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SGR-driven Payment Reduction Postponed Again [Ober|Kaler]

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As part of the Balanced Budget Act of 1997 (BBA), Congress enacted a number of payment reforms designed to curb the growth of expenditures under Medicare Part B. One of the more notable of those provisions was the Sustainable Growth Rate (SGR), 42 U.S.C. § 1395w(4)(f), through which Congress sought to control the growth in aggregate Medicare expenditures for physicians' services. The SGR is based on a spending target linked to the nation's gross domestic product, and actual spending on physicians' services is then compared with this target. To the extent that spending is less than or exceeds the target, Medicare adjusts the physician fee schedule conversion factor up or down for the next year so that all physicians see a proportional increase or reduction to their fees.

Initially, the SGR benefited physicians because of strong economic growth. In the early 2000s, however, expenditures exceeded the target, which led to proposed cuts in the Medicare physician fee schedule payments for 2003. Concerned that these cuts would drive physicians to abandon Medicare, Congress postponed the cuts, and has repeated this step year after year. At present, therefore, the SGR, if it were to be applied, would require a 24.4% cut in the Medicare conversion factor beginning January 1, 2014.

Each time it has delayed the application of the SGR, Congress has recognized that the SGR, as designed, is flawed. Congress has repeatedly debated reforms to the formula to address the SGR's shortcomings, but it has been unable to agree on how to pay for the reforms. This year, again, Congress wrestled with the SGR problem but, more so than in past years, it appeared this year that there was a real likelihood that Congress would ultimately agree on a solution. These appearances, however, may have been misplaced. As the calendar year ended, Congress once more was unable to agree on a long-term solution, and instead of broadly addressing the SGR problem, it again delayed its implementation, this time for a mere three months.

The delay in the SGR is contained in the Pathway for SGR Reform Act of 2013 (the Reform Act), which was attached as an amendment to the Bipartisan Budget Agreement of 2013, and signed into law by the President in late December. In the Reform Act, Congress provided for a three-month reprieve from the SGR cuts, with the hope that both houses of Congress will continue to work on a long-term budget deal and on a permanent SGR fix. For the short term, however, the draconian cuts resulting from the SGR's application are delayed, and there will be, instead, a .5% update for claims with dates of service on or after January 1, 2014, through March 31, 2014.

Also included in the SGR Reform Act is an extension of the exception process for outpatient therapy caps, again through March 31, 2014. Additionally, there is an extension for ambulance add-on payments that were initially authorized under the Middle Class Tax Relief and Job Creation Act of 2012. Further, there is an extension of the Medicare inpatient hospital payment adjustment for Low Volume Hospitals authorized originally by the Affordable Care Act, and an extension of the Medicare-Dependent Hospital Program. Again, these extensions are limited, going only through March 31, 2014.

Ober|Kaler's Comments

The Pathway for SGR Reform Act of 2013 provides a narrow window within which Congress must act. But can Congress agree on broad-based payment reform between now and that date? Recent history suggests that the answer is no and that yet another patch will be required.