December 19, 2012

Ms. Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1589-FC
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Electronic Reporting Pilot; Inpatient Rehabilitation Facilities Quality Reporting Program; Revision to Quality Improvement Organization Regulations (CMS-1589-FC)

Dear Ms. Tavenner:

The American Society for Radiation Oncology (ASTRO)\(^1\) appreciates the opportunity to provide written comments on the “Hospital Outpatient Prospective and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Electronic Reporting Pilot; Inpatient Rehabilitation Facilities Quality Reporting Program; Quality Improvement Organization Regulations (CMS-1589-P)” published in the *Federal Register* as a final rule on November 16, 2012.

ASTRO members are medical professionals, practice at hospitals and cancer treatment centers in the United States and around the globe, and make up the radiation therapy treatment teams that are critical in the fight against cancer. These teams include radiation oncologists, medical physicists, medical dosimetrists, radiation therapists, oncology nurses, nutritionists and social workers, and treat more than one million cancer patients each year. We believe this multidisciplinary membership makes us uniquely qualified to provide input on the inherently complex issues related to Medicare payment policy and coding for radiation oncology services.

In this letter we address two proposals that will impact our membership and the patients they serve including:

- Proton Beam Therapy (APCs 0664 and 0667) and
- Intraoperative Radiation Treatment (IORT) (APC 0065).

\(^1\) ASTRO is the largest radiation oncology society in the world, with 10,000 members who specialize in treating patients with radiation therapies. As the leading organization in radiation oncology, biology, and physics, the Society is dedicated to the advancement of the practice of radiation oncology by promoting excellence in patient care, providing opportunities for educational and professional development, promoting research and disseminating research results and representing radiation oncology in a rapidly evolving healthcare environment.
Proton Beam Therapy (APCs 0664 and 0667)

APC 0664 (Level I Proton Beam Radiation Therapy) includes two procedures: CPT code 77520 (Proton treatment delivery; simple, without compensation) and CPT code 77522 (Proton treatment delivery; simple, with compensation). APC 0667 (Level II Proton Beam Radiation Therapy) also includes two procedures: CPT code 77523 (Proton treatment delivery, intermediate) and CPT code 77525 (Proton treatment delivery, complex).

CY 2011 claims data has been used to set rates for CY 2013. For CY 2013, CMS is updating the payment rates for proton beam therapy for CY 2013 to reflect the most recently available claims data from all providers. CMS is not finalizing a proposal to reassign APC assignments based on the 2011 claims data. The 2013 payment rates reflect a modest reduction in payment for APC 0664 and a significant reduction in payment for APC 0667.

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<th>HCPCS</th>
<th>Short Descriptor</th>
<th>2013 APC</th>
<th>2013 Payment Rate</th>
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<th>% Change in Payment Rate</th>
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<td>0664</td>
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<td>77523</td>
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<td>Proton treatment complex</td>
<td>0667</td>
<td>$682.36</td>
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While ASTRO is pleased that CMS is maintaining the 2012 APC assignments for 2013, we are very disappointed that CMS will be basing 2013 rates on data that has been identified as “erroneous.” In CY 2011, only three providers submitted claims for proton services in the hospital outpatient environment. One of these providers only started submitting in 2010 and recently discovered that they had been incorrectly submitting data. CMS was informed of this problem by ASTRO and other stakeholders during the comment period. Due to the small number of providers reporting proton services in the OPPS environment and the limited number of claims submitted, this erroneous data will have a significant impact on ratesetting.

CY 2013 APC Rates Create Rank Order Anomaly

APCs are grouped based on clinical and resource use similarities. The CY 2013 proton beam therapy APC rates are inappropriate, illogical, and create a rank order anomaly in the family. CPT codes 77523 and 77525 represent an intermediate and complex proton service respectively. Based on the CY 2013 proposed rates, these intermediate and complex services are now valued less than CPT codes 77520 and 77522, which represent simple proton services.

When considering the actual medical service described by the various CPT codes, the CY 2013 APC rates are clearly not appropriate.
• **Simple** proton treatment delivery is to a single treatment area utilizing a single non-tangential/oblique port, custom block with compensation (77522) and without compensation (77520).

• **Intermediate** proton treatment delivery (77523) is to one or more treatment areas utilizing two or more ports or one or more tangential/oblique ports, with custom blocks and compensators.

• **Complex** proton treatment delivery (77525) is to one or more treatment areas utilizing two or more ports per treatment area with matching or patching fields and/or multiple isocenters, with custom blocks and compensators.

