

unusual cases, such as low volume items and services.”

For purposes of this proposed rule, we analyzed the APC groups within this statutory framework.

A. Recommendations of the Advisory Panel on APC Groups

1. Establishment of the Advisory Panel on APC Groups

Section 1833(t)(9)(A) of the Act requires that we consult with an outside panel of experts, the Advisory Panel on APC Groups (the Panel), to review the clinical integrity of the groups and weights. The Act specifies that the Panel will act in an advisory capacity. This expert panel, which is to be composed of representatives of providers subject to the OPFS (currently employed full-time, in their respective areas of expertise), reviews and advises us about the clinical integrity of the APC groups and their weights. The Panel is not restricted to using our data and may use data collected or developed by organizations outside the Department in conducting its review.

On November 21, 2000, the Secretary signed the charter establishing an “Advisory Panel on APC Groups.” The Panel is technical in nature and is governed by the provisions of the Federal Advisory Committee Act (FACA) as amended (Pub. L. 92–463).

On November 1, 2002, the Secretary renewed the charter. The new charter indicates that the Panel continues to be technical in nature, is governed by the provisions of the FACA, may convene “up to three meetings per year,” and is chaired by a Federal official.

To establish the Panel, we solicited members in a notice published in the **Federal Register** on December 5, 2000 (65 FR 75943). We received applications from more than 115 individuals nominating either a colleague or themselves. After carefully reviewing the applications, we chose 15 highly qualified individuals to serve on the Panel.

Because of the loss of 6 Panel members in March 2003 due to the expiration of terms of office, retirement, and a career change, a **Federal Register** notice was published on February 28, 2003 (68 FR 9671), requesting nominations of Panel members. From the 40 nominations we received, 6 new members have been chosen and will be identified on the CMS Web site.

2. The Panel’s Meetings

The first Panel meeting was held on February 27, February 28, and March 1, 2001. During the 2001 meeting, the Panel members felt that requiring

consistency for all presentations with regard to format, data submission, and general information would assist them in analyzing the submissions and presentations and making recommendations. Therefore, upon the Panel’s recommendation, the Research Subcommittee was established during the 2001 meeting.

The Panel began its 2002 meeting on January 22, 2002, by considering the Research Subcommittee’s recommendation to the Panel on requirements for written submissions and oral presentations. The Research Subcommittee recommended that all future oral presentations and written submissions contain the following:

- Name, address, and telephone number of the proposed presenter.
- Financial relationship(s), if any, with any company whose products, services, or procedures are under consideration.
- CPT ([Physicians’] Current Procedural Technology) codes involved.
- APC(s) affected.
- Description of the issue.
- Clinical description of the service under discussion, with comparison to other services within the APC.
- Description of the resource inputs associated with the service under discussion, with a comparison to resource inputs for other services within the APC.
- Recommendations and rationale for change.
- Expected outcome of change and potential consequences of no change.

The Panel adopted these Subcommittee recommendations.

The third Panel meeting was held on January 21 and 22, 2003, to discuss the APCs of the newly implemented 2003 OPFS. We published a notice in the **Federal Register** on December 27, 2002 (67 FR 79107), to announce the following: The location and time of the third Panel meeting; a list of agenda items; and that the meeting was open to the public. In that document, we solicited public comment specifically on the items included on the agenda for the January 2003 Panel meeting. In this section, “commenter” refers to entities that provided comments in response to that **Federal Register** notice. We also provided additional information about the Panel meeting through a press release and on the CMS Web site. Presentations for the 2003 meeting met, at a minimum, the adopted guidelines for presentations referred to above.

3. Establishment of an Observation Subcommittee

At the third annual meeting in January 2003, the Panel suggested

numerous changes to the APCs (listed below) and that a subcommittee be established to review observation issues, such as allowable International Classification of Diseases, clinical modification codes, and operational issues. Therefore, before the close of the third annual meeting, the Observation Subcommittee was established. Other Panel members that are not currently participating in this subcommittee are welcome to take part in this subcommittee, which is tasked with reviewing International Classification of Disease Codes, clinical modification codes, and operational issues related to observation. This subcommittee will report its findings to the Panel in 1 year.

4. Recommendations of the Advisory Panel and Our Responses

In this section, we consider the Panel’s recommendations affecting specific APCs. The Panel based its recommendations on claims data for the period April 1, 2002 through September 30, 2002. This data set comprises a portion of the data that will be used to set 2004 payment rates. APC titles in this discussion are those that existed when the APC Panel met in January 2003. In a few cases, APC titles have been changed for this proposed rule, and, therefore, some APCs do not have the same title in Addendum A as they have in this section.

The Panel’s agenda included APCs that our staff believe violate the 2 times rule as well as APCs for which comments were submitted. As discussed below, the Panel sometimes declined to recommend a change in an APC even though the APC appeared to violate the 2 times rule. In section II.B of this preamble, we discuss our proposals regarding the 2 times rule based on the April 1, 2002 through December 31, 2002 data that we used to determine the proposed 2004 APC relative weights. Section II.B also details the criteria we used when deciding to propose exceptions to the 2 times rule.

a. Debridement and Destruction.

APC 0012: Level I Debridement & Destruction.

APC 0013: Level II Debridement & Destruction.

We expressed concern to the Panel that APCs 0012 and 0013 appear to violate the 2 times rule. In order to remedy these violations, we asked the Panel to consider the following changes:

(1) Move the following codes from APC 0013 to APC 0012:

HCPSCS	Description
11001	Debride infected skin add-on.
11302	Shave skin lesion.