



September 6, 2022

VIA Electronic Submission to Regulations.gov

Ms. Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1751-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: [CMS-1770-P] Medicare and Medicaid Programs; CY 2023 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicare and Medicaid Provider Enrollment Policies, Including for Skilled Nursing Facilities; Conditions of Payment for Suppliers of Durable Medicaid Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); and Implementing Requirements for Manufacturers of Certain Single-Dose Container or Single-Use Package Drugs To Provide Refunds With Respect to Discarded Amounts

Dear Ms. Brooks-LaSure:

On behalf of the National Association for Proton Therapy (NAPT), please accept the following comments in response to the CY 2023 Medicare Physician Fee Schedule (PFS) Proposed Rule. NAPT is a nonprofit organization made up of world-renowned cancer centers, focused on enhancing the awareness of and access to proton therapy as a clinically sound cancer treatment.¹ NAPT's mission is to work collaboratively to: (i) educate and raise awareness of the clinical benefits of proton therapy among patients, providers, payers, policymakers, and other stakeholders, (ii) ensure patient choice and access to affordable proton therapy, and (iii) encourage cooperative research and innovation to advance the appropriate and cost-effective utilization of proton therapy for certain cancers.

In brief, key issues addressed in this letter include:

- Reduction in the PFS conversion factor
- Continued implementation of the clinical labor rate
- Request for Information on Strategies for Updates to Practice Expense (PE) Data Collection and Methodology
- Rebasing and revising the Medicare Economic Index

Our detailed comments are presented below.

I. Proposed Decline in Conversion Factor

NAPT is very concerned about the impact of Medicare payment rate reduction on providers, and the potential ramifications for access and outcomes for cancer patients. These concerns have been heightened during the COVID-19 Public Health Emergency (PHE). The proposed conversion factor for CY 2023 is 33.0775,

¹ Listing of members can be found on the NAPT website, please visit: <http://www.proton-therapy.org>.



representing a 4.42% reduction from that of CY 2022 (34.6062). In addition to other services and items, the reduction in payment rates may create an unnecessary barrier to beneficiary access to critical oncology services and technologies. The decrease in conversion factor reflects a combination of zero statutory update factor, the expiration of a temporary 3.00 percent increase in payment amounts authorized by Congress in CY 2022, and RVU budget neutrality adjustments.

This drop in the conversion factor compounds the continuing reimbursement cuts for radiation oncology. According to the analysis, Medicare reimbursement for radiation therapy declined by 27% between 2010 and 2019, when adjusted for inflation and utilization,² and additional payment cuts have continued since 2019. In addition, radiation oncology providers are now reporting that their overhead costs have increased by 10-20% due to inflationary pressures.

Although NAPT fully understands that CMS has limited regulatory authority to offset the payment reduction due to the conversion factor, we encourage CMS to consider all possible ways it can mitigate these cuts through regulatory or sub-regulatory means in addition to working with Congress, as appropriate, on a legislative correction. Mitigating reductions in the conversion factor will help providers that have been disproportionately impacted by the PHE, and may help preserve patient access to specialty care like cancer treatments

II. Clinical Labor Pricing Update

In last year's MPFS final rule, CMS implemented an update of the Clinical Labor Prices, phased in over four years. This was in conjunction with the final year of the supply and equipment pricing update and was meant to address concerns that current wage rates are inadequate because they do not reflect current labor rate information, as well as concerns that updating the supply and equipment pricing without updating the clinical labor pricing would create distortions in the allocation of direct PE.

This CMS policy increases the source clinical labor pricing and then disproportionately cuts physician services with high-cost supplies and equipment to account for the budget neutrality requirements in place to offset the clinical labor rate increases. CY 2023 marks the second year of the four-year phase in for the clinical labor price update, which accounts for a significant portion of the payment cut that the broader radiation oncology services are proposed to experience in the coming year. This update puts a huge and unfair burden on specialties that require expensive supplies and/or equipment to care for their patients, such as radiation oncology. While the increase in clinical labor is appropriate, it is not appropriate that physicians, notably from a relatively few small specialties, are negatively impacted by the change.

While phasing in the clinical labor pricing update over a four-year period reduces the immediate drastic impact on many specialties, it does not remedy the overall effect it has on practices. ***Again, we urge the Agency to work with professional and medical specialty societies on a more comprehensive solution to the significant payment shifts that policy changes generate due to the budget neutral environment.***

² Hogan, BS, Jacob, Amit Roy, MD, Patricia Karraker, MD, et al. "Decreases in Radiation Oncology Reimbursement over time: Analysis by Billing Code." *Radiation Oncology*Biography*Physics*. Vol. 114, Issue 1, P47-56. May 21, 2022. <https://doi.org/10.1016/j.ijrobp.2022.05.018>



III. Request for Information on Practice Expense Data Collection and Methodology

The PE inputs used in setting MPFS rates, including both the development of PE RVUs and, historically, the relative shares among work, PE, and malpractice RVUs across the MPFS, are central in developing accurate rates and maintaining appropriate relativity among PFS services and overall payment among the professionals and suppliers paid under the MPFS.

