

Resolutions Adopted at the 49th Annual Meeting, 1992

Administrative Law

Whereas the rapid expansion of Federal and State government involvement in every phase of the delivery of health care has caused a corresponding increase in the use of administrative adjudicatory proceedings to the point where said proceedings have become the exclusive means of redress by individual health care providers and patients for virtually every issue raised in the delivery of health care, and

Whereas Medicare, through its respective carriers and financial intermediaries, the Utilization and Quality Control Peer Review Organizations (PROs), and the office of the Inspector General has retained for itself virtually exclusive adjudicatory authority over the property of practicing physicians through such proceedings, and

Whereas although administrative adjudicatory proceedings are given the legitimacy of judicial tribunals, they are inherently unfair in that they utilize administrative law judges—as triers of fact and law—who are employed by the very agency which is in an adverse relationship with the individual appearing before same, and thereby, there is a disincentive for said administrative law judge to be impartial; and

Whereas although administrative adjudicatory proceedings are given the legitimacy of judicial tribunals, they do not utilize juries of one's peers to try the facts of the cases; they employ an intolerably low standard of admissibility in the presentation of the government's evidence, often so low as to deny the individual the right to cross-examine any adverse witness at all; and

Whereas although administrative adjudicatory proceedings are given the legitimacy of judicial tribunals, they are often employed to actually enforce a policy of the administrative agency even though that policy is not supported by law; and

Whereas an administrative adjudicatory proceeding may, by its decision, economically destroy an individual through the imposition of fines, civil monetary penalties or exclusion from a program, none of the rights and protections provided to a citizen in a court of law are accorded the individual in the said proceeding; and

Whereas when courts are asked to consider the decision of an administrative adjudicatory proceeding, they, as a matter of law, not only accept the evidentiary record as same was developed in said administrative proceeding—and said courts will not hear new evidence at all—but will hold in favor of the administrative agency as long as there exists “substantial evidence” in the record to support same, thereby, as a practical matter, virtually preventing an individual from ever being able to question the motivation or fairness of the agency in said proceeding, much less reverse the administrative decision itself,

Now therefore be it resolved: ...that [AAPS] shall encourage the Congress of the United States and the various State legislatures to expand access to the judiciary for hearings and trials *de novo* for all individuals in cases arising out of the Federal and State government involvement in the health care field, particularly in those cases where fines, civil monetary penalties and/or exclusion from any government health care program may be the result.

An Administrative Civil Rights Act

Whereas the unelected, permanent and non-removable clerks and officers of the bureaucracy have established themselves as a “fourth branch” of government, with powers far exceeding those that might have been imagined by the writers of our US Constitution; and

Whereas administrative law can place the functions of legislator, prosecutor, judge and jury into one agency; and

Whereas administrative agencies can use their powers arbitrarily and capriciously against citizens who are effectively deprived of rights guaranteed under the Constitution to *all* persons, even accused criminals; and

Whereas it is the Constitutional responsibility of the Congress to restrain the agencies that it has created and to prevent the usurpation of power and authority by unelected, permanent and non-removable bureaucrats,

Now therefore be it resolved: ...that [AAPS] will advocate the passage by the Congress of the United States and the various State legislatures of the Administrative Civil Rights Act, and will seek the cooperation of other organizations for this purpose.

Administrative Civil Rights

The constitutionally guaranteed civil rights of American citizens shall be protected in administrative proceedings.

Any agency acting under color of federal or state law shall have the right to impose only limited penalties through administrative proceedings, even when these penalties are called “deterrents” or “means of protecting program integrity” rather than “punishments.” Allowed forfeitures include only: (1) Withholding of future direct payments from the public treasury (except that Social Security benefits up to the amount funded by actual contributions by an individual, including amounts paid by employers in the individual's name, plus interest, may not be withheld); (2) Fines or civil monetary penalties not to exceed one week's after-tax income to an individual or one week's net profit to a corporation.

Before larger economic penalties or loss of liberty may be imposed, the defendant shall have the right to demand a trial in a court of law and in which the defendant has all the rights accorded to criminal defendants. These include but are not restricted to: trial by jury, representation by counsel, protection against self incrimination and double jeopardy, a presumption of innocence, and protection against unlawful searches and seizures. Personnel of the court shall be independent of the agency bringing the complaint against the citizen and shall receive no direct or indirect remuneration from that agency.

Citizens who are under investigation for violation of any law or regulation by an administrative agency shall be informed of their rights and shall not be penalized for exercising or refusing to waive these rights.

No person shall be permitted to make an anonymous complaint about a condition that carries an administrative sanction, and no monetary rewards shall be given to informants.

This law shall supersede all federal laws that mandate or permit larger administrative penalties to be enforced without proper judicial procedure.

