

September 11, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
CMS- 1786-P
P.O. Box 8010
Baltimore, MD 21244-1850

Submitted online via www.regulations.gov

RE: CY 2024 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates [Docket CMS-2023-0120-0002]

Dear Administrator Brooks-LaSure:

We are writing to express concerns with the CY 2024 Hospital Outpatient Prospective Payment System (OPPS) proposed rule as published in the *Federal Register* on July 31, 2023 (hereinafter referred to as the “Proposed Rule”). Put simply, the Proposed Rule offers your agency an opportunity to dramatically increase patient and provider access to non-opioid pain management approaches and, in the process, prevent opioid addiction. Your agency can do so as soon as January 1, 2024. Unfortunately, the Proposed Rule misses this opportunity.

The United States is in the middle of an opioid addiction epidemic and prescription opioids have clearly played a role. In 2010, 21,000 Americans died of an opioid-related overdose¹. In 2016, 42,000 Americans died of the same.² In 2022, approximately 84,000 Americans died from an opioid-related drug overdose³. This represents a three-fold increase in just the last twelve years. While the majority of these deaths are attributable to illicit forms of synthetic and semi-synthetic opioids⁴, prescription opioids have played a part. In 2021, approximately one-quarter of all opioid-related overdose deaths involved prescription opioids⁵.

As clinicians, we understand the clinical value of non-opioids. For us, these are not just valuable clinical tools, but also an effective means of doing our part to prevent opioid addiction. For us, one of the most obvious benefits of utilizing multimodal pain strategies to help our patients manage

¹ U.S. Department of Health and Human Services. (2023, July 10). *Drug overdose death rates*. National Institutes of Health. <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates#:~:text=Opioid%2Dinvolved%20overdose%20deaths%20rose,with%2080%2C411%20reported%20overdose%20deaths.>

² General, O. of the S. (2022, April 8). *Opioid overdose prevention*. HHS.gov. [https://www.hhs.gov/surgeongeneral/reports-and-publications/addiction-and-substance-misuse/opioid-overdose-prevention-resources/index.html#:~:text=Since%202010%2C%20the%20number%20of,fentanyl%20analogs%20\(synthetic%20opioids\).](https://www.hhs.gov/surgeongeneral/reports-and-publications/addiction-and-substance-misuse/opioid-overdose-prevention-resources/index.html#:~:text=Since%202010%2C%20the%20number%20of,fentanyl%20analogs%20(synthetic%20opioids).)

³ Ahmad FB, Rossen LM, Sutton P. (2023) Provisional drug overdose death counts. National Center for Health Statistics. <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

⁴ Centers for Disease Control and Prevention. (2023, August 23). Opioid overdose. Centers for Disease Control and Prevention. <https://www.cdc.gov/drugoverdose/deaths/opioid-overdose.html>

⁵ Centers for Disease Control and Prevention. (2022, May 11). U.S. overdose deaths in 2021 increased half as much as in 2020 - but are still up 15%. Centers for Disease Control and Prevention. https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm

postsurgical pain is that such approaches obviate the need to use prescription opioids⁶. In doing so, we can minimize patient risk of misuse, abuse, and/or addiction. Of course, there are other clear benefits of such multimodal pain management approaches, including providing effective analgesic support⁷, expediting patient recovery time⁸, minimizing the incidence of opioid adverse events⁹, and reducing healthcare expenditures¹⁰.

Instead, all-too-often, in the United States we treat pain with prescription opioids. As a result, the United States consumes 80 percent of the global supply of hydrocodone¹¹ and 99 percent of the global supply of opioids¹². Accordingly, **90 percent of surgical patients receive opioids** to manage their pain¹³.

Often, the decision of how to manage a patient's postsurgical pain is not made by us, as clinicians, nor is it made by our patients. Instead, this important decision is frequently made for us. **This is true regardless of the patient**, including if the patient has been diagnosed with a substance use disorder, is in long-term recovery from some substance abuse issues, has a mental health condition that predisposes them to misuse and addiction of narcotics, or even if the patient simply prefers another pain treatment modality.

It is important that incentives exist that can make non-opioid treatment options more readily available to clinicians and the patients we treat. In 2019, your agency took a key step¹⁴ in the right direction by providing separate payment for the administration of non-opioid pain management approaches in the ambulatory surgery center (ASC) setting. In doing so, **use of non-opioid pain management approaches increased by 120 percent from 2019 to 2020**¹⁵. Clearly, this policy change provided exactly the type of needed incentive to make non-opioid pain approaches more accessible.

⁶ Dysart, S. H., Barrington, J. W., Del Gaizo, D. J., Sodhi, N., & Mont, M. M. (2018, December 24). *Local infiltration analgesia with liposomal bupivacaine improves early ...* The Journal of Arthroplasty . [https://www.arthroplastyjournal.org/article/S0883-5403\(18\)31227-0/fulltext](https://www.arthroplastyjournal.org/article/S0883-5403(18)31227-0/fulltext)

⁷ Beck, D. E., Margolin, D. A., Babin, S. F., & Russo, C. T. (2015). *Benefits of a multimodal regimen for postsurgical pain management in colorectal surgery*. The Ochsner journal. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4679301/>

