



## Everything you wanted to know about the “doc-fix” bill, but were afraid to ask

April 9, 2015

UPDATE: On April 14, 2015, the U.S. Senate passed H.R. 2 and the bill was signed into law by President Obama on Thursday, April 16, 2015. With this new law, the 21 percent cut in the physician fee schedule is permanently avoided, and the other provisions of the law discussed in our April 9 eAlert (below) will be implemented. As noted, CMS previously instituted a 10-business day processing hold for all impacted claims with dates of service April 1, 2015, and later. While a small volume of claims will be processed at the reduced rate, the MACs will automatically reprocess claims paid at the reduced rate with the new payment rate. No action is necessary from providers that have already submitted claims for the impacted dates of service.

On March 26, 2015, the U.S. House of Representatives passed a bill known as H.R. 2, the Medicare Access and CHIP Reauthorization Act. If signed into law, H.R. 2 would provide a permanent fix to the Sustainable Growth Rate (SGR). Without this fix, the formula would result in a 21.2 percent cut in Medicare payments for physicians effective April 1, 2015.

The SGR formula was passed into law in 1997 as part of the Balanced Budget Act of 1997 to control Medicare spending on physician services, but it has never been fully implemented, with 17 short-term patches being applied over the years to prevent the very steep cuts in reimbursement from ever taking place. H.R. 2 would eliminate the steep cuts in reimbursement and replace it with a five-year period of annual updates of 0.5 percent as Medicare transitions to a new system that rewards physicians for value and for improving the quality of care of Medicare beneficiaries, rather than paying based on volume.

The Senate did not act on H.R. 2 before taking a two week break, so it will take up H.R. 2 when it reconvenes on April 13. In the meantime, in order to delay and avoid the 21.2 percent cut in reimbursement, CMS has [notified](#) physicians that since there is at least a 14-day delay in payment of claims, the cuts will not be implemented until at least April 15, giving two days for the Senate to pass H.R. 2 and the President to sign the bill into law.

In addition to the SGR provisions in H.R. 2, there are a number of provisions



**Shannon K. DeBra**

Of Counsel  
Cincinnati  
513.870.6685  
[sdebra@bricker.com](mailto:sdebra@bricker.com)

extending (either temporarily or permanently) existing Health and Human Services (HHS) programs and rules, including a two-year extension of the Children's Health Insurance Program (CHIP). H.R. 2 would also prohibit the inclusion of Social Security numbers on beneficiary Medicare cards in order to prevent identity theft.

Several other interesting and noteworthy provisions are tucked into the bill. The first such provision would affect gainsharing arrangements that would otherwise be subject to civil monetary penalties under Section 1128A(b) of the Social Security Act. H.R. 2 would require the HHS Secretary, in conjunction with the Office of Inspector General (OIG), to submit a report to Congress along with legislative recommendations for how to amend the law to permit certain gainsharing arrangements "while reducing waste and increasing efficiency."

H.R. 2 also includes a provision requiring HHS and OIG to study the applicability of federal fraud and abuse laws to items and services furnished to Medicare beneficiaries and paid for under an alternative payment model.<sup>1</sup> Finally, H.R. 2 contains a provision requiring HHS to "develop a plan to revise the incentive program" that encourages Medicare beneficiaries to report fraud and abuse in the Medicare program to enhance the rewards and extend the incentives to the Medicaid program.

In 2013, CMS issued a [proposed rule](#) that would have revised 42 C.F.R. § 420.405(e)(2) to increase the reward for reporting fraud in the Medicare program from no more than \$1,000 to 15 percent of the final amount collected (up to a maximum of \$9.9 million). That proposed rule was never finalized. Congress is now requiring HHS to make recommendations for how to encourage greater participation in the incentive program, including recommendations for a public awareness and education campaign to encourage participation in the revised incentive program.

Finally, H.R. 2 would extend the period of non-enforcement of the "two-midnight" rule through September 30, 2015. This would mean that inpatient hospital patient status reviews under the "two-midnight" policy would be off-limits to RACS until October 1, 2015. The prior law delaying RAC review of claims involving the two-midnight rule expired March 31, 2015. However, CMS announced on April 1, 2015 that it is extending through April 30, 2015 the prohibition on RAC reviews of inpatient hospital patient status under the "two-midnight" rule.

#### Footnotes

1. For more information about the Medicare "alternative payment models," click [here](#) to go to an HHS blog on the topic.

