

ASC list not include procedures that are commonly performed or that may be safely performed in physicians' offices. CPT code 53675, Complex catheterization, would be significantly overpaid in the lowest ASC payment group. Therefore, we are not adding this procedure to the list.

Comment: A few commenters opposed our proposal to remove the following codes from the ASC list: CPT codes 50520 (Closure of nephrocutaneous fistula), 50570 (Renal endoscopy), 50572 (Renal endoscopy), 50574 (Renal endoscopy), 50576 (Renal endoscopy), 50578 (Renal endoscopy), and 50580 (Renal endoscopy).

Response: These codes describe procedures that are not consistent with our criteria in section § 416.65(b)(3) and therefore are not appropriate to be performed in an ASC. Therefore, we are making our proposal final and we are deleting these codes from the list.

Comment: In our proposed rule we proposed to delete the following nerve injection CPT codes: 64410, 64415, 64417, 64420, 64421, 64430, 64442, 64443, 64510, 64520, 64530, 64600, 64605, 64610, 64620, 64622, 64623, 64630, and 64680. These proposed deletions prompted numerous comments from ASCs specializing in pain management and from interventional pain physicians. Commenters argued that concerns about patient safety supported retaining these nerve block injection codes on the ASC list. They stated that the minimally acceptable requirements for safe completion of these procedures include continuous monitoring of heart function, lung function and breathing. The placement of injections in the spinal area requires the highest infection control standards. In addition, fluoroscopic guidance is necessary to assure precise needle placement. Injections can provoke severe hypertension, chest pain, cardiac arrhythmias, myocardial infarction, severe pain and vasovagal reactions. Risks include seizures, respiratory and cardiac arrest, hypotension, respiratory depression, pneumothorax, total spinal anesthesia, infection, local anesthetic toxicity, paralysis and death. Commenters argued that because of the risks associated with these procedures, they require the health and safety protections assured by the conditions for coverage of ASC services found in part 416 of the regulations.

A few commenters supported deletion of the nerve injection codes from the ASC list. These commenters stated that they are able to perform these nerve injections in their offices. However, these commenters also stated that they

operate in environments with resuscitation facilities and radiological guidance, more typically found in an ASC or a hospital outpatient setting than in a physician's office.

Response: The preponderance of comments opposing deletion of these codes from the ASC list stressed that assuring patient safety requires monitoring and special equipment not customarily found in the physician office setting. Even the minority supporting deletion noted the need for special safety measures in their comments. In light of these comments, we have retained these procedures on the ASC list (with the exception of CPT codes 64442 and 64443, which have been deleted by CPT) because as required by the conditions for coverage in §§ 416.41 and 416.44, ASCs are specifically equipped to provide the level of patient care and monitoring needed to ensure patient health and safety when these procedures are performed. In addition, ASCs are required to have in place appropriate procedures to address emergencies should they occur.

IV. Provisions of the Final Regulations

This final rule with comment period makes additions to and deletions from the current list of Medicare approved ASC procedures. In addition, this final rule with comment period responds to comments received from the June 12, 1998 proposed rule (63 FR 32290) that addressed proposed additions to and deletions from the list of ASC approved procedures. This final rule with comment period implements requirements of section 1833(i)(1) and (2) of the Act.

The addendum that follows this preamble contains the complete list of surgical procedures that are approved for an ASC facility fee payment effective for services furnished on or after July 1, 2003. The addendum also designates those CPT codes that are additions to or deletions from the current ASC list. The CPT code for each procedure is listed in column 1. In column 2, the letter "A" indicates a code that is being added to the ASC in this final rule. The letter "A*" (with an asterisk) indicates a code added to CPT since 1998 that we are adding to the list but that we did not propose to add in the June 1998 proposed rule. CPT codes designated with "A*" are those for which we are soliciting comments. The letter "D" in column 2 indicates a code that is being deleted from the ASC list. Column 3 provides the short descriptor for the CPT code in column 1. Column 4 indicates the current payment group to which an approved code is assigned.

Column 5 indicates the FY 2003 payment amount for the assigned payment group. We solicit comments on additions to the ASC list designated with "A*" in column 2 and the payment group to which these additions are assigned. The codes designated by "A*" in column 2 are new CPT codes that were added to CPT in 1999, 2000, 2001, 2002, and 2003 that are similar to procedures on the updated ASC list.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** and invite public comment when we add to the ASC list HCPCS codes that describe new surgical procedures. The proposed notice includes a reference to the legal authority under which the additions to the list are proposed and a description of the subjects and issues involved. We solicit comment both on the appropriateness of performing the new procedures in an ASC and the payment rate that we propose as the ASC facility fee for the new procedures. This process can be waived, however, if the agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule that is issued.

For reasons that we explain elsewhere in this preamble, we have not previously issued a rule to make final the additions and deletions proposed in the June 12, 1998 proposed rule. For the same reasons, we have not issued proposed notices regarding the addition to the ASC list of new CPT codes that were created during the years since publication of the June 12 proposed rule. This final rule with comment adopts some provisions set forth in the June 12, 1998 proposed rule (63 FR 32290). In this final rule with comment, we are also making certain additions to the ASC list that were not proposed in the June 12 rule and that are subject to comment. Specifically, we are adding new CPT codes for surgical procedures that were added to CPT in 1999, 2000, 2001, 2002, and 2003, and we are assigning those codes to an existing ASC payment group.