DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
WASHINGTON, DC 20201

August 2, 2019

Ms. Laura I. Thevenot
Chief Executive Officer
American Society for Radiation Oncology
251 18th Street South, 8th Floor
Arlington, VA 22202

Dear Ms. Thevenot:

Thank you for your letter dated July 8, 2019, regarding our recently issued report entitled *Medicare Could Have Saved Millions of Dollars in Payments for Three-Dimensional Conformal Radiation Therapy Planning Services* (A-09-18-03026, issued June 13, 2019). Your letter expresses disappointment with the report and urges that we rescind it. Specifically, your letter states that our report reaches inappropriate conclusions based on inaccurate information regarding the building blocks associated with the valuation of Current Procedural Technology (CPT)[1] code 77295 billed for developing a three-dimensional radiation therapy (3D-CRT) plan, as well as the application of National Correct Coding Initiative (NCCI) edits for this CPT code.

We stand by the findings and recommendation in our report. The purpose of our review was to determine the potential savings to Medicare if billing requirements and system edits had been implemented to prevent additional payments for separately billed 3D-CRT planning services.

In our nationwide review of intensity-modulated radiation therapy (IMRT) planning services,[2] we found a high number of inappropriate separately billed planning services, and in most cases the service billed was a complex simulation (CPT code 77290). The billing patterns we identified for 3D-CRT planning services were similar. In addition, the payment amounts for developing an IMRT plan (CPT code 77301) and a 3D-CRT plan (CPT code 77295) were similar. According to the 2018 *Current Procedural Terminology (CPT) Manual*, the national unadjusted payment amount for each planning code is the same.

[1] **The five character codes and descriptions included in this letter are obtained from Current Procedural Terminology (CPT®), copyright 2018 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures. Any use of CPT outside of this letter should refer to the most current version of the Current Procedural Terminology available from AMA. Applicable FARS/DFARS apply.**

[2] *Medicare Improperly Paid Hospitals Millions of Dollars for Intensity-Modulated Radiation Therapy Planning Services* (A-09-16-02033), issued August 15, 2018.

Despite these similarities, there are billing requirements and system edits to prevent payments for separately billed IMRT planning services on the same or a different date of service as IMRT planning (CPT code 77301), whereas for 3D-CRT planning services there are only system edits to prevent payments for separately billed 3D-CRT planning services on the same date of service as 3D-CRT planning (CPT code 77295).[3] To determine why, we discussed our findings with the Centers for Medicare & Medicaid Services (CMS). Our report did not address overpayments or compliance with current billing requirements for 3D-CRT. Rather, the report reflects how much Medicare could have saved if similar billing requirements and system edits had been implemented for 3D-CRT when the billing requirements for IMRT went into effect. The report did not address the sufficiency of the payment amount for CPT code 77295, as either a stand-alone or bundled payment.

Your letter expresses concern with our description of 3D-CRT and states that "according to the report, there is a *planning* and *treatment delivery* phase in three-dimensional radiotherapy planning." The letter then states that "there is no treatment delivery associated with 77295." We are aware there is not a delivery component to 3D-CRT planning. As stated on page 3 of the report, there is a planning and treatment delivery phase for 3D-CRT. The report does not state that there is a planning and treatment delivery phase for 3D-CRT *planning*.

Your letter also expresses concern with our understanding of the NCCI edits and states: "The OIG [Office of Inspector General] fails to note that PTP [procedure-to-procedure] edits take effect if a provider reports two codes of an edit pair for the same beneficiary on the *same date of service* [emphasis in original]." The letter then states that there are many reasons why these services may be billed before a 3D-CRT plan and that by not considering the medical necessity of these services, OIG has made a recommendation that "would rob patients of the [computed tomography] simulations essential to their safety." As stated throughout the report, we are aware that the NCCI edits apply only to services billed on the same date of service. However, for IMRT planning services, additional billing requirements and system edits prevent separate payments for the same services listed in the NCCI edits when they are billed on a different date of service. These requirements and edits prevent separate payments for these services. They do not prevent providers from performing these services, and we did not review the medical necessity of these services or suggest that providing these services was unwarranted. We recommended that CMS implement similar billing requirements and edits for 3D-CRT planning services.

