MEDICARE PHYSICIAN REIMBURSEMENT: *Is the SGR's end in sight?*

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On December 19, 2009, President Barack Obama signed the Department of Defense appropriations bill (H.R. 3326) into law. Given the importance of passing a bill to fund America's military before adjourning for the year, congressional leaders determined the defense bill was the best vehicle for temporarily halting the 21 percent cut in the Medicare physician reimbursement that had been scheduled to take effect on January 1. The bill temporarily delayed the 21 percent cut until March 1, with the hope that Congress would use the two months in between to address Medicare's broken physician payment formula, known as the sustainable growth rate (SGR). Unfortunately, this hope was not realized, and on March 2, the President signed another temporary measure into law (H.R. 4691)—this one retroactively repealing the 21 percent cut that had taken effect and restoring Medicare payment rates for the month of March.

Urgent, yet temporary

The importance of these bills was underscored by the President's signature in both cases shortly after Senate passage of each bill. H.R. 3326 included a provision that prevented the cut in physician reimbursement and maintained the 2009 conversion factor of $36.0666 through the end of February. The January 1 deadline had been replaced with a March 1 deadline, at which point a 21 percent cut in the Medicare conversion factor was scheduled to take effect unless Congress again intervened. H.R. 4691, which was enacted on March 2, simply replaced the March 1 deadline with a new deadline of April 1, 2010.

As many readers may know, the scheduled 21 percent cut in reimbursement is a result of the SGR. The SGR was enacted as part of the Balanced Budget Act of 1997, which received the bipartisan support of Democratic President Bill Clinton and a Republican majority in Congress. The SGR set a target for Medicare physician spending that linked total spending to per capita growth in the gross domestic product (GDP). As a result, Medicare physician payments were tied to the GDP, and this linkage—along with a regulatory decision in the SGR's implementation to include physician-administered drugs in the calculation of Medicare physician spending—set the stage for this new Medicare payment system's failure. To be fair, the system's failure was unforeseeable at the time, but after a few years of payment increases, Medicare payments to physicians were cut 5.4 percent in 2002, with additional reductions scheduled in every following year. Only congressional intervention has prevented those cuts from taking place.

Congress's passage of the delay last December, and again in March, followed the pattern set in previous years in which lawmakers provided a temporary reprieve from a broken Medicare payment system in need of reform. What was different about the actions—both in December and again in March—was the context in which they happened. First, these delays occurred in the midst of congressional consideration of health care reform legislation that could fundamentally alter how health care is delivered in the U.S. Second, both bills followed a concerted effort by some in Congress to finally enact the much-needed reform of Medicare's physician payment system.

A new context

On November 7, 2009, the House of Representatives, in a 220 to 215 vote, passed its version of health care reform legislation, the Affordable Health Care for America Act (H.R. 3962)—which the College supported. In supporting H.R. 3962, the College cited several of the bill's reforms, including measures to expand coverage, to help ensure patient access to surgical care, and to improve the nation's emergency care and trauma systems. In addition, the College offered its support for the bill because of the full and permanent SGR reform included in the Medicare Physician Payment Reform Act (H.R. 3961), which was introduced as a companion to H.R. 3962.

Following the House, the Senate passed its version of health reform legislation, the Patient Protection and Affordable Care Act (H.R. 3590), in a 60 to 40 vote on Christmas Eve, 2009. The College opposed the legislation. In a December 1, 2009, letter to Senate Majority Leader Harry Reid (D-NV), the College and 18 surgical organizations expressed opposition to the initial version of the bill, citing the following reasons: creation of an unaccountable Medicare board whose recommendations could become law without congressional action; budget-neutral payment increases for primary care and general surgery financed through payment cuts to other surgical specialties; an application fee for physicians to participate in Medicare; a tax on cosmetic surgical procedures; and the absence of medical liability reform. In addition, the letter highlighted the bill's failure to reform the broken Medicare payment system, as well as the lack of a pathway in the Senate to achieve the much-needed SGR reform that the College and the surgical community have been advocating as an essential component of health care reform legislation.

