



American Association of Physicists in Medicine

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August 27, 2009

Charlene Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1414-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2010 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2010 Payment Rates; Proposed Rule; CMS-1414-P

Dear Ms. Frizzera:

The American Association of Physicists in Medicine¹ (AAPM) is pleased to submit comments to the Centers for Medicare and Medicaid Services (CMS) in response to the July 20, 2009 *Federal Register* notice regarding the 2010 Medicare Hospital Outpatient Prospective Payment System (HOPPS) proposed rule. AAPM will provide comments on the 2010 Bypass list and packaging of image guidance services.

Packaging of Image Guidance Codes

AAPM continues to oppose packaging of image guidance services. While AAPM understands the rationale of packaging under a prospective payment system, we are concerned that the methodology to determine payment for packaged services is not transparent and may lead to inappropriate payment for image guidance services.

AAPM strongly supported the APC Advisory Panel's August 27, 2008 recommendation that CMS provide separate payment for radiation therapy guidance services for two (2) years and reevaluate the packaging proposal for 2011 HOPPS proposed rulemaking.

¹ The American Association of Physicists in Medicine's (AAPM) mission is to advance the practice of physics in medicine and biology by encouraging innovative research and development, disseminating scientific and technical information, fostering the education and professional development of medical physicists, and promoting the highest quality medical services for patients. Medical physicists contribute to the effectiveness of radiological imaging procedures by assuring radiation safety and helping to develop improved imaging techniques (e.g., mammography CT, MR, ultrasound). They contribute to development of therapeutic techniques (e.g., prostate implants, stereotactic radiosurgery), collaborate with radiation oncologists to design treatment plans, and monitor equipment and procedures to insure that cancer patients receive the prescribed dose of radiation to the correct location. Medical physicists are responsible for ensuring that imaging and treatment facilities meet the rules and regulations of the U.S. Nuclear Regulatory Commission (NRC) and various State regulatory agencies. AAPM represents over 6,700 medical physicists.

For 2010 CMS proposes to maintain the packaged status of all image guidance services, including those radiation therapy guidance services performed in the treatment room. This does not reflect the APC Advisory Panel's August 2008 recommendation.

AAPM remains concerned that the current packaging policy for image guidance will create an incentive for hospitals to cut back their use of advanced therapeutic technologies for daily patient localization used in radiation oncology treatment delivery in a way that could have a direct negative impact on the quality of patient care. The goal of radiation therapy is to maximize the radiation dose to the tumor site while minimizing the dose to surrounding healthy tissue. AAPM believes that the use of state-of-the-art radiation oncology treatment delivery modalities without the corresponding use of adequate daily target localization presents a serious safety risk to patients, and the current CMS policy seems to offer a financial incentive to those hospitals that choose to make little or no use of daily localization when providing radiation therapy. Image guidance procedures improve the quality of radiation treatment delivery and is not a significant additional cost to the Medicare program.

AAPM is pleased that CMS accepted the APC Advisory Panel's recommendation to continue to analyze the impact of increased packaging on beneficiaries and provide detailed data and analyses to the APC Panel. AAPM continues to support increased transparency regarding the image guidance packaging data and encourages CMS to continue to monitor and provide detailed data regarding the impact of packaging to the public. CMS should carefully monitor the effect that packaging will have on radiation therapy payment rates to ensure that any changes do not inhibit use of this important treatment.

AAPM remains strongly opposed to continued packaging of radiation oncology image guidance services. AAPM recommends that CMS closely monitor the impact of packaging image guidance on the quality of Medicare beneficiaries cancer care and to provide transparent and meaningful data associated with the packaging policy, which allows stakeholders to determine if reimbursement for image guidance technology is reasonable and appropriate.

2010 Bypass List

In the 2009 HOPPS final rule, CMS removed from the 2009 bypass list all codes in the radiation oncology series of CPT (i.e., 77261-77799) that did not meet the empirical criteria for inclusion on the Bypass list. AAPM and other key stakeholders did not have an opportunity to analyze changes to the final 2009 Bypass list or make recommendations that might have avoided significant payment fluctuations from proposed and final 2009 payment rates.

Changes to the 2009 final rule Bypass list resulted in the loss of approximately 1 million pseudo-single procedure claims utilized to determine payment rates for radiation oncology APCs. Removing these codes from the 2009 Bypass list negatively impacted final 2009 payment rates for several radiation oncology APCs, including Low Dose Rate (LDR) brachytherapy.

As CMS is aware, the typical radiation oncology encounter involves multiple services. As a result, exclusive reliance on single claims means that the APC payment rates are based on atypical encounters and erroneous claims submissions. AAPM supports the changes that CMS made several years ago, which permitted the Agency to include data from multiple procedure claims within the database used by CMS for rate setting for radiation oncology codes. The methodology developed by CMS relies upon the "date of service" on the claims and a list of codes to be "bypassed" to create "pseudo-single" claims from multiple procedure claims.

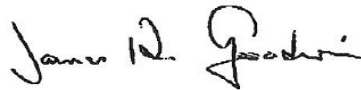
For 2010, CMS proposes to continue to bypass all of the codes on the 2009 Bypass list. In addition, CMS proposes to use the empirical criteria to determine additional codes to be added to the Bypass list for 2010. Further, CMS proposes to bypass 438 HCPCS codes, including radiation oncology codes CPT 77300, 77301, 77315, 77331, 77336, 77370 and 77401.

The majority of radiation oncology APCs have proposed increases slated for 2010, however, LDR Brachytherapy (APC 312 & 651) and Stereotactic Radiosurgery (SRS) (APC 65, 66, 67) procedures have proposed reductions in 2010 ranging from 3.0% to 31%. These decreases are in addition to the 2009 HOPPS final rule payment reductions for all LDR and SRS APCs, which decreased from 2008 by 3.0% to 25%. AAPM supports continued CMS analysis of the claims data for radiation oncology codes, and particularly for the APCs for which the number of usable claims declined.

AAPM supports the American Society for Radiation Oncology (ASTRO) recommendation that CMS add CPT 77470, 77295, and 77328 to the Bypass list for 2010. These codes meet two of the three of the CMS criteria for inclusion on the Bypass list and are present on many of the brachytherapy claims that are not used in proposed 2010 rate setting. AAPM encourages CMS to establish an appropriate methodology that utilizes to the greatest extent possible multiple procedure claims for rate setting by creating pseudo-single claims.

In conclusion, we hope that CMS will take these issues under consideration during the development of the 2010 HOPPS/ASC final rule. Should CMS staff have additional questions, please contact Wendy Smith Fuss, MPH at (561) 637-6060.

Sincerely,



James Goodwin, M.S.
Chair,
Professional Economics Committee



Lena Lamel, M.S.
Vice-Chair
Professional Economics Committee

CC: Carol Bazell, M.D., M.P.H., CMS