

Radiation Therapy Alliance

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21st Century Oncology
OnCure Medical Corporation
Physician Oncology Services, L.P.
Radiation Oncology Services of America
Vantage Oncology, Inc.

December 29, 2009

Ms. Charlene Frizzera
Acting Administrator
Centers for Medicaid & Medicare Services
Hubert H. Humphrey Building
200 Independence Avenue, SW, Room 445-G
Washington, DC 20201

RE: Final Rule (CMS–1413–FC): Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010

Dear Ms. Frizzera:

The Radiation Therapy Alliance (RTA), an organization that represents for-profit, freestanding radiation therapy centers including 21st Century Oncology, OnCure Medical Corporation, Physician Oncology Services L.P., Radiation Oncology Services of America, and Vantage Oncology, Inc., appreciates the opportunity on behalf of their physicians and staff at over 200 freestanding radiation therapy centers in 21 states to comment on the 2010 Final Physician Fee Schedule Rule as it relates to changes affecting radiation therapy.

This comment letter relates to the following policies contained in the CY 2010 Physician Fee Schedule (PFS) Final Rule:

- Physician Practice Information Survey (PPIS)
- Equipment Utilization Rate
- Malpractice RVUs

The *proposed* PFS rule for CY 2010 included a 17 percent reduction in PE RVUs for radiation oncology primarily as a result of two policies. First, the Centers for Medicare and Medicaid Services (CMS) utilized information from the PPIS to update the specialty-specific PE/HR data used to develop PE RVUs. Second, CMS proposed to increase the assumed utilization rate for all services containing equipment costing over \$1 million from 50 to 90 percent. In our comment letters on the proposed rule, we provided data from our facilities indicating the utilization rates and PE/HR costs we experience and expressed our significant concern regarding the effect these cuts would have had on free-standing radiation therapy centers. As such, the RTA appreciates the decisions by CMS in the *final* PFS rule to not

implement the utilization rate change for radiation therapy equipment and to phase-in the PPIS survey data over a four-year period.

We continue to stress that while the CMS impact table in the proposed rule showed an aggregate 19 percent reduction to radiation oncology, the RTA's analyses found that the negative effects on free-standing radiation therapy centers would have been significantly more profound. The RTA continues to believe that the blending of data between free-standing and hospital-based providers masks the impact of policies on free-standing radiation therapy centers and their patients. As such, we urge CMS in future rulemaking to expressly indicate in impact tables not only the effect of changes to the PFS on professional fees and global reimbursement, but also on the technical reimbursement that compensates free-standing radiation therapy centers. Moreover, the RTA is prepared to work with CMS to explore further payment reforms for free-standing radiation therapy centers that address this issue as well as the broader set of issues resulting from the current incentive structure embodied in the PFS.

Equipment Utilization

We commend CMS for recognizing the significant and important differences between radiation therapy and diagnostic imaging and acknowledging that the evidence presented by MedPAC regarding equipment utilization only relates to certain diagnostic equipment. We hope that the survey data of actual utilization rates of radiation therapy equipment that was collected and provided by the RTA was helpful to CMS in their rulemaking process. We further hope that the site visit by CMS staff to a RTA facility in Maryland also helped inform policymakers about the treatment of radiation oncology.

Physician Practice Information Survey

In addition to applying a 4-year transition to the PE RVUs developed using the new PPIS data, CMS acknowledged other concerns with the development of PE/HR data for free-standing radiation therapy centers. We appreciate the incorporation by CMS of comments to the proposed rule that CMS adjust the PE/HR used for free-standing radiation therapy centers by eliminating 21 survey responses whose physician hour information was missing from the data and imputed. CMS also accepted the request to update the weights used to blend the hospital-based and free-standing radiation therapy center survey data based on more recent claims data. The effect of these revisions was an increase in PE/HR values for radiation oncology from the proposed rule value of \$226.18 to a final rule value of \$289.65.

While the RTA commends CMS for making these modifications to PE/HR for radiation oncology, the RTA remains concerned that the PPIS may not reflect the most accurate practice expense costs incurred at free-standing radiation therapy centers. The RTA looks forward to continuing a dialogue with CMS on this issue and submitting new information during the course of future rulemaking.

Malpractice RVUs

According to the final PFS rule, the impact of the malpractice RVU changes was -2 percent, slightly larger than the -1 percent impact in the proposed rule. In the final rule, CMS decided to assume a minimum of 0.01 malpractice RVUs to every code instead of allowing 0.00 MP RVUs for many codes. In addition, data for malpractice premiums for technical component (TC) codes with zero work RVUs was changed from medical physicists (with average premiums of \$1335) to independent diagnostic testing facilities (IDTFs) (with average premiums of \$9374). Our analysis of these two changes shows the impact should

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have been slightly positive for radiation oncology, rather than a negative impact. The RTA requests that CMS review these calculations and make any necessary corrections.

Conclusion

In conclusion, the RTA, on behalf of its physicians and staff, would like to express our thanks to CMS staff for your consideration and attention to these issues. We stand ready to continue to provide information and expertise regarding the operations and medical science of free-standing radiation therapy centers in the future.

Sincerely,

A handwritten signature in black ink that reads "Christopher M. Rose". The signature is written in a cursive, flowing style.

Christopher Rose, M.D.
Chair, Radiation Therapy Alliance Policy Committee