



CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515  
**TERRI A. SEWELL**  
ALABAMA, 7TH DISTRICT

October 4, 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](http://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]**

Dear Administrator Brooks-LaSure:

As lead authors of the NOPAIN Act, we are writing to express concerns with the CY 2024 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rules Proposed Rule (“Proposed Rule”) [Docket CMS-2023-0120]. Specifically, we believe that **the Proposed Rule misses a crucial opportunity** to address the nation’s ongoing opioid addiction crisis.

*The Ongoing Opioid Addiction Crisis*

The opioid addiction crisis is showing no signs of abating. In fact, it is getting worse.

Data from the Centers for Disease Control and Prevention (CDC) show that more than 110,000 Americans died of a drug overdose in 2022<sup>1</sup>. Approximately, 82,000 – or 75 percent – of these deaths involved opioids<sup>2</sup>. This means that, on average, **one American died every seven minutes** in 2022 from an opioid related drug overdose.

This is, by itself, a tragedy of epic proportions.

This is a problem that has gotten significantly worse in recent years. In 2010, we lost just over 21,000 Americans to an opioid-related drug overdose<sup>3</sup>. In 2016, we lost just over

<sup>1</sup> [Products - Vital Statistics Rapid Release - Provisional Drug Overdose Data \(cdc.gov\)](https://www.cdc.gov/drugoverdose/data/psr/psr-provisional-2022.html)

<sup>2</sup> *Ibid.*

<sup>3</sup> <http://wonder.cdc.gov/>



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42,000 Americans to an opioid-related overdose death<sup>4</sup>. And, just last year – or another six years – we lost over 82,000 Americans to an opioid-related drug overdose<sup>5</sup>. All told, **rates of opioid-related drug overdose deaths have increased nearly 300 percent in the last twelve years.**

*Medicare's Role in the Opioid Crisis*

In the United States, we treat pain with prescription opioids.

Ninety percent of acute pain patients receive opioids to manage their pain<sup>6</sup>. Accordingly, it is not a surprise to learn that the United States consumes 80 percent of the global supply of opioids, including 99 percent of the global supply of hydrocodone<sup>7</sup>.

In response to heightened awareness of the crisis, we have seen in recent years a downward trend in opioid prescribing in the United States. Between 2011 and 2019, opioid prescribing decreased by approximately 40 percent – from approximately 250 million opioid prescriptions dispensed to about 150 million prescriptions dispensed<sup>8</sup>.

This is true across most payer audiences, including Medicaid, private insurance, and cash patients. However, incredibly, **opioid prescribing in Medicare has increased** during this time. Accordingly, Medicare's share of opioid prescribing during this time increased substantially from accounting for 20 percent of the country's opioid prescriptions in 2011 to accounting for 35 percent of all the country's opioid prescriptions<sup>9</sup>. This represents a **75 percent increase** in just under a decade.

*Response to Opioid Crisis*

Lawmakers of both parties and across multiple Administrations have dedicated significant attention to the opioid crisis during this time.

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<sup>4</sup> *Ibid.*

<sup>5</sup> [Products - Vital Statistics Rapid Release - Provisional Drug Overdose Data \(cdc.gov\)](https://www.cdc.gov/drugoverdose/rxrate-maps/index.html)

<sup>6</sup> <https://pubmed.ncbi.nlm.nih.gov/27631771/>

<sup>7</sup> <https://pubmed.ncbi.nlm.nih.gov/18443641/>

<sup>8</sup> <https://www.cdc.gov/drugoverdose/rxrate-maps/index.html>

<sup>9</sup> *Ibid.*



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- The Trump Administration commissioned a Pain Management Best Practices **Inter-Agency Task Force** charged with investigating the issue and developing solutions<sup>10</sup>.
- The **CDC promulgated guidance** on appropriate levels of opioid prescribing.
- **Dozens of states have enacted laws** limiting the quantity of opioids that can be prescribed. Congress passed multiple pieces of **significant federal legislation** targeted at support for families and individuals in crisis. These pieces of legislation have provided crucial support for our nation's first responders, opioid use disorder treatment providers
- and centers, and other changes designed to help deal with increased rates of opioid use disorder in the country. **Centers for Medicare and Medicaid Services (CMS)** was tasked with **promulgating guidance** pursuant to the Comprehensive Addiction and Recovery Act ("CARA") and the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act ("SUPPORT for Patients and Communities Act").

