



2009

President

Nancy Berliner, MD
Chief, Hematology Division
Brigham & Women's Hospital
75 Francis Street
Boston, MA 02115-6110
phone 617-732-5840
fax 617-264-5215
nberliner@partners.org

President-Elect

Hal E. Broxmeyer, PhD
Walther Oncology Center
Indiana University School of Medicine
950 W. Walnut Street, Room 302
Indianapolis, IN 46202
phone 317-274-7610
fax 317-274-7592
hbroxmey@upui.edu

Vice President

J. Evan Sadler, MD, PhD
Washington University Medical School
660 South Euclid Avenue, Box 8125
Saint Louis, MO 63110-1093
phone 314-362-9029
fax 314-454-3012
esadler@im.wustl.edu

Secretary

Charles S. Abrams, MD
University of Pennsylvania
School of Medicine
421 Curie Boulevard, #912
Philadelphia, PA 19104-6140
phone 215-998-1058
fax 215-673-7400
abrams@mail.med.upenn.edu

Treasurer

Linda J. Burns, MD
Division of Hematology,
Oncology, and Transplantation
University of Minnesota
420 Delaware Street, SE
Mayo MC 286/Room 14-154A Moos Tower
Minneapolis, MN 55455-0341
phone 612-624-8144
fax 612-625-9988
burns019@umn.edu

Councillors

Thomas Bensinger, MD
David M. Bodine, PhD
D. Gary Gilliland, MD, PhD
Richard A. Larson, MD
Stephanie Lee, MD, MPH
Elaine A. Muchmore, MD
Robert F. Todd, III, MD, PhD
David A. Williams, MD

Editors-In-Chief

Cynthia E. Dunbar, MD, *Blood*
Roy L. Silverstein, MD, *The Hematologist*

Executive Director

Martha L. Liggett, Esq.
American Society of Hematology
1900 M Street, NW, Suite 200
Washington, DC 20036
phone 202-776-0544
fax 202-776-0545
mliggett@hematology.org

August 26, 2009

Charlene Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
Attention: CMS-1414-P
7500 Security Blvd.
Baltimore, MD 21244-8013

Re: Medicare Program: Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2010 Payment Rates

Dear Acting Administrator Frizzera:

The American Society for Hematology (ASH) is pleased to have the opportunity to comment on the proposed changes to the Hospital Outpatient Prospective Payment System (HOPPS) for 2010. ASH represents over 16,000 hematologists in the United States who are committed to the treatment of blood and blood-related diseases. ASH members include clinicians who regularly render services to Medicare beneficiaries.

The Society would like to specifically address the proposed change to classify allogeneic bone marrow/stem cell transplants as "inpatient only" procedures and to exclude payment for hematopoietic progenitor cell harvesting for transplantation.

- ASH urges CMS to allow physician judgment by the transplant physician to determine when to perform an allogeneic transplant in a hospital outpatient setting.
- ASH is also asking CMS to withdraw the corresponding change for Code 38205 from an "E" or excluded status to an "S" status.
- ASH urges that Code 38205 continue to be paid separately under HOPPS regardless of where the transplant ultimately occurs because the proposed "bundling" policy is overly complicated and burdensome.

It is ASH's understanding that CMS designates certain procedures for payment in the inpatient setting because of the nature of the procedure, the underlying physical condition of the patient, or the need for at least 24 hours of postoperative recovery time or monitoring before the patient can be safely discharged. CMS proposes to add allogeneic bone marrow/stem cell transplants (Codes 38240 and 38242) to the "inpatient-only" list under the assumption that this reflects the "current clinical practice of performing allogeneic stem cell transplants on Medicare beneficiaries on an inpatient basis only". Consistent with that view, CMS further proposes to assign an "E" status to Code 38205, which is the code used to report the harvesting of allogeneic cells.

While CMS recognizes that allogeneic stem cell harvesting may take place in the hospital outpatient department, CMS states that payment for this service is made through the DRG payment, for the transplant procedure, which is assumed (incorrectly) to always be performed on an inpatient basis.

CMS is mistaken in its understanding that allogeneic transplants are performed only on an inpatient basis. While most allogeneic transplants may currently be performed in the inpatient setting, there is a meaningful proportion, perhaps as many as 10 percent of cases that can be safely performed on an outpatient basis. CMS' own data demonstrates that allogeneic transplant procedures are performed in outpatient settings. In fact, based on physician claims for Code 38242, a majority of the services were performed in outpatient settings while for Code 38240, about 5 percent of the service were performed outside of the inpatient setting. Hematologists perform most of the bone marrow/stem cell transplants in the United States and as the national professional society representing these physicians, ***ASH urges CMS to allow physician judgment by the transplant physician to determine when to perform an allogeneic transplant in a hospital outpatient setting.*** The decision to perform the procedure in the outpatient setting will be made only when it is safe and efficacious to do so considering the patient's condition, the presence or absence of co morbid conditions, and the need for extensive monitoring and recovery time post procedure.

When it is determined safe and efficacious to do the transplant procedure on an outpatient basis, there are substantial advantages to both the patient and the Medicare program including the following:

- Decreased risk of infection
- Lower cost
- Greater patient comfort
- Improved usage of hospital resources

ASH notes that at the recent meeting of the APC Advisory Committee on August 6, 2009 there was unanimity among the committee members that CMS should not add allogeneic transplants to the inpatient only list. For all of these reasons, ASH urges CMS to withdraw this proposal.

The Society recognizes that there are a number of technical billing and payment questions that ultimately need to be addressed relating to the payment for allogeneic transplants in outpatient settings. These include but are not limited to the question of how to recognize fees charged to hospitals by the National Marrow Donor Program for bone marrow/stem cells from unrelated donors under the HOPPS program. ASH and several other interested groups initiated a dialogue with CMS on these operational and policy issues several months before this proposed rule was issued. Although ASH recognizes that it will take some time to work through these billing and

related questions; the lack of an immediate solution to specific billing issues should not dictate the basic policy decision on where the procedure can be safely performed.

Finally, in addition to the recommended change in status for Codes 38240 and 38242, ***ASH also asks CMS to withdraw the corresponding change for Code 38205 from an “E” or excluded status to an “S” status.*** Harvesting of cells from a donor is typically provided on an outpatient basis. As indicated above, some allogeneic transplants are performed on an outpatient basis, and the proposed policy of “bundling” all harvesting costs into the DRG payment for the allogeneic transplant clearly does not apply to the situations where the transplant will be done on an outpatient basis. Moreover, ***ASH urges that Code 38205 continue to be paid separately under HOPPS regardless of where the transplant ultimately occurs because the proposed “bundling” policy is overly complicated and burdensome.*** This is particularly the case for the frequent situation where the harvesting is performed in a different hospital than where the transplant is performed. Finally, Code 38205 currently pays about \$759 under HOPPS in comparison to an MS DRG payment for bone marrow transplant of well over \$30,000. Thus, whether or not these costs are bundled into the DRG rate, it would have a relatively trivial impact on the MS DRG payment.

Thank you for the opportunity to submit these comments. If we may provide additional information, you may contact Carol Schwartz, Senior Manager, Policy & Practice at ASH 202-292-0258/cschwartz@hematology.org.

Sincerely

A handwritten signature in cursive script that reads "Nancy Berliner".

Nancy Berliner, M.D.