

## *Congress Fails to Pass Bill Postponing Medicare Physician Payment Cuts*

On October 21, 2009, the Senate failed to move forward on Senate Bill 1776, the “Medicare Physician Fairness Act of 2009”,<sup>1</sup> which would have avoided cuts in the Medicare physician fee schedule of 21.2%<sup>2</sup> for 2010 and further cuts between 5.3 and 5.7% for 2011-2014.<sup>3</sup> Instead, S.R. 1776 would have provided for a 0% base change in physician payments for the next 10 years starting in 2010 and would have eliminated consideration of the Sustainable Growth Rate (SGR) in future Medicare fee schedules.<sup>4</sup> The Sustainable Growth Rate formula is a controversial measure stemming from the Balanced Budget Act of 1997 that adjusts the Medicare physician payment rate by comparing the cumulative actual expenditures of covered Part B Medicare services from 1996 to the current date to a target expenditure level calculated using the SGR.<sup>5</sup> Although other factors are involved, the covered fee schedules, including the Medicare Part B Physician Fee Schedule, are then altered to more closely match future total expenditures to target expenditures for the next year.<sup>6</sup>

Due to increasingly large projected cuts in the annual update to the Medicare physician fee schedule, a series of legislative initiatives altered the percentage change in the SGR conversion factor. For 2004 and 2005, the Medicare Modernization Act created a minimum update of 1.5%.<sup>7</sup> In 2006, the Deficit Reduction Act resulted in a change to the conversion factor for the physician fee schedule of 0.2%, which was followed by a 0% change in the physician fee schedule update for 2007 under the Tax Relief and Health Care Act of 2006.<sup>8</sup> Most recently, the Medicare Improvements for Patients and Providers Act (MIPPA) and the Medicare, Medicaid, and SCHIP Extension Act set the update at 0.5%, with MIPPA additionally requiring an update of 1.1% in 2009.<sup>9</sup> Each of these updates has statutorily changed the update to the physician fee schedule without requiring fundamental changes to the SGR methodology.<sup>10</sup> This has resulted in a large increase in the differential between actual expenditures and target expenditures, thereby driving up the amount by which the SGR formula should be reducing physician payments each year.<sup>11</sup> Medicare payment rates for hospitals are not tied to the Sustainable Growth Rate formula, and received a base 2.1% increase for 2010.<sup>12</sup>

Throughout the recent history of the SGR formula, there

has been concern that facing reduced reimbursement, physicians would opt out of the Medicare program, threatening Medicare beneficiaries’ ability to access care through a decreasing number of providers.<sup>13</sup> Although this concern has prompted short term changes, the substantial cost of reforming the SGR system—S.R. 1776 would have cost \$247 billion over the next 10 years<sup>14</sup>—has made legislators hesitant to change it and continues to impede current legislative proposals.<sup>15</sup> Senators Kent Conrad and Chuck Grassley are reportedly drafting a new bill similar to previous measures that would update the physician fee schedule with a 0.5% increase for the next two years at a cost of \$25 billion.<sup>16</sup> Although several of the major health care reform bills being considered by Congress, including the recently voted on America’s Affordable Health Choices Act of 2009,<sup>17</sup> contain measures to permanently or temporarily change updates to the physician fee schedule under the SGR, a separate measure that addresses payment cuts would reduce the cost of each reform initiative, making them more appealing to members of Congress concerned about the expenditures projected for each bill.<sup>18</sup>

<sup>1</sup> “S.1776: Medicare Physician Fairness Act of 2009 – All Actions,” [www.opencongress.org/bill/111-s1776/actions](http://www.opencongress.org/bill/111-s1776/actions) (Accessed 11/2/09).

<sup>2</sup> “Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010: Final Rule with comment period,” Department of Health and Human Services, pp. 1, [http://www.federalregister.gov/OFRUpload/OFRData/2009-26502\\_PL.pdf](http://www.federalregister.gov/OFRUpload/OFRData/2009-26502_PL.pdf) (Accessed 11/6/09).

