ACP American College of Physicians[SM]
Leading Internal Medicine, Improving Lives

The Quest for SGR-Repeal: The Progress and Challenges to Date

2014 Leadership Day on Capitol Hill

Background

Where Things Stand

The issue of reforming Medicare's physician payment formula, known as the Sustainable Growth Rate (SGR), has been a long-sought priority of organized medicine for the last 10 years. In fact, it is difficult to remember a time when ACP has not been advocating for repeal of the SGR, which indicates just how great the challenges have been in Congress to find bipartisan agreement on a solution to the SGR dilemma.

We are in a different place this year with the SGR, under completely different circumstances than in years past, because a bipartisan, bicameral agreement has been reached among the chairs and ranking members of the Medicare committees in Congress on the fundamental policy reforms to replace the SGR formula. Since May 2013, we have seen unprecedented progress by the Medicare authorizing committees in the House and Senate in crafting legislation that eliminates the SGR and moves us toward a value-based payment and delivery system. On Feb. 6, 2014, the *SGR Repeal and Medicare Provider Payment Modernization Act* (H.R.4015 in the House and S. 2000 in the Senate) was introduced, with the support of the chairman and ranking members of the House Ways and Means, House Energy and Commerce, and Senate Finance Committees. ACP applauded this effort and fully endorsed the legislation, along with so many related subspecialties. This legislation gives us reason to be more optimistic about the chances for SGR-repeal. Our chance has finally come, in 2014, to finally get rid of the SGR forever, and we have the legislation to do it now. If SGR-repeal is allowed to fail in 2014, we will lose momentum on all the progress that has been made to date, and will have to start all over again in the 114th Congress. Enactment of this legislation is a top priority for Leadership Day this year.

Our optimism over the progress that has occurred is tempered with doubt because a significant challenge remains in getting SGR-repeal across the finish line: how to pay for it. Republicans and Democrats in Congress are at loggerheads over how to come up with the estimated $124 billion dollars to pay for SGR-repeal, or whether to even pay for it at all, which is discussed in detail in the background below. These differences of opinion among the parties on how or whether to pay for SGR-repeal cannot be underestimated in this tight budget environment, especially in an election year when each party wants desperately to hold the majority. And yet, in its perverse reasoning, Congress proceeded to pass legislation on March 31 enacting a one-year delay, at a cost of $15.8 billion, in scheduled SGR cuts that were supposed to take effect on April 1. These SGR "patches," as they are known, have been enacted virtually every year since the SGR formula was created, which only serves to increase the cost every year of full SGR-repeal. Nearly all of medicine opposed this patch.

In light of these factors, advocacy on the SGR issue has never been more important than this year. At Leadership Day and throughout the year, ACP will be aggressive, by every means necessary, in our efforts to influence the political will of Congress to get SGR-repeal done this year. Background information on the SGR is provided below, including the very basics of the SGR formula itself, an explanation of the *SGR Repeal and Medicare Provider Payment Modernization Act*, more details of the politics surrounding the issue, and key aspects of our advocacy efforts to date.

Background

The Sustainable Growth Rate Formula: the Basics

The SGR formula was enacted by Congress as part of the Balanced Budget Act of 1997 (BBA). This outdated formula determines payments to physicians for the services they provide under Medicare. Specifically, the formula limits growth in spending for physicians' services by linking updates to target rates of spending growth. A critical factor in the determination of the target rate is projected growth in the real gross domestic product (GDP) per capita. The law provides for a mechanism for enforcement of the target rate of growth. When spending increases exceed the targeted rate of growth, payments are automatically reduced across the board. Since the formula does not accurately keep pace with the actual cost of physicians' services, this typically results in scheduled payments cuts to physicians under Medicare virtually every year.

The SGR formula does not control volume and, in fact, cuts payments without regard to the quality or efficiency of care provided by an individual physician. Every year since 2001, the current, fatally flawed SGR formula has threatened to impose steep cuts in Medicare physician fee schedule payments for care provided to America's seniors. While Congress

typically acts to avert payment reductions, the average Medicare payment rate this year is essentially the same as it was in 2001.

Key Components of the *SGR Repeal and Medicare Provider Payment Modernization Act*

This legislation was introduced on Feb. 6, 2014 as the *SGR Repeal and Medicare Provider Payment Modernization Act*, H.R. 4015/S. 2000. It represents unprecedented bipartisan agreement on the part of the three committees in the House and Senate with jurisdiction over Medicare, the House Energy & Commerce and Ways & Means Committees and the Senate Finance Committee, on policy to repeal Medicare's SGR formula and replace it with a new value-based payment and delivery system. All three committee unanimously approved the legislation.

