



# **STATEMENT**

**of the**

**American Medical Association**

**for the Record**

**House Committee on Small Business  
Subcommittee on Contracting and Workforce**

**Re: Defer No More:  
The Need to Repeal the 3% Withholding Provision**

**May 26, 2011**

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The American Medical Association (AMA) appreciates the opportunity to provide our views on section 511 of the Tax Prevention and Reconciliation Act of 2005 (TIPRA), Pub. L. No. 109-222, 26 U.S.C. 3402(t). Under this provision, federal, state and local government entities are required to withhold 3 percent of all payments made for services or property after December 31, 2011, including payments under the Medicare program. The AMA lauds the leadership of the Subcommittee for addressing this important matter.

**The AMA strongly opposes section 511 and we support repeal of this provision.** There was no opportunity for Congress or affected parties to appropriately discuss the policy implications of this provision since it was inserted into the TIPRA conference report, and was not included in the House or Senate version of the tax legislation. This requirement will be extraordinarily costly and administratively burdensome to implement, and government agencies, physicians, and other health providers will all bear the brunt of these costs and administrative burdens, which will far outweigh any possible benefit of the withholding requirement.

**For the reasons discussed below, the AMA strongly opposes section 511 and urges that this provision be repealed, or in the alternative, we strongly support an exemption from section 511 for physicians and all providers who furnish health care services to Medicare beneficiaries and enrollees of other federal health care programs, including, for example,**

## **TRICARE, the Federal Employees Health Benefit Program (FEHBP), and the Veterans Administration.**

### **The Withhold Provision Will Place a Significant Burden on Medicare and Further Jeopardize Access to Care for Medicare Beneficiaries and Military Families**

The Centers for Medicare and Medicaid Services (CMS) announced that total Medicare spending in 2010 was \$523 billion. Section 511 may apply to a large portion of this total outlay. This will require the application of significant resources by the Medicare program, as well as by physicians and other providers, to administer and ensure proper operation of this provision.

The vast majority of physician practices are small businesses. According to the AMA Physician Practice Information Survey, 78 percent of office-based physicians in the United States are in practices of nine physicians and under, with the majority of those physicians being in either solo practice or in practices of between 2 and 4 physicians. Withholding 3 percent of Medicare payments for services furnished by physician practices will create a difficult cash flow problem for physician practices as small businesses. This will be extremely detrimental to Medicare beneficiaries and the physicians who treat them because the withhold comes on top of drastic cuts in Medicare physician payment rates projected in the coming decade. Under current law, in the absence of Congressional action, Medicare physician payment rates are scheduled to be cut by 29.5 percent on January 1, 2012, with cuts potentially continuing in future years. These successive annual reductions are due to a statutory formula called the sustainable growth rate, or SGR. It governs annual Medicare physician payment updates and is broken beyond repair and must be replaced.

Cuts of this magnitude, on top of physician payment rates that, to date, have fallen well behind medical practice cost inflation, will impact access to care for our nation's seniors, those with disabilities, and the baby boomers now entering Medicare.

In a 2010 AMA survey, about one in five physicians overall, and nearly one-third of primary care physicians, say they are being forced to limit the number of Medicare patients in their practice due to the ongoing threat of future physician payment cuts and inadequate Medicare rates.

**It is clear that physicians cannot absorb the pending cuts in Medicare physician payment rates, and the resultant pending access crisis for Medicare beneficiaries will only be made worse if physicians face serious cash flow interruptions due to the 3 percent withhold, on top of steep cuts projected for 2011 and beyond.**

Medicare beneficiaries will not be the only vulnerable population affected by these cuts. The Military Officers Association of America states that Medicare physician pay cuts would significantly damage military beneficiaries' access to care under TRICARE, as TRICARE payments are linked to Medicare rates. Further, the congressionally-created Council on Graduate Medical Education is already predicting a shortage of 85,000 physicians by 2020. Medicare cuts

will exacerbate this shortage by making medicine a less attractive career. Section 511 will only hasten these trends and disproportionately impact physician specialties that treat a higher percentage of Medicare patients, thus further driving looming shortages in these particular specialties. This will adversely impact the delivery of health care to all patients in this country.

Other government contractors have the ability to, and will, increase contract bids to account for the 3 percent withhold. This unfairly and disproportionately places a burden on physicians who participate in the Medicare program because their payment formula establishes specific payment amounts for each medical service furnished under the program. Therefore, unlike other government contractors, physicians cannot increase amounts owed to them by Medicare.

### **The Implementing Costs of the Withhold Provision Greatly Outweigh Any Benefit to the Federal Government**

The section 511 withhold is intended to offset otherwise unreported tax revenues, and although it \$7 billion revenue score when enacted, the vast majority of these dollars results from an initial acceleration of tax receipts and not from an actual revenue increase from improved tax compliance. We understand, rather, that the provision was estimated to result in only about an estimated \$215 million per year of increased revenue (with only slight increases in each of the following years). These amounts will not likely offset the government and private sector costs that will be required to implement section 511. Government and private sector systems, including physician group practices and solo practitioners, are not set up to track and ensure the appropriateness of the withhold. This will become particularly difficult to administer as the 3 percent withhold amount may need to be retroactively tracked and adjusted if, for example, a physician successfully appeals a claim or files a corrected claim and the payment amount for such claim is subsequently adjusted by the Medicare contractor.

This tracking and recordkeeping system will be complicated by the fact that most physicians and other providers receive payments from many different government organizations, each of which will apply the 3 percent withhold, thereby significantly complicating the record-keeping and reconciliation processes. A single physician practice, for example, may provide services to patients enrolled in many different federal programs, including Medicare fee-for-service, the FEHBP, the Veterans Administration, TRICARE, or a state, county, or city health plan. Physician practices likely would be notified of the withheld amounts in the remittance advice accompanying the federal payment for the medical services provided. They also likely would receive periodic reports from each of the withholding organizations to show how much was withheld by taxpayer identification number. The physician practice would then need to reconcile the remittance advice with the periodic reports.

The substantial administrative costs, required oversight, and hassle factor related to implementation of section 511 will far outweigh any benefit from this provision. Existing laws provide the government with the authority to force companies to pay their tax liabilities, and greater benefit could come from better enforcement of these laws rather than requiring a withhold on tax-compliant physician practices and companies.

The Federal Payment Levy Program (FPLP), for example, provides a simpler, more targeted, and equitable means for addressing healthcare providers who fail to pay their federal taxes. Under the FPLP, CMS may reduce Medicare payments subject to the levy by 15 percent of the payment, and the levy is continuous until the overdue taxes are paid in full or other arrangements are made to satisfy the debt. The advantages of this targeted approach are far superior to the across-the-board withholding policy that will impose a significant administrative and financial burden on physicians and all other tax-paying health care providers, along with all affected government units as well.

**Due to the overall administrative costs (which far outweigh any benefit of section 511), the threat to access to medical care for Medicare beneficiaries and military families, and the burden section 511 would place on numerous government agencies, the Medicare program, physicians, and other Medicare providers, the AMA urges the Subcommittee and Congress to repeal section 511 this year.**

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We appreciate the Subcommittee's critical role in reviewing this costly and burdensome withhold provision, and look forward to working with the Subcommittee and Congress to repeal this provision before its January 1, 2012 effective date.