



## COLLEGE of AMERICAN PATHOLOGISTS

---

September 13, 2022

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-1772-P  
P.O. Box 8010  
Baltimore, MD 21244-1850

*Submitted Electronically to: <http://www.regulations.gov>*

Re: Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating

Dear Administrator Books-LaSure:

The College of American Pathologists (CAP) appreciates the opportunity to comment on the Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs proposed rule CMS-1772-P for calendar year (CY) 2023. As the world's largest organization of board-certified pathologists and leading provider of laboratory accreditation and proficiency testing programs, the CAP services patients, pathologists, and the public by fostering and advocating excellence in the practice of pathology and laboratory medicine worldwide. Pathologists are physicians whose diagnoses drive care decisions made by patients, primary care and specialist physicians, and surgeons. When other physicians need more information about a patient's disease, they often turn to pathologists who provide specific diagnoses for each patient. The pathologist's diagnosis and value are recognized throughout the care continuum and make them a critical member of the patient's health care team.

**This letter includes comments regarding the following issues:**

1. II. Proposed Updates Affecting OPPS Payments
  - a. A. Proposed Recalibration of APC Relative Payment Weights, CPT Code 88121
  - b. Blood and Blood Products: Status Indicator for HCPCS Code P9099

**a) Recalibration of APC Relative Payment Weights, CPT Code 88121**

In this proposed rule, CMS proposes to move Cytopathology, in situ hybridization (eg, FISH), urinary tract specimen with morphometric analysis, 3-5 molecular probes, each specimen; using computer-assisted technology (CPT code 88121) to APC 5672 "Level 2 Pathology" from APC 5673 "Level 3 Pathology". This service includes pathology specimens that require extensive complex specimen preparation. The CAP is concerned that flawed data led to this change in APC level for CPT code 88121. OPPS charge-based cost data were neither designed nor intended to be an accurate estimate of service/procedure level costs at the CPT code level. The hospital charge-based cost data used for OPPS rate-setting allow CMS to estimate costs for purposes of grouping a number of services or procedures (multiple distinct codes) into appropriate clinically and economically homogeneous APCs. These data do not identify actual costs for specific procedures. The costs



associated with performing this service is nearly three times the cost of an APC 5672 “Level 2 Pathology” service, based on physician fee schedule technical component cost differences. This proposed reassignment creates a resource cost rank order anomaly with other physician services and the technical costs will not be fully recovered from each unit of service. The unique complexity of specimens and extensive technical work associated with these services require a level 3 pathology APC. **The CAP urges the CMS to maintain the assignment of APC 5673 for CPT code 88121.**

**b) Blood and Blood Products: Status Indicator for HCPCS Code P9099**

Last year, at the August 2021 the CMS Advisory Panel on Hospital Outpatient Payment (HOP Panel) meeting, the HOP Panel recommended that CMS authorize the Medicare administrative contractors to compensate hospitals on the basis of reasonable cost for new blood products billed with HCPCS code P9099 *Blood component or product not otherwise classified*. **In conjunction with the Association for the Advancement of Blood & Biotherapies (AABB), we agree with the HOP panel’s decision and urge CMS to adopt the recommendation of the HOP Panel and assign HCPCS code P9099 the “F” status indicator.** A status indicator of “F” would authorize A/B MACs to pay hospitals on the basis of reasonable cost rather than under a separate APC payment.

\* \* \* \* \*

The College of American Pathologists is pleased to have the opportunity to comment on issues and appreciates your consideration of these comments. Please direct questions on these comments to; Todd Klemp (202) 354-7105 / tklemp@cap.org