

## CMS Finalizes Rules Extending Medicare Advantage Option to ESRD-Eligible Beneficiaries in 2021

On May 21, CMS finalized rules requiring that Medicare Advantage be made available to ESRD-eligible Medicare beneficiaries, effective in 2021. Historically, Medicare Advantage has been an option only for those qualifying for Medicare because of age or disability and those choosing to enroll in a Medicare Advantage Special Needs Plan. CMS projects that, as a result of this change, Medicare Advantage enrollment of Medicare beneficiaries with ESRD will increase by more than 30% in 2021 alone and will grow by 60% over six years.

This change has the potential to significantly impact renal transplantation rates. Historically renal transplantation rates for Medicare beneficiaries with ESRD who are enrolled in Medicare Fee-for-Service (FFS) have been about three times the transplantation rates of those enrolled in Medicare Advantage plans. This difference is almost certainly due in part to the fact that the ESRD population currently enrolled in Medicare Advantage plans is generally older than those enrolled in FFS Medicare. Still, it is unclear, at this stage, whether Medicare Advantage plans have in place the policies and procedures necessary to expand access to renal transplantation necessary to accommodate the expected influx of younger ESRD-eligible Medicare beneficiaries next year.

In fact, implementation of the Medicare Advantage coverage expansion and related changes will likely disrupt current contractual agreements between transplant centers. Under current contracts, organ acquisition costs are generally included in the global payment amounts paid by Medicare Advantage plans to transplant centers. Under the new rules, the organ acquisition costs attributable to Medicare Advantage enrollees will be paid under the same methodology and using the same claims and cost reporting processes as the organ acquisition costs attributable to Medicare FFS beneficiaries. Accordingly, it is anticipated that Medicare Advantage plans will seek to renegotiate their transplant center contracts to exclude organ acquisition costs from the amounts paid to transplant centers.

Because current rules anticipate that Medicare Advantage patients' organ acquisition costs are paid directly by Medicare Advantage plans, the current rules preclude Medicare Advantage patients from being "counted" as Medicare patients for the purposes of determining the portion of organ acquisition costs paid by Medicare. In its response to the newly finalized rules when they were in proposed form, ASTS had requested that the cost reporting rules be changed to ensure that transplant centers are in fact paid for renal organ acquisition costs attributable to Medicare Advantage patients. In the final rules, in response to ASTS comments, CMS clarified that, beginning in 2021, Medicare Advantage patients will be "counted" as Medicare patients in determining the Medicare percentage for kidney transplants, thereby assuring that Medicare Advantage patients' renal organ acquisition costs will be covered by Medicare. Also in response to ASTS comments, CMS clarified that the Medicare Advantage acquisition cost payment will be processed by the Medicare Administrative Contractors (MACs) using the same processes used for Medicare FFS patients, and will not be paid by Medicare through Medicare Advantage plans.