

AFROC



ASSOCIATION OF FREESTANDING RADIATION ONCOLOGY CENTERS

Our Voice in Washington

The Source

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2005 DUES

AFROC is the only organization that solely focuses on the regulatory, legislative, and socioeconomic issues of freestanding radiation oncology centers and is **your only voice in Washington**. Your continued participation is critical to its future and to the future of your freestanding radiation center.

Now is the time to pay your 2005 dues. It is estimated that 95% of your dues can be taken as a business expense.

Thank you.

Check out
AFROC's website
www.afroc.org

AFROC MEMBERS' Q&A

Below are questions most frequently asked by AFROC members. Answers have been provided by AFROC's Legal Counsel, Diane Millman and her associate at Powers Pyles Sutter & Verville, Justin Hunter, JD.

Q. Regarding the ASTRO survey information in the August, 2004 AFROC newsletter on hospital-based freestanding practices and other freestanding centers, the information in the newsletter stated that hospital practices showed a much lower practice expense per hour. Is there any detailed data on why there was such a difference? Typically, physician practices have been noted to run more efficiently than hospitals.

*It is Not Too Early to Save
the Date for the*

17th Annual AFROC

Conference on

June 5 and 6, 2005

at the

Grand Hyatt

Washington, DC

A. Radiation oncologists practicing in hospitals have very few practice expenses, since the cost of equipment, supplies, etc. are borne by the hospital. Radiation oncologists in freestanding settings have to bear these costs themselves so their practice expenses are higher.

Q. Medical oncologists are allowed to open radiation oncology centers. In some cases, radiologists have hired radiation oncologists to work in their freestanding centers. Has there been some change in the Stark Law that allows this? If not, what is allowed and what is not?

Q. Can urologists buy or invest in radiation oncology centers? What about medical oncologists? Is this a matter of self referral?

A. There is a Stark law exception that is available for medical oncology, urology and other group practices that provide radiation oncology services (the "in office ancillary services exception"). This has always been in the law, but was clarified in the Stark II regulations issued earlier this year.

Q. Are radiation oncologists required to be on site when patients are treated in a freestanding radiation oncology center?

A. The Medicare Carrier Manual requires that a physician (not necessarily the radiation oncologist) be "immediately available", and this has historically been interpreted by CMS and by most carriers to mean "in the office." Specific rules vary by state, but the carriers of which we are aware require that a physician be on site when a Medicare patient is treated in order for the treatment to be covered. This rule does not apply to non-Medicare patients, unless required by a particular state's laws.

Q. Do you think that both the technical and professional components will be revamped by 2006? I have just invested in some very costly new equipment and am understandably worried.

A. CMS continues to indicate to the medical community that it plans to modify the methodology for determining technical component payments by 2006, even though it does not yet have the data to do so, and many methodological issues remain unanswered. If this change occurs,

the revision will directly affect the technical component codes, will indirectly affect radiation oncology professional component codes, and will have "ripple effects" for other specialties.

Q. Have we made any progress on the reimbursement disparity for Part A nursing home patients who receive treatment in a freestanding center? These patients are covered when treatment is provided in hospital based centers, but not in free standing centers.

What is the plan to correct this disparity and is it worthwhile continuing to contact our representatives? Do you have any standard form letter summarizing this issue that I could send to our representative in Washington?

A. Under current law, CMS takes the position that it is not authorized to pay for technical component radiation oncology services rendered to SNF patients who are covered under Part A of the Medicare Program. (Freestanding centers clearly are authorized to bill Medicare Part B for services rendered to Medicare patients in SNFs are covered by Medicare Part B). Where a freestanding center provides services to a Medicare Part A SNF patient, the center is required to bill the SNF for the technical component, and may bill the professional component directly to Medicare Part B. CMS has provided an exception to this requirement for hospital-based centers.

Despite AFROC attempts to reverse Medicare policy on this issue, CMS continues to assert that it does not have the authority to change this policy without legislation. Due to the election, Congress did not consider Medicare legislation this year. We anticipate that Medicare legislation will be introduced next year regardless of the outcome of the election, and AFROC plans to reconsider the possibility of pursuing legislative relief at that time.

In the interim, you should also be aware that, earlier this year, CMS issued a program memorandum (Transmittal 183), that addresses the relationships between SNFs and outside providers who provide services to SNF patients "under arrangements". Transmittal 183 makes clear that SNFs must have a written contract with third party service providers that makes explicit

the SNF's obligation to pay those providers for services to SNF Part A patients (with certain limited exceptions). **To obtain a copy of Transmittal 183, call Sheila Gell at (888) 334-4542 or e-mail her at sgell@ppsv.com.**

We have drafted a model letter you may wish to consider sending to your Congressman and Senators on this issue. It is general in nature, and should be personalized to the extent possible.

Draft Letter

Congressman ____
 XXX
 XXX
 XXX

Dear [Congressman ____][Senator _____]:

I am writing to express my concerns with a Centers for Medicare and Medicaid Services (CMS) rule under the skilled nursing facility (SNF) consolidated billing regulations that inappropriately preclude our freestanding radiation oncology center, ____, from providing potentially life-saving radiation oncology services to cancer patients in SNFs in our area.

