

## PERMANENT SGR REPEAL AND REPLACEMENT STILL POSSIBLE AS DEADLINE LOOMS

With the last Sustainable Growth Rate ("SGR") "patch" set to expire on March 31, 2015, lawmakers on Capitol Hill must soon decide whether to pass another "patch" or to finally tackle the issue of permanent SGR repeal and replacement. Just last week, House Majority Leader Kevin McCarthy (R-CA) and House Ways and Means Committee Chairman Paul Ryan (R-WI) told attendees at the annual Federation of American Hospitals meeting in Washington, D.C., that permanent repeal and replacement was off the table. However, although details are scarce, sources on Capitol Hill have told Hall Render attorneys there may now be a deal to permanently repeal and replace the Medicare physician payment formula that is currently under review by House and Senate leadership to determine whether there are enough votes for passage.

### WHAT ARE THE OBSTACLES TO FULL REPEAL AND REPLACEMENT?

Since SGR repeal and replacement legislation was introduced last year, the main obstacle to passage has been how lawmakers will come up with the \$170 billion needed to fully offset the cost. But reports now indicate that key House committee staffers are discussing passage of an SGR repeal and replacement package that would be partially offset or not offset at all. While either approach would improve the chances of passing the SGR repeal and replacement bill, those chances are far from certain because of potential opposition from members of Congress from both sides of the aisle.

In the House, most Republicans, including those who align themselves with the Tea Party, continue to demand that the cost of permanent repeal and replacement be completely paid for and not add to the federal deficit. If that continues to be the case, the Republican leadership will have to rely on a significant number of Democratic votes to pass any measure. This puts House Speaker John Boehner (R-OH) in a difficult position because to do so would go against an unwritten House Republican rule that legislation isn't to be passed without a majority of Republicans voting in favor. Last week, Speaker Boehner was harshly criticized by the more conservative members of his party after using a large number of Democratic votes to pass a funding bill for the Department of Homeland Security that did not include a provision blocking President Obama's executive order on immigration. Since it is unlikely that he would be willing to use this method again too soon, passage of a six to nine month SGR "patch" is much more likely.

If House lawmakers pass another temporary SGR "patch," opposition on the Senate side of Capitol Hill should be minimal. The only roadblock would be if such legislation comes out of the House with offsets that are unacceptable to Senate Democrats. These would include repeal of the ACA's individual mandate, insurance reforms or an increase in Medicare beneficiary payments. Although there is a chance that some of the more conservative Senate Republicans will threaten to filibuster any SGR bill that would increase the federal deficit, it is more likely that they would instead vote against the measure on final passage. Senate Majority Leader Mitch McConnell (R-KY) has made clear that he wants to show the American people that the Senate can pass legislation and there is no Senate Republican rule that prevents him from doing so with a large number of Democratic votes.

### HOW WOULD CONGRESS PAY FOR PERMANENT SGR REPEAL AND REPLACEMENT?

If an SGR repeal and replacement bill is to be paid for at all or Congress passes another "patch," lawmakers will focus mainly on cuts to providers to cover the cost. Reports indicate that these include extending the Medicare sequester and rebasing payments for disproportionate share hospitals for another year, setting a timeline and parameters for bundled post-acute care, changing post-acute care inflationary updates, and creating site-neutral payments for some providers on certain patients/procedures (e.g., inpatient rehab facilities/SNFs and hospital outpatient departments/physician offices). There is also discussion of creating a uniform deductible for Medicare Parts A and B, which would have a bigger impact on SNFs and home health since they are not currently subject to cost sharing.

### CONCLUSION

As recently as Monday, March 9, it was widely believed that lawmakers in Congress had settled on passage of another temporary "patch" to the Medicare physician payment formula before the current law expires on March 31, 2015. However, passage of a bill to permanently repeal and replace the SGR is still being discussed by key House committee staffers. Since the cost of permanent repeal and replacement of the SGR is likely to be paid for almost exclusively with cuts to health care providers, developments on Capitol Hill over the next week warrant

close observation.

For more information, please contact John F. Williams III at 202.442.3780 or [jwilliams@hallrender.com](mailto:jwilliams@hallrender.com).

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