



## American Association of Physicists in Medicine

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August 27, 2008

Kerry N. Weems  
Acting Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1403-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 and Other Revisions to Part B for CY 2009; Proposed Rule; CMS-1403-P

Dear Mr. Weems:

The American Association of Physicists in Medicine (AAPM) is pleased to submit comments to the Centers for Medicare and Medicaid Services (CMS) in response to the July 7, 2008 *Federal Register* notice regarding the 2009 Physician Fee Schedule proposed rule.

AAPM's 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, computed tomography, magnetic resonance imaging, 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 Nuclear Regulatory Commission and various State Health Departments. AAPM represents over 6,700 medical physicists.

AAPM recommends that CMS more closely examine the impact of all 2009 Medicare Part B payment policies for radiation oncology, including medical physics services. Continued reductions for some practice expense relative value units (RVUs), including CPT 77336 Continuing Medical Physics Consultation, could have a major impact on the provision of radiation oncology and related procedures to Medicare beneficiaries treated in freestanding cancer centers.

## **Malpractice RVUs (PC/TC Issue)**

Malpractice RVUs are reviewed by CMS at 5-year intervals. CMS notes that there are some radiological services that have assigned malpractice RVU values that have never been part of the review process. Consequently, the malpractice RVUs assigned to these technical services have not been revised since their initial assignment. CMS states that the reason these services have never been reviewed is directly linked to a lack of suitable data on the cost of professional liability insurance for technical staff or imaging centers. CMS states that more information is needed to ensure that any changes made to malpractice RVUs are resource-based and that their contractor will research available data sources for the malpractice costs associated with the technical component (TC) portion of these codes.

Medical physicists, due to their key role in the design and quality assurance of high-risk radiation therapy procedures, have a significant liability exposure, and so liability insurance is normally carried by the medical physicist's employer or by the medical physicist if self-employed.

Marsh Affinity Group Service's plan is one of the largest association insurance program brokers and administrators in the United States. The Plan is administered by Marsh Affinity Group Services and is underwritten by the Chicago Insurance Company, one of the Fireman's Fund Insurance Companies. Typical policies for medical physicists are valued at \$1Million Individual / \$3Million Aggregate coverage.

AAPM opposes any policy that would make the TC malpractice value zero. It is important that the cost of medical physicist's professional liability insurance be captured in the resource-based malpractice RVUs for technical services. These expenses do not represent general liability insurance premiums, which are included in the practice expense RVUs.

**AAPM recommends that CMS contact Marsh Affinity Group Services to obtain information and data on medical physicist professional liability insurance before proposing changes to the malpractice RVUs for technical services.** (See contact information below.)

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<http://www.personal-plans.com/product/marsh/>

## **Independent Diagnostic Testing Facilities (IDTFs)**

AAPM supports high quality imaging and patient safety in all sites of service, including the physician office setting. AAPM believes that safety and quality standards need to be applied to all equipment as well as allied health professionals, including medical physicists. Applying such standards may reduce inappropriate utilization, improve patient safety and increase quality imaging.

Under the current Medicare enrollment requirements physicians and non-physician practitioners (NPPs) who perform diagnostic testing services for their own patients (“Physician Entities”) are not required to enroll with Medicare as an Independent Diagnostic Testing Facility (IDTF).

CMS is proposing to apply IDTF requirements to all diagnostic testing services (except diagnostic mammography services) provided in physicians' offices. CMS proposes to improve the quality of diagnostic testing performed by physicians and NPPs by requiring them to enroll as suppliers of these services and to meet certain quality and performance standards, including applicable Federal and State licensure, health and safety requirements that currently apply to IDTFs.

Freestanding cancer centers utilize planar and stereotactic x-ray systems, ultrasound, computed tomography (CT), magnetic resonance imaging (MRI) and positron emission tomography (PET) for image guidance during therapeutic treatment delivery. The use of this technology is not for diagnostic testing but is an integral component of safe delivery of radiation therapy. CMS should clarify that the proposed IDTF regulations apply to diagnostic testing facilities whose purpose is the diagnosis of clinical conditions. We call attention to the fact that Diagnostic Imaging Accreditation programs have a great many requirements that are not compatible with radiation therapy image guidance and simulation systems.

Section 135 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), enacted into law on July 15, 2008, will require facilities with advanced diagnostic imaging services such as MRI, CT and nuclear medicine to be accredited to be eligible for Medicare payment for the technical component as January 1, 2012. Criteria for accreditation includes standards for qualifications of non-physician medical personnel and procedures to ensure that equipment meets performance standards used to furnish advanced diagnostic imaging services.

**AAPM recommends that CMS exempt imaging systems used exclusively for radiation therapy simulation or image guided radiation therapy (and whose use does not generate a diagnostic imaging interpretation) from triggering the inclusion of a provider as an IDTF supplier. We also recommend that CMS focus on ensuring a smooth implementation of the new accreditation standards mandated by Congress.**

AAPM believes that the CMS IDTF proposal will provide significant regulatory and administrative impediments to safe and effective delivery of radiation therapy to patients if inclusion as an IDTF is mandated for facilities that use these modalities exclusively for image guided radiation therapy and radiation therapy simulation. If CMS implements the IDTF proposal, radiation oncologists and other providers who use these modalities for therapeutic treatment should be exempt from the IDTF requirements.

### **Sustainable Growth Rate**

The proposed rule indicates that payment rates for all services would be reduced by 5.4% for 2009, a reduction required by the statutory formula that takes into account substantial growth in overall Medicare spending.

While we understand that CMS is required by law to update the conversion factor on an annual basis according to the sustainable growth rate (SGR) formula, we do not support reductions under the SGR system forecasted for 2009 and subsequent years. The SGR formula is unreasonable and not viable as it is tied to the overall U.S. economy (gross domestic product) and does not accurately reflect the health care costs of treating Medicare patients. Further, the current formula does not account for the costs and savings associated with new technologies.

The current SGR formula must be replaced with one where payment updates keep pace with practice cost increases.

**CMS should replace the Sustainable Growth Rate in 2010 with an annual update system like those of other provider groups so that payment rates will better reflect actual increases in physician practice costs and take into account Medicare Part B savings associated with new technologies.**

### **Physician Self-Referral and Anti-Markup Issues**

CMS proposes a new, targeted exception to the physician self-referral statute to encourage gainsharing, pay-for-performance, value-based purchasing and similar programs that use economic incentives to foster high quality, cost-effective care.

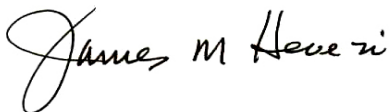
**AAPM applauds the CMS efforts but urges caution as these are complex issues that deserve careful consideration. Specifically, AAPM recommends that any future gainsharing programs include safeguards that do not favor one treatment modality over another treatment modality.**

### **Conclusion**

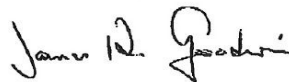
Appropriate payment for radiation oncology procedures and medical physics services is necessary to ensure that Medicare beneficiaries will continue to have full access to high quality cancer treatment in freestanding cancer centers. The continued effect of multiple proposals on the technical component and global payment for radiation oncology procedures (e.g. CPT 77336) could be devastating to freestanding radiation oncology centers that provide cancer care to Medicare beneficiaries.

We hope that CMS will take these issues under consideration during the development of the 2009 Physician Fee Schedule Final Rule. Should CMS staff have additional questions, please contact Wendy Smith Fuss, MPH at (703) 534-7979.

Sincerely,



James Hevezi, Ph.D.  
Chair,  
Professional Economics Committee



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