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December 29, 2009

Ms. Charlene Frizzera
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

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

Dear Ms. Frizzera:

These comments are submitted by the American Society of Clinical Oncology (ASCO) in response to the Final Rule with comment period making changes to the Medicare physician fee schedule for Calendar Year (CY) 2010 that was published in the Federal Register on November 25, 2009 (the Final Rule).¹

ASCO is the national organization representing over 27,000 physicians and other healthcare professionals specializing in cancer treatment, diagnosis, prevention and research. ASCO members also conduct research leading to improved patient outcomes. We are committed to ensuring that evidence-based practices for the prevention, diagnosis and treatment of cancer are available to all Americans, including Medicare beneficiaries. We appreciate the opportunity to comment on the policies CMS is implementing.

Our principal comments can be briefly summarized as follows:

Practice expense relative value units. ASCO appreciates the use of the Gallup data for medical oncologists in lieu of their proposal to revise the practice expense relative value units based on data from the American Medical Association's Physician Practice Information Survey (AMA PPIS). However, ASCO asserts that to use the Gallup survey data for medical oncology in tandem with the AMA PPIS data for other specialties, CMS must update the Gallup survey data by the Medicare Economic Index (MEI) plus a percentage reflecting the additional average increases in expenses (in addition to MEI) that are unique

¹ 74 Federal Register 61738.

to these services or alternatively, use the indirect practice cost index (PCI) from 2009 in calculating practice expense RVUs in 2010. In the future, ASCO is prepared to work with CMS and other policymakers to explore ways to implement a new survey for medical oncology that replicates the response rates and accuracy of the Gallup survey.

Malpractice relative value units. CMS should not reduce the malpractice relative value units assigned to the chemotherapy administration codes but we appreciate that the decrease in the final rule is less than was proposed.

Sustainable growth rate. ASCO appreciates the removal of physician-administered drugs from the sustainable growth rate methodology, both prospectively and retroactively.

Consultations. ASCO continues to oppose the elimination of the consultation codes. The rationale stated by CMS for their deletion of these codes does not withstand analysis, and their elimination would disadvantage physicians, like most oncologists, who must provide significant additional documentation for a consultation. Moreover, recent analysis suggests that medical oncologists who historically bill consultation codes will experience a decrease of 28% in reimbursement as a result.

These issues and others are discussed in greater detail below.

CMS Should Not Implement the Revisions to the Practice Expense RVUs

The indirect costs reflected in the practice expense relative value units (RVUs) of the physician fee schedule are based on information about physicians' practice expenses obtained through surveys of a sample of physicians. For most physician specialties, the practice expense amounts have been based on the American Medical Association's Socioeconomic Monitoring Survey (SMS) for 1995-99. For medical oncology, practice expense costs have been calculated using a supplemental survey conducted in 2002 by an independent organization (the Gallup Organization) using the same survey instrument as the SMS. Since the surveys were conducted in different years, the data from the surveys have been inflation-adjusted to make them comparable.

In the Final Rule, CMS finalizes their intention to use a survey conducted by the AMA in 2007-08, called the Physician Practice Information Survey (AMA PPIS), in place of both the AMA's SMS data and the supplemental surveys conducted by several specialties. In our comments to the proposed rule, ASCO strongly opposed this proposal, and noted the statutory requirement for CMS to use the oncology supplemental survey data when setting practice expense weights.²

Use of the AMA PPIS Data Would Adversely Affect Cancer Treatment

² Letter from Douglas W. Blayney, MD to Charlene Frizzera, RE: CMS-1413-P – Proposed Policies Under the Medicare Physician Fee Schedule and Other Revisions to Part B for CY 2010 (August 31, 2009).

ASCO appreciates that CMS will use the Gallup survey data in lieu of the PPIS data for medical oncology. However, ASCO continues to assert that the Gallup Organization's supplemental survey data would need to be updated to be consistent with the AMA PPIS data from later years. The AMA PPIS data indicate a greater increase in practice expenses than updates based on the MEI. Accordingly, updating the Gallup Organization's supplemental survey data by the increase in the MEI would appear to understate oncologists' practice expenses. A more appropriate measure should be used. CMS should update the Gallup Organization's survey data by the MEI plus a percentage reflecting the additional average increase in expenses (in addition to the MEI) that are unique to these services.

An alternative technical option to an update to the Gallup data using MEI plus a percentage would be to use the Indirect Practice Cost Index (PCI) from 2009 in lieu of the published PCI in 2010. Either option would have the effect of better representing the indirect costs incurred by medical oncologists.