H.R. 4015/S. 2000 halts all scheduled SGR cuts, restores more than a hundred billion dollars to payment for physician services, offers multiple opportunities for physicians in private practice to earn higher updates, and gives the profession the leading role in offering alternative payment models, and designing the measures to evaluate performance.

This bill is the product of an unprecedented effort by organized medicine: it is supported not only by ACP, but also the American College of Surgeons, American Academy of Family Physicians, American Medical Association, and almost all of the state medical societies and specialty societies. View the joint support letter here. The impact of this legislation on physicians is as follows and a more detailed accounting of how its provisions are an improvement over current law can be found here:

- It guarantees positive baseline updates for 5 years, versus a 24 percent cut on 4/1/2014 (and likely more SGR cuts afterwards). Even if Congress were to override the next SGR cut, past practice tells us we would get another multi-year freeze, at best--and quite likely, across-the-board cuts.
- The SGR results in scheduled pay cuts no matter what you do, versus giving you the opportunity to earn higher updates for quality improvement or being in a Patient-Centered Medical Home or other Alternative Payment Model. Physicians are empowered to determine your own annual update, above and beyond the baseline updates, based on your performance in a new merit-based incentive program or participation an alternative payment model (APM). Under current law, all physicians get the same (negative) scheduled SGR updates.
- It adds $128 billion to physician payments over 10 years versus $120 billion in cuts from the SGR, at a time when fiscal realities are causing across-the-board cuts in many other programs.
- It cancels the existing Physician Quality Reporting System (PQRS) and EHR Meaningful Use penalties at the end of 2017, adding these dollars back to physician payments instead of going to the federal government. Under current law, you could be facing the following penalties in 2018:
  - ✓ PQRS -2.0 percent in 2018 and beyond
  - ✓ Meaningful Use -4 percent in 2018, -5 percent in 2019
- It also cancels any potential negative adjustments that physicians may face as part of the Medicare Value-Based Payment Modifier Program in 2018 and beyond.
- It unifies the current PQRS, Meaningful Use, and Medicare Value-Based Payment Modifier program into a single reporting program starting in 2018, creating an opportunity for us to work to harmonize measures and streamline reporting.
- Certified Patient-Centered Medical Home (PCMHs) and PCMH subspecialty practices will get the highest possible scores for clinical practice improvement under the new Merit-based Payment Incentive System and will be able to bill and be reimbursed for chronic care management starting in 2015; advanced PCMHs can qualify as an APM and get 5 percent annual bonuses for six years without taking direct financial risk.
- It provides $40 million per year in technical assistance to small practices.
- It mandates a process to improve the accuracy of Medicare relative value units (RVUs).

Congressional Action on the SGR in 2014

SGR-Repeal Legislation:

The introduction of the *SGR Repeal and Medicare Provider Payment Modernization Act* (H.R. 4015/S. 2000) on Feb. 6 set in motion a series of activities in both the House and Senate that only accelerated with the approach of the April 1 scheduled SGR cuts. Soon after introduction, it was clear that a vote on H.R. 4015/S. 2000 was only going to come after direct negotiations between leaders of the House and Senate took place on how to pay for it – only they were not talking, much to the dismay of ACP and most of medicine. Despite agreement on the policy behind H.R. 4015/S. 2000, Republicans and Democrats were far apart, and still are, on how to deal with the budget impact of this legislation and SGR-repeal in general. In April, the Congressional Budget Office (CBO) estimated the cost of SGR-repeal at $124 billion. The *SGR Repeal and Medicare Provider Payment Modernization Act*, as introduced, is estimated to cost $138 billion, as it contains related policies that have a cost impact. Republicans and Democrats have fundamental philosophical differences over how to pay for the cost of SGR-repeal or even if it should be paid for. Rather than work together, in a serious way, to find common ground on how to address the budget impact of SGR-repeal, Republicans and Democrats have remained to this day entrenched in their differing opinions on the matter.

Republicans have been insisting that SGR-repeal be paid for and, on Mar. 14, 2014, the Republican-controlled House passed H.R. 4015 with a "pay for" that delayed the Affordable Care Act's (ACA) individual insurance mandate for five years, which ACP opposed because it was contrary to existing College policy. Delaying the individual insurance requirement, according to the CBO, will increase the number of uninsured and result in higher premiums. Also, by linking enactment of H.R. 4105 with a provision to fundamentally alter the ACA by delaying the individual insurance requirement, the GOP-controlled House knew that it was passing a bill that would be unacceptable to the Democratic-controlled Senate and President Obama. The Obama Administration issued a statement that the President would veto the bill if sent to him with a delay in the ACA's individual insurance requirement.

