For the past several years (2003 through 2009), Congress has intervened each year to postpone threatened cuts to the Medicare Physician Fee Schedule. In 2010, however, Congress has, as of yet, failed to suspend the imminent -21.3% payment cut for the typical year, instead putting off the cut for a period of one to three months since the first intervention in November 2009. But as of May 20, 2010, Congress will consider legislation that would interfere to stop the scheduled cut through 2011.

Overview of the Sustainable Growth Rate Formula

The Sustainable Growth Rate (SGR) method replaced the Medicare Volume Performance Standard (MVPS) provision in 1997 to provide annual target updates to the physician fee schedule for Medicare Part B. The SGR formula is designed to control aggregate growth in Medicare expenditures by raising or lowering the proposed payment target to reflect actual cumulative expenditures. The calculation of SGR relies upon four factors, according to the Centers for Medicare & Medicaid Services (CMS):

1. “The estimated percentage change in fees for physicians’ services;”
2. The estimated percentage change in the average number of Medicare fee-for-service beneficiaries;
3. The estimated 10-year average annual percentage change in real GDP per capita; and,
4. The estimated percentage change in expenditures due to changes in law or regulations.  

The purpose of instituting the SGR formula was two-fold: (1) to ensure patient access to physician services; and, (2) to predictably control federal spending on Medicare part B. Since its enactment, actual Medicare expenditures remained below target expenditures through 2001. However, every year since 2002, actual expenditures have exceeded target expenditures, with a 65 percent increase in per-beneficiary expenditures on Medicare services between 1997 and 2005. Despite this, Congressional action to suspend the impending cuts to payments for physician services every year since 2003 has resulted in a widening gap between the cumulative spending and cumulative target each year the proposed cuts were overridden. Table I, below, illustrates the proposed and actual physician fee schedule conversion factor (CF) updates for the years 1997 through 2009.

<table>
<thead>
<tr>
<th>Year</th>
<th>CF Update</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>0.6%</td>
</tr>
<tr>
<td>1998</td>
<td>2.3%</td>
</tr>
<tr>
<td>1999</td>
<td>2.3%</td>
</tr>
<tr>
<td>2000</td>
<td>5.5%</td>
</tr>
<tr>
<td>2001</td>
<td>5.0%</td>
</tr>
<tr>
<td>2002</td>
<td>-4.8%</td>
</tr>
<tr>
<td>2003</td>
<td>1.7%</td>
</tr>
<tr>
<td>2004</td>
<td>1.5%</td>
</tr>
<tr>
<td>2005</td>
<td>1.5%</td>
</tr>
<tr>
<td>2006</td>
<td>0.2%</td>
</tr>
<tr>
<td>2007</td>
<td>0.0%</td>
</tr>
<tr>
<td>2008</td>
<td>0.5%</td>
</tr>
<tr>
<td>2009</td>
<td>1.1%</td>
</tr>
</tbody>
</table>

According to estimates by the CBO, under the current SGR mechanism, the cumulative gap between target and actual expenditures will continue to grow, perhaps increasing to a peak deficit of approximately 40 percent, until 2014, when it is predicted that actual spending will dip below target levels once again.

Current Congressional Status Regarding the SGR: “Fix” or “Repeal”

The recently enacted health reform bills did not include language to permanently repeal or change the SGR formula. However, on November 19, 2009, the U.S. House of Representatives passed a bill by a vote of 243 to 183, which would permanently repeal the SGR, replacing it with a framework that would update the Medicare physician payment schedule by GDP + 2 for evaluation and management services, and GDP + 1 for other services. In anticipation of the Senate vote on this legislation, Congress has temporarily postponed the 2010 cut, originally set to come into effect on January 31, 2010. Upon reconvening on April 12, 2010, the Senate decided to temporarily fix the planned 21.3 percent Medicare physician fee cut by delaying implementing the SGR formula until June 1, 2010.

On May 20, 2010, text of the “American Jobs and
(Continued from previous page)

Closing Tax Loopholes Act of 2010” was introduced to Congress. On May 28, 2010, the House of Representatives chose to separate the text regarding the postponement of the Medicare physician payment cut from the remainder of the bill text and subsequently approved the physician payment legislation by a vote of 245 to 171. While this bill will not repeal the SGR, it would delay the scheduled June 1 cut to physician payment rates under Medicare until 2012, providing a 2.2% increase to rates from June 1 to December 31, 2010, a 1% increase for 2011, with the rate for 2012 to be, once again, determined depending on a targeted growth rate.10

To avoid disruption in the delivery of health care services to beneficiaries and payment of claims for physicians, on May 27, CMS directed its contractors to hold claims for services paid under the MPFS for the first 10 business days of June (i.e., through June 14, 2010).11 This hold only applies to MPFS claims with dates of service of June 1, 2010, and later. With the expectation of Congressional action in the near future, CMS directed its contractors to continue to hold June 1 and later claims through Thursday, June 17, and planned to lift the hold on Friday, June 18.12

On Wednesday, June 16, the proposed nineteen month fee fix was reduced to seven months in an attempt to gain the 60 percent supermajority needed to pass the legislation. However, even after shifting off twelve months, the “test vote” on the measure failed to pass, with every Republican and twelve Democrats voting against the bill, in a 52-45 vote.13 Forced to restart the process, Democrats gave doctors even shorter relief from the impending one-fifth Medicare cuts in their payments, by giving doctors only a 6 month reprieve in the looming cuts, and only increasing the physician reimbursement rate by 2.2% through November.14

However, Thursday night, the Senate was unable to pass legislation that would have prevented the 21.3 percent cut in physician reimbursement rates until November, garnering only 56 of the 60 votes needed, despite scaling back the original provision from 19 months to 6 months in order to reduce the overall cost of the bill.15 Additionally, physicians will not be receiving the 2.2 percent increase to Medicare physician payment for claims with dates of service of from June 1 through Nov. 30, a provision also called for in the bill.16 The Senate is not expected to hold further votes this week, and the steep cut in Medicare rates is scheduled to take effect Friday.17

Updated

Moments ago, the Senate reached a deal and passed a short-term six month physician pay cut, blocking the 21 percent reimbursement cut scheduled to go into effect today.18 This update comes after failing on Thursday to pass the larger H.R. 4213, which not only would have provided the physician payment relief, but also included provisions to extend tax and jobless benefits.19 Now that the measure has been approved by the Senate, it will also need to be considered by the House. The House will be unable to consider the measure before Monday, however, as they have already broken for the weekend. However, the House is expected to pass the bill, as in May, approved a previous version of the bill that stayed the physician fee cuts until 2012. Once passed by the House, this measure will block the expected 21.3 percent cut to Medicare physician payments, as well as provide the expected 2.2 percent increase for claims dated from June 1 to November 30.20

1 “Estimated Sustainable Growth Rate and Conversion Factor, for Medicare Payments to Physicians in 2010”, by Centers for Medicare & Medicaid Services, November 2009, p. 1
2 “Estimated Sustainable Growth Rate and Conversion Factor, for Medicare Payments to Physicians in 2010”, by Centers for Medicare & Medicaid Services, November 2009, p. 1
6 “Estimated Sustainable Growth Rate and Conversion Factor, for Medicare Payments to Physicians in 2010”, by Centers for Medicare & Medicaid Services, November 2009, p. 7

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“Senate reaches Medicare physician payment deal, House scheduled to vote next week”, Medical Group Management Association, Washington Connexion, May 28, 2010

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