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

August 27, 2008

Kerry Weems
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1404-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 2009 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates; Proposed Rule; CMS-1404-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 18, 2008 *Federal Register* notice regarding the 2009 Hospital Outpatient Prospective Payment System (HOPPS) and Ambulatory Surgical Center (ASC) Payment System 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 will provide comments and recommendations on packaging of image guidance codes, reassignment of HCPCS C9725 from a New Technology APC to a clinical APC, and charge compression.

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.

Further, because radiation oncology image guidance codes are not commonly performed with any one or only a few surgical or procedural codes, we believe the result of this policy may be inappropriate lower payment for these packaged services.

AAPM is very concerned that the current packaging policy for image guidance will create an incentive for hospitals to cut back their use of advanced 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.

AAPM supports the APC Advisory Panel's August 27th recommendation that CMS provide separate payment for image guidance procedures for two (2) years and re-evaluate the packaging proposal for 2011 HOPPS proposed rulemaking.

If CMS decides to continue the packaging proposal in 2009, 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.

New Technology APCs

CMS assigned HCPCS C9725 *Placement of endorectal intracavitary applicator for high intensity brachytherapy* to New Technology APC 1507 effective January 1, 2006. For 2009, CMS proposes to move this technology into clinical APC 0164 Level II Urinary and Anal Procedures.

Hospitals may not have correctly reported this procedure and utilization according to the outpatient claims data is extremely low with only four (4) single procedure claims reported in 2006 and two (2) single procedure claims in the 2007 claims data. Based on low utilization, CMS has very limited data available to make an appropriate APC assignment at this time.

AAPM recommends that CMS either maintain C9725 in New Technology APC 1507 until sufficient claims data is available to make an appropriate clinical APC assignment; or CMS reassign HCPCS C9725 to the more appropriate clinical APC 0155 Level II Anal/Rectal Procedures.

The procedures in APC 0155 Level II Anal/Rectal Procedures are more similar clinically and with respect to resource cost and include other rectal procedures.

Charge Compression

AAPM agrees with the CMS decision not to implement any short-term adjustments to the HOPPS payment rate calculations for 2009. We are pleased that CMS continues to further study charge compression as the Research Triangle Institute (RTI) recommended changes are significantly complex and would impact not only the HOPPS payment system but also the Medicare Physician Fee Schedule.

AAPM is concerned about the effects of charge compression on the pricing of new and high cost technologies, including advanced imaging. AAPM supports the Agency's efforts to provide education to hospitals to improve their cost reporting. It is extremely important that hospitals accurately report capital costs associated with high cost radiation oncology and radiology equipment.

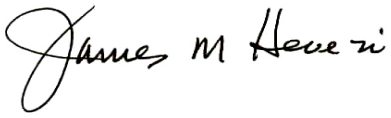
AAPM encourages CMS to proceed with caution when proposing changes to hospital cost reports and the methodology to determine cost-to-charge ratios.

> **AAPM recommends that CMS continue to further study charge compression and proceed with caution when making changes that could negatively impact hospital outpatient departments.**

Conclusion

We hope that CMS will take these issues under consideration during the development of the 2009 Hospital Outpatient 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

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