



American Association of Physicists in Medicine

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August 26, 2011

Donald Berwick, M.D.
CMS Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1525-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicare Program; Hospital Outpatient Prospective Payment System; Proposed Rule;
CMS-1525-P

Dear Administrator Berwick:

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 18, 2011 *Federal Register* notice regarding the 2012 Medicare Hospital Outpatient Prospective Payment System (HOPPS) proposed rule. AAPM will provide comments on the cancer hospital payment adjustment, physician supervision of hospital outpatient therapeutic services and APC reassignment of CPT code 77338.

CANCER HOSPITAL PAYMENT ADJUSTMENT

CMS proposes to implement a payment adjustment to eleven cancer centers designated under the Balanced Budget Act of 1997, which results in an aggregate 9% increase to these cancer hospitals' outpatient payments. It is important to note that most U.S. cancer care is provided by other hospitals furnishing cancer centers (i.e. "non-cancer" hospitals).

AAPM supports the intension of fairly compensating the eleven designated cancer hospitals for services that CMS deems to be more costly than cancer care provided in all other U.S. hospitals. AAPM opposes a budget neutral payment adjust that will provide a 0.6 percent payment reduction to the all other "non-cancer" hospitals, which provide cancer care to the majority of Medicare beneficiaries.

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.

AAPM recognizes that the cancer hospital payment adjustment was mandated by the Affordable Care Act of 2010 but we recommend that CMS find an alternative payment methodology that does not negatively impact payments to all other hospitals furnishing cancer care (i.e. "non-cancer" hospitals).

PHYSICIAN SUPERVISION OF HOSPITAL OUTPATIENT THERAPEUTIC SERVICES

CMS is proposing to establish the Federal Advisory APC Panel as an independent review body that would evaluate individual outpatient therapeutic services for potential assignment by CMS of general or personal physician supervision.

AAPM supports an open, transparent public process to review physician supervision levels for outpatient therapeutic services. We agree that the APC Advisory Panel is an acceptable federal advisory body to review public comments and make recommendations to CMS. However, we believe that it is imperative that a radiation oncologist and/or a medical physicist be a member of the APC Advisory Panel involved in reviewing all recommendations that apply to physician supervision of radiation therapy services provided in the hospital outpatient setting.

AAPM supports the CMS proposal to utilize the APC Advisory Panel as an independent review body to evaluate individual outpatient therapeutic services and make recommendations to CMS regarding the level of physician supervision as long as a radiation oncologist and/or medical physicist is a member of the APC Advisory Panel.

Further, CMS proposes to use the definitions for personal supervision or general supervision that were established for the Medicare Physician Fee Schedule to apply to the hospital outpatient therapeutic services.

AAPM supports the CMS proposal to use the current Medicare Physician Fee Schedule definitions of personal supervision or general supervision to apply to the hospital outpatient therapeutic services.

REASSIGNMENT OF CPT 77338

CMS proposes to reassign CPT 77338 *MLC device(s) for IMRT, design and construction per IMRT plan* from APC 310 to 305. This proposal will reduce 2012 payment 72.3% from the 2011 payment of \$926.74. CPT 77338 was implemented in 2010 and 2012 proposed reassignment is based on the first year of available outpatient claims data.

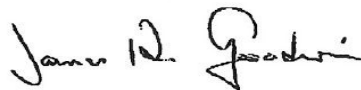
For 2011, CMS developed a simulated cost for one unit of CPT 77338 by using the frequency information they acquired from an internal study and the median cost of one unit of CPT code 77334 *Treatment devices, design and construction; complex*. CMS assumed that if a total of eight devices were typically furnished across two treatments, then approximately four devices were furnished for each treatment. CMS assumed that the cost of each device for IMRT would be approximately the same as a single unit of CPT code 77334 because one unit of CPT 77334 represents one device. CMS estimated that the cost of the devices that would be reported by one unit of CPT 77338 would be approximately \$792 (4 devices at an estimated per device cost of \$198 each). Based on this analysis CMS assigned CPT 77338 to APC 310 in 2011 because there were no claims data available for rate setting.

A review of the 2012 median cost data (based on 2010 outpatient claims), shows a median cost of \$185.14 for CPT 77338. This is in sharp contrast to the median cost for CPT 77334, which is \$212.95 for 2012 (\$213.52 in 2011). The 2010 claims data are inaccurate as CPT 77338 is a single charge for multiple complex IMRT devices and one would expect that the costs would be multiples of 77334. In addition, the claims data analysis revealed that there is wide variability in hospital charges associated with CPT 77338. The analysis leads us to believe that hospital providers need additional coding guidance regarding non-IMRT (CPT 77332-77334) and IMRT treatment devices (CPT 77338).

AAPM recommends that CMS maintain CPT 77338 in APC 310 Level III Therapeutic Radiation Treatment Preparation in 2012 based on inaccurate 2010 median claims data.

We hope that CMS will take these issues under consideration during the development of the 2012 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
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