

September 17, 2021

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
CMS- 1753-P  
Mail Stop C4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Submitted online via [www.regulations.gov](http://www.regulations.gov)

**RE: CMS- 1753-P: 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**

Dear Administrator Brooks-LaSure,

Thank you for the opportunity to comment on the proposed rule entitled, "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," as published in the *Federal Register* on August 4, 2021 (hereinafter "Proposed Rule"). Specifically, we will focus our comments on the opportunity before the Centers for Medicare & Medicaid Services (CMS) to expand patient and provider access to non-opioid pain management therapies across all care settings. This policy change is especially critical given the record-breaking number of opioid-related overdose deaths in 2020.

While the COVID-19 pandemic has had a profound and undeniable impact on all Americans, we are particularly concerned by the public health crisis' contribution to the country's highest rates of drug-related fatalities in history. The Centers for Disease Control and Prevention (CDC) reported that over 95,000 Americans<sup>i</sup> died from a drug-related overdose in the 12 months ending in January 2021 – a 31 percent increase from 2020.<sup>ii</sup> Three-quarters of these deaths (71,318) involved opioids.<sup>iii</sup> To address this, we implore CMS to take the necessary steps to prevent addiction before it starts by advancing policies that have been demonstrated to increase the availability and utilization of non-opioid approaches to managing acute pain.

As the most influential health care payer in the U.S., CMS has a unique role in reshaping the trajectory of the opioid crisis and the opportunity to break the cycle of opioid dependency, misuse, and addiction. In fact, CMS has already identified a proven solution to minimize exposure to opioids by properly incentivizing non-opioid pain management strategies.

Beginning in CY2019, CMS adopted a policy to provide separate reimbursement for non-opioid options to patients undergoing procedures in the ambulatory surgery center (ASC) setting. As a result, utilization of non-opioid pain management approaches in the ASC increased by 120 percent in just one year.<sup>iv</sup>

While we appreciate this policy change, CMS has chosen to not separately reimburse for non-opioids in the hospital outpatient (HOPD) setting, leaving tens of millions of surgical patients at risk of being unnecessarily exposed to opioids. Therefore, while utilization of non-opioid pain management approaches has grown significantly in the ASC, utilization of such approaches in the HOPD setting has increased by only 10 percent over this same time period.<sup>v</sup>

Most surgeries in the United States occur in the HOPD setting, and the status quo for treating these patients' pain is all too often with opioid-based pain management approaches.<sup>vi</sup> In fact, estimates show that over 80 percent of surgery patients receive opioids to manage their postsurgical pain.<sup>vii</sup> On average, patients are prescribed over 80 pills after surgery, whether they need them or not; this is well above international standards.<sup>viii</sup>

As a result, it is hardly surprising that some of these patients initiate long-term opioid use following a surgical procedure. In fact, every year, more than 3.75 million or 9.2 percent of patients become long-term opioid users after a low-risk surgery.<sup>ix</sup> To reduce the risk of opioid misuse among Americans, we urge CMS to ensure site of care parity by increasing access to the available opioid alternative pharmacologic and non-pharmacologic modalities to manage postsurgical pain for all Medicare beneficiaries.

Non-opioid approaches administered by highly qualified and trained professionals offer patients many clinical and health benefits compared to traditional, opioid-based methods. Research has documented the advantages, which include lower pain scores,<sup>x</sup> quicker recoveries,<sup>xi</sup> shorter hospital stays,<sup>xii</sup> fewer opioids consumed,<sup>xiii</sup> and fewer opioid-related adverse events and rehospitalizations.<sup>xiv</sup> Despite these outcomes, the current payment system has created a barrier that has limited the tools available to providers to cater to their patient's needs for acute pain management.

We know that this upstream, common-sense solution to preventing opioid addiction can have a significant and lasting impact on the current state of the opioid use disorder crisis in the country. Patients and providers deserve a choice and a voice in how they manage acute postsurgical pain. Therefore, we, the undersigned, urge CMS to provide **all patients**, regardless of where they are treated, access to the wide array of FDA-approved, safe, effective, and clinically appropriate non-opioid therapies.

Thank you so much for your consideration of these comments.

Sincerely,

A Voice in the Wilderness Empowerment Center  
A.C.T. Drug Free Community Coalition

