January 2013 ASTS Legislative and Regulatory Update

ASTS
American Society of Transplant Surgeons

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On New Year's Day, Congress passed *American Taxpayer Relief Act of 2012*. This legislative update provides a summary of some key provisions of the bill, touches on the impact for transplant surgeons and patients, and highlights ASTS planned advocacy efforts as the 113th Congress tackles entitlement reform in early 2013.

Medicare Physician Fee Schedule

The bill grants a one-year extension of the current physician fee schedule – the so-called one-year "doc fix." This means that physicians serving Medicare patients for the next year will not have their fees cut by over 27%, as was set to occur on January 1. This extension and other provisions are estimated by the Congressional Budget Office to cost $10.6 billion in fiscal year 2013 and approximately $25 billion over the 10-year period through 2022. To offset this cost, a number of other Medicare providers were subject to spending cuts, including hospitals, ESRD providers, providers of advanced imaging services, diabetic care suppliers and others. For further details about these cuts, please refer to the addendum below (How is the $25 billion cost of the SGR patch offset?). This one-year fix postpones again a long-term solution to the outdated sustainable growth rate formula.

Sequestration

The bill also delays for two months the across-the-board spending cuts known as "sequestration," so all Medicare providers will not be subject to a 2% cut in their fees as of January 1. Cuts for other health programs, including research, public health initiatives and training of health care professionals, are also averted. Instead, this cut will go into effect in March unless Congress acts.

Entitlement reform

While the bill raises approximately $600 billion over 10 years in new revenue (i.e., increased taxes), it reduces federal spending items by a very small margin. This means that the great budget debate of 2012 will continue to be the top order of business for the incoming 113th Congress. Entitlement reform (Medicare and Medicaid spending cuts), and perhaps Social Security, will become the main subject of debate in January and February. These spending cuts are expected to be used to help reduce the federal deficit and perhaps to offset another increase in the federal debt ceiling—the amount of debt the U.S. Government is permitted to

incur by law.

ASTS advocacy efforts

These recent actions present both opportunities and threats to the field of transplantation. In collaboration with our partners at Powers, Pyles, Sutter and Verville (PPSV), ASTS will continue to advocate for key transplant issues. Although a transplant funding cut has not been specifically threatened, ASTS needs to be vigilant over the coming months in the face of intense pressure to slash spending throughout the government. We will work tirelessly with Congressional and other governmental officials to preserve funding for the Division of Transplantation (DoT) to fund important contracts such as the OPTN, SRTR, and the National Living Donor Assistance Center. ASTS, along with the entire transplant community, will continue to advocate for passage of the immunosuppressive drug coverage bill, which is widely supported by Democrats and Republicans in both the House and Senate. We will continue to seek resolution to the new Social Security Death Master File (SSDMF) privacy rules that have limited access to data necessary to generate the program specific reports (PSRs). ASTS will continue to address the role of transplantation as an essential health benefit (EHB) under the Affordable Care Act (ACA). We will continue to influence development of prudent PHS guidelines for reducing the transmission of viral diseases through organ transplant. As the new Congress starts its work, ASTS will be there to proactively represent the many issues that matter to you and your patients.

Addenda

How is the $25 billion cost of the SGR patch offset?

- The biggest chunk of offsets to pay for the doc fix comes from hospitals, from whom Medicare expects to recoup $10.5 billion in the five-year period from 2014 to 2018, contending that past overpayments will be addressed by a new system of coding level of care. The Inpatient Hospital Prospective Payment System documentation and coding adjustment for implementation of MS-DRGs allows HHS to apply estimates for discharges for FY 2014, ’15, ’16, and ’17, to offset $11 billion (the increased aggregated payments between 2008 – 2013).
- Additional cuts will come from hospitals that care for a significantly disproportionate number of low-income patients (disproportionate share hospitals). Those payments were already scheduled to decline as part of more Americans gaining insurance under the Affordable Care Act. The cuts are now extended an additional year, about $4 billion nationwide in 2022.

- There are also cuts to providers for ESRD patients, including revisions to the Medicare ESRD bundled payment system starting January 1, 2014, to reflect GAO findings about utilization of drugs and biologicals. There is also a Medicare payment adjustment for non-emergency ambulance transports for ESRD beneficiaries.
- The Medicare Improvement Fund was completely eliminated and uncommitted funding for health insurance cooperatives (a.k.a., “co-ops”) was suspended.

Where was the funding added?

- In 2014 and beyond, there will be incentive payments for electronic quality reporting by physician group practices, allowing eligible practitioners to participate in clinical data registries in lieu of contracting with HHS to report to the agency on specific measures. ASTS is inquiring whether the SRTR might serve as a registry for this purpose (there may be barriers - we will provide updated information as it becomes available).
- There is a one-year extension of funding for CMS to contract with a consensus-based entity (such as the National Quality Forum) to consult on an integrated national strategy and priorities for health care performance measurement in all applicable settings. The bill also requires HHS to develop a strategy to provide data for performance improvement in a timely manner to applicable providers under the Medicare program.