

TO: ASTS Members
From: Diane Millman and Rebecca Burke
Date: November 5, 2008
Re: Physician Fee Schedule Rules and Rates for CY 2009 and Effective Date of Termination of Certification for Transplant Centers that fail to meet Medicare Conditions of Coverage.

Last week, CMS made available on its website the final Physician Fee Schedule (PFS) rule and rates for CY 2009 as well as the final Hospital Outpatient Prospective Payment (HOPPS) rule and rates for CY 2009.

In the final PFS rule, which will become effective on January 1, 2009, CMS modified the methodology used to achieve budget neutrality, in accordance with a legislative mandate included in the Medicare Improvements for Patients and Providers Act of 2008. **As a result of this and other adjustments required by law, the conversion factor used to determine Medicare payment for physicians services in CY 2009 will be \$36.0666, which is approximately 5.3% lower than the current conversion factor. However, the change in the budget neutrality calculation will also result in an increase in work relative value units. These increases, in conjunction with other RVU changes, result in increases in Medicare payment for transplantation which are generally in the range of 3-4%.**

The final PFS rule also addresses another issue of major concern to ASTS and its members. In the proposed PFS rule published this summer, CMS requested comments on the surgical fees associated with organ retrieval costs, which are included in hospitals' organ acquisition costs. Currently, there is a cap of \$1250 per kidney donor but no limit on the surgical fee for extra-renal organs. In the final PFS rule, CMS rejected ASTS's request that based on an inflation index, on the grounds that the agency does not have sufficient data to establish an appropriate cap for kidney or for extra-renal organs. CMS therefore again solicited data on the appropriate surgical fees for these services. ASTS will be working with the agency on this issue over the coming year.

Finally, in the HOPPS rule, CMS took the opportunity to clarify termination procedures for transplant centers that fail to meet Medicare conditions of coverage. CMS noted that, in the preamble to the final transplant center certification regulations, the agency had suggested that certification would continue pending appeal. However, in the HOPPS rule preamble, **CMS indicated that, in fact, if a transplant center fails to meet Medicare conditions, participation in the Medicare Program will be terminated on the effective date of the de-certification decision, and will not await the resolution of any appeal of the decision.** This is consistent with the process used for terminating other Medicare providers and suppliers.

Physician Fee Schedule Rules and Rates for CY 2009 and Effective Date of Termination of Certification for Transplant Centers that fail to meet Medicare Conditions of Coverage.