

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED—Continued

HCPCS	Short descriptor
67343	Release eye tissue.
68100	Biopsy of eyelid lining.
68110	Remove eyelid lining lesion.
68135	Remove eyelid lining lesion.
69433	Create eardrum opening.

We are not adding to the ASC list CPT code 50590 Extracorporeal Shock Wave Lithotripsy (ESWL), for which we had proposed a payment of \$2107 in the June 1998 proposed rule. In *American Lithotripsy Society v. Sullivan*, 785, F. Supp. 1035 (D.D.C. 1992), the District Court ordered that we “publish the data and other information we are relying on in setting a (lithotripsy) rate and allow time for comment before issuing a final notice * * *”. The data and other information that we would rely on in setting a payment rate for ESWL are part of the ratesetting methodology that we proposed in the June 1998 proposed rule. Because we are not making that ratesetting methodology final at this time, we might not be in compliance with the District Court order if we were to add CPT code 50590 to the ASC list in this final rule under the current payment rate structure. In addition, comments submitted by the American Lithotripsy Society opposed the \$2,107 payment rate that we proposed in the June 1998 proposed rule. Therefore, we are not including CPT code 50590 among the additions to the ASC list that are implemented by this final rule.

III. Analysis of and Responses to Public Comments

In response to the publication of the June 12, 1998 proposed rule, we received approximately 13,000 comments, many of which were duplicate comments that were resubmitted each time we extended the comment period. We received comments from individual ASCs, physicians, health care workers, professional and trade associations, and medical societies and organizations. The majority of the comments addressed our proposal to adopt ambulatory payment classification (APC) groups as the basis for setting ASC payment rates. In addition, we received numerous comments regarding our proposal to package payment for corneal tissue into the payment rate for corneal transplant surgery. We also received numerous comments regarding proposed reductions in payment for gastroenterological procedures. Those comments will be addressed in a

subsequent rule when we implement changes in the ASC ratesetting methodology. In this final rule with comment, we only respond to comments that address additions to and deletions from the list of approved procedures.

Overall, the commenters who addressed our proposed additions to and deletions from the ASC list favored the proposed additions. Most commenters supported expansion of the ASC list to the maximum possible extent to permit Medicare payment to ASCs for procedures that are performed on an outpatient basis in hospitals. We respond below to commenters who recommended the addition or deletion of specific CPT codes. In reviewing the comments regarding our proposed additions to and deletions from the ASC list, we consulted our medical advisors, and we took into account Congressional intent when the ASC benefit was enacted as well as the current standards for the ASC list that are codified in § 416.65.

As we explain above, we do not include in the list of ASC approved procedures, procedures currently performed on an ambulatory basis in a physician's office that do not generally require the more elaborate facilities of an ASC. Also, the ASC list does not include procedures that are appropriately performed in an inpatient hospital setting but would not be safely performed in an ASC, consistent with the criteria in § 416.65(b)(3).

We also recognized that there are some procedures that might be appropriately performed in ASC for the younger patient who is generally healthy. But for the larger number of beneficiaries whose health is more likely to be compromised by age or disability, an ASC may be a questionable setting for those same procedures. Therefore, we are adding to the ASC list only those procedures that can be safely performed in an ASC on the general Medicare population in at least a significant number of cases.

We believe that the ASC list resulting from the additions and deletions that we are implementing in this final rule with comment is an improvement over the existing list. We have updated the ASC list by adding a significant number of the procedures that we proposed to add in the June 1998 proposed rule as well as new CPT codes established since 1998 that are consistent with our criteria for the ASC list. The resulting updated list allows ASCs to furnish to Medicare beneficiaries surgical services that reflect the practice of contemporary surgery without compromising patient safety. We will continue to update the list through notice and comment within

the biennial timeframe established under the statute. As part of the next biennial update, we will also consider proposing revised criteria to apply in determining which procedures are appropriate for the ASC list.

Comment: A number of commenters favored elimination of the ASC list. The commenters stated that the decision regarding where to perform a procedure should rest with the physician and the patient, not with CMS.

Response: Section 1833(i)(1) of the Act requires us to determine which surgical procedures are safely and appropriately performed in an ASC. Therefore, we cannot adopt this recommendation.

Comment: A national medical association commented that we should not add certain codes that we proposed to add because these procedures are hospital procedures and are not appropriate for same day surgery in an ASC. These procedures are CPT codes 57284 (paravaginal defect repair), 57288 (stress incontinence), 57555 (cervical stump excision), 58345 (fallopian tube catheter), and 57460 (colposcopy).

Response: After a review of our most recent claims data for site of service and an examination of the clinical nature of the surgical procedures in question, we agree with the commenter, and we are not adding these codes to the list.

Comment: The same commenter agreed with our proposal to add CPT codes 57291 (artificial vagina construction) and 57556 (cervical stump excision) to the ASC list and our proposal to delete CPT codes 56405 (vulva drainage) and 57800 (cervix dilation) from the ASC list.

Response: We agree with the commenter. We are adding CPT codes 57291 and 57556 to the ASC list and deleting CPT codes 56405 and 57800.

Comment: A medical specialty society commented that we should delete from the ASC list CPT codes 15842 (microsurgical muscle graft), 26035 (decompression fingers, injection injury), 26037 (decompressive fasciotomy, hand), 27440 (arthroplasty, knee, tibial plateau), 42225 (palatoplasty w. attached pharyngeal flap), 60220 (total thyroid lobectomy), and 60225 (total thyroid lobectomy). The commenter states that these procedures are hospital procedures and not appropriate for an ASC.

Response: We agree with the commenter and we are deleting these 7 procedures from the current list.

Comment: The same commenter disagreed with our proposal to add to the list the following procedures: CPT codes 42842 (extensive throat surgery), 42844 (extensive throat surgery), 57284