May 28, 2014

The Fight is Not Over!

Dear ASCRS eyeContact,

You and your fellow ASCRS members have made a tremendous difference in our ongoing effort to repeal the Sustainable Growth Rate (SGR) and reform Medicare Physician Payment. Throughout the past year, you and thousands of other physicians have voiced your support for repealing and reforming the system so that it preserves patient access to specialty care and adequately compensates physicians for their services.

Your advocacy has helped transform previously unacceptable versions of Medicare physician payment reform legislation into a consensus bill (H.R. 4015/S. 200) supported by both parties on the Hill, both the House and the Senate, and the medical community. Despite the widespread support and the bill’s passage in the House, Congress passed another one-year “patch” to the SGR—over the objections of ASCRS and the medical community—after negotiations over the bill’s cost off-sets fell apart.

While we and our partners in the medical community are extremely disappointed that Congress opted for the patch when so much progress had been made, we will continue to advocate for a full repeal. This newsletter contains detailed information about the proposal and how you can help achieve our goal.

For additional background information, use the ASCRS eyeContact Action Center. Refresh your advocacy skills with the updated Grassroots Handbook, available at the Action Center electronically for no charge.

If you have any questions or need additional assistance, please feel free to contact Allison Dickert, manager of PAC and grassroots, at 703-591-2220 or adickert@ascrs.org.

Sincerely,

Brock K. Bakewell, MD
Chairman, Government Relations Committee
EyeContact Update

Medicare Physician Payment Reform/SGR Repeal and Replacement

**Status:** The House of Representatives passed legislation (H.R. 4015) to repeal and replace the SGR with a 5-year delay in the individual mandate as an offset. The Senate has not acted on its version of the bill (S. 2000), and neither side could come to agreement on cost off-sets before the previous “patch” expired on April 1, 2014. Congress passed an additional one-year patch, over the objections of the medical community, which contained an objectionable provision seeking to revalue certain “misvalued” codes to meet arbitrary savings targets.

**What this means for you:** Medicare physician payments will continue with a 0.5% update through the end of 2014 and a 0.0% update from January to March 2015. In the meantime, ASCRS and the medical community will push for a full repeal and urge legislators to develop bipartisan cost off-sets before the end of the year. eyeContacts will also be called upon to contact their legislators and ask them to prioritize the repeal.

House Passes SGR Repeal and Replacement; Partisan Wrangling on Pay-Fors Prompts Congress to Pass Another One-Year “Patch”

SGR Repeal and Medicare Provider Payment Modernization Act (H.R. 4015/S. 2000)

After several iterations of SGR repeal and replacement proposals that did not adequately meet the policy goals of ASCRS and the specialty medical community, the House Ways and Means, the House Energy and Commerce, and the Senate Finance Committees introduced bipartisan, bicameral compromise legislation, the SGR Repeal and Medicare Provider Payment Modernization Act (H.R. 4015/S. 2000).

The new bill addresses concerns raised by ASCRS and others in the specialty medical community over previous versions and is supported by ASCRS and the medical community. Specifically, the bill repeals the SGR and replaces it with a 0.5% update to Medicare physician payments for five years, preserves the fee-for-service system, and integrates existing quality reporting programs into a new Merit-Based Incentive Payment System (MIPS) that is not budget neutral and establishes clear quality improvement thresholds. Penalties associated with existing programs (PQRS, EHR/Meaningful Use and the Value-Based Payment Modifier) would be removed. The MIPS program would develop a composite score, whereby physicians would receive bonuses or penalties based on performance of a variety of measures.

ASCRS and other medical societies called on their members to contact Congress in support of the bill. Following that advocacy, the Republican-controlled House of Representatives passed H.R. 4015 in March, but paid for it by passing a five-year delay of the individual mandate. That partisan move was not supported by the Democratic leadership of the Senate, who in turn proposed either not off-setting the cost or paying for the repeal with surplus Overseas Contingency Operations (OCO) funds—equally unacceptable to their House Republican counterparts. ASCRS and the medical community urged Congressional leaders to identify bipartisan pay-fors, but Congress opted instead to suspend negotiations and pass another one-year “patch.” The Senate is yet to act on SGR repeal and replacement legislation.

The Protecting Access to Medicare Act (P.L. 113-93), aka the SGR “Patch”

Due to strong physician group opposition, including from ASCRS, and the desire of members of both parties in both Houses of Congress to continue work on a full repeal, the one-year “patch”—while ultimately passing and becoming law on April 1, 2014—faced some initial uncertainty. ASCRS and the medical community opposed the one-year “patch” because it would further delay a full repeal of the SGR, and it included a troubling provision aimed at revaluing certain “misvalued” codes (see below for a full explanation of the provision). The “patch” includes a 0.5% update from April 1 to December 31, 2014, and a 0% update from January 1 to April 1, 2015.

