

we explained above, because we are not updating the ASC payment rates and ratesetting methodology in this final rule, we would not be in compliance with the District Court order issued in *American Lithotripsy Society v. Sullivan*, 785, F. Supp. 1035 (D.D.C. 1992) if we were to add ESWL to the ASC list without further data and information. Overall, we believe the increased beneficiary access to surgical services and the expansion of the ASC list that will result from this final rule outweighs potential objections to our not including certain additions that were proposed in 1998 to the ASC list.

For the above reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

C. Alternatives Considered

As stated above, we are issuing this final rule with comment to implement additions to and deletions from the ASC list proposed in the June 1998 proposed rule. However, we are not implementing the ratesetting method, rebased payment rates, and changes in the regulations that were also proposed in the June 1998 proposed rule. We considered not updating the ASC list until we completed a survey of ASC costs to use in rebasing the ASC payment rates. However, we decided against this approach because it could have resulted in delaying the update of the list for several years while we conducted the survey and audited and compiled the data upon which to rebase the rates.

We considered basing payment rates for procedures being added to the ASC list in this final rule on the ASC payment group that most closely approximated the payment amount for the same procedures under the hospital outpatient prospective payment system (OPPS). However, the statute requires

that payment rates be tied to ASC, not hospital outpatient costs, so we decided, as explained previously in this preamble, to match the additions to the list to procedures already on the list that are similar in terms of clinical work and resource inputs and to assign the new code to the same payment group as the current code. This approach better maintains internal consistency in ASC payment rates among codes on the list that are similar.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 16, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

Approved: February 14, 2003.

Tommy G. Thompson,

Secretary.

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
10121	A	Remove foreign body	2	446
10180	Complex drainage, wound	2	446
11010	A	Debride skin, fx	2	446
11011	A	Debride skin/muscle, fx	2	446
11012	A	Debride skin/muscle/bone, fx	2	446
11042	Debride skin/tissue	2	446
11043	Debride tissue/muscle	2	446
11044	Debride tissue/muscle/bone	2	446
11404	Removal of skin lesion	1	333
11406	Removal of skin lesion	2	446
11424	Removal of skin lesion	2	446
11426	Removal of skin lesion	2	446
11444	Removal of skin lesion	1	333
11446	Removal of skin lesion	2	446
11450	Removal, sweat gland lesion	2	446
11451	Removal, sweat gland lesion	2	446
11462	Removal, sweat gland lesion	2	446
11463	Removal, sweat gland lesion	2	446
11470	Removal, sweat gland lesion	2	446
11471	Removal, sweat gland lesion	2	446
11604	Removal of skin lesion	2	446
11606	Removal of skin lesion	2	446
11624	Removal of skin lesion	2	446
11626	Removal of skin lesion	2	446
11644	Removal of skin lesion	2	446
11646	Removal of skin lesion	2	446
11770	Removal of pilonidal lesion	3	510
11771	Removal of pilonidal lesion	3	510
11772	Removal of pilonidal lesion	3	510
11960	Insert tissue expander(s)	2	446
11970	Replace tissue expander	3	510
11971	Remove tissue expander(s)	1	333
12005	Repair superficial wound(s)	2	446
12006	Repair superficial wound(s)	2	446
12007	Repair superficial wound(s)	2	446
12016	Repair superficial wound(s)	2	446
12017	Repair superficial wound(s)	2	446
12018	Repair superficial wound(s)	2	446
12020	Closure of split wound	1	333
12021	Closure of split wound	1	333
12034	Layer closure of wound(s)	2	446