The Democratic-controlled Senate refuses to consider H.R. 4015/S. 2000 with a "pay for" that in any way harms or dismantles the ACA. In the Senate, agreement on how to bring SGR-repeal legislation to the floor for a vote – even among Democrats – has been fraught with difficulties. The Senate Finance Committee was chaired by then-Senator Max Baucus (D-MT) at the time that agreement was reached on S. 2000 on February 6. Senator Baucus shortly thereafter resigned from the Senate to become ambassador to China. He was replaced by Senator Ron Wyden (D-OR) as the new Chairman of the Finance Committee. Chairman Wyden has been diligent in his efforts to enact SGR-repeal legislation this year. In March, Senator Wyden introduced two bills (S.2110 and S.2157) with identical policy to that contained in the *SGR Repeal and Medicare Provider Payment Modernization Act* plus extension of several other expiring health-related programs–but each with different methods of addressing the budget issue (e.g. one includes a "pay for" that uses unspent war funds, called Oversees Contingency Operations—OCO—funds, the other offers no "pay for"). Majority Leader Reid has not yet scheduled any SGR-repeal legislation for floor consideration in the Senate this year. Meanwhile, the reaction of House leaders and key Senate Republicans, including Senator Orrin Hatch (R-UT), the ranking member of the Senate Finance Committee, to the "pay fors" proposed by Senator Wyden has been that of opposition, believing that unspent war funds are not a legitimate source of funding (i.e. budget gimmicks) and no "pay for" is just as objectionable because it would (on paper) raise the national deficit another $138 billion.

As of May 1, talks are at a standstill between the House and Senate on the matter with no real urgency for action because an SGR "patch" was enacted in law on April 1, delaying scheduled SGR cuts until April 1, 2015.

SGR "Patch" Legislation:

On April 1, 2014, the President signed into law H.R. 4302, legislation delaying a scheduled 24 percent SGR cut until April 1, 2015. This was the 17th SGR "patch" in the last 11 years. Despite strong urging from most physician organizations, including ACP and its Advocates, that Congress vote down the "patch" and stop pushing off permanent SGR-reform to the future, both the House and Senate succeeded in passing H.R. 4302. In a March 31 statement, ACP expressed disappointment and frustration on Senate passage of the "patch," as it had a few days earlier when the House passed the measure. Although ACP clearly did not want the 24 percent scheduled SGR cut to go into effect on April 1, the College opposed the patch—even though it would postpone the cut until April 1 of 3015—because another patch would give Congress an excuse to put off action on permanent SGR repeal until the 114th Congress. Instead of a patch, ACP argued that Congress could stop the 24 percent scheduled SGR cut on April 1, and all future SGR cuts, by passing permanent repeal based on the bipartisan, bicameral bill agreed to by the Medicare committees.

During floor consideration of H.R. 4302, debate on the measure was fierce with many members of Congress on record as wanting full SGR-repeal but under intense pressure by chamber leaders to agree to another "patch" so scheduled cuts did not go into effect. In those final days leading up to April 1, the issue became so politically charged that passage of H.R.4302 was not assured in either chamber. In a last-minute sleight-of-hand, the House even resorted to passing the measure by voice vote when no one was in the chamber to object because it did not have the required support of 2/3rds majority of House members to secure passage. The implications of that voice vote meant that no House members were held accountable for how they would have voted on the measure because there was no recorded vote. The Senate passed H.R. 4302 by a recorded vote of 64 to 35.

ACP Advocacy and Next Steps

ACP advocacy on permanent SGR-repeal has been steadfast since the three Medicare authorizing committees began crafting the bipartisan legislation that was eventually introduced as the *SGR Repeal and Medicare Provider Payment Modernization Act* (H.R.4015/S. 2000) on Feb. 6, 2014. ACP fully endorsed this legislation, as introduced, and diligently worked in collaboration with nearly all of organized medicine to convince Congress to pass it before the April 1, 2014 scheduled SGR cut. ACP was both disappointed and frustrated when Congress could not muster the political will necessary to shepherd this legislation through both chambers before April 1.

