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Headed for Another Medicare Showdown

CMS ANNOUNCES 29.4 PERCENT PHYSICIAN FEE CUT FOR 2012.

Editorial Staff

Whether it's Congress vs. the Centers for Medicare & Medicaid Services, CMS vs. health care providers, or any other combination of the three, the latest showdown seems inevitable in the coming months regarding proposed Medicare fee cuts and how they are determined. According to a recently released Congressional Budget Report, a 29.4 percent reduction in reimbursement will take effect Jan. 1, 2012 if Congress doesn't step in – as it has done every year without fail since 2003 – at the last minute to block the fee cuts.

"The Congressional Budget Office (CBO) projects that, under current law, payment rates for physician services will be reduced by 29.4 percent in 2012. That large reduction called for under current law follows several years of legislative action to either maintain or increase physician payment rates under the Medicare program when those rates were otherwise scheduled to decrease under the provisions of law known as Medicare's Sustainable Growth Rate (SGR) mechanism. Such legislative actions have overridden the SGR."

The Congressional Budget Report mentions two SGR changes – referred to as the "clawback" and the "cliff" – used by Congress to override scheduled fee reductions since 2003. According to the report, "In the case of the clawback approach, the legislation providing for a short-term adjustment in payment rates also overrides the provision in underlying Medicare law that requires that the

SGR target be adjusted to accommodate changes in spending that result from changes in law or regulatory action. The effect of that override is that the additional spending that results from the adjustment in payment rates (compared with the spending that would have occurred if the scheduled reduction in payment rates had gone into effect) is counted as excess spending above the target. Under current law, application of the SGR mechanism will eventually recoup (or claw back) that excess spending through further reductions to payment rates in subsequent years."

Congress could also use the cliff mechanism, which "for a short-term adjustment in payment rates, also overrides the provision in current law that would cap the reduction at MEI [Medicare Economic Index] minus 7 percent in the year following the adjustment. Further, the cliff mechanism specifies that the payment rate update in the year that the override expires 'shall be calculated as if that freeze (or increase) had not been enacted.' Unlike clawback legislation, which limits future rate reductions to no more than 7 percent in any given year, cliff provisions can result in a very large rate reduction in the year following a short-term rate adjustment. Each year the difference between the legislated payment rate and the rate in the year the override expires has grown. The current projection of a 29.4 percent cliff at the start of calendar year 2012 reflects the cumulative effect of all reductions called for under the SGR formula but overridden by legislative action since 2007."

An alternative to cliff or clawback strategies would be to eliminate or dramatically revise the SGR formula altogether – an option no doubt endorsed wholeheartedly by those who believe the formula is inherently flawed. According to the CBO report, one of three things could happen:

- "The SGR could be replaced with a specified update – a freeze, the MEI, 1 or 2 percent – in each year through 2021."
- "Options that 'Reset the SGR' would forgive all spending that has accrued above the cumulative targets and set both the cumulative target and cumulative spending to zero as of December 31, 2010. Those options would use calendar year 2011 as the base period for future application of the SGR and would specify an update in 2012 equal to the MEI. The subsequent options would reset the SGR as described above, but increase the target either by 1 or 2 percent, with other factors in the target remaining unchanged."
- "The final option ... reflects the Fiscal Commission's policy recommendations, under which payment rates to physicians would be frozen in 2013, decreased by 1 percent in 2014, and then subject to an SGR that could be reset in 2015, using the 2014 spending level as the base." This option also assumes a freeze of payment rates in 2012.

Whether any of these three options, if adopted, would solve the problem long term is a matter of pure peculation. Likewise, the long-term viability of the "clawback" and "cliff" strategies remains unclear; if anything, they appear to merely delay even-larger cuts year to year. To get a clearer picture of what these options mean, and how they could impact you and your practice, review the entire CBO report, "Medicare Payments to Physicians: The Budgetary Impact of Alternative Policies," by clicking here.

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