



January 13, 2010

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Harry Reid  
Majority Leader  
U.S. Senate  
Washington, DC 20510

Dear Madam Speaker and Mr. Leader:

On behalf of the more than 44,000 members of the American Society of Anesthesiologists (ASA), I write to express our priorities and concerns as House and Senate leaders begin discussions to reconcile H.R. 3962, the Affordable Health Care for America Act, and H.R. 3590, the Patient Protection and Affordable Care Act.

By passing versions of health reform legislation, the House and Senate have made great strides toward strengthening America's health care delivery system. ASA is particularly supportive of desperately-needed health insurance market reforms, including the elimination of coverage denials based on pre-existing conditions, as well as the guaranteed availability and renewability of health insurance coverage. We believe all Americans should have access to affordable health insurance.

However, we remain concerned about several issues currently included in health reform legislation or reported to be under consideration for the final health reform package. As you work through the conference process, we ask that you address these issues.

**Expansion of Medicare payment levels**

ASA remains strongly opposed to any extension of unsustainable Medicare payment rates — whether through a co-op, trigger, public plan option, or any other new government plan. Currently, neither H.R. 3962 nor H.R. 3590 includes any mechanism to extend Medicare rates to new plans. We urge House and Senate leaders to retain this position.

Medicare has long underfunded payment for anesthesia services. Medicare currently pays anesthesiologists 33 percent of what private insurers pay, according to a recent Government Accountability Office (GAO) report (GAO-07-463). In contrast, the Medicare Payment Advisory Commission (MedPAC) reports that Medicare pays other specialists an average of 80 percent of what private insurers pay. The 33 percent rate does not cover the costs of providing anesthesiology medical care; an extension of Medicare's payment rates to a greater population would be unsustainable for our specialty.

### **Need for meaningful SGR reform**

Further compounding the payment problems for anesthesia services, anesthesiologists and all physicians face a 21 percent Medicare payment cut beginning March 1, 2010, due to the flawed mechanisms of the Sustainable Growth Rate formula (SGR). We are disappointed that the Senate health reform legislation does not include a permanent fix to the SGR.

The health system reform debate represents the appropriate opportunity to finally repeal the broken SGR formula and replace it with a workable formula that generates payment updates that accurately reflect the costs of providing care to Medicare beneficiaries. We urge House and Senate leaders to act immediately to repeal the SGR and implement a new system.

### **Senate Independent Payment Advisory Board (IPAB) provisions (§3403)**

ASA is troubled by the Senate's proposal to create an "Independent Payment Advisory Board" (IPAB). Such a panel would place authority for Medicare payment policy in an executive branch board, effectively removing Congressional authority and oversight of Medicare. Indeed, the Board would have the authority to make cuts to physician payments with limited accountability. We are extremely concerned about the impact of broad-sweeping cuts on already unreasonably low Medicare payments for anesthesia services.

We ask that House and Senate leaders defer to the House reform bill which excludes provisions that would create an IPAB or other entity with unchecked freedom to further impede fair Medicare payments for physician services.

### **Senate so-called "Non-discrimination" provision (§2706)**

This language needlessly injects controversial scope-of-practice provisions into an important health insurance affordability and access debate. Specifically, this provision would prohibit health plans from distinguishing among widely varying health care providers acting within the scope of that provider's license.

At a time when allied health professionals, such as advanced practice nurses, are converting their degrees from the master's level to doctorate, sometimes via "on-line" classes, and subsequently identifying themselves as "doctors" to patients, this provision would exacerbate patient confusion over greatly differing levels of education, skills and training among health care professionals. Further, this language inappropriately interjects civil rights concepts into well-established state scope of practice laws. It sets up a collision course between constitutional and state scope of practice laws. As physicians who are committed to providing the highest quality of care possible, we believe this provision could jeopardize patient safety.

Such provisions also establish an undesirable barrier to implementing coverage decisions based on effectiveness research. The fact that a provider is acting within the scope of licensure does not mean that the service provided is effective or beneficial.

Additionally, many industries or professions have gradations of services that are delivered by members of a team. For example, the legal profession is carried out by both attorneys and paralegals. Similarly, health care is often provided by a team of physicians and allied health paraprofessionals, working together. This concept and practice continues to work well for the benefit of patients and helps to hold down costs. Not only could this Senate provision interfere with the team approach concept and negatively impact quality and patient care, §2706 unfairly singles out health care from other industries that provide services in a similar manner.

We urge that this provision be removed.

#### **Bundling (Senate §3023/House §1152)**

In light of our members' long record of advancing safe, efficient and high quality care, ASA is closely following demonstration and pilot programs designed to test the bundling of payments as a mechanism to promote coordination, quality and efficiency of care delivery. Because such programs remain new and largely untested, ASA supports thorough examination and evaluation before any program is extended or expanded beyond its original statutory duration or size. Such a review should ensure that the program does in fact improve coordination, quality and efficiency of care and is not simply another mechanism to reduce already low Medicare payment rates to providers. All programs should also remain voluntary for providers.

#### **Medical liability reform provisions (Senate §10607/House §2531)**

We commend both the House and Senate for the inclusion of incentives for states to implement and evaluate alternative medical liability laws. The provisions represent small, yet important, steps forward in reforming our nation's medical liability system. Serious consideration should be given to the inclusion of additional Medical Injury Compensation Reform Act (MICRA)-type reforms such as limits on awards for non-economic damages in any final reform package.

In addition to bringing important relief to practicing physicians, such reform could generate much needed budget savings. The Congressional Budget Office (CBO) recently concluded that certain MICRA-type reforms "lower costs for health care both directly, by reducing medical malpractice costs—which consist of malpractice insurance premiums and settlements, awards, and legal and administrative costs not covered by insurance—and indirectly, by reducing the use of health care services through changes in the practice patterns of providers." CBO estimated that the reforms could reduce the federal budget deficit by over \$50 billion over 10 years.

Anesthesiology has long been recognized as medicine's leader in improving patient safety. However, anesthesiologists still experience problems with the current medical liability system. Accordingly, we renew our steadfast support for meaningful medical liability reform.

**Medicaid expansion and provider payment levels (Senate §2001/House §1701)**

The health reform bills passed by the House and Senate would expand patients' eligibility for participation in Medicaid. Because Medicaid has historically paid for physician services—and anesthesia services in particular—at unsustainably low rates, we urge House and Senate leaders to work with state governments to develop mechanisms that would ensure fairer and more appropriate Medicaid payment levels for anesthesiologists and other physicians.

The Senate's Medicaid payment increases for primary care services could go a long way toward improving patient access to preventive services. The very essence of this provision is a clear indication that Medicaid payments to other providers also require reform so that access to Medicaid services can be increased.

As you work through negotiations, we ask you to please fully address our concerns. We look forward to working with you on these important matters.

Sincerely,



Alexander A. Hannenberg, M.D.

President

American Society of Anesthesiologists

CC: The Honorable Max Baucus  
The Honorable Tom Harkin  
The Honorable Charles Rangel  
The Honorable Pete Stark  
The Honorable Henry Waxman  
The Honorable Frank Pallone  
The Honorable George Miller