The House leadership at first attempted to bring the bill to the floor under suspension of the rules, which requires a two-thirds majority, but due to bipartisan opposition that made passage with a supermajority unlikely, they were forced to scrap their original plan and forced through the measure with a hasty voice vote. Similarly in the Senate, senators from
both parties spoke on the floor against passing another “patch” when so much had been accomplished to repeal the SGR. The measure received only 64 yes votes—slightly exceeding the 60 needed—for passage.

ASCRS signed onto letters to House and Senate leadership from the American Medical Association (AMA) and medical community—including specialty and state medical associations—the surgical coalition and the Alliance of Specialty Medicine opposing the one-year patch and urged a “no” vote on the legislation. The letters also encouraged passage of a full repeal.

**Misvalued Code Provision**
The misvalued code provision has been included in all iterations of SGR repeal and replacement bills throughout the last year and has been consistently flagged as an area of concern by ASCRS•ASOA and the specialty and surgical communities. Over the past several years, CMS has had the authority to identify what they perceive to be “misvalued” codes, and the Relative Value Update Committee (RUC) has “revalued” those work Relative Value Units (RVUs). The 2013 cataract and complicated cataract code reductions were a result of this exercise. It is ongoing, and in fact, the majority of the codes that were already identified as “misvalued” either have been revalued or are in the pipeline to be completed prior to 2017.

The provision in the short-term “patch” legislation begins a new effort in 2017, which is itself problematic because providers will not get credit for all of the “savings” and redistribution that has occurred over the past couple of years and over the next two years. (The full repeal and replacement legislation included this provision but the start date was 2015, therefore, we would have received credit for the revalued codes.)

Specifically, the provision calls for CMS to “revise and expand” identification of potentially “misvalued” codes—and includes a list of criteria. Because it says revise, that means they could be going back to codes that have already been revalued and will most likely do so. This entire exercise is focused on giving primary care more money—the continuation of the redistribution of money from specialists to primary care. The specific criteria include codes such as those that have experienced the fastest growth, substantial changes in practice expenses, have low relative values and are billed multiple times for a single treatment, account for a majority of spending under the fee schedule, etc.

The provision sets a target (0.5%) for relative value adjustments for “misvalued services” from 2017 through 2020. Therefore, there needs to be a reduction in expenditures as a result of adjustments to relative values. As long as the target is met each year, the money is redistributed within the physician payment pool in a budget-neutral manner, and the “overages” count toward the target for the next year. However, if the target is not met—and that is what CBO assumed in their score of this provision—there will be an across-the-board cut to achieve the savings, and how it is achieved is up to CMS. ASCRS•ASOA has maintained our concern about this provision, even while supporting the overall effort to repeal the SGR (originally H.R. 4015/S.2000).

**Additional Provisions Including One-Year Delay of ICD-10**
The “patch” is also paid for by increasing sequester cuts in the first six months of 2024 from 2% to 4% and with $2.3 billion set aside earlier this year for SGR repeal after extending sequestration to restore military pension cuts. Cuts to clinical laboratory services and radiology services provided in physician offices or hospital outpatient departments are also included in the bill as pay-fors.

H.R. 4302 also includes a one-year delay of ICD-10 to October 1, 2015 and implements appropriate-use criteria, with prior authorization for physicians who refer a high number of patients for imaging services. In addition, the bill reauthorizes other Medicare programs, also known as “extenders,” such as the Geographic Practice Cost Index Floor.

**Next Steps: Urge Your Legislators to Pass a Full Repeal and Replacement This Year**
ASCRS and the medical community are continuing to urge House and Senate leadership to work together to develop bipartisan, bicameral cost off-sets for a full repeal of the SGR this year.

Legislators need to hear from practitioners in their districts and states about how further patches and delays to a repeal affect patient access to specialty care.

eyeContacts should contact their members of Congress to urge them to come together to prioritize a full repeal of the SGR and to develop bipartisan cost off-sets this
year. Be sure to explain that constant uncertainty from the SGR threatens the viability of your practice and the patients you treat. Use the eyeContact Action Center to look up your legislators’ contact information.

