American Association of Physicists in Medicine
One Physics Ellipse
College Park, MD 20740-3846
(301) 209-3350
Fax (301) 209-0862
http://www.aapm.org

September 5, 2013

Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1600-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for CY 2014 Proposed Rule; CMS-1600-P

Dear Administrator Tavenner:

The American Association of Physicists in Medicine[1] (AAPM) is pleased to submit comments to the Centers for Medicare and Medicaid Services (CMS) in response to the July 19, 2013 *Federal Register* notice regarding the 2014 Medicare Physician Fee Schedule (MPFS) proposed rule. AAPM will provide comments on the use of hospital outpatient prospective payment system and ambulatory surgical center payment system rates in developing practice expense relative value units; revision of the Medicare Economic Index reclassification of non-physician compensation; validation models for relative value units; and the overall reduction to radiation oncology technical component services.

AAPM has significant concerns regarding the proposed reductions to radiation oncology and freestanding radiation therapy centers in the 2014 MPFS. Cuts of this magnitude will harm cancer care, especially in rural areas, and will negatively impact Medicare beneficiary access to life-saving treatments. We fear that many freestanding cancer centers may close or reduce expenses, including clinical labor, which could impact the safety and quality of radiation therapy and compromise patient outcomes.

[1] The American Association of Physicists in Medicine (AAPM) is the premier organization in medical physics, a broadly-based scientific and professional discipline encompassing physics principles and applications in biology and medicine whose mission is to advance the science, education and professional practice of medical physics. 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 7,000 medical physicists.

I. Using HOPPS and ASC Rates in Developing Practice Expense Relative Value Units

For 2014, CMS proposes to limit MPFS payment for practice expense relative value units (RVUs) to the amount paid in the hospital outpatient (HOPPS) or ambulatory surgical center (ASC) setting.

The proposed rule provided too little detail about exactly what CMS was proposing and it took considerable time during the comment period to obtain the information needed to understand and replicate the CMS methodology, especially with respect to the 5 percent "low volume" threshold and whether payment for a specific code was being capped at the ASC or HOPPS levels. The proposed rule did not identify or include a list of affected codes but instead directed readers to Addendum B, which is simply a complete list of all codes paid under the MPFS.

The proposed policy change is particularly damaging to CPT codes which have high direct practice costs. 82 percent of the codes on the list have direct practice expense costs (i.e., non-physician clinical labor, medical equipment and supplies) that exceed the proposed payment cap amount, making them unsustainable in the office setting. For example, practice expense payments for planning a course of intensity modulated radiation therapy would cover only 65% of the current direct costs. In addition, payments for breast and lung cancer radiation oncology treatment episodes would decrease by 13 percent.

This proposal's underlying premise is flawed. CMS ignores fundamental differences in Medicare payment methodologies between resource-based relative value scale that is the basis for the MPFS and the ambulatory payment classifications (APCs) used for HOPPS and ASC rates. These differences render service-by-service comparisons inappropriate and inaccurate.

The HOPPS is based on hospital charge data for a broad range of services that can be highly inconsistent and subject to methodological manipulations. The hospital outpatient data used to determine HOPPS payment rates is fraught with errors based on hospital miscoding or lack of coding packaged services, inaccurate hospital charges, and cost-compression that often yield payment rates set below hospital costs, which will now apply to the physician and freestanding cancer center payments.

In addition, AAPM believes that the proposal to use the current year HOPPS or ASC rates as a point of comparison in establishing practice expense RVUs for services under the MPFS is inappropriate. CMS is proposing to cap 2014 MPFS rates based on a comparison of 2013 HOPPS and ASC payment rates, which does not reflect the most recent annual update (i.e. HOPPS increase of 1.8%) or changes to APC weights.

Also important is that the proposal has the potential to impact Medicare beneficiaries by shifting procedures into the hospital outpatient setting, which would increase Medicare beneficiary copayments.

> ***The AAPM urges CMS to <u>not</u> implement the proposal to use hospital outpatient prospective payment system and ambulatory surgical center payment system rates in developing Medicare Physician Fee Schedule practice expense relative value units.***

II. Medicare Economic Index

CMS proposes to revise the Medicare Economic Index (MEI), with the most significant change involving the reclassification of expenses for non-physician clinical personnel that can bill independently from non-physician compensation to physician compensation. This discretionary action, when applied to the pools of work and practice expense RVUs, leads to across-the-

board reductions in practice expense RVUs and a budget-neutrality adjustment to the conversion factor. CMS estimates that the proposed revision in the MEI and its related effect on RVU pools will lead to estimated reductions in Medicare payments of 5 percent for radiation therapy centers and 2 percent for radiation oncology. For example, CPT 77336 Continuing medical physics consultation yields a 6.8 percent technical component payment reduction due to the MEI reclassification.

