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MEMORANDUM

To: **American Society of Transplant Surgeons**

From: **Peter Thomas and Adam Chrisney**

Date: April 2010

Re: **Outcome of ASTS Health Care Reform Priorities**

Comprehensive health care reform legislation, comprised of the Senate-passed bill, H.R. 3590, and the House reconciliation bill, H.R. 4872, passed both Houses of Congress and were signed into law by President Obama on March 23rd and March 30th, respectively. But, while President Obama and Democrats in the House and Senate have achieved one of their signature goals, it is not at all clear how the health care reform effort will affect them at the polls this November.

Living Donor Protections: Amongst a host of new consumer protections and nondiscrimination provisions, the bill includes a key ASTS health insurance reform which prohibits private insurers in the individual and group markets from imposing pre-existing condition exclusions. In fact, the law prohibits discrimination in private insurance based on health status. This prohibition in Sec. 2704 of the legislation is the cornerstone of private insurance market reform and applies to all medical conditions, including living donor status. Once fully implemented in 2014, this reform alone will end the disincentive confronting many live organ donors who fear that their donor status will compromise their ability in the future to secure affordable private insurance coverage.

Immunosuppressive Drugs: ASTS and the broader transplant community were very disappointed to learn that after extensive advocacy and being closer than ever before to extending immunosuppressive drug coverage to Medicare beneficiaries in danger of losing access to their medications, the final Reconciliation package did not contain this provision. This provision was in the House bill but was not adopted in the Senate. A conference committee held the greatest promise of getting the House provision included the final compromise bill.

But once the decision was made to pursue a Reconciliation bill approach to move health care reform across the finish line, a large number of very popular provisions had to be gutted from the bill. The extension of immunosuppressive drugs was one of these provisions. This is because many provisions in the bill would have offered Republicans in the Senate the ability to filibuster the overall bill, and Democrats were anxious to conclude deliberations and succeed in passing a bill, regardless of whether it addressed every issue they wanted.

The good news is that there is widespread support for these provisions, which are comprised within legislation known as the Comprehensive Immunosuppressive Drug Coverage for Kidney Transplant Patients Act of 2009. ASTS has worked hard for many years to have this bill passed and many other groups support the bill as well. Under this legislation, transplant recipients pay the Medicare Part B premium, and Medicare coverage of immunosuppressive drugs would be extended beyond 36 months only for recipients who lack access to other coverage. All other health care needs for transplant recipients who are not Medicare aged or disabled would remain subject to the current ESRD 36-month coverage limit. Given the substantial level of support for this proposal, coupled with the high awareness level of the current problem, ASTS will continue working to ensure that the next significant Medicare bill that Congress passes will include an extension of immunosuppressive drugs.

Medicare Physician Fee Schedule: The next issue on the health care Congressional agenda is the one that Congress perhaps should have started with, and that is the continuing problem of the SGR formula and the impending cut to the Medicare physician fee schedule. As of April 15, Congress has just been able to pass a small fix until the end of May; this short extension will be applied retroactively to all physician services provided to Medicare patients in April.

The most recent dispute on the Senate floor boils down to a disagreement about whether to put the cost of fixing the fee schedule "on budget" (and offset the cost of the provision with spending cuts in other places) or just treat it like "emergency spending" and essentially spend money the government does not have. To complicate matters further, the health reform bill just used all of the obvious spending offsets to finance the expansion of coverage. Additional very short term fixes could be the order of the day throughout the rest of the summer and until we pass the November elections this fall. This is a major, vexing problem that ASTS is following closely and will continue to intervene when necessary and appropriate.