No individual agency shall be exempted from these guarantees of citizens' rights. The law shall apply equally to the Food and Drug Administration, the Environmental Protection Agency, the Health Care Financing Administration [now the Centers for Medicare and Medicaid Services (CMS)], the Internal Revenue Service, the Occupational Health and Safety Administration, and any other agency acting under color of federal or state law.

To assure adequate consideration of the serious consequences of abridging the rights of citizens, this Act may be amended only in legislation specifically directed to that purpose, not as part of the budget reconciliation process or as an amendment to unrelated legislation.

All agreements between a citizen and a governmental agency, in which a citizen has waived his rights, shall be held invalid and unenforceable if signed under duress, such as a demonstrable or perceived threat of seizure of assets, loss of licensure, loss of liberty, loss of property value, criminal prosecution, or other adverse consequence imposed upon a citizen under color of federal or state law or regulation.

Citizens deprived of economic or other rights by governmental agents acting in violation of this Act shall not be denied access to federal court or to damages at law.

Repeal of the McCarran-Ferguson Act

Whereas the McCarran-Ferguson Act was enacted in 1945 to insulate insurance companies—and “the business of insurance”—from liability under the antitrust laws due to the fact that rates in the insurance industry then were set by multiple competitors appearing before state insurance commissioners; and

Whereas the McCarran-Ferguson Act provides special exemptions for certain insurance companies, which are not justifiably entitled to such special exemptions; and

Whereas the insurance industry, as the payor for virtually every health care service rendered in the United States, is in a position to control—and in fact does control—most aspects of the delivery of health care; and

Whereas because of the continued viability of the McCarran-Ferguson Act, insurers are able to share—and do share—payment and non-payment information with one another, as well as rate and price information and determinations regarding the form of health care delivery, and thereby eliminate any and all competitive forces from the health care marketplace,

Now therefore be it resolved: ...that [AAPS] shall encourage the Congress of the United States to repeal the McCarran-Ferguson Act.

The Right of Patients and Physicians to Contract Privately

Whereas the government of the United States of America is pursuing the ostensibly admirable goal of financing medical care for its citizens; and

Whereas this goal necessarily requires that the detailed interrelationships between physician and physician, and between physician and patient, be regulated; and

Whereas such regulation, through vague, broadly based threats of anti-trust litigation and fines, has effectively inhibited physicians' freedom of speech; and

Whereas such regulation, through the actions of peer review organizations, has intimidated physicians by randomly criticizing their professional actions and decisions and forced them to answer to frequently erroneous charges; and

Whereas such regulation, by using manipulative techniques of delaying and deducting payment of physicians' charges, has coerced increasing numbers of physicians to reluctantly “participate” in the Medicare program; and

Whereas such regulation, by creating a Medicare “appeals” process, which is unreasonably burdensome, time consuming and frequently powerless to effect significant change in the oppressive Medicare system, has effectively eliminated a physician's right to due process and a fair and speedy trial; and

Whereas such regulation, by instituting “limiting charges” and prohibiting balance billing of Medicare patients, has taken away the fundamental right of physicians to enjoy their Constitutional guaranteed right to life, liberty and property; and

Whereas such regulation, with its administrative threats and manipulation, can impair a physician's best judgment and is therefore not in the interest of the public,

Now therefore be it resolved: ...that [AAPS] does publicly denounce this oppressive and intrusive regulation of American Medicine by the Federal Government as fundamentally alien to our basic American Constitutional principles;

And be it further resolved: ...that [AAPS] acknowledges that this Federal regulation of physicians and patients has created a system of involuntary servitude for both, and has effectively taken away their inalienable right to life, liberty and the pursuit of happiness;

And be it further resolved: ...that [AAPS] formally petition the President and the Congress of the United States to free the physicians of this country from the unjust exploitation by this government, by reaffirming the right of physicians and patients to contract privately, outside of the Medicare system, as provided in the [original] Medicare Act.

True Health Insurance and Fair and Equitable Premiums

Whereas true health insurance involves payment of small amounts in advance to cover unexpected, possibly catastrophic events, that are very expensive but also very unusual; and

Whereas it is *not* “insurance” to pay “premiums” in advance for coverage of routine, commonly expected, and basic health care costs; and

Whereas “first dollar coverage” is uneconomical and unsound, causing great increases in rates of utilization and ultimate total cost for care; and

Whereas a tax system that is touted as being “fair and equitable” and “based on ability to pay” has *neither* of those attributes when the tax system allows some politically selected persons to list health care expenses as “business expenses,” and allows other politically selected persons to receive health care benefits that are free of all taxation, while the rest of the taxpayers must buy their health care with after-tax dollars,

Now therefore be it resolved: ...that the tax code should treat the health care expenses of *all* workers in the same manner, and, if any special favors are to be granted by the tax code to anybody in regard to health care expenses said special exemptions or deductibility should be granted only to those who are buying true insurance, with payment of actuarially sound premiums for unexpected, unusual, catastrophic illnesses and expenses.