

POWERS

POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

To: Dan Garrett
Jennifer Nelson Dowdy
Diane Mossholder
Laurie Kulikosky
From: Diane Millman
Re: Modification of OPO outcomes requirements for 2022 recertification cycle
Date: November 4, 2019

On Friday, CMS finalized its Hospital Outpatient Prospective Payment System (HOPPS) rates and policies for 2020. Among other changes, CMS finalized a technical modification of the OPO outcomes requirements that ASTS had supported in its comments. Specifically, OPOs are currently required to meet two out of three outcome measures. CMS is finalizing the proposal to revise the definition of “expected donation rate” that is included in the second outcome measure to match the Scientific Registry of Transplant Recipients (SRTR) definition. This change will clarify the regulatory standard so that CMS requirements can be consistent with SRTR reporting requirements. To give OPOs adequate time to comply with the change to the definition of “expected donation rate,” CMS is temporarily suspending the requirement that OPOs meet two of three outcome measures for the 2022 recertification cycle only. OPOs must instead meet one of two outcome measures (the donation rate of eligible donors measure or the aggregate donor yield measure).

In the 2020 HOPPS Proposed Rule, CMS had solicited comments on changing the OPO and transplant center CfCs and CoPs. ASTS and AST had submitted extensive joint comments in response to this solicitation. In the 2020 HOPPS Final Rule, CMS noted that comments on this issue included, but were not limited to: recommendations that CMS work with the Health Resources and Services Administration (HRSA) and the OPTN to develop combined OPO and transplant center metrics; support for the development of best practices regarding donation after cardiac death (DCD) and regulations to require support for DCD; support for a cause, age, and location consistent (CALC) deaths metric; recommendations to develop metrics that include donor hospitals and transplant centers; recommendations that referrals and notifications of imminent death and potential donors be improved; support for addressing issues that OPOs in non-contiguous states and territories face; requests to improve reimbursement for transplant centers and OPOs; and suggestions to better align definitions and terminology. Additional suggestions included: a recommendation that CMS not use the observed versus expected measure to evaluate OPOs and that the yield measure should ultimately be replaced or supplemented with a combined OPO and transplant center metric that measures how they interact to maximize organ transplants; a recommendation that CMS take into consideration an OPO’s work and commitment to research and development, deceased donor research, and participation in such projects/practices as the HOPE Project, Donor Hypothermia Study, and Stanford Donor Heart Study; a recommendation that an in-patient assessment of ICU deaths be conducted; a

recommendation that CMS eliminate or revise the transplant center outcomes requirements and that the SRTR star ratings or denominator for metrics or adjustments be eliminated; a recommendation that CMS prioritize national databases for regulatory purposes; and a recommendation that CMS, HRSA, OPTN, SRTR, and the Centers for Disease Control (CDC) form a taskforce to examine publicly available data sources that would evaluate sources and determine the practicality of identifying ventilated patients who die in hospitals/emergency departments. CMS indicated that it would continue to review the public comments on this issue for future rulemaking and potential revisions to the CfCs for OPOs and the CoPs for transplant centers.