During the August 27, 2012 semi-annual meeting of the Advisory Panel on Hospital Outpatient Payment, the Alliance of Dedicated Cancer Centers made a presentation on the CY 2013 proposed rates for proton treatment to the Panel. The Cancer Centers examined the underlying claims and cost report data to uncover why CMS cost estimates for CY 2013 differed from that of past years. It was discovered that the third provider, which began reporting the proton beam codes in 2010, had been reporting the costs and charges for the proton beam therapy codes to the wrong cost center in their cost reports. This error was confirmed in public comments by the CFO of this provider who was in the audience. This representative also informed the Panel that they have submitted revised claims and cost reports.

The Panel concluded that CMS does not have sufficient data to implement such drastic changes and that the data they had is flawed. ASTRO continues to agree with the Panel’s recommendation that CMS should not use the flawed data sets and should maintain the CY 2012 APC configurations and CY 2012 rates.

In proposing the rates for CY 2013, CMS followed standard rate setting procedures. Given the flawed data, this approach is inappropriate in this instance. CMS has been informed by the provider that the data was inadvertently submitted inaccurately, and CMS has received corrected data. The use of this flawed data in ratesetting has resulted in payment rates that do not accurately reflect the resources used in providing the service. Perversely, these new rates would be greater for a less resource-intensive service than for a more resource-intensive complex service.

We disagree with the Agency’s decision to apply the standard ratesetting methodology in the face of overwhelming evidence that the data is flawed. CMS’ payment systems should be relatively consistent and not have unexpected dramatic swings in payment from year to year. Coupled with the question of data integrity from one of the institutions and the fact that payment rates for this cancer service are based on only three institutions, ASTRO supports maintaining the 2012 APC rates.

*ASTRO urges CMS to reverse its decision to use the 2011 claims data to set 2013 APC rates for proton services represented by CPT codes 77520, 77522, 77523, and 77525. ASTRO requests CMS to maintain the 2012 APC payment rates for these services.*
Intraoperative Radiation Therapy (IORT) (APC 0065)

The 2012 CPT® code book includes two new codes that describe IORT delivery: 77424 Intraoperative radiation treatment delivery, x-ray, single treatment session and 77425 Intraoperative radiation treatment delivery, electrons, single treatment session. This technology has been around for many years. ASTRO submitted the original CPT code application for the IORT codes and is supportive of the technology and the potential advantages that are provided to a selected subgroup of women with early stage breast cancer and other intra-abdominal and head and neck cancers. For CY 2012, CMS assigned status indicator (SI) “N”, items and services packaged into APC rate, to the two new IORT delivery codes. The assignment of SI “N” means there is not a separate payment for the service in the hospital outpatient environment. In our comments on the 2012 final OPPS regulations, ASTRO recommended that CMS should unbundle the IORT treatment delivery codes and assign them to an APC that appropriately reflects the resources used to provide the service.

For CY 2013, CMS is unpackaging both codes and assigning them to APC 0065 (Level I SRS Mrg FUS and MEG) with a payment rate of $978.25. CMS will review the assignment of CPT codes 77424 and 77425 individually once OPPS hospital claims data becomes available.

ASTRO is very pleased with this decision. In our comments on the 2013 proposed OPPS regulations, ASTRO supported the Agency’s proposal to unbundle IORT. The CMS decision to package IORT delivery in 2012 was based on a policy to package services that are typically ancillary and supportive of a principal diagnostic or therapeutic procedure, which would generally include intraoperative services. ASTRO and other commenters stated that due to the clinical nature of the service, IORT services are not the typical intraoperative services that are packaged in the OPPS environment. Unlike typical intraoperative services, IORT services are not integral to or dependent upon the surgical procedure to remove a malignancy that precedes IORT. Based on these public comments and after further review and consideration, CMS agreed that packaging of IORT services was not appropriate.

ASTRO commends CMS for their consideration of public comments and reconsideration of this issue. We agree with the Agency’s decision to unpackage IORT treatment delivery. ASTRO will continue to monitor these codes, and we look forward to the opportunity to review OPPS hospital claims data for both codes when available.

Thank you for the opportunity to comment on this final rule. We look forward to continued dialogue with CMS officials. Should you have any questions on the items addressed in this comment letter, please contact Sheila Madhani, Assistant Director of Medicare Policy, ASTRO Government Relations Department at (703) 839-7372 or sheilam@astro.org.

Respectfully,

Laura I. Thevenot
Chief Executive Officer