

News Bulletin: Senate Fails to Stop Physician Payment Cut

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 it 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 intervene 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.¹ 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.”*²

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.³ 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 2005.⁴ 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.⁵ Table I, below, illustrates the proposed and actual physician fee schedule conversion factor (CF) updates for the years 1997 through 2009.

Table I. Proposed and Actual Annual updates to the physician fee schedule conversion factor, 1997-2009⁶

Year	CF Update
1997	0.6%
1998	2.3%
1999	2.3%
2000	5.5%
2001	5.0%
2002	-4.8%
2003	1.7%
2004	1.5%
2005	1.5%
2006	0.2%
2007	0.0%
2008	0.5%
2009	1.1%

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.⁷

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.⁸ 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, 2010.⁹

On May 20, 2010, text of the “American Jobs and

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 shaving 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

- 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
- 3 “Medicare’s Physician Payment Rates and the Sustainable Growth Rate”, Statement of Donald B. Marron before the Subcommittee on Health, Committee on Energy and Commerce, and U.S. House of Representatives, Congressional Budget Office, July 25, 2006, p. 3-4
- 4 “Medicare’s Physician Payment Rates and the Sustainable Growth Rate”, Statement of Donald B. Marron before the Subcommittee on Health, Committee on Energy and Commerce, and U.S. House of Representatives, Congressional Budget Office, July 25, 2006, p. 3-4
- 5 “Medicare’s Physician Payment Rates and the Sustainable Growth Rate”, Statement of Donald B. Marron before the Subcommittee on Health, Committee on Energy and Commerce, and U.S. House of Representatives, Congressional Budget Office, July 25, 2006, p. 9-10
- 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
- 7 “Medicare’s Physician Payment Rates and the Sustainable Growth Rate”, Statement of Donald B. Marron before the Subcommittee on Health, Committee on Energy and Commerce, and U.S. House of Representatives, Congressional Budget Office, July 25, 2006, p. 4-5
- 8 “House Passes H.R. 3961—Legislation to Permanently Repeal the SGR”, American Medical Association, Health System Reform Bulletin, November 19, 2009, <http://www.ama-assn.org/ama/pub/health-system-reform/resources/bulletin/november-2009/19nov2009.shtml> (Accessed 5/18/10)
- 9 “Senate Passes Temporary Physician Fee Fix, Will Delay Rate SGR Cuts Until June,” Becker’s Hospital Review, <http://www.hospitalreviewmagazine.com/news-and-analysis/business-and-financial/senate-passes-temporary-physician-fee-fix-will-delay-rate-sgr-cuts-until-june.html>, Accessed May 5, 2010
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- 11 “Fee Cut to Go Into Effect, but CMS Holding Off Claims Processing,” by Leigh Page, Becker’s ASC Review, June 1, 2010. <http://www.beckersasc.com/news-analysis-asc/business-financial-benchmarking/fee-cut-goes-into-effect-but-cms-holding-off-claims-processing.html>. (Accessed 06/15/2010),
- 12 “Fee Cut to Go Into Effect, but CMS Holding Off Claims Processing,” by Leigh Page, Becker’s ASC Review, June 1, 2010. <http://www.beckersasc.com/news-analysis-asc/business-financial-benchmarking/fee-cut-goes-into-effect-but-cms->

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- 14 “Modern Physician Alert: Senate Crafts Six-Month Doc-Pay Fix,” Modern Physician, June 16, 2010, <http://www.modernhealthcare.com/apps/pbcs.dll/article?AID=/20100616/MODERNPHYSICIAN/306169941#> (Accessed 6/16/2010)
- 15 “Medicare Payment Cuts To Doctors Loom As Republicans Reject Slimmed-Down 'Extenders' Package,” Kaiser Health News, June 18, 2010, <http://www.kaiserhealthnews.org/Daily-Reports/2010/June/18/Doc-Fix-Extenders-Bill.aspx> (Accessed 6/18/2010).
- 16 “Medicare Payment Cuts To Doctors Loom As Republicans Reject Slimmed-Down 'Extenders' Package,” Kaiser Health News, June 18, 2010, <http://www.kaiserhealthnews.org/Daily-Reports/2010/June/18/Doc-Fix-Extenders-Bill.aspx> (Accessed 6/18/2010).
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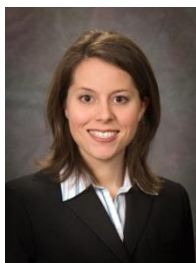
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