All told, we have dedicated billions of taxpayer dollars towards combatting this problem.

Clearly, throwing money at the problem has not worked. It is time for a different approach.

### *The NOPAIN Act*

In 2018, CMS proposed providing a separate payment for the administration of non-opioid pain management services for patients in an ambulatory surgery center (ASC) setting. This policy change went into effect on January 1, 2019.

### **The policy worked.**

From 2019 to 2020 – use of non-opioid pain management approaches increased by 120 percent<sup>11</sup>. Unfortunately, the scope of this policy was limited to ASC patients and did little to ensure access to non-opioid pain management approaches for patients treated in a hospital outpatient department (HOPD).

Building off this successful policy change, we were proud to champion a piece of federal legislation called the *Non-Opioids Prevent Addiction in the Nation Act* ("NOPAIN Act"). This bipartisan, bicameral piece of legislation would ensure robust access to non-opioid

<sup>10</sup> <https://www.hhs.gov/opioids/prevention/pain-management-options/index.html>

<sup>11</sup> <https://www.federalregister.gov/documents/2019/11/12/2019-24138/medicare-program-changes-to-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center>



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pain management approaches across all care settings. The legislation garnered tremendous support from Members of Congress and key clinical and patient advocacy groups and was enacted as part of the FY 2023 spending agreement signed into law by President Biden in December.

The policy is not statutorily required to go into effect until 2025, but CMS has the tools and the ability to implement it sooner. Without taking this step, we are concerned that:

- Tens of millions of patients will be prescribed opioids to manage postsurgical pain because they lack access to non-opioid approaches<sup>12</sup>;
- Millions of patients will develop new persistent opioid use after such procedures<sup>13</sup>; and
- Tens of thousands of Americans will die from an opioid-related drug overdose<sup>14</sup>.

Because of this, we wrote to your agency in March asking about obstacles your agency faced in implementing this legislation before 2024. To date, your agency has not responded to this letter.

The Proposed Rule makes clear that your agency does not anticipate the implementation of this legislation to be a challenge. Instead, the rule makes clear that the expectation is that this legislation will operate very similarly to how it has worked thus far in the ASC. Given the rousing success of this policy in the ASC, we seek to understand why your agency would not seek similar results as soon as possible in the HOPD.

We are not alone in asking CMS to bring this policy change to patients as soon as possible. Over the last six months, thousands of patients<sup>15</sup>, dozens of leading advocacy voices<sup>16</sup>, and 11 Governors<sup>17</sup> representing 60 million Americans all made clear their desire to see enhanced access to non-opioids in the outpatient surgery center setting. The Proposed Rule was silent on these calls.

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<sup>12</sup> see citation 8

<sup>13</sup> <https://www.cdc.gov/opioids/basics/prescribed.html#:~:text=Addiction%20and%20Overdose,-Anyone%20who%20takes&text=In%20fact%2C%20as%20many%20as,setting%20struggles%20with%20opioid%20addiction.&text=Once%20addicted%2C%20it%20can%20be%20hard%20to%20stop>.

<sup>14</sup> <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates#:~:text=Opioid%2Dinvolved%20overdose%20deaths%20rose,with%2080%2C411%20reported%20overdose%20deaths>.

<sup>15</sup> Link to petition

<sup>16</sup> Need citation

<sup>17</sup> Need citation

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*The Final Rule*

We urge CMS to act with the urgency required by this epidemic. We cannot afford to wait another year to ensure access to non-opioids across all outpatient surgery settings. We urge you to provide separate payment for the administration of non-opioid pain management approaches to all outpatient surgery center settings beginning on January 1, 2024.

We appreciate the opportunity to share our concerns and look forward to partnering with CMS to combat the opioid addiction crisis. Together, we can make a meaningful difference in turning the tide on an epidemic that is costing us hundreds of lives a day.

Sincerely,

A handwritten signature in blue ink that reads "Terri Sewell".

Terri Sewell  
Member of Congress

A handwritten signature in blue ink that reads "Brian Fitzpatrick".

Brian Fitzpatrick  
Member of Congress