Adult & Teen Challenge  
AdvaMed  
Ambulatory Surgery Center Association  
American Association of Colleges of Nursing  
American Association of Nurse Anesthesiology  
American Association of Oral and Maxillofacial Surgeons  
American Massage Therapy Association  
American Psychological Association  
American Society of Anesthesiologists  
Arizona Public Health Association  
atTAcK Addiction  
Aurora Sober Living  
Chatham Drug Free Community Coalition  
Community Anti-Drug Coalitions of America  
Cover2 Resources  
Drug Free America Foundation Inc.  
Drug Free Ozarks  
Friends of Guest House  
Healthcare Leadership Council  
Herren Project  
Indiana Rural Health Association  
Journey House Foundation  
Mental Health Association in Delaware  
National Certification Commission for Acupuncture and Oriental Medicine  
National Council for Mental Wellbeing  
National Hispanic Medical Association  
National Rural Health Association  
National Safety Council  
National Transitions of Care Coalition  
Overdose Lifeline  
Partnership for a Healthy Iowa  
Partnership to End Addiction  
Pennsylvania Association of Nurse Anesthetists  
Physical Medicine Management Alliance  
#PYDONEFAMILY Coalition  
REAL LIFE  
RetireSafe  
Rhode Island Community for Addiction Recovery Efforts  
Save Our Society From Drugs  
Second Chance Center, Inc.  
SeekHealing  
Shatterproof  
Society for Opioid Free Anesthesia  
Society of Behavioral Medicine

TALK 2 Healthy Choices Coalition  
The Kennedy Forum  
Voices for Non-Opioid Choices  
Warren Coalition  
Watauga Substance Abuse Prevention  
West Warwick Prevention Coalition  
Will Bright Foundation  
Young People in Recovery

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<sup>i</sup> Ahmad FB, Rossen LM, Sutton P. Provisional drug overdose death counts. National Center for Health Statistics. 2021. <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

<sup>ii</sup> Ahmad FB, Rossen LM, Sutton P. Provisional drug overdose death counts. National Center for Health Statistics. 2021. <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

<sup>iii</sup> Ahmad FB, Rossen LM, Sutton P. Provisional drug overdose death counts. National Center for Health Statistics. 2021. <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

<sup>iv</sup> Centers for Medicare & Medicaid Services (2021). 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*. <https://www.federalregister.gov/documents/2021/08/04/2021-15496/medicare-program-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center-payment>

<sup>v</sup> Centers for Medicare & Medicaid Services (4 August 2021). 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*. <https://www.federalregister.gov/documents/2021/08/04/2021-15496/medicare-program-hospital-outpatient-prospective-payment-and-ambulatory-surgical-center-payment>

<sup>vi</sup> Hall, MJ, Schwartzman A, Zhang J, Liu X. Ambulatory Surgery Data from Hospitals and Ambulatory Surgery Centers: United States, 2014. *Natl Health Stat Report*. 2017 Fe;(102) Table A.

<sup>vii</sup> Hah, J. M., Bateman, B. T., Ratliff, J., Curtin, C., & Sun, E. (2017). Chronic Opioid Use After Surgery: Implications for Perioperative Management in the Face of the Opioid Epidemic. *Anesthesia and analgesia*, 125(5), 1733–1740. <https://doi.org/10.1213/ANE.0000000000002458>

<sup>viii</sup> Bicket M, et al. (2017). Prescription opioid oversupply following orthopedic surgery: A prospective cohort study. American Pain Society annual scientific meeting 2017. [https://www.jpain.org/article/S1526-5900\(17\)30157-8/pdf](https://www.jpain.org/article/S1526-5900(17)30157-8/pdf)

<sup>ix</sup> Hah, J. M., Bateman, B. T., Ratliff, J., Curtin, C., & Sun, E. (2017). Chronic Opioid Use After Surgery: Implications for Perioperative Management in the Face of the Opioid Epidemic. *Anesthesia and Analgesia*, 125(5), 1733–1740. <https://doi.org/10.1213/ANE.0000000000002458>

<sup>x</sup> Halaszynski, T. Influences of the Aging Process on Acute Perioperative Pain Management in Elderly and Cognitively Impaired Patients. *The Ochsner Journal* 2013. Vol 13 228-247.

<sup>xi</sup> Wang MY, Chang HK, Grossman J. Reduced Acute Care Costs With the ERAS® Minimally Invasive Transforaminal Lumbar Interbody Fusion Compared With Conventional Minimally Invasive Transforaminal Lumbar Interbody Fusion. *Neurosurgery*. 2017.

<sup>xii</sup> Wang MY, Chang HK, Grossman J. Reduced Acute Care Costs With the ERAS® Minimally Invasive Transforaminal Lumbar Interbody Fusion Compared With Conventional Minimally Invasive Transforaminal Lumbar Interbody Fusion. *Neurosurgery*. 2017.

<sup>xiii</sup> Mont MA, Beaver WB, Dysart SH, Barrington JW, Del Gaizo DJ. Local infiltration analgesia with liposomal bupivacaine improves pain scores and reduces opioid use after total knee arthroplasty: results of a randomized controlled trial. *J Arthroplasty*. 2018;33(1):90-96

<sup>xiv</sup> Baker, J., Brovman, E. Y., Rao, N., Beutler, S. S., & Urman, R. D. (2020). Potential Opioid-Related Adverse Drug Events Are Associated With Decreased Revenue in Hip Replacement Surgery in the Older Population. *Geriatric orthopaedic surgery & rehabilitation*, 11, 2151459320915328. <https://doi.org/10.1177/2151459320915328>