

He was bemoaning the losses of the future scientists and scholars who did not get to research. He was bemoaning the future composers who did not get to compose; the teachers who did not grow up to teach; and the doctors who never go to heal.

One and a half million murdered children is such a staggering number that it is most difficult to comprehend. This is why I thought that perhaps singling out and remembering the tragedy of one child would symbolize the great loss of all the children who were annihilated by the Nazis.

So today let us remember Deborah Katz.

In the Holocaust archives there is a letter written in 1943 by a Jewish girl by the name of Deborah Katz. She was nine years old when she and her family were taken out of the ghetto and loaded into cattle trains destined for the death camp of Treblinka.

Her parents managed to pry open a small window of the box car and threw the child out hoping that a miracle would happen and she would survive.

A Catholic nun happened to pass by and found the injured child. She brought her to the convent and hid her among the sisters who gradually nursed Deborah back to health.

The child was in comparative safety and she had a good change to survive.

One morning, however, the nuns woke up and found a letter on Deborah's bed and this is what the nine year old child wrote.

"It's bright daylight outside but there is darkness around me. The sun is shining but there is no warmth coming from it. I miss my mommy and daddy and my little brother, Moses, who always played with me. I can't stand being without them any longer and I want to go where they are."

The following morning Deborah Katz was put by the Gestapo on the next trainload—destination—the gas chambers of Treblinka.

Today, I want to say to little Deborah, if you can hear me, poor child, and I know that you can. I want you to know that there is no more darkness, thank God. The sun is shining again and warming little children like you. And what is most important, dear child, I want you to know that you did not die in vain. You have touched the hearts of many decent people, far far away from the place where you lived and died.

There is a museum in Washington where within the last five years more than ten million visitors came to remember the horrors of those dark days.

You are not forgotten, little Deborah, and you will serve as an inspiration to many children throughout the world to make sure that in years to come, no child of any people, in any country, should ever have to go through the agonies and pains that you have suffered.

**DON'T LET FRAUD BLEED MEDICARE: OPPOSE EFFORTS TO GUT THE FALSE CLAIMS ACT**

**HON. FORTNEY PETE STARK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 5, 1998*

Mr. STARK. Mr. Speaker, there is a move afoot to re-open Medicare and other federal health care programs to gross waste, fraud and abuse. The legislative Trojan Horse in question is the "Health Care Claims Guidance Act," (H.R. 3523) which would erect huge new barriers to federal prosecution of cases that target claims submitted with reckless disregard, deliberate ignorance or actual knowledge that the claim is false.

I strongly urge my colleagues not to support—or to withdraw their support—for this pernicious legislation.

The False Claims Act is the primary mechanism used by the Department of Justice to recover money paid out for services that Medicare doesn't cover, or that have no medical record to back them up. It's a civil, not a criminal statute, and has been used since Abraham Lincoln's administration to punish contractors who defraud the government. In the 1980's, the False Claims Act was used against defense contractors who overbilled the government by millions of dollars for items like those infamous toilet seats. Last year, the Department of Justice used the law to recover about \$100 million in health care actions. Measured against the roughly \$100 billion that Medicare pays out every year in hospital claims, that's a relatively modest amount.

But that figure may rise in the future, because the False Claims Act is now being used more effectively to crack down on providers who deliberately overcharge Medicare through upcoding, unbundling, and other rip-off schemes. An alarming book by Harvard economist Malcolm Sparrow, "License to Steal," documents how unscrupulous providers can devise billing strategies that pass muster under Medicare's claims processing system. It is precisely these kind of over-aggressive, sophisticated billing practices that the federal government is trying to stop using the False Claims Act.

That's why the effort by the American Hospital Association to create a "free fraud zone" for providers who wished to overbill Medicare by as much as \$11.4 billion every year is so offensive. The kind of cases that are brought under the False Claims Act are NOT innocent billing mistakes. I like to call H.R. 3523 the Columbia/HCA Protection Act, since even AHA admits that if the bill were enacted, it could be used to get the poster child for health care fraud off the hook!

