ASA President Alex Hannenberg, M.D.
Tele-Town Hall opening remarks
March 18, 2010

Good evening, and welcome to tonight's Tele-Town Hall. I am Dr. Alex Hannenberg, ASA President, and I am very glad that you could all join us for what may be our last Tele-town Hall regarding health system reform. This call is intended for ASA members and Component Society Executive Directors only. Members of the media are not invited to participate. If you are not affiliated with ASA, please disconnect at this time.

As has been widely reported, the Democratic leadership in the U.S. House of Representatives has announced its intentions to seek final votes on health system reform prior to the start of the Congressional Easter/Passover recess. Through a mechanism yet to be finalized by the Democratic leadership, the House will consider and seek to pass the Senate health reform bill, confusingly referred to as H.R. 3590 or "the Patient Protection and Affordable Care Act," along with a related "correction" or "sidecar" reconciliation bill.

Based upon the best information available, final votes are expected on Sunday though possibly later. As you may have heard, the President has now cancelled his trip to Asia to stay in Washington and lobby for this bill.

As I have in conveyed in a number of communications in recent weeks, ASA has had major reservations about H.R. 3590 since it was first introduced and considered by the U.S. Senate late in 2009. We were not alone in our concerns. We participated in a surgical coalition of 18 national surgical organizations to raise specific concerns about provisions in the Senate bill. These serious concerns were raised prior to Senate action on the reform bill in hopes changes would be made during Senate consideration. The changes were not made, and as a result, the ASA and most of our surgical colleagues, urged a "no" vote on H.R. 3590 during Senate floor consideration in December.

It was ultimately our hope that many of our concerns would be addressed as House and Senate leaders began to meet in early January to discuss reconciling the Senate bill, H.R. 3590 with the House companion reform bill, H.R. 3962. This opportunity to resolve our concerns vanished abruptly as those meetings subsequently ended with the election of Scott Brown to fill the U.S. Senate seat left vacant by the death of Democratic Senator Ted Kennedy. With a loss of the filibuster-proof majority, the Democratic leaders decided to utilize the reconciliation process to advance health reform.

The decision to use the reconciliation process meant that the original Senate bill in its entirety remained "on the table." Unlike the House reform bill, H.R. 3962, the Senate bill includes many provisions that would weaken our medical practices and adversely impact the patients we serve. Beyond the fact that there is no effort to address the broken Sustainable Growth Rate (SGR) formula, the bill includes other provisions that penalize physicians. Taken alone, the physician payment cuts produced by retention of

the SGR formula finance as much as one quarter of the reform package. The bill also includes the establishment of an Independent Payment Advisory Board or IPAB. When per capita Medicare expenditure exceeds an arbitrary threshold, the IPAB would be authorized to recommend Medicare payment reductions principally by targeting spending for physician services. With special statutory protection, the Board's recommended payment cuts would move expeditiously through Congress, with Congress itself and the medical community having little opportunity to defeat or modify the payment reductions, no matter how draconian. The IPAB would also have unprecedented authority to make recommendations regarding spending in the private health care marketplace. On this issue, ASA joined with numerous patient groups and other physician organizations, 74 in total, to urge elimination of the independent board.

Other provisions of the Senate bill similarly target physician payments. One provision would modify the still unproven Physician Quality Reporting Initiative (PQRI) through the addition of Medicare payment reductions for non-compliant physicians. Another provision creates a new entity within the U.S. Department of Health and Human Services directed to develop even more payment changes for so-called "mis-valued" physician services – with the potential for reductions to procedural specialties to increase payments for primary care physicians.

Beyond payment provisions, the Senate bill also includes gratuitous so-called "non-discrimination" language (Sec. 2706). The intentionally vague language, inserted by supporters of paraprofessionals, seeks to prevent health insurers from "discriminating" against non-physician providers in deciding who may participate in their plans. The provision elevates paraprofessionals while putting Federal law on a collision course with each state's scope of practice law.

ASA also has raised concerns about the Senate bill's expansion of Medicaid eligibility without a corresponding recognition of the longstanding physician payment problems inherent to the program.

