POWERS

POWERS PYLES SUTTER & VERVILLE PC

MEMORANDUM

TO: Maggie Kebler-Bullock
Emily Besser

FROM: Diane Millman

DATE: July 16, 2025

SUBJECT: **2026 Physician Fee Schedule Proposed Rule**

CMS recently released the 2026 Physician Fee Schedule Proposed Rule (PFS Proposed Rule). This memorandum outlines the key proposals of interest to ASTS members.

The Centers for Medicare & Medicaid Services (CMS) has released the calendar year (CY) 2026 PFS Proposed Rule addressing payment policies and other outpatient services covered under Medicare Part B for services provided in 2026. Comments are due by Sept. 12, 2025.

- **Conversion Factor Updates.** Separate updates for Qualifying Alternative Payment Model (APM) Participants (QP) and non-QP clinicians are proposed for 2026. This is the first year CMS will implement separate conversion factors based on QP status. The CY 2026 qualifying APM conversion factor is projected to increase by $1.24 (3.83 percent) to $33.59, from the current $32.35. Similarly, the CY 2026 nonqualifying APM conversion factor is projected to increase by $1.17 (3.62 percent) to $33.42, from $32.35.

- **Efficiency Adjustment.** CMS is proposing an "efficiency adjustment" that would apply to the work Relative Value Unit (RVU) and corresponding intraservice portion of physician time of non-time-based services. Under this proposal, the work time associated with many services (including transplant and other surgery) would be reduced, which impacts payment. *CMS anticipates that most specialties would see no more than a 1 percent change in total RVUs; however, since transplant procedures include substantial intraservice work time, the impact for transplantation could be more significant*.

- **Proposed Site of Service Payment Differential.** CMS proposes adjusting the methodology for allocating indirect costs (such as overhead, billing, administrative costs, etc) based on the site of service. Specifically, for services valued in the facility (e.g. hospital inpatient) setting, CMS would reduce the indirect costs to half the amount used for non-facility services (i.e. services performed in physicians' office settings). *Since*

1250 CONNECTICUT AVE NW ■ EIGHTH FLOOR ■ WASHINGTON DC 20036 ■ PH 202.466.6550 ■ www.PowersLaw.com

transplantation is performed on a hospital inpatient basis, this proposal has the potential to significantly reduce the relative value units accorded to transplant procedures.

- **Telehealth and Supervision Flexibilities.** CMS proposes to permanently allow direct supervision via real-time audio/video for services provided incident to physicians' services and diagnostic services and to loosen the process for adding services to the list of services that can be provided via telehealth. CMS proposes permanently removing frequency limitations established in 2011 and 2017 for subsequent inpatient visits (previously once every three days), subsequent nursing facility visits (once every 14 days) and critical care consultations (once daily). However, the proposed rule would return to pre- PHE policy, under which a teaching physician must be physically present during critical portions of resident-furnished services in Metropolitan Statistical Areas (MSAs) (but not rural) areas. This may impact those ASTS members who are teaching physicians for programs located in urban areas.

CMS has been collecting data on post-operative visits furnished as part of global surgical packages and the extent to which these furnished postoperative visits align with the number of post-operative visits assumed by CMS when valuing global surgical services, and the agency is again soliciting public comments on strategies to improve the accuracy of payment for global surgical packages. Currently, Medicare pays surgeons a fixed share of a global procedure's valuation when another physician performs the post-op visits (billed with modifier -54). These "procedure shares" are 79 percent, 80 percent, or 81 percent for roughly half of procedures with 90-day global periods and 90 percent for most procedures with 10-day global periods. CMS is considering three different methodologies to update procedure shares:

- Subtract from the valuation the work RVUs assigned to post-op visits
- Subtract the number of post-op visits expected or actually performed
- Subtract physician time spent on post-op care

We would suggest working with the American College of Surgeons in responding to this proposal.

Several of these proposed new policies (e.g. the Efficiency and Site of Service Proposals) likely contribute to proposed reductions in the RVUs for transplant surgery, which would decrease by about 5%-9% if the 2026 PFS Proposed Rule is adopted without change. CMS' own estimates suggest that payment for facility-based surgery would decrease by approximately 7% if the proposals were adopted in their current form.