

Congress Clears Temporary “Doc Fix” Bill to Postpone Physician Cuts Until 2015; ICD-10 Compliance Delayed Again

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At the end of March, the House and Senate acted on legislation to prevent a 24% Medicare cut for physicians from taking place on April 1, 2014. H.R. 4302, the *Protecting Access to Medicare Act of 2014*, extends current Medicare reimbursement rates until March 31, 2015, and extends for one year a number of other Medicare payment policies.

The temporary fix was criticized by the American Medical Association (AMA) and many other physician groups, which had hoped for a permanent fix. AAEM sent out an action alert in March asking members to contact their legislators in Washington, urging support for a bipartisan, permanent SGR repeal rather than another short-term patch. The House and Senate tax-writing and health committees have been working towards a long-term solution since the beginning of 2013, and leaders were mostly in agreement on a bipartisan framework that would replace the Medicare Sustainable Growth Rate (SGR) with a period of stable, positive payment updates and later a new payment system that would allow physicians to earn additional payment adjustments if they met certain performance benchmarks.

However, Republicans and Democrats were never able to coalesce around a plan to offset the cost of the permanent fix, which exceeded \$150 billion once other Medicare extenders were taken into account. House Republicans passed a permanent fix in March, which was paid for by delaying the Affordable Care Act's (ACA) individual mandate through 2019. This legislation was rejected by Senate Democratic Leadership and

the Administration, which claimed that the change would result in higher premiums and more uninsured Americans. The Chairman of the Senate Finance Committee floated a proposal to pay for the fix using savings from a reduction in funding for overseas war operations, but a number of key Republicans described that provision as a gimmick because it claims savings from money that would never have been spent in the first place.

When it became clear that the two sides would not reach an agreement by April 1, some of the negotiators asked for a shorter-term extension so that discussions could continue on a permanent solution, but ultimately the House and Senate advanced a proposal that would fix the rates for a full year.

The final bill included a number of provisions that impact physicians. Notably, the legislation delays for one year the transition from the International Statistical Classification of Diseases (ICD)-9 to ICD-10. The compliance date had already been delayed in 2012, when HHS decided to set the new date for October 2014. This legislation postpones ICD-10 until October 1, 2015. Some physicians and hospitals have advocated the delay, as there are concerns about the sharp increase in the number of codes when the transition is completed. They claim that the new system would impose large costs and administrative burdens on medical professionals. The bill also prevents the Centers for Medicare and Medicaid Services (CMS) from enforcing the “two-midnight” rule until April 2015. This policy was designed to prevent hospitals from abusing patient observation status and was originally scheduled to take effect in October 2013, before an earlier delay in enforcement. The rule permits Medicare coverage of admitted inpatients expected to require care that exceeds two midnights, but often denies coverage for a shorter hospital stay.

A number of provisions are included to offset the cost of the one-year fix, which the Congressional Budget Office (CBO) estimates at \$20 billion. One such provision is designed to provide savings by enhancing payment accuracy, by identifying and reducing misvalued services. The data would be collected voluntarily from medical professionals and other sources, and the legislation includes a small amount of funding to compensate providers who submit data to CMS. Another cost-saving measure included in the bill would establish a program to promote the utilization of “appropriate use criteria” for certain advanced diagnostic imaging services.

Focus on Health Care Reform

With the “doc fix” off the table until 2015, Congress will likely continue its focus on health care bills that would modify or repeal parts of the ACA. While the Republican-controlled House has sought to pass legislation to change the law, the White House and the Democrat-controlled Senate has for the most part resisted significant modifications to the ACA. However, the White House has made some key changes, including adjustments to ACA enrollment deadlines and the delay of the law's employer mandate.

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Beyond these unilateral fixes, there have been few examples of the Administration and Congress working together to modify the ACA. Requests for additional funding to implement the law and extensions of expiring ACA policies such as the temporary Medicaid pay boost for primary care physicians are not likely to be advanced in a divided Congress.

Meanwhile, the House has already passed a number of measures in 2014 including bills to (1) repeal the ACA's definition of a full-time worker as an individual who works 30 or more hours per week; (2) delay the ACA's penalties against individuals who do not purchase health insurance; (3) prevent premium tax credits and subsidies authorized by the ACA to be granted to plans that cover elective abortion coverage; (4) allow an additional religious exemption from the ACA's minimum essential health care coverage requirements for individuals that hold religious beliefs which would cause them to object to medical health care provided under this coverage; (5) require HHS to provide notification to individuals of security breaches to federal or state health exchanges that compromised personally identifiable information; (6) establish that a volunteer providing firefighting and prevention services, emergency medical services, or ambulance services to a state or local government or tax-exempt organization is not counted as a full-time employee under the ACA's employer mandate to provide minimum essential health care coverage. House and Senate Republicans have also focused on proposals to delay

or repeal the ACA's 2.3% excise tax on medical devices.

On a larger scale, key House Republicans have been preparing for the introduction of an alternative health care proposal that would replace the ACA. This bill could be introduced as a larger comprehensive bill, or it may be presented as a series of smaller bills. Either way, there is little chance of any such proposal being enacted, but the alternative would be used for messaging in advance of the 2014 elections. Similar to the framework for an alternative health reform measure introduced by several Republican Senators earlier this year, the bill would likely maintain some of the more popular provisions of the law such as allowing individuals with pre-existing conditions to remain covered and maintaining the requirement that health plans allow dependent coverage up to age 26.

The alternative is also expected to include a section on medical malpractice reform. The Senate Republican measure specifically proposed capping non-economic damages for claims under the Federal Emergency Medical Treatment and Active Labor Act (EMTALA). It also would provide incentives for states to examine medical liability laws, promote reforms, and cite popular Republican ideas such as the establishment of special "health courts." House Republican Leadership has indicated that the House will vote on an ACA alternative before the end of the year. ■



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