CMS Final Rules Establish Physician & Hospital Outpatient Payment for 2027, New OPO Decertification Processes

Early November brought finalization of several Medicare proposed rules that will impact ASTS members in 2027.

OPO Certification

The Centers for Medicare and Medicaid Services (CMS) finalized a follow-up to its 2020 Final Rule governing Conditions of Participation for organ procurement organizations (OPOs). This Rule further cements the new rating structure that will determine which of the 55 OPOs will be recertified at the end of the current cycle and largely tracks the proposed rule, with a few exceptions:

- Consistent with ASTS's comments, CMS refrained from finalizing a provision that would have imposed new quality assurance requirements for "medically complex" organs/donors, citing the lack of medical consensus on the definition of that term.
- In response to ASTS concerns about the need to assure stability during the transition of a DSA to a new OPO, CMS adopted stricter transition plan reporting requirements. Stability also may be increased by a new provision which somewhat protects OPOs assigned a new DSA from competition under certain circumstances until a full recertification cycle has been completed for the newly assigned DSA.
- CMS did not finalize a proposal that many interpreted to require that those procuring organs be licensed in their state to do so.
- CMS reaffirmed its statutory authority to certify new OPOs and indicated that the standards and processes to be used for this purpose will be addressed in future rulemaking.

By CMS's estimation, there will be 14 Tier 3 DSAs and 21 Tier 2 DSAs, resulting in an estimated 35 DSAs opened for competition at the end of the current cycle. The agency expects it will receive 140 applications from OPOs that want to assume responsibility for these DSAs (4 applications per open DSA). Office of Management and Budget (OMB) estimates that no more than 14 OPOs will expand to serve multiple DSAs following implementation of the new designation framework.

2027 Physician Fee Schedule (PFS) Payment

CMS finalized Medicare policies and payment rates for 2027. Due to the expiration of the one-year 2.50% statutory increase in the Medicare conversion factor which positively impacted 2026 Medicare payment rates, Medicare payment to physicians overall will decrease in 2027, unless Congress acts. For Qualifying APM Participants (QPs) the 2027 conversion factor is set at $32.95 (a decrease of $0.62 or -1.83%), while the conversion

factor for Non-Qualifying Clinicians will be set at $32.63 (a decrease of $0.77 or -2.31%). Efforts are ongoing by ASTS and other organizations to convince Congress to enact legislation that would avert the decrease; however, prospects for enactment are unclear in the aftermath of the mid-term elections.

The RVUs for transplant procedures remained relatively unchanged, with reductions in generally the range of one to three percent.

With respect to other issues of interest to ASTS members:

- CMS adopted changes to the methodology used to allocate indirect practice expenses to individual codes, but, in a nod to surgical specialists, exempted CPT codes with 90-day global periods (including transplant CPT codes) from the new methodology.
- CMS greatly moderated a proposed policy that would have reduced Medicare payment when a separately identifiable office/outpatient evaluation and management (E/M) visit and a global procedure occur on the same day by the same physician, adopting a 20% to curb duplicate billing. *Please note that this policy may have limited impact on ASTS members, since it applies only when an E/M visit and surgical procedure are both provided during the same visit in a physician's office setting*.
- CMS adopted new codes and rules for billing advance care planning performed by clinical staff.

2027 Hospital Outpatient Payment
While Medicare payment to physicians is slated to decrease in 2027 (absent Congressional action), Medicare payment for hospital outpatient services overall will increase by 2.3% next year.

Many academic medical centers may be hit hard by Medicare payment reductions for 340B drugs. The new hospital outpatient rule finalizes payment for separately payable 340B-acquired drugs at average sales price (ASP) minus 28 percent, down from ASP plus 6 percent. CMS will redistribute the savings through an approximately 7.5 percent increase in payment for non-drug items and services, making the policy budget neutral across the OPPS but not for individual 340B hospitals, many of which will see net reductions.

Request for Comments on Barriers to Medicare Certification of New Transplant Programs
In a proposed rule seeking to streamline Medicare's hospital conditions of participation, CMS included a Request for Information on ways to eliminate barriers to Medicare

certification of new transplant programs. ASTS plans to comment on the RFI and welcomes your suggestions. Please email Diane Millman at Diane.Millman@asts.org.