

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]

Dear Administrator Brooks-LaSure:

Thank you for the opportunity to comment on the Hospital Outpatient Prospective Payment System Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates Proposed Rule (“Proposed Rule”)¹. The organizations below represent leading voices dedicated to combatting our nation’s opioid addiction crisis, including by preventing opioid addiction where we can. The Proposed Rule, as released on July 13th, 2023, is a disservice to patients and providers around the country and will do little to prevent opioid addiction as it puts non-opioid pain management options out-of-reach for patients and providers in the outpatient surgery setting until 2025.

The Proposed Rule, in its current form, will have dire consequences for millions of families around the country.

Over the past six months, thousands of patients², dozens of leading advocacy voices³, and 11 Governors⁴ representing 60 million Americans made clear their desire to see enhanced access to non-opioids in the outpatient surgery center. The Proposed Rule ignored those calls.

Make no mistake: the opioid crisis in this country is showing no signs of abating anytime soon. In fact, opioid-related overdose deaths are higher than ever. In 2022, we lost more than 82,000 Americans to an opioid related drug overdose⁵. This means that, on average, one American died every seven minutes in 2022 from an opioid-related drug overdose **despite** the historic investments supporting first responders,

¹ Available at: <https://www.regulations.gov/document/CMS-2023-0120-0001>

² <https://nonopioidchoices.org/wp-content/uploads/2023/07/Citizens-Petition-6.5.23.pdf>

³ <https://nonopioidchoices.org/wp-content/uploads/2023/03/VoicesCMSimplementationsignonletter-03.23.23.pdf>

⁴ <https://nonopioidchoices.org/wp-content/uploads/2023/05/Governor-Letter-to-Biden-Admin-NOPAIN-Act-05.17.23.pdf>

⁵ Centers for Disease Control and Prevention. (2023, May 18). *Provisional data shows U.S. drug overdose deaths top 100,000 in 2022*. Centers for Disease Control and Prevention.

<https://blogs.cdc.gov/nchs/2023/05/18/7365/#:~:text=The%2079%2C770%20reported%20opioid%2Dinvolved,80%2C997%20in%20the%20previous%20year.>

increasing access to mental health and addiction services, ensuring widespread availability of naloxone in communities around the country, and more.

Yet, the opioid addiction crisis persists.

In December, the Administration signed into law a landmark spending agreement. Included in this legislation was a policy measure designed to prevent opioid addiction by increasing access to non-opioid pain management approaches in all outpatient surgical centers. The legislation mirrored a policy change put into place by the Centers for Medicare and Medicaid Services (CMS) starting in CY 2019⁶ to increase access to and use of non-opioid pain measures in the ambulatory surgical center (ASC) setting to prevent postsurgical opioid misuse and addiction.

This policy has been an indisputable success.

From 2019 to 2020, use of non-opioid pain management approaches increased by 120 percent⁷ – which created opportunities for providers to reduce opioid prescribing in this setting and, in turn, the risk of ASC patients misusing prescription opioids.

Unfortunately, such a policy change was never made for the hospital outpatient department (HOPD) setting, resulting in tens of millions of patients⁸ who will not have access to non-opioid pain management approaches in any given year simply because of their site of care.

The legislation signed into law by President Biden⁹ fixed this discrepancy and would ensure that all patients undergoing an outpatient surgical procedure would have access to non-opioid pain management options, but the legislation would not go into effect until 2025.

In the time that CMS is taking to implement this legislation, we miss an important opportunity:

- Tens of millions of patients will be prescribed opioids to manage postsurgical pain because there are no alternatives.
- Millions of patients will develop new persistent opioid use after such procedures.
- And, tens of thousands of Americans will die from an opioid-related drug overdose.

This does not have to be the case.

⁶ <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Downloads/CMS-1678-FC-2018-OPPS-FR-Claims-Accounting.pdf>

⁷ 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>

⁸ McDermott, K. W., & Liang, L. (n.d.). *Overview of major ambulatory surgeries performed in hospital-owned ...* Overview of Major Ambulatory Surgeries Performed in Hospital-Owned Facilities, 2019. <https://hcup-us.ahrq.gov/reports/statbriefs/sb287-Ambulatory-Surgery-Overview-2019.pdf>

⁹ Carvajal, N. (2022, December 30). *Biden signs \$1.7 trillion government spending bill into law | CNN politics*. CNN. <https://www.cnn.com/2022/12/29/politics/joe-biden-omnibus/index.html>

In the final iteration of this rule, we urge CMS to act with the urgency this crisis demands and increase access to non-opioid pain management options to all patients beginning on January 1, 2024.

Thank you so much for your consideration of these comments. Together, we can make non-opioid pain management approaches more accessible for all surgery patients. In doing so, we can improve patient care and reduce the risk for long-term opioid use following surgery.

Sincerely,

American Association of Nurse Anesthesiology
Ambulatory Surgery Center Association
American Massage Therapy Association
American Medical Women's Association
A Voice in the Wilderness Empowerment Center
Aurora Sober Living
Better Together CT Inc.
CADCA
California Black Health Network
Casting Vets
Chatham Drug Free
Clean Living Exceptional Alternative Recovery Residences
Dropping 22
Drug Free America Foundation Inc.
EMH Recovery, Inc.
GuardianGarage
Healing On the Fly
Healthcare Leadership Council
Herren Project
Ho`ōla Veteran Services
Jamie Daniels Foundation
Journey House Foundation
Massachusetts Military Support Foundation
Medicaid|Medicare|CHIP Services Dental Association
Mental Health America
Mental Health America of Illinois
Montachusett Veterans Outreach Center
National Association for Alcoholism and Drug Abuse Counselors
National Association of Social Workers
National Certification Commission for Acupuncture and Oriental Medicine
National Rural Health Association
National Safety Council
National Transitions of Care Coalition
Nurses Organization of Veterans Affairs
Operation First Response
Optimum Health and Wellness Physical Therapy
Overdose Lifeline
Partnership to End Addiction

Physical Medicine Management Alliance
Pledge for Life Partnership
Prevention Action Alliance
PTSD Awareness Summit
REAL LIFE
RetireSafe
Ruyts Foundation of Veteran Suicide Prevention
Save Our Society From Drugs
Shatterproof
SHE RECOVERS Foundation
Society for Behavioral Medicine
Society for Opioid Free Anesthesia
South End- Roxbury Community Partnership
Team Sharing, Inc.
The Battle Within
The Kennedy Forum
