July 2013 ASTS Legislative and Regulatory Update

ASTS
American Society of Transplant Surgeons

Legislative and Regulatory Update

Senate and House Committee Pass HIV Organ Donation Bill
The Senate unanimously passed S. 330, the HIV Organ Policy Equity (HOPE) Act on June 17, and last week the House companion legislation, H.R. 698, was passed by the Committee on Energy and Commerce and Judiciary Committee. The HOPE Act would effectively reverse a provision in the Health Omnibus Program Extension of 1988 that banned all organ donations from persons with HIV. It would allow the Department of Health and Human Services (HHS) to research effective ways to transplant organs from HIV-positive persons to other individuals with HIV. ASTS supported this bill through advocacy efforts on Capitol Hill and as part of the Transplant Roundtable.

For data and links to reports related to AIDS and HIV-positive individuals, see Department of Health and Human Services (HHS) Secretary Kathleen Sebelius' statement regarding the 19th annual National HIV Testing Day (June 27).

CMS Pilots FQAPI Survey Program
The Centers for Medicare and Medicaid Services launched a Focused Quality Assessment and Performance Improvement (FQAPI) pilot survey program Monday, July 15, 2013. CMS noted that 10 transplant centers were selected for participation in this pilot project based on SRTR data and will be reviewed by specially trained surveyors. As with all CMS surveys, it is unannounced. It is anticipated that there will be two surveyors onsite for two days at each transplant center. The pilot surveys will look specifically at the transplant center QAPI program. The FQAPI will not be considered part of the regular recertification process. CMS stated that it is exploring the relationship between QAPI programs and

transplant center outcomes.

CMS has indicated they will not issue a Statement of Deficiency and Plan of Correction (CMS-2567) or citations based on findings during the pilot surveys.

ASTS was not involved in the genesis or development of the FQAPI pilot project.

According to CMS, data from the pilot program will be analyzed during the fall of 2013, with full implementation anticipated in 2014. ASTS will engage CMS during the revision period. To make our involvement as effective as possible, transplant centers selected for the pilot FQAPI survey are requested to provide feedback to ASTS by contacting ASTS Executive Director Kim Gifford at 703-414-7870 or kim.gifford@asts.org.

SGR Legislative Activity Heats Up

Congressional committees, Congressional Budget Office (CBO), Government Accountability Office (GAO), and MedPAC have been active over the past month regarding repeal of the Sustainable Growth Rate (SGR). On July 18, the House Energy and Commerce committee released draft legislation to repeal the SGR and implement pay-for-performance under an expanded PQRS system. On July 23, the Health Subcommittee passed, by voice vote, its legislation. The legislation now moves to the full Energy and Commerce Committee.

The legislation includes an annual statutory update of 0.5 percent per year for 2014 through 2018. During this time, the current law payment incentives, such as the Physician Quality Reporting Program (PQRS) and the Electronic Health Record (EHR) Incentive Program, as well as quality measure development, will continue. Providers will also have the option of using current delivery system reform avenues as well as a new Alternative Payment Models (APM) process to put forward and test new models of care delivery and improvement.

Beginning in 2019, providers will receive an annual update of 0.5 percent. However, physicians practicing in fee-for-service will receive an additional update adjustment based on quality performance under a new Update Incentive Program (UIP). Providers who do not report any quality information will receive the current law 2 percent reduction in payment under PQRS, an additional 3 percent reduction under UIP. Other incentive programs in title XVIII remain in place.

In the Senate, the Finance committee held a hearing on July 10 entitled, "Repealing the SGR and the Path Forward: A View from CMS." The committee witness, CMS Deputy Administrator Jonathan Blum, said that CMS supports a four- to five-year period of stability in physician payments to develop new payment models. According to Hill staff, Senate Finance staff will be briefing their Members before the August recess to outline and revise their proposal for SGR repeal.

The legislative activity follows two significant events regarding the SGR. In June, the CBO sent a letter to House Budget Committee Chairman Paul Ryan (R-WI) stating that it will not issue a new "budget baseline" in August 2013. In a hearing earlier this year, MedPAC Chairman Glen Hackbarth warned Congress to move quickly on an SGR repeal as CBO scoring put the SGR repeal "on sale," at the lowest cost to replace it in nearly a decade. The CBO letter means that the cost to repeal the SGR, $139 billion, will not increase (or decrease) before the fall of this year, allowing Congress much needed time to settle on legislation to repeal the SGR. Final Congressional action on any SGR repeal or payment fix is unlikely to occur before the fall.

ASTS has been actively engaged in this important issue through written testimony, meetings with individual Congressional offices, and collaboration with other stakeholders, including the American College of Surgeons and the American Medical Association. We will continue to advocate to: a) have SRTR be accepted as a reporting registry for quality based incentive payments, b) ensure there is adequate risk adjustment of results, c) ensure attribution of results to the transplant team (rather than an individual surgeon) when appropriate, and d) increase resources for specialists to develop measures.

CMS Final Rule on Expanded Medicare Beneficiaries Includes Change Proposed by ASTS

In February, ASTS submitted a detailed comment letter in response to CMS's proposed rule on the new expanded category of Medicaid beneficiaries, set to go into effect (in those states that choose to expand Medicaid) on January 1, 2014. In its final rule, CMS specifically addressed one of ASTS' key recommendations: that transplant and related services should be covered in every Alternative Benefit Plan (ABP) that states offer their expanded Medicaid population. States are given the option of either providing their existing Medicaid benefit package to the expanded population or offering an ABP plan. The proposed rule established that every ABP plan must at least cover the contents of the essential benefit plan selected by the state for the private market.

The final rule uses language that closely tracks ASTS' comment letter. It establishes that IF a state covers transplant services in its essential benefit plan (or what is sometimes called a "base benchmark plan"), then it must provide coverage for transplant services in any ABP it chooses to use for the expanded population. This is not exactly a coverage mandate for transplant services, but the fact that CMS included ASTS' comment and did not dispute the recommendation bolsters the case for transplant coverage in both Medicaid and, by extension, with private plans sold under the exchanges.