ASCO Opposes the Revisions to the Malpractice Relative Value Units

ASCO appreciates the slightly reduced decrease in malpractice RVUs under the final rule compared to the proposed rule but continues to oppose any negative change to malpractice relative value for medical oncologists.

ASCO Supports Removing Physician-Administered Drugs from the SGR

ASCO supports the removal of physician administered drugs from the SGR calculation both prospectively and retroactively.

ASCO Opposes Eliminating Payment for the Consultation Codes

In the Final Rule, CMS eliminates payment for all consultation codes (except telehealth consultation G-codes) effective January 1, 2010. The revision would be made in a budget-neutral manner by redistributing the relative value units from the consultation codes to the codes for new and established patient visits and initial hospital and initial nursing facility visits.

ASCO continues to oppose this change. ASCO agrees that there is long-standing confusion about when it is appropriate to bill a consultation as opposed to a new patient visit, especially with respect to the issue of transfer of care. This confusion is, however, not a rationale for eliminating the consultation codes altogether. Instead, CMS should clarify the appropriate use of these codes.

CMS also asserts that there is now little difference between a consultation and a new patient visit because the only difference is the requirement for a written report from the consultant to the referring physician, which CMS says is no longer a "major defining aspect of consultation services" because CMS has eased the level of formality for the report (74 Fed. Reg. at 33552-53). Although the documentation requirements have been reduced for consultations in hospital emergency departments and in settings that use a unified medical record, such as academic medical departments and large multi-specialty group practices, in the usual office setting Medicare still requires a consultation report in the form of a "separate document communicated

to the requesting physician” (Medicare Claims Processing Manual, Ch. 12, § 30.6.10.F). Thus, in most cases, including most situations in which oncologists provide consultations, there is substantial additional work involved in a consultation compared to a new patient visit. ASCO opposes the effective elimination of payment for that additional work as finalized in the Final Rule and related notices.

ASCO strongly opposes the proposed redistribution of the RVUs in the office setting with the elimination of the payment for consultations. As stated in a document posted on the CMS website, 50% of the RVUs for the outpatient consultation codes would be redistributed to new patient visits and 50% to established patient visits. No rationale is provided in the document for this reallocation.

Moreover, recent analysis suggests that historically, medical oncologists’ billings of E&M services do not follow the pattern proposed by CMS. In fact, if one assumes that in lieu of billing consultation codes, oncologists will bill E&M services in the same pattern as observed historically, oncologists will likely receive a 28% decrease in reimbursement for these services.

We do not see any basis for redistributing 50% of the RVUs from the consultation codes to established patient visits. Generally, a physician would bill for a consultation only for a new patient. Since a patient is considered an established patient if the patient has received any professional service from a physician in the consultant’s group in the previous three years, there may be circumstances when a physician is asked to provide a consultation with respect to a patient who would be considered an established patient. But those situations are relatively rare, and, ASCO believes, would be far less than 50% of all consultations. Reassigning 50% of the consultation code RVUs to established patient visits appears to disadvantage physicians who perform numerous consultations and to favor physicians who furnish few consultations. Any reallocation of RVUs from consultation to visit codes should be designed, to the extent feasible, to maintain the current level of RVUs billed by consulting physicians.

In the case of hospital admissions, CMS has finalized the addition of a new modifier to identify the admitting physician. This change would permit both the admitting physician and a specialty physician to bill an initial hospital visit on the same day, which is currently not permitted under Medicare policy. ASCO supports this proposal.

ASCO Supports the New Rules Concerning the Authorized Compendia and Coverage of Off-Label Uses

ASCO supports the policies implemented concerning authorized compendia and coverage of off-label uses. The compendia are very important for Medicare coverage of cancer treatments, and we support steps to make their procedures more transparent and free from conflicts of interest.

Comments on the Proposals Regarding the Competitive Acquisition Program

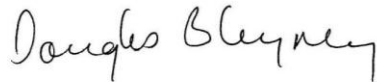
ASCO appreciates the additional information that CMS provided about its proposal to allow physicians participating in the CAP program to store nominal amounts of CAP vendor owned drugs in their offices and to furnish CAP drugs from that stock using electronic transactions. We

believe that the policy changes CMS is making could make the program moderately more attractive to physicians. However, ASCO continues to believe that the finalized changes in the CAP do not address one of the major concerns that oncologists have with the CAP, namely the ability of the CAP vendor to cut off access to a patient's chemotherapy drugs mid-therapy if the patient does not pay their coinsurance in a timely manner. We urge CMS to resolve this issue in order to remove one of the largest obstacles to greater use of the CAP.

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Thank you for the opportunity to submit comments on the Final Rule.

Sincerely,

A handwritten signature in cursive script that reads "Douglas Blayney".

Douglas W. Blayney, MD
President