Lastly, your letter suggests that the recommendation in our report disregards the American Society for Radiation Oncology's (ASTRO's) efforts to educate OIG on the application of CPT code 77295 in your prior letter, dated March 25, 2019. However, we met with ASTRO officials on March 19, 2019, and discussed our 3D-CRT review and reviewed the information provided in your March 25, 2019 letter. As indicated in our response letter, dated May 10, 2019 (enclosed), we carefully reviewed and considered the information provided. On the basis of that information, we made several revisions to our draft report

[3] The services included in the bundled payment for IMRT planning (A-09-16-02033, Appendix B) and the services included in the NCCI procedure-to-procedure (PTP) code pairs for 3D-CRT planning (A-09-18-03026, Appendix C) are nearly identical.

before issuing it, including removing the term “bundled” from the description of CPT code 77295. (We had used this term in the description of CPT code 77301 in our IMRT report.)

In its written comments on our 3D-CRT draft report, CMS concurred with our recommendation and stated that it would consider whether implementing billing requirements in the future to prevent payments for additional planning services when reported with 3D-CRT would be appropriate. We will ensure that CMS receives a copy of your letter so that it may consider the information you presented.

OIG is committed to continuing our oversight of Medicare, as well as the other programs of the Department of Health and Human Services. We appreciate your input on this review.

Sincerely,

/Gloria L. Jarmon/
Deputy Inspector General
for Audit Services

Enclosure

Enclosure

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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WASHINGTON, DC 20201

MAY 10 2019

Laura I. Thevenot
Chief Executive Officer
American Society for Radiation Oncology
251 18th St. South, 8th Floor
Arlington, VA 22202

Dear Ms. Thevenot:

We appreciated meeting with you and ASTRO representatives on March 19 and your follow-up letter of March 25, 2019, concerning our work related to Intensity Modulated Radiation Therapy (IMRT) and our ongoing work associated with Outpatient 3-Dimensional Radiation Therapy Planning.

Your March letter states that OIG recognizes the significant confusion around appropriate billing for services delivered in conjunction with IMRT treatment planning during our audit period. We note that our Nation-wide review (A-09-16-02033), found noncompliance with Medicare requirements because the hospitals appeared to be unfamiliar with or misinterpreted the Centers for Medicare & Medicaid Services (CMS) guidance. We therefore recommended that CMS educate hospitals on properly billing Medicare for IMRT planning services. In two of our other audits, which were specific to a Medicare administrative contractor (MAC), we believe that the guidelines were clear (A-02-16-01006, A-02-16-01007). Our reviews often find billing errors due to lack of understanding of program rules or lack of appropriate internal controls. In these situations, it is appropriate to recommend both (1) recovery of the overpayments and (2) improved guidance or education and training or both.

You also requested that we coordinate with the CMS and MAC to stop what you believe to be improper recoupment of overpayments for Current Procedural Technology (CPT)[1] code 77336. You indicated that, according to guidance found in the *Medicare Claims Processing Manual*, it is acceptable to bill CPT code 77336 both as part of the broader course of IMRT treatment delivery and before the service for CPT code 77301, so long as CPT code 77336 is not provided "as part of developing the IMRT treatment plan." We interpret the *Medicare Claims Processing Manual* that way as well, as is shown in footnote 5 and 6, respectively, of the two reports (A-02-16-01006 and A-02-16-01007) in which we recommended recovery of overpayments. Although our audit findings included instances in which we determined that CPT code 77336 was not allowable, we did not question those claims because the services

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were part of IMRT treatment planning. We questioned those claims because documentation did not support the services billed or documentation indicated that the services were not medically necessary. In our Nation-wide audit, we did not perform a medical review on claims pertaining to CPT code 77336 and our findings did not include any errors related to that code. Please note that CMS concurred with our recommendations, and we have been in communication with CMS staff regarding recoupment of overpayments related to code 77336.

Thank you for providing the additional guidance from ASTRO's Radiation Oncology Coding Resource regarding the appropriate billing of CPT code 77295, *3-Dimensional Radiotherapy* regarding our ongoing audit, and *Review of Outpatient 3-Dimensional Conformal Radiation Therapy Planning Services* (Work Plan No. W-00-18-35812). The objective of our 3-dimensional conformal radiation audit is to determine the potential savings to Medicare if billing requirements and system edits had been implemented to prevent additional payments for separately billed radiation planning services billed on a different date of service than CPT code 77295. We will review and consider this additional information as we proceed with our audit.

OIG is committed to continuing our oversight of Medicare, as well as the other programs of the Department. We appreciate your input as we conduct our work.

Sincerely,

Gloria Jarmon
Deputy Inspector General
for Audit Services