

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 OPPS (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 have been identified on the CMS web site.

We received one comment regarding our selection of Panel members.

Comment: One commenter stated that Community Mental Health Centers (CMHCs) have not been represented on the APC Panel even though the names of qualified nominees have been submitted. The commenter went on to say that the **Federal Register** (February 28, 2003, at 68 FR 9671 through 9672) specifically states, "Qualified nominees will meet those requirements necessary to be a Panel member. Panel members must be representatives of Medicare providers (including Community Mental Health Centers) subject to the OPPS * * * [therefore,] I feel that it is imperative to have a freestanding CMHC representative on the Panel."

Response: The **Federal Register** notice on the APC Panel to which the commenter referred, states in section II,

Criteria for Nominees, the following: "The Panel shall consist of up to 15 members selected by the Secretary, or designee, from among representatives of Medicare providers (including Community Mental Health Centers) subject to the OPPS." The language does not mandate that a CMHC representative will be on the Panel. In the regulation, we simply identified representatives from CMHCs—or any other organizations—as possible nominees.

This year, when we requested nominations for the APC Panel, the list of nominees was long, prestigious, and included representatives from all aspects of the health care industry: Doctors, nurses, hospital administrators, coders, etc. Therefore, our choices were difficult; however, since there are definite Federal guidelines governing our selections, and specific Panel and Agency needs to address, given the clinical range of services paid under the OPPS, we were able to identify the most qualified individuals. Since the needs of the Agency and the Panel change due to members leaving, we invite all concerned Medicare providers to continue to nominate qualified individuals when the need arises.

The Panel's biannual meetings are forums to discuss APCs and representatives from the CMHCs—and other organizations—are invited to attend Panel meetings and to make presentations to the Panel on relevant agenda items.

Comment: The commenter also stated that the APC Panel sets the payment rates for the outpatient services.

Response: While the Panel is an advisory committee mandated by law to review the APC groups, and their associated weights, and to advise the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services concerning the clinical integrity of the APC groups and their weights, the APC Panel does not set payment rates for outpatient services. The advice provided by the Panel is considered by us in our development of the annual rulemaking to update the hospital OPPS. The APC Panel's activities most often address whether or not the HCPCS codes within the APCs are comparable clinically and with respect to resource use, assigning new codes to new or existing APCs, reassigning codes to different APCs, and the configuring of existing APCs into new APCs.

2. August 2003 Meeting

The APC Panel met on August 22, 2003 to discuss issues presented in the proposed rule of August 12. We announced the meeting in the **Federal**

Register on July 25 and invited the public to make presentations to the Panel on issues discussed in the proposed rule. In this section, we summarize the issues discussed by the Panel, their recommendations on those issues, and our decisions with respect to their recommendations.

a. Blood and Blood Products

The Panel heard testimony by suppliers of blood and blood products and their representatives who expressed significant concerns about the proposed payment rates, particularly in light of new safety and testing requirements. These presenters to the Panel recommended that we exclude blood and blood products from the OPPS and pay for them at reasonable cost. After listening to the testimony, reviewing the median costs and proposed payments rate from our hospital claims data, and deliberating the issue, the Panel recommended that we continue to pay for blood and blood products within the OPPS. However, the Panel further recommended that we freeze the payment rates for blood and blood products at 2003 levels for 2004 and 2005 while we undertake further analysis of the cost data. The Panel also recommended that hospitals be educated on the proper billing for blood and blood products.

As discussed elsewhere in this final rule, we will accept the Panel's recommendation with respect to 2004. We will freeze the payment rates for blood and blood products at the 2003 payment levels. However, we are not making a decision with respect to 2005 at this time. Any proposals regarding our 2005 payment rates or policies for these items will be discussed in our proposed rule for the CY 2005 update. The Panel also recommended that the APCs for blood and blood products be on the agenda for the winter 2004 meeting in time for consideration of the 2005 payment rates. We agree to place this item on the agenda for the next APC Panel meeting.

b. Nuclear Medicine, Brachytherapy, and Radiosurgery Services

(1) Nuclear Medicine APCs and Radiopharmaceuticals

The Panel heard testimony on and considered the proposed restructuring of the nuclear medicine APCs discussed in the August 12, 2003 proposed rule. The Panel recommended that we move forward with the categorization system in the proposed OPPS 2004 rule absent strong, reasoned opposition from provider groups. If strong opposition was revealed in the public comments,