With the goal of improving the information used in the PE methodology, CMS is requesting information on how it can improve the collection of PE data inputs and refine the PE methodology. Of the various PE inputs, CMS believes that indirect expenses (e.g., rent and IT) presents the best opportunity to build “consistency, transparency, and predictability” into the methodology. The primary source for indirect PE information is currently the Physician Practice Information Survey (PPIS).

While NAPT applauds CMS for attempting to remedy parts of the flawed payment system, the Agency must take care to ensure that any solutions it pursues do not exacerbate underlying problems. We urge CMS to take caution in undertaking any significant changes to the existing methodology used to determine PE relative values to avoid unintended consequences, including sizable shifts in payments within or between specialties that could create access to care issues. Adequate time should be given to considering not only an appropriate replacement for the existing methodology, but also to the ultimate implementation of any changes. Additionally, broad stakeholder input should also be relied upon to inform the new methodology.

As it is considering a broader strategy for fee schedule methodology changes, CMS should consider a thorough and informed approach, particularly related to practice expense. We have seen the sizable shifts in payment rates directly resulting from policies implemented to ‘improve’ the system. The Medicare program was designed to provide the elderly with financial protection from the cost of medical care and, in the process, to increase access to services of high quality. The guiding principles used to protect and improve the Medicare program are :

- Access to care
- Quality of care
- Financial protection for beneficiaries
- Equity among physicians
- Reductions in the growth of supplemental medical insurance (SMI) outlays
- Understandability
- Orderly change
- Pluralism

CMS must also consider the unique practice expense requirements associated with the delivery of cancer treatment. The practice of radiation oncology is dependent on expensive equipment. Depending on the age of the equipment, where the equipment is in its’ “life cycle,” and the number of depreciation years for the equipment, costs vary by practice. Professionals with specific expertise and experience in the design and construction of radiation oncology clinics must be consulted to ensure that clinics meet International Atomic Energy Agency (IAEA) and National Council of Radiation Protection standards and regulations, as well as local requirements. The specifications required to house this equipment include reinforced concrete and a radiation shielded vault. The shielding associated with the equipment used in radiation oncology clinics is significant, requiring several feet of reinforced concrete between treatment rooms and adjacent occupancies, all of which require a significant financial investment.





Medicare's practice expense formula should result in payments that appropriately reimburse physicians and their practices for expenses incurred. Employing a formula that knowingly underpays for expenses on one side of the formula, while overpaying for expenses on the other side of the formula to rebalance the pool, is inappropriate and concerning. These costs must be taken into consideration as part of any review of the PE methodology.

We must provide Medicare beneficiaries access to care and financial protections. We also must provide equity among physicians, recognizing the variation in practice expense by specialty. ***To that end, NAPT urges CMS to pause partial methodological practice expense changes to the MPFS until the Agency has had meaningful engagement with stakeholders (e.g., town halls and AMA RUC network) on potential PE changes and PFS improvements.***

IV. Medicare Economic Index – Rebasing and revising (Combined impact of full MEI changes)

In the Proposed Rule, CMS outlines the basis for proposing to rebase and revise the Medicare Economic Index (MEI). As noted in the rule, the MEI is based on 2006-based costs and the cost weights, therefore, do not reflect the current market conditions. The proposed weights for rebasing and revising the MEI are significantly different from the current (2006-based) weights, reflecting more recent changes in the cost of providing physician services. These data suggest that services and, more broadly, specialties with higher PE costs have been undervalued relative to other services, providing a compelling rationale for updating the MEI weights.

While we support the proposal in concept, we urge CMS to delay the implementation until the public has commented on the data sources and methodology of the rebased and revised MEI. When CMS chooses to implement this policy, it is critical that any changes are implemented in a phased approach given the large specialty specific impacts of implementing the proposed rebased and revised MEI fully in one year. Such a transition would also be consistent with other significant payment changes in the Physician Fee Schedule including how CMS updated prices of supply and equipment inputs and its current transition of clinical labor updates for use in its PE methodology.

NAPT has concerns with the ongoing reimbursement cuts that the broader radiation oncology community is facing in the CY 2023 PFS proposed rule. These proposed substantial cuts put financial pressure on institutions already burdened by the impact of the ongoing pandemic, thus, straining their ability to ensure quality care and participate in clinical research.

We appreciate the opportunity to submit comments in response to the Proposed Rule. Please contact Jennifer Maggiore at jennifer@proton-therapy.org if you have any questions or need additional information.

Sincerely,

Jennifer Maggiore
Executive Director, NAPT