⁸ *Ibid*

⁹ H., B. C. C. (2023, June 6). *The benefits of opioid free anesthesia and the precautions necessary when employing it*. Translational perioperative and pain medicine. <https://pubmed.ncbi.nlm.nih.gov/31712783/>

¹⁰ Asche CV;Dagenais S;Kang A;Ren J;Maurer BT; (n.d.). *Impact of liposomal bupivacaine on opioid use, hospital length of stay, discharge status, and hospitalization costs in patients undergoing total hip arthroplasty*. Journal of medical economics. <https://pubmed.ncbi.nlm.nih.gov/31161837/>

¹¹ *Opioids perception of pain*. Opioids Perception of Pain - MN Dept. of Health. (n.d.). <https://www.health.state.mn.us/communities/opioids/prevention/painperception.html#:~:text=The%20United%20States%20makes%20up,percent%20of%20the%20world's%20hydrocodone>

¹² *Ibid*

¹³ Singh K, Murali A, Stevens H. (2022) "Predicting persistent opioid use after surgery using electronic health record and patient-reported data." Journal of Surgery, 172 (1). <https://doi.org/10.1016/j.surg.2022.01.008>

¹⁴ Available as of August 23, 2023, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Downloads/CMS-1678-FC-2018-OPPS-FR-Claims-Accounting.pdf>

¹⁵ Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model; Request for Information on Rural Emergency Hospitals. Federal Register. Available at: <https://www.federalregister.gov/documents/2021/08/04/2021-15496/medicare-program-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center-payment>

Unfortunately, to date, your agency has resisted calls to provide a similar incentive for procedures in the hospital outpatient department (HOPD) setting. This includes calls from 11 governors representing over 60 million Americans¹⁶, thousands of concerned citizens¹⁷, dozens of leading public health and patient advocacy groups¹⁸, and a leading coalition working to prevent opioid addiction in America¹⁹. Madame Administrator, **your agency's unwillingness to heed these calls is exacerbating the current opioid addiction crisis.**

In fact, by continuing to ignore these calls, your agency has knowingly and unnecessarily exposed tens of millions of Medicare patients²⁰ to prescription opioids. It is easy to see why – **Medicare reimbursement policy clearly continues to prioritize opioid-based pain approaches** above all others. In 2011, there were approximately 250 million opioid prescriptions dispensed in the United States²¹. 53 million of these were covered by Medicare²². Over the next few years, amid increased awareness of the opioid crisis, opioid prescribing in the country decreased by 40 percent²³. However, during that time, opioid prescribing in Medicare actually increased by 2 percent²⁴ and **Medicare's share of overall opioid prescriptions increased by 75 percent** – from 20 percent in 2011 to 35 percent in 2019²⁵.

Recognizing this emerging trend, and the obvious lack of incentives in place to make non-opioid pain treatment measures more accessible to patients and their providers, **Congress passed legislation** last year to prevent opioid addiction through increased access to and use of non-opioid options²⁶ across all care settings. This legislation was then signed into law by President Biden in December.

Your agency, through this Proposed Rule, can take steps today to put these policy changes in effect as soon as January 1, 2024. Given the current state of the opioid epidemic and the opportunity to prevent millions more cases of new, persistent opioid use in the country²⁷, we urge you to take the opportunity presented by the Proposed Rule and **make separate payment available for the**

¹⁶ Available on Voices for Non-Opioid Choices as of August 23, 2023: <https://nonopioidchoices.org/wp-content/uploads/2023/05/Governor-Letter-to-Biden-Admin-NOPAIN-Act-05.17.23.pdf>

¹⁷ Available on Voices for Non-Opioid Choices as of August 23, 2023: <https://nonopioidchoices.org/wp-content/uploads/2023/07/Citizens-Petition-6.5.23.pdf>

¹⁸ Available at Voices for Non-Opioid Choices as of August 23, 2023: https://nonopioidchoices.org/wp-content/uploads/2022/09/Third-Party-OPPS-Comment-Letter-CY23.FINAL_.pdf

¹⁹ Available at Voices for Non-Opioid Choices as of August 23, 2023: https://nonopioidchoices.org/wp-content/uploads/2022/09/CY2023OPPSVoicesresponse.FINAL_.pdf

²⁰ Dobson, G. P. (2020, July 29). *Trauma of major surgery: A global problem that is not going away*. International journal of surgery (London, England). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7388795/#:~:text=Globally%2C%20a%20staggering%20310%20million,be%20readmitted%20within%2030%20days.>

²¹ Available at Voices for Non-Opioid Choices as of August 23, 2023: https://nonopioidchoices.org/wp-content/uploads/2023/08/Shoff_Rural-Urban-Differences-in-Dental-Opioid-Prescriptions_508.pdf

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *H.R.3259 - 117th Congress (2021-2022): Nopain Act*. Congress.gov. (n.d.). <https://www.congress.gov/bill/117th-congress/house-bill/3259>

²⁷ Oluwadolapo D. Lawal, M. (2020, June 25). *Rate and risk factors associated with prolonged opioid use after surgery*. JAMA Network Open.

administration of non-opioid pain management approaches in both the HOPD and ASC setting beginning no later than January 1, 2024.

Patients are counting on you.

Thank you for your consideration of these comments and we hope the final iteration of the Proposed Rule will treat the opioid addiction epidemic with the urgency it demands. We stand ready to work with your agency and doing our part to preventing opioid addiction in this country and saving lives.

Sincerely,

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