fully protect Medicare beneficiaries, must be strengthened to perform this service.

Public Citizen

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Joan Claybrook, President

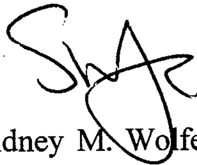
October 16, 1995

June Gibbs Brown
Inspector General
Department of Health and Human Services
Washington, D.C. 20201

Dear Ms. Brown:

Please find enclosed our comments on the OIG's draft report, "The Medicare Peer Review Organizations' Role in Identifying and Responding to Poor Performers." We appreciate the opportunity to review and comment on this report. Please let us know if we can be of further assistance to you or your staff in your studies regarding Peer Review Organizations.

Sincerely,



Sidney M. Wolfe, M.D.
Director

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Enclosure