American Society of Anesthesiologists

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February 10, 2012

The Honorable Xavier Becerra
U.S. House of Representatives
Washington, DC 20515

Dear Representative Becerra:

As you continue your discussions regarding H.R.3630, the *Temporary Payroll Tax Cut Continuation Act of 2011*, I write on behalf of the over 48,000 members of the American Society of Anesthesiologists (ASA) to **affirm our medical specialty's ongoing support for repeal of the Medicare sustainable growth rate (SGR) formula and for its replacement with a new formula that more accurately calculates payments for physicians, especially anesthesiologists**. ASA believes that appropriate offsets for this fix are the purview of Congress, and we urge funding for this purpose. To protect the integrity of any new payment formula, the **ASA also renews its strong support for the immediate repeal of sections 3403 and 10320 of the Patient Protection and Affordable Care Act (PPACA)** – the provisions creating the Independent Payment Advisory Board (IPAB).

Since 2002, the SGR formula has generated annual "negative" updates – or reductions in Medicare payments for physicians. In an effort to avert the adverse consequences associated with the implementation of these payment reductions, Congress passed a series of measures to override the reductions. These "doc fixes" have prevented payment reductions in the short-term but they have also created a payment landscape that includes a pending payment reduction projected to exceed 27%. This accumulated payment reduction or SGR "debt" is projected to grow in the future to over 35% unless Congress acts. Payment reductions of this magnitude would be unsustainable for physicians treating Medicare patients. **Such reductions would be particularly problematic for anesthesiology because of the specialty's already unusually low Medicare payment rate, often referred to as the "33% problem."**

"33% Problem"

For over 20 years, Medicare payments for anesthesia services have been deeply discounted relative to usual and customary commercial payment rates. While modest disparities between commercial and Medicare payment rates are well-recognized in the physician community, the disparity in payments for anesthesia services is unprecedented in its magnitude.

A Government Accountability Office (GAO) report released in 2007 confirmed for Congress what anesthesiologists have known and struggled with for years: Medicare payments for anesthesia services represent only one-third of prevailing commercial payment rates. GAO analyzed payments for 7 different anesthesia services provided in 41 separate geographic localities nationwide and found that Medicare payments were lower than commercial payments by over 60%. **On average, Medicare payments for anesthesia services represented only 33% of the prevailing commercial insurance payment rates for the same service.** In contrast, according to the Medicare Payment

Advisory Commission (MedPAC), Medicare's payments for other physician services represent approximately 80% of commercial rates. Most disconcerting to anesthesiology is that a more recent survey suggests that the 33% payment differential may be expanding. Based on ASA's internal 2011 annual survey data, the current Medicare anesthesia conversion factor was only 31% of even the lowest average commercial conversion factor for anesthesia. This longstanding payment disparity exists despite data reflecting that anesthesia services have not historically, and do not currently, represent volume or growth drivers under the Medicare program.

As evidenced by the Institutes of Medicine's (IOM) report touting anesthesiologists as leaders in patient safety and quality of care,[i] anesthesiologists play a critical role in achieving the goals of reduced healthcare costs and improved quality of care. However, for these efforts to continue, the specialty must be supported by adequate payment rates by all payers including the Medicare program. Medicare payments for the delivery of anesthesia services to the expanding numbers of Medicare beneficiaries must be reasonable and sustaining to the specialty.

Accordingly, we urge the conferees to permanently repeal the flawed SGR formula and to replace the formula with a new payment mechanism that assures appropriate payment levels for all physicians, especially those with longstanding and demonstrable payment disparities such as anesthesiology.

Repeal the Independent Payment Advisory Board (IPAB)

A repeal of the SGR and the development of a new payment formula would represent a truly historic step forward in addressing weaknesses in the Medicare physician payment system. **To ensure that any payment advances are preserved, we urge Congress to link such an effort with a repeal of the IPAB provisions of the PPACA.**

PPACA created an unaccountable and unelected board with sweeping powers to mandate across-the-board or other targeted reductions to Medicare payments. A so-called "SGR-on-steroids," the Board could press for significant cuts to Medicare physician payments including cuts to already historically disadvantaged specialties like anesthesiology. Yet, unlike the SGR formula, Congress would be severely tested in its ability to re-work any IPAB-mandated physician payment cuts.

Indeed, ASA remains concerned about the IPAB's statutory authority which effectively usurps a significant and meaningful part of Congress' authority over the Medicare program. Payment policies considered by Congress and enacted into law could be reversed by the Board. Even longstanding payment policies with broad support in Congress could be reversed or changed by the Board. Moreover, lawmakers would effectively be thwarted by barriers created by the IPAB statute from holding the Board to any level of accountability. Currently, Medicare beneficiaries, advocates, and physicians have the ability to work with Congress to improve the program. The implementation of the IPAB would largely remove Congress from the process with negative consequences for the nation's Medicare system.

After 20 years, the time has come for Congress to act to repeal the flawed SGR payment mechanism. The SGR must be replaced with a new and viable system that accurately reflects the costs of providing care while also correcting historic payment disparities such as those found in anesthesiology. Additionally, any Congressional advances in this area should be protected by neutralizing the threat to physician payments represented by the IPAB. The statutory authority creating this unaccountable Board must be repealed. We urge Congress to act on these issues expeditiously.

Thank you for your consideration. Our organization and its members stand ready to work with you and your colleagues in support of these important changes.

Please contact Ronald Szabat, J.D. or Manuel Bonilla, M.S. of our Washington, DC office at 202-289-2222 for additional information about these issues.

Sincerely,

Jerry A. Cohen, M.D.
President
American Society of Anesthesiologists

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[i] To Err is Human: Building a Safer Health System, Institute of Medicine, 2000.