Some have automatically characterized ASA's position on the pending legislation as putting our interests as doctors ahead of the interests of our patients. I believe that this assessment fails even cursory analysis of the facts. What is pending in Congress today expands coverage under Medicaid rates that are widely recognized as inadequate to cover the costs of care and then puts in place mechanisms to cut Medicare rates. The only strategy available to survive as a provider is to shift costs onto other payers. This may be temporarily a successful paradigm for a few, but those who provide care to the neediest often have nowhere to cost-shift and will perish. This is why we believe that the financing under H.R. 3590 threatens the delivery of care and undermines the core goals of health system reform.

Having pointed out the areas of concern with the H.R. 3590, ASA had remained hopeful over the past few weeks that the reconciliation bill, again the bill being advanced to "correct" H.R. 3590 would provide the opportunity to address some of our concerns. We continued lobbying to that end through yesterday morning when it became quite clear that medicine's major issues would not be addressed. And with today's release of the Reconciliation Act of 2010, we confirmed that our issues were not

addressed. The reconciliation bill does nominally recognize the longstanding problems with Medicaid payment levels by providing payment boosts to parity with Medicare. But, only primary care physicians would be eligible for the payment increases. In our view, the Reconciliation Bill falls far short as a "correction" bill on these and many other items of importance to anesthesiologists . A summary of the bill and a Congressional Budget Office (CBO) review of the bill are posted on the ASA website.

In the end, ASA simply could not lend its support or endorsement to the Senate bill, and we have been patient in arguing our case long enough, hoping that a reform package would emerge that we could support. It has now become clear that this is not the case. The projected negative impact on our specialty for years and years to come is simply not acceptable and in fact offensive. Accordingly, yesterday afternoon ASA released a message to its members announcing our decision to urge a "no" vote on the reform bills and asking members to convey that position to their local Members of Congress. Based upon conversations of today, I have learned that a number of surgical groups in our coalition also will express such opposition. As I stated in my message to our members, the ASA leadership and I are strongly committed to advancing responsible health system reform, and as a result our decision was made with some reluctance and disappointment, but no regret.

Because you will be hearing a great deal about the machinations in Washington to promote these bills, I will take a few moments to sketch an outline of the process as we understand it today. Earlier this week, the House began the process which is expected to end with the final votes on reform. On this past Monday, the House Budget Committee considered and passed a "shell" or health reform "place holder" bill consisting of reforms passed last year by the Ways and Means and Education and Labor Committees. The Committee passed the bill largely along party lines 21-16. Two moderate Democrats, Rep. Allen Boyd (D-FL-2nd) and Chet Edwards (D-TX-17th), voted against the proposal. The purpose of the Budget Committee's action was to ensure compliance with the rules pertaining to the special reconciliation process. Substantively, it meant nothing.

The House Rules Committee will soon consider the Budget Committee's "place holder." As the gatekeeper to the House floor, the Rules Committee will perform two critically important functions. First, the Committee will insert the contents of the just released reconciliation bill into the "place holder" bill. With the insertion of the text of the Reconciliation Act into the "placeholder" the bill then becomes the "real" item for House consideration. Second, the Rules Committee will formalize the "rule" or process guiding House floor consideration of both the reconciliation and Senate bills. This is an area of much Congressional and press discussion. The key question appears to be whether the House votes will be structured in such a manner as to allow passage of both the reconciliation and Senate bills by a single vote as opposed to two separate votes. This process has been referred to as "deem and pass." This is as much a political stratagem as a parliamentary one.

While the actual process for House floor consideration remains unclear, we do know that there will be few if any opportunities to amend either the Reconciliation Act or the Senate bill on the floor of the House. A few votes including procedural votes will likely determine the destiny of both bills.

If, and it remains a big “if”, the House passes both the Reconciliation Act of 2010 and H.R. 3590, the two bills will part ways. H.R. 3590 having already passed the Senate on December 24, 2009, will likely be held briefly for enrollment – a process to officially recognize that a bill has passed both the House and Senate. It will then be quickly sent to the President for his signature .

Meanwhile – if passed -- the Reconciliation Act of 2010 would be sent to the Senate for consideration. Republicans in the Senate have indicated they expect to offer a number of amendments, the contents of which they have not yet released publicly.

You are undoubtedly aware of the status of vote gathering in the House. This remains a minute to minute cliffhanger, and failure to reach 216 votes through the process I’ve just outlined would likely bring efforts on health reform in this Congress to a halt, by no means an impossible or even implausible scenario.

We expect much activity over the next three to seven days so ASA members are urged to monitor their email and the ASA website for additional information.