<sup>3</sup> “The 2009 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds,” pp. 147.

<sup>4</sup> S.1776, “Medicare Physician Fairness Act of 2009,” Section 2 “Medicare Physician Fee Schedule Update for Years Beginning with 2010,” [www.opencongress.org/bill/111-s1776/text](http://www.opencongress.org/bill/111-s1776/text) (Accessed 11/2/09).

<sup>5</sup> “Estimated Sustainable Growth Rate and Conversion Factor, for Medicare Payments to Physicians in 2010,” <http://www.cms.hhs.gov/SustainableGRatesConFact/Downloads/sgr2010p.pdf> (Accessed 11/2/2009).

<sup>6</sup> “Estimated Sustainable Growth Rate and Conversion Factor, for Medicare Payments to Physicians in 2010,” pp. 1, <http://www.cms.hhs.gov/SustainableGRatesConFact/Downloads/sgr2010p.pdf> (Accessed 11/2/2009).

<sup>7</sup> “The 2009 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds,” pp. 147.

<sup>8</sup> “The 2009 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds,” pp. 147.

<sup>9</sup> “The 2009 Annual Report of the Boards of Trustees of the Federal

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Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds,” pp. 147-8.

<sup>10</sup> “The 2009 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds,” pp. 148.

<sup>11</sup> “The 2009 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds,” pp. 148.

<sup>12</sup> “Medicare Program: Changes to the Hospital Outpatient Prospective Payment System and CY 2010 Payment Rates; Changes to the Ambulatory Surgical Center Payment System and CY 2010 Payment Rates” Department of Health and Human Services, pp. 338, [http://www.federalregister.gov/OFRUpload/OFRData/2009-26499\\_PI.pdf](http://www.federalregister.gov/OFRUpload/OFRData/2009-26499_PI.pdf) (Accessed 11/9/09).

<sup>13</sup> “AMA Deeply Disappointed Senate Has Failed Seniors, Baby Boomers and Military Families By Blocking S. 1776” by J. James Rohack, MD, American Medical Association, Nov. 2, 2009, [www.ama-assn.org/ama/pub/news/news/senate-blocks-s1776\\_print.html](http://www.ama-assn.org/ama/pub/news/news/senate-blocks-s1776_print.html) (Accessed 11/2/2009); “Congressional Roundup: House Passes Health IT Legislation; House-Senate Conference Next Step,” BNA Health Law Reporter (15) 897. Aug. 3, 2006.

<sup>14</sup> Letter to Judd Gregg from Douglas Elmendorf, Director Congressional Budget Office, Oct. 26, 2009.

<sup>15</sup> “Congressional Roundup: Senators Discuss Physician Pay Fix; Health Reform Talks Continue in Senate,” BNA Health Law Reporter (18) 1403. Oct. 22, 2009.

<sup>16</sup> “Congressional Roundup: Senators Discuss Physician Pay Fix; Health Reform Talks Continue in Senate,” BNA Health Law Reporter (18) 1403. Oct. 22, 2009.

<sup>17</sup> “America’s Affordable Health Choices Act of 2009” pp. 216, <http://waysandmeans.house.gov/media/pdf/111/AAHCA09001xml.pdf> (Accessed 11/9/09).

<sup>18</sup> “Congressional Roundup: Senators Discuss Physician Pay Fix; Health Reform Talks Continue in Senate,” BNA Health Law Reporter (18) 1403. Oct. 22, 2009; “Senate Rejects ‘Doc Fix’ Spending Bill, as Some Democrats Side With Republicans,” by David Herszenhorn and Robert Pear. NY Times, Oct. 21, 2009, <http://prescriptions.blogs.nytimes.com/2009/10/21/senate-rejects-doc-fix-spending-bill-as-some-democrats-side-with-republicans> (Accessed 11/2/2009).



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