Plan to Meet With Your Legislators Back Home This Summer
The traditional August congressional recess is a great opportunity for eyeContacts to meet and visit with representatives and senators in your district or state. Start planning to meet with your legislators now. Request to schedule a meeting to discuss SGR repeal, or consider inviting elected leaders to come and tour your practice. It’s a great opportunity to demonstrate how you help patients in their district or state and the impact of uncertainty from the SGR. Contact Allison Dickert, manager of PAC and grassroots, at adickert@ascrs.org or 703-591-2220 for assistance setting up a back home visit or practice tour.

Update on Other Legislative Issues

Repeal of IPAB

Status: There has been no Congressional action to repeal IPAB.

What this means for you: Without a repeal, as early as 2015, the IPAB could make arbitrary cuts to physician payments if Medicare spending grows too quickly. Recent analysis, however, indicates that Medicare spending is decreasing, which may mean a delay in implementation of IPAB.

ASCRS and the Alliance of Specialty Medicine oppose the IPAB, an unelected board that would recommend cuts to Medicare starting in 2015, and we have partnered with the medical community in the IPAB coalition to advocate for its repeal. ASCRS signed onto a letter with more than 500 groups from the medical community to oppose IPAB. Legislation to repeal IPAB, H.R. 351/S. 351, the Protecting Seniors’ Access to Medicare Act, sponsored by Rep. Phil Roe, MD (R-TN), and Sen. John Cornyn (R-TX), has bipartisan support with 222 co-sponsors in the House and 36 co-sponsors in the Senate.

With the ongoing decrease in Medicare spending, no board members have been appointed to IPAB. ASCRS will continue to monitor this issue.

Medicare Private Contracting

Status: There has been no Congressional action to implement a viable Medicare private contracting option.

What this means for you: ASCRS will continue to push for legislation to implement private contracting. eyeContacts should educate their patients and policymakers about the need for this option.

ASCRS and the Alliance of Specialty Medicine support H.R. 1310/S. 236 to allow physicians to contract privately on a case-by-case basis without the beneficiary losing his/her Medicare benefit. Rep. Tom Price, MD (R-GA), is the lead sponsor in the House, with 24 additional co-sponsors. Sen. Lisa Murkowski is the lead sponsor in the Senate, with three physician co-sponsors: Sen. Tom Coburn, MD (R-OK), Sen. Rand Paul, MD (R-KY), and Sen. John Barrasso, MD (R-WY). Sen. Jim Inhofe (R-OK) is also a co-sponsor. ASCRS and the Alliance of Specialty Medicine worked in both the previous Congress and the current one to have this legislation introduced.

Meaningful Use/EHR

Status: The House passed H.R. 4015 to repeal and replace the SGR, which would integrate the Meaningful Use program into the Merit-Based Incentive Program (MIPS) and remove the penalties; however, no action has been taken by the Senate.

What this means for you: Physicians must continue to implement and demonstrate “meaningful use” of EHR systems. eyeContacts are encouraged to communicate to their
elected officials the need to make this program more relevant to specialists.

ASCRS continues to question the utility of the EHR/ Meaningful Use program for specialists as the majority of the measures are currently geared toward primary care. ASCRS favors implementing positive incentives and flexible measures that reflect the needs of specialty care. We continue to oppose the penalties set in current law and will continue to push to have the penalties repealed and the timelines extended. SGR Repeal and Medicare Provider Payment Modernization Act (H.R. 4015/S. 2000) referenced above would collapse the existing EHR/ Meaningful Use program into the Merit-Based Incentive Payment System (MIPS) and use it as part of the component score to award bonuses or incur penalties.

ASCRS and members of the surgical community have met with key leaders on Capitol Hill and the Administration, worked to educate Congress and CMS on concerns with the existing program, and pushed for introduction of legislation to improve the program. With ASCRS’ support, Rep. Diane Black (R-TN) introduced H.R. 1331, the Electronic Health Records (EHR) Improvement Act, to implement much-needed reforms to the program. While the bill addresses many of our concerns—including creating hardship exemptions for small practices and physicians near retirement, shortening the gap between the performance period and the penalty, expanding options for participation in the incentive program, and improving quality measures by using specialty-led registries—the relevance of this program to specialists is still uncertain.

As always, the status of pending legislation is subject to change. Before contacting your elected officials, be sure to check recent issues of Washington Watch Weekly or visit ASCRS’ eyeContact Action Center for up-to-date information. In addition, ASCRS Government Relations staff is always available to assist you with your advocacy efforts. Please contact Allison Dickert, manager of PAC and grassroots, at 703-591-2220 or adickert@ascrs.org for help.