In addition to dismissing pending cases, the bill includes a "material amount" provision that Justice Department officials say would effectively shut down most False Claims Act cases. Simply put, the bill's proposed threshold of 10% would prohibit the government from bringing suit at all—unless the disputed amount exceeded 10% of the hospital's billing to Medicare or Medicaid for the entire year. So in effect, a large provider like Columbia could submit hundreds of millions of dollars in false claims every year—no questions asked. That's a form of immunity that the tobacco industry might well envy.

We must not go down that route. We must not enact legislation like the Health Care Claims Guidance Act that raises the government's burden of proof and makes hospital compliance plans into escape hatches for providers who fraudulently bill. I strongly believe, and I know the Administration does too, that providers who deliberately scam the system must be punished.

On the American Hospital Association's web page is an announcement that AHA is "working with state metropolitan associations to identify a hospital that would be willing to be a plaintiff in a court case against the Justice Department." Let 'em sue. Any decent court will throw out a case that attempts to roll back the legal and proper use of the False Claims Act in recovering taxpayer's money that was inappropriately paid to hospitals for services

that have no medical record to back them up. Congress should also throw out H.R. 3523, which Senator GRASSLEY has called a "misguided missile in the war against fraud."

I'd like to make a point about how the False Claims Act is being used to stop patient abuse. In 1996, the law was successfully used to bring suit against three Philadelphia-area nursing homes that were found to be denying wound care and nutrition to three residents. In plain English, the nursing homes were starving the residents and ignoring their very serious skin ulcers, while continuing to submit false claims to Medicare and Medicaid. The amount of claims money involved was not large. But the statute was effectively used to stop the horrendous abuse of helpless, frail people, and to severely punish the nursing home.

Experts say that the Philadelphia nursing home settlements are helping to establish a clear precedent for use of the False Claims Act in poor quality of care cases. But if H.R. 3523 is enacted, the law's present deterrent value against patient abuse would be nullified.

The sheer toll that fraud and overpayment exacts on federal health programs each year makes it imperative that the federal government use every means available to fight back. The False Claims Act is a critical part of our current legislative arsenal, since it harnesses the energies of whistleblowers who are in a position to observe bad billing practices that the best computers can never detect. After all, if a claim looks okay, Medicare requires intermediaries and carriers to pay it within 14 days.

It is perhaps not surprising that just as the federal government steps up its anti-fraud efforts, doctors and hospitals are beginning to complain loudly that they are somehow being "unfairly targeted." This response from providers may even signal a certain level of fear that the federal government's no-questions-asked payment policy is changing. As it must: The latest report from the HHS Inspector General shows hospitals were paid \$6 billion too much last year. Physicians were also paid \$6 billion too much, and overpayments to home health agencies reached \$2.5 billion. Fraud costs Medicare billions every year that it can ill afford to lose, and it must be stopped.

A back-of-the-envelope calculation shows that if fraud ceased today, the five-year savings would amount to more than \$100 billion. That's enough to extend the life of the hospital insurance trust fund by an additional seven years, and is nearly equal to what the Balanced Budget Act saved last year! The government's war against Medicare fraud has only begun, and the IG's audit makes it clear that no one who supports a "zero tolerance for fraud" policy can support H.R. 3523.

I've probably introduced more legislation in this area than any other member of Congress—13 bills in the 105th Congress alone. A bill that I will shortly propose would give back to HCFA an authority it used to have—the ability to adjust base payments to Medicare HMOs every year, based on the previous year's documented overpayment or underpayment. Right now, the Congressional Budget Office says Medicare will overpay HMOs by \$31 billion over the next 10 years! HCFA has always had the flexibility to adjust payments for Medicare managed care plans—until the Balanced Budget Act took it away last year. That's a legislative mistake that must be fixed soon, or taxpayers will be outraged.