January 28, 2003

Honorable William "Bill" M. Thomas
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

CBO has reviewed H. J. Res. 3, a joint resolution to disapprove under the Congressional Review Act (CRA) the rule submitted by the Centers for Medicare and Medicaid Services (CMS), relating to revisions to payment policies under the Medicare physician fee schedule for calendar year 2003 and other items, as introduced on January 7, 2002.

H. J. Res. 3 would invoke the process established by the Congressional Review Act of 1996 (Public Law 104-121) to disapprove a rule that was published in the Federal Register on December 31, 2002. That rule, which is scheduled to go into effect on March 1, 2003, would reduce Medicare's payment rates in 2003 for physicians' services to 4.4 percent below the 2002 rates; change the measure of productivity used in calculating the Medicare Economic Index; and implement other policy changes related to therapists, anesthesiologists, clinical nurse specialists, PET scans, telehealth, colorectal cancer screening, and geographic classifications. If H. J. Res. 3 is enacted, the published rule would have no force or effect. CMS could resubmit a rule for 2003, but pursuant to the CRA, that rule could not be substantially similar to the disapproved rule.

CBO expects that enacting H. J. Res. 3 would result in Medicare payments for physician services at 2002 rates for all of calendar year 2003, instead of at rates that would decline by an average of 4.4 percent starting in March. The increase in rates would result in higher payments in subsequent years as well (until 2008, CBO estimates). As a result, CBO projects that enacting the resolution would increase federal spending by about $600 million in fiscal year 2003, and by about $6 billion over the 2003-2008 period. Because payment rates would eventually fall below those under current law, CBO estimates that enacting the resolution would have a negligible cumulative effect on federal spending over the 2003-2013 period.

How the Payment Formula Works

Each year, CMS establishes Medicare’s payment rates for physicians’ services for the upcoming year by applying a statutory formula that, over a period of years, will adjust fees to bring cumulative spending for physicians’ services and services furnished incident to a physician visit in line with a cumulative expenditure target. The cumulative expenditure target is derived from specific, year-by-year expenditure targets. Those targets are updated each year to reflect inflation—primarily in physicians’ costs (the Medicare Economic Index)—as well as changes in the size of the economy, growth in the number of Medicare enrollees in the fee-for-service sector, and any changes in expenditures due to “law and regulations.”

The formula in current law will bring cumulative payments in line with the cumulative target by reducing payment rates each year until spending in the most recent year is below the expenditure target for that year. At that point, the updates to payment rates may become positive, but the increases will be set to keep annual spending below the year-by-year expenditure targets until cumulative spending and the cumulative target converge.

The Impact of H. J. Res. 3

Based on discussions with experts on the Congressional Review Act, CBO assumes that H. J. Res. 3 would not be considered a change in law that affects the overall expenditure target for physicians’ services. CBO also assumes that continuing to pay for physicians’ services at 2002 rates, rather than imposing the statutorily required reduction in those payment rates, would not be considered a change in regulations that would affect the expenditure target. Therefore, CBO assumes that enacting H. J. Res. 3 would have no effect on the year-by-year or cumulative expenditure targets. But it would increase the payment rates in 2003, which would be the basis for fee updates in future years. Therefore, CBO estimates that the increase in payment rates for 2003 would result in spending that remains above current-law levels through 2008.

Because the expenditure targets would remain unchanged, the statutory formula would ultimately reduce rate increases in the future to compensate for the higher payments in the next several years. Hence, CBO estimates that the formula would eventually produce reductions in payment rates (relative to current law) that would offset the $6 billion increase in spending from 2003 through 2008. Thus, CBO estimates that the cumulative effect on federal spending over the 2003-2013 period would be negligible.

This estimate assumes that the change in the measure of productivity used in calculating the Medicare Economic Index would still be made and would take effect on January 1, 2004.

If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is Christopher Topoleski.

Sincerely,

Barry B. Anderson
Acting Director

cc: Honorable Charles B. Rangel
Ranking Democrat