The AAPM believes that the proposed reclassification of non-physician compensation and its resulting effect on RVUs have made it difficult for stakeholders to unravel the individual effects on practice expense RVUs of the several different provisions in the proposed rule. In fact, the MEI section of the proposed rule never mentions the fact that the altered MEI weights will have a significant impact on the practice expense RVUs for both professional component and technical component services. The AAPM is concerned about the proposed reclassification of non-physician compensation given its impact on Medicare payments to physicians and freestanding cancer centers.

The AAPM urges CMS to reconsider the proposed reclassification of non-physician compensation as part of the proposed revision of the Medicare Economic Index for 2014.

III. Validating RVUs of Potentially Misvalued Codes

In the proposed rule, CMS briefly mentions contracts with the RAND Corporation and Urban Institute to develop validation models for RVUs. It appears that both models will focus on validation of physician work RVUs. AAPM is interested in additional information and specifics regarding the scope of each of the validation models. We would like to know if either contractor plans to validate practice expense RVUs? We recommend that CMS maintain transparency regarding these contracts and provide the public with additional detail regarding each model.

The AAPM requests that CMS provide additional information and specifics regarding the RAND Corporation and Urban Institute validation models for relative value units.

IV. Impact of Proposed Reductions to 2014 Radiation Oncology RVUs

AAPM has reviewed the proposed RVUs for radiation oncology codes 77261-77799. All of the technical component codes will incur RVU reductions in 2014 with the exception of CPT 77407. In fact 18 procedure codes will realize reductions greater than 10 percent as proposed for 2014 and 14 of the 18 codes will yield reductions greater than 25 percent (see below):

CPT Code & Descriptor	Percent RVU Reduction 2013-2014	CPT Code & Descriptor	Percent RVU Reduction 2013-2014
77605-TC Deep external hyperthermia	-62.5%	77406 Radiation treatment delivery	-32.5%
77610-TC Interstitial hyperthermia	-61.4%	77414 Radiation treatment delivery	-30.8%
77615-TC Interstitial hyperthermia	-56.9%	77416 Radiation treatment delivery	-30.8%
77620-TC Intracavitary hyperthermia	-47.1%	77412 Radiation treatment delivery	-25.1%
77301-TC IMRT planning	-37.8%	77403 Radiation treatment delivery	-25.0%
77423 Complex neutron beam treatment	-37.5%	77280-TC Simple simulation	-24.8%
77422 Simple neutron beam treatment	-36.3%	77413 Radiation treatment delivery	-22.2%
77290-TC Complex simulation	-35.9%	77402 Radiation treatment delivery	-14.0%
77404 Radiation treatment delivery	-32.5%	77777-TC Intermediate interstitial brachytherapy	-12.3%

Many of the codes listed above with proposed RVU reductions in 2014, also realized RVU reductions in 2012 and 2013. This proposed rule includes extreme, unpredictable shifts in payment for numerous services in the MPFS. AAPM is concerned that CMS is allowing devaluation of technical component services provided in freestanding and community-based cancer centers under the MPFS.

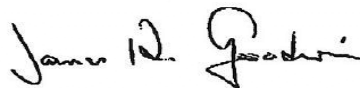
CMS continues to propose new payment policies that negatively impact the specialty of radiation oncology. Radiation Oncology and Radiation Therapy Centers are negatively affected by the proposed cap on non-facility practice expense RVUs for certain services and by the Medicare Economic Index proposed change that would have the effect of further reducing practice expense RVUs. The impact of proposed 2014 policies yields a 13 percent reduction in payment to Radiation Therapy Centers, which is compounded by a 9 percent payment reduction in 2013 and a 6 percent reduction in 2012. AAPM is concerned regarding the viability of providing high quality radiation therapy and medical physics services in a freestanding setting.

Continued reductions to RVUs and MPFS payments will have a deleterious effect on freestanding cancer centers and impact the provision of cancer care, especially in rural areas. Medicare beneficiaries deserve access to quality cancer treatment provided in freestanding and community-based cancer centers.

> ***The AAPM recommends that CMS stabilize radiation oncology RVUs and payments in order to ensure Medicare beneficiary access to life saving cancer treatments provided in freestanding and community-based cancer centers.***

Appropriate payment for medical physics services, radiology and radiation oncology procedures is necessary to ensure that Medicare beneficiaries will continue to have full access to imaging in the diagnosis of cancer and high quality cancer treatments in freestanding cancer centers. We hope that CMS will take these issues under consideration for the 2014 Physician Fee Schedule 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