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Medicare Physician Pay Cut Further Delayed

By **Jed Morrison**

In what is becoming a bimonthly exercise, Congress on November 29, 2010, passed legislation delaying until December 31, 2010, a 23% Medicare physician payment cut that was scheduled to take effect December 1, 2010. Had this Congressional Band-Aid not been applied, the 23% physician payment cuts would have started this week. President Obama is expected to sign the legislation.

Under current law, if no further action had been taken, the Medicare Physician Fee Schedule ("MPFS") on December 1, would be reduced by an average of 23% due to the impact of the sustainable growth rate formula ("SGR"). Under the SGR, cumulative Medicare spending for physician services is supposed to follow a target path equal to the rate of growth in physician costs, Medicare enrollment, and growth in real gross domestic product. Spending in excess of the SGR target in a given year results in automatic reductions in spending for physician services the following year. However, Congress has chosen to "defer" the SGR impact virtually each year since inception. Thus, cumulative deferred reductions amount to about a 23% cut.

Rather than permanently fix the SGR, however, Congress simply defers its impact for a few months at a time. In 2010, this is the fifth Act of Congress to defer the application of the SGR to physician payments. The SGR cuts hang over physicians' heads, however, and Congress has shown little inclination to enact a permanent solution to the formula.

Unfortunately for physicians, the new deferral only extends to the end of the year. Unless this Congress takes additional action in the next few weeks, Congress will have adjourned *sine die* by the end of 2010 and the SGR cuts by operation of law will go into effect prior to the convening of the next Congressional session. With all of the uncertainty created by healthcare reform, Congress' inability to permanently solve the SGR formula and provide a predictable fee schedule for physician payments simply adds to the uncertainty faced by physicians in the Medicare program.

If you have any questions, please contact **Jed Morrison** at 210.978.7780 or **jmorrison@jw.com** or any member of the **Jackson Walker L.L.P. Health Care Section**.

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