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## **CLIENT ALERT**

**April 1, 2014**

### **Business As Usual With the Latest SGR Temporary Fix. . . But This One Includes a Stunning ICD-10 Delay.**

Late in the evening on March 31, 2014, the Senate easily passed the Protecting Access to Medicare Act of 2014 (H.R. 4302) which had just been passed by the House four days earlier. The Bill is now waiting for President Obama's signature. The passage of the Bill is good news/bad news. The significance is that the Medicare Sustainable Growth Rate (SGR) formula will not be implemented for one year, freezing the payment rates at their current levels until March 2015. This represents the 17<sup>th</sup> delay of the implementation of SGR which ultimately will represent a 24% Medicare physician pay cut. The bad news is that there is yet to be a permanent proposal for reforming the formula. Also, on a surprising note, the Bill included the delay of implementation of ICD-10 until October, 2015, *at the earliest*.

Congress created the SGR in 1997, a formula that would tie the amount of money budgeted for Medicare payments to the projected growth of the economy. Unfortunately, health care costs have by far outpaced economic growth which has created a multi-billion dollar shortfall in funding for Medicare payments. As a consequence, Congress has approved "doc fix" bills 16 times since 2003 resulting in the latest fix on March 31st so that more money could be appropriated to Medicare funding in order to avoid cuts in Medicare reimbursement rates for physicians.

Interestingly, the highly influential American Medical Association (AMA), along with other organizations representing physician specialty groups, were urging a "no" vote on the Bill. It is their position that a permanent fix to the doctors' perennial problem must be addressed now rather than constantly adjusting the SGR. AMA President Ardis Dee Hoven, MD, who had made a permanent fix to the SGR a top priority in this session had the following to say:

"This bill perpetuates an environment of uncertainty for physicians, making it harder for them to implement new innovative systems to better coordinate care and improve quality of care for patients."

"Remarkable progress was made this past year in reaching a bipartisan, bicameral agreement on policy to repeal the SGR, and the AMA encourages Congress to continue its work and resolve outstanding issues. On behalf of Medicare patients and physicians across the country, it is critical that we achieve permanent Medicare physician payment reform. We will continue our efforts to secure a permanent SGR repeal this year."

Opponents of the Bill also objected to the fact that it will be financed in part by shifting funds around between physicians through a new assault on "misvalued" procedures and through a four-percent across the board cut for all of Medicare for the first six months of 2024.

It is true that there is bipartisan support for a permanent solution, however, the issue is how to pay for it. Recent events had initiated the momentum for a permanent fix when, in February, 2013, the Congressional Budget Office unexpectedly cut the cost of a permanent fix by over one hundred billion dollars based on lower projections for Medicare spending. In February, 2014, bipartisan Congressional leaders released a joint proposal for permanently reforming the formula. Unfortunately, an agreement on how to pay for the fix could not be reached. Finally, Senate Majority Leader Harry Reid (D-Nev) and House Speaker John Boehner (R-Ohio) worked together on the current last minute SGR stop-gap. A last-ditch attempt by Senate Finance Committee Chairman Ron Wyden (D-OR) to put through a permanent solution to the SGR problem by repealing and replacing the SGR and paying for the \$138 billion hole it would create in the budget by using savings from winding down military operations in Afghanistan, known as Overseas Contingency Operations funding, failed on Monday afternoon

One of the biggest surprises found in the Bill, however, was the inclusion of the ICD-10 delay. This was unexpected because Marilyn Tavenner, Head of the Centers for Medicare and Medicaid Services (CMS), had recently declared that there would be no extensions. Moreover, in the hours after the Senate vote, questions were already raised as to whether the delay would last longer than one year. In addition, demands are being made on CMS to provide new guidance to the industry on what the delay means for providers, vendors, clearinghouses and other concerned parties. No industry group(s) has taken credit for achieving this delay.

Other changes in the Bill include a delay in the enforcement of the controversial two midnight payment rule for hospitals and a suspension of recovery audits of medically unnecessary claims, both until March, 2015. In addition, there is a two-year delay of Section 202 of the Bipartisan Budget Act of 2013 (BBA). Section 202(b) of the BBA expanded the scope of Medicaid's recovery rights with respect to personal injury settlements from being solely limited to the portion of the settlements allocated to medical expenses to the entire settlement. Strengthening Medicaid's rights in this respect is now delayed until October 1, 2016.

Although physicians have survived another year without the drastic SGR reductions, the fix is only temporary and Congress still has much work to do to remedy this looming problem. Over the next year Congress has three options: pass another "doc fix" Bill, pass a Bill overhauling Medicare payments, or see skyrocketing costs of doctors who treat Medicare patients. CMS also has its work cut out for it on a host of issues created by this Bill: providing guidance on the new timeline for ICD-10 implementation, resolving

the controversial issues swirling around the two midnight payment rule and providing guidance on what the suspension of recovery audits means to providers. As news develops on all of these issues, we will keep you posted.

If you have questions regarding this Bill, or any health law matter, please contact Stephanie Ottenwess at [sottenwess@ottenwesslaw.com](mailto:sottenwess@ottenwesslaw.com).

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