It is our understanding that, under current law, SNFs are paid under a prospective payment system for services rendered to nursing home patients whose nursing home stays are covered under Part A of the Medicare Program. These are generally patients who have been hospitalized (often for surgery necessary to remove a tumor) and who require post-surgical radiation therapy. Under the Medicare regulations currently in effect, our center is precluded from billing the Medicare Program for medically necessary services provided to these patients, while hospital-based radiation oncology centers—which generally cost both the Medicare patient and the Medicare Program more—are authorized to bill for these services. This situation simply makes no sense.

This situation is creating considerable obstacles to the cost-effective delivery of radiation oncology services to nursing home patients in our community. Many of these Medicare beneficiaries are required to receive oncology services from hospitals, and from different radiation oncologists, resulting in substantial duplication of services in some cases and disruption of the physician-patient relationship.

We hoped this problem would have been solved when the Medicare prescription drug bill was enacted last year. We urge you to work with your colleagues on the [House Ways and Means and Energy and Commerce Committees] [Senate Finance Committee] to fix this problem. We are confident that the problem can be fixed in a manner that is budget neutral, and look forward to hearing from you with respect to your efforts to assure that this problem is corrected at the earliest possible opportunity in the next legislative session.

Sincerely,

Below is a copy of a model services agreement between a freestanding radiation oncology center and a SNF for the provision of radiation oncology services to SNF Part A patients by a freestanding center:

Service Agreement

This Agreement between _____ (“SNF”) and _____ (“RADIATION ONCOLOGY CENTER”) (collectively referred to as “the Parties”) is executed this ___ day of _____, 20___, to set forth the terms and conditions of RADIATION ONCOLOGY CENTER’S provision of radiation oncology services to SNF patients covered under Part A of the Medicare Program (“MEDICARE PART A RESIDENTS”).

1. The Parties acknowledge that from time to time on an ‘as needed’ basis as requested by SNF, RADIATION ONCOLOGY CENTER shall provide radiation oncology technical and professional component services to SNF MEDICARE PART A RESIDENTS, as defined by the Medicare Physician Fee Schedule. The Parties hereby also acknowledge that, under Medicare regulations currently in effect with respect to consolidated billing, RADIATION ONCOLOGY CENTER is precluded from billing Medicare Part B for radiation oncology technical component (but not professional component) services rendered to such patients.

2. Accordingly, RADIATION ONCOLOGY CENTER hereby agrees to bill SNF exclusively for any such technical component services, and SNF hereby agrees to pay RADIATION ONCOLOGY CENTER for such services *[in accordance with the fee schedule set forth at Attachment A][the amounts that otherwise would be allowable under the Medicare Physician Fee Schedule][Insert other payment formula]*. Such services shall be billed by RADIATION ONCOLOGY CENTER to SNF *[within ___ days of the date of service] [on the ___ day of the month following the provision of such services][insert other date]* and shall be paid by SNF *[within ___ days of the date when the invoice is received][no later than the ___th day of the month in which such services are billed][insert other due date]*. RADIATION ONCOLOGY CENTER is authorized to, and shall bill Medicare Part B and any other applicable third party payer for any professional component radiation oncology services provided to a SNF MEDICARE PART A RESIDENT who is eligible for coverage under Medicare Part B.

3. All services provided by RADIATION ONCOLOGY CENTER shall at all times be rendered in accordance with the generally accepted standard of care for such services in the community.

4. This Agreement shall be effective on the ___ day of ___ and shall remain in effect *[for a term of ___ years] [until terminated by either party]*. This Agreement may be terminated by either party by written notification of termination *[for breach of the terms hereof][with or without cause]*. Termination shall become effective ___ days after notice of termination is made in accordance with this Agreement; provided, however, if such termination is based on breach of this Agreement, the party alleged breaching party shall have ___ days to cure such breach.

5. Any notices required to be provided pursuant to this Agreement shall be sent by first class mail, postage prepaid, to the following addresses:

For RADIATION ONCOLOGY CENTER:

For SNF:

All notices shall be deemed delivered three days after mailing in the United States mail.

6. Any dispute arising under this Agreement shall be governed by the laws of the State of _____, regardless of its choice of law principles.

7. This Agreement is the entire agreement of the parties and supersedes any prior oral or written agreements with respect to the subject matter hereof. This Agreement may not be amended except upon the mutual written consent of both parties.

8. Neither party may assign this Agreement without the prior written consent of the other party.

9. This Agreement may be executed in one or more counterparts, all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

RADIATION ONCOLOGY CENTER

By: _____

Print Name: _____

Title: _____

SNF

By: _____

Print Name: _____

Title: _____

1875 Eye Street, NW
Twelfth Floor
Washington, DC 20006-5409
Phone: 888-334-4542
Fax: 202-466-5938
Email: sgell@ppsv.com

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