The main obstacle standing in the way of enactment of H.R. 4015/S. 2000 has been the failure of Congress to find agreement on the budget impact of SGR-repeal. Throughout the entire process, ACP has stated that it is Congress' responsibility to decide how to pay for the cost of SGR-repeal, as budget matters do not fall within the expertise of ACP or its members. For that reason, we have not offered specific offsets applicable to SGR-repeal. What we have proposed, since 2011, is a broad array of policy reforms that, if enacted, could produce significant savings to the federal government, but at no time did we offer them as a possible offset for the cost of SGR-repeal.

As noted above in the context of H.R. 4015/S. 2000, both the House and Senate have put forth possible ways to offset the cost of SGR-repeal. Those ideas included: delaying the ACA's individual insurance mandate, as put forth by House Republicans; using billions in unspent war funds known as Overseas Contingency Operations (OCO) funds that would no longer be needed as the United States withdraws its military presence from Iraq and Afghanistan, as put forth by Senate Democrats; not paying for SGR-repeal at all but in the process add $138 billion to the national deficit, as put forth by Senate Democrats. ACP has largely and intentionally stayed out of the fray during the congressional debate on the budget issues surrounding SGR-repeal. However, we felt compelled to address the budget matter in the following instances during House and Senate floor debate in March:

- ACP opposed Republican efforts in the House to offset the cost of SGR-repeal by delaying the ACA's individual insurance mandate, as this was in direct contradiction with long-standing ACP policy. Without a requirement to purchase insurance through the newly-established health exchanges, healthy individuals would delay or decide not to purchase insurance, creating a risk pool comprised primarily of sick enrollees who would drive up the cost of coverage and destabilize the insurance market. The House succeeded in passing H.R. 4015 using the individual mandate as a "pay for," but the Senate would not consider it.

- ACP supported Senator Ron Wyden's efforts, as the new Finance Committee Chair, to pass SGR-repeal using either OCO funds or with no "pay for" at all. It was clear to ACP that the Senate needed to pass SGR-repeal legislation, namely S. 2000, with its own "pay for" so that both chambers were then on equal footing, which would then precipitate direct negotiations between House and Senate leaders on how to solve their budget differences. ACP supported Senator Wyden's efforts so congressional leaders could move forward with those direct discussions that would ideally result in a compromise on the budget issue and ultimate passage of the SGR-repeal policy as agreed to by the Medicare authorizing committees. In 2014, the Senate Majority Leader has not scheduled S. 2000, or any other SGR-repeal legislation, for a floor vote because it still unclear whether either of the "pay fors," as proposed by Senator Wyden, or any other pay-fors, could garner the 60 votes needed in the Senate.

That said, ACP's advocacy message on the SGR has been clear: House and Senate leaders need to enter into direct negotiations, resolve the budgetary impasse on SGR-repeal in a way that can pass both chambers, and enact the SGR-repeal policy as agreed to by the Medicare authorizing committees – before the end of the year.

As noted at the outset of this document, the circumstances surrounding the SGR this year are different than they have been in the past. Some key reasons include:

- The policy crafted by the committees in H.R. 4015/S.2000 is like nothing we have seen before because it not only eliminates the antiquated SGR formula but it systematically transforms how healthcare is delivered, in a way that advances so many of ACP's long-standing policies.
- The committees in both the House and Senate have approved this legislation, and in a bipartisan fashion, which has never happened.
- The cost to repeal the SGR has decreased substantially from previous years at $124 billion, as estimated by the Congressional Budget Office in April. This cost has increased slightly from CBO's February estimate, which means that if Congress further delays permanent SGR-repeal, the cost may continue to increase.

ACP believes that it is still possible for Congress to reach agreement, this year, on full SGR repeal and how to pay for it, but our window of opportunity for enactment of H.R. 4015/S.2000 is fleeting because the 113th Congress will end at the end of this year. That means that in January 2015, if not enacted by then, this legislation is dead. The new 114th Congress will begin in January, with many newly-elected members of Congress, the committees of Medicare jurisdiction will be reformulated, leadership in the House and Senate could change, and all legislation must be reintroduced. In other words, as far as H.R. 4015/S. 2000, we literally would have to begin the entire process again, and in a different political and legislative environment.

Continued ACP advocacy, on the part of its governance, Advocates, and its entire membership is critical if we are to bring about comprehensive SGR reform this year.

For more information on ACP's positions on payment and delivery system reforms, please visit the Advocacy section of ACP Online, http://www.acponline.org/advocacy/where_we_stand/physician_payment/.