The December letter followed a November 4 letter to Senator Reid from the College and 19 surgical organizations, stating that the surgical community was prepared to oppose the Senate's health reform bill if it included a number of provisions in the Senate Finance Committee bill, the America's Healthy Future Act. The November and December letters were also preceded by a September 22 letter to the Senate Finance Committee Chairman Max Baucus (D-MT) from the College and 19 other surgical societies, stating that the organizations were unable support the bill before the Committee, while highlighting several concerns also mentioned in the letter to Senator Reid, and, again, stressing the legislation's lack of Medicare physician payment reform.

Before the Senate Finance Committee's passage of health reform legislation, the Senate Health, Education, Labor and Pensions (HELP) Committee had approved its own version of health reform legislation, the Affordable Health Choices Act, on July 15, 2009. Following the Finance Committee passage in October, Senators Reid, Baucus, and Christopher Dodd (D-CT), who had guided the legislation through the HELP Committee, worked to reconcile the Finance and HELP versions. It was during this period that the College offered comments in an effort to shape the Senate bill and achieve a pathway to reforming the SGR in the Senate. On November 18, 2009, the first version of H.R. 3590 was released, and the Senate voted to invoke cloture and move to consideration of the bill on November 21, 2009. This vote set the stage for the Senate's consideration, and ultimate passage, of the legislation in December 2009.

Throughout December, negotiations on health reform continued in the Senate. The legislation passed by the Senate on December 24, 2009, was first released as a manager's amendment for consideration on December 19, 2009. The updated bill did include several improvements—namely, removal of budget neutrality, the application fee, and the cosmetic surgery tax. Nonetheless, the College remained opposed to H.R. 3590 because of the bill's failure to address the SGR, and because of several problematic provisions in the bill—most notably, the Medicare payment board, now called the Independent Payment Advisory Board (IPAB), which would now also be able to make policy recommendations about non-government health care spending.

While failing either to reform the SGR or to provide a pathway to Medicare payment reform in the Senate, the creation of an unelected Medicare board that would divest Congress of its authority over Medicare payment policy and shift this power to the executive branch would actually worsen the situation for surgical reimbursement in Medicare. On top of not reforming the SGR, the bill also included provisions that would create an unelected Medicare board that would divest Congress of its authority over Medicare payment policy and shift this power to the executive branch. Furthermore, the Medicare board, as envisioned in the Senate, could contain costs to the point of further undermining Medicare reimbursement for surgical care and potentially endangering Medicare beneficiaries' access to surgical care. It is for this reason that, in addition to advocating for Medicare payment reform, the College has played a key role in the effort to educate representatives, senators, and their staff members about the dangers of a board such as IPAB. Through the efforts of the College, patient organizations, other physician organizations, and other concerned stakeholders, numerous congressional staff members were contacted and, to date, 118 members of the House have publicly stated their opposition to such a board.

Progress and uncertainty

Health care reform also provided the setting for the greatest progress for achieving full-scale reform of the Medicare physician payment system since the cut of 2002. Twelve days after the passage of its health care reform bill, on November 19, 2009, the House passed the College-supported Medicare Physician Payment Reform Act (H.R. 3961) in a 243 to 183 vote.

H.R. 3961 includes the reforms that were included in an earlier version of the House bill, the America's Affordable Health Choices Act (H.R. 3200). H.R. 3200 had been passed by the House Committees on Ways and Means, Education and Labor, and Energy and Commerce in the months leading up to the release of H.R. 3961 and H.R. 3962 on October 29, 2009. H.R. 3961 would reset the budget baseline of the SGR and would replace the single spending target of the SGR with two spending targets based on type of service, which would be used to determine Medicare reimbursement for physician services. The first category of services would include all evaluation and management and office visits, and the second category would include all other services, including major surgical procedures. The bill would increase this annual target for growth to GDP plus 2 percent for the evaluation and management category, and to GDP plus 1 percent for the category for all other services. These provisions had been first released in June 2009, and the College had worked closely with the staff on the Ways and Means Committee and the Energy and Commerce Committee to address concerns regarding surgical reimbursement and preserving patients' access to surgical care.

Whereas the House considered legislation to reform and replace the SGR, the Senate considered the Medicare Physician Fairness Act of 2009 (S. 1776), which did not include the reforms outlined in H.R. 3961. Instead, S. 1776 would have reset the baseline and prevented Medicare payment levels from falling below 2009 levels. However, this measure failed to gain the support it needed to be considered by the full Senate, and on October 21, 2009, in a 47 to 53 vote, the bill failed to garner the 60 votes needed to invoke cloture. Senate Democrats and Republicans both cited the bill's cost as their reason for opposing the bill. At the time of consideration, S. 1776 was estimated to cost $210 billion over 10 years, ironically the same amount as H.R. 3961.

Unknown path ahead

Because of the enactment of the defense appropriations bill and H.R. 4691, the 21 percent cut in Medicare payments scheduled for January 1 was postponed until April 2010. Recognizing the continued need for legislative action on the SGR, the Senate took the step of adding a provision to the legislation to provide for an increase in the federal debt limit (H.J. Res. 45). While the provision did not directly address the threat of the 21 percent cut, it did exempt $82 billion from the statutory pay-as-you-go requirement that was included in H.J. Res. 45 for the purpose of addressing Medicare payments to physicians. This provision could set the stage for future consideration of Medicare physician payment provisions later in 2010.

Discussions regarding Medicare physician payments have also occurred in the context of legislation to promote economic growth and job opportunities. In fact, on March 10, the Senate approved the American Workers, State, and Business Relief Act of 2010 (H.R. 4213), which, in addition to measures extending certain tax provisions, also included a provision to extend current Medicare payment levels through the end of September. The House had previously passed a more narrowly crafted version of H.R. 4213 in December 2009. As a result, the House and Senate will need to need to resolve the differences between the House- and Senate-passed versions of H.R. 4213. Whether or not the Medicare payment issue will be resolved as part of those discussions before the scheduled cut on April 1 was unclear at press time.

In addition, the consideration for addressing Medicare physician payment cuts, either on a temporary or permanent basis, will certainly be affected by what costs the Congressional Budget Office (CBO) estimates will be associated with any Medicare payment legislation. With Congress moving to its consideration of the 2011 budget, CBO has indicated that a full repeal of the SGR could now be estimated to cost in excess of $300 billion.*

Even if Congress should agree to the Medicare payment extension through September, there has been no indication as to what action Congress might take to address future cuts either through other temporary measures or through full-scale and permanent Medicare payment reform. Earlier in 2010, there were rumors of consideration being given to a five-year temporary Medicare payment measure in the context of health care reform negotiations, and the $82 billion exempted under H. J. Res. 45 is the amount that would provide for measures freezing Medicare payments at 2009 levels through 2014.

The College continues to stress the need for a full and permanent Medicare payment reform, and has expressed strong concerns regarding the five-year approach, which would also expire the same year that the Medicare board (IPAB) would start issuing Medicare payment policies—should the Senate-passed bill become law.

The focus of America's surgeons

Over the past year, congressional efforts to reform the Medicare payment system have been undeniably shaped by the health care reform debate. While the effort to reform Medicare's payment system continues, 2009 marked the first time, since the creation of the SGR in 1997, that a congressional body has both considered and approved a measure to replace Medicare's broken physician payment system with a new methodology for Medicare reimbursement. In the near-term, America's surgeons are urged to call on their senators to follow the House's lead and enact much-needed reform of Medicare's payment system.

Even as Congress has continued to pass short-term measures to stop Medicare payment cuts, the College continues to advocate for lasting and permanent Medicare payment reform that will not only preserve, but also improve, Americans' access to quality surgical care. From the beginning, the College has consistently held that health reform's promise of greater access to care generally, and surgical care specifically, will mean little if Americans cannot find a qualified physician or surgeon to provide the care they need. Whether or not this promise will be realized rests in large part on whether or not America's elected representatives understand and appreciate the importance of ensuring that Medicare beneficiaries—and ultimately all Americans—can find a surgeon when they need one. Ω

*The Congress of the United States. Congressional Budget Office. *The Budget and Economic Outlook Fiscal Years 2010 to 2020*. January 2010. Available at: http://cbo.gov/ftpdocs/108xx/doc10871/01-26-Outlook.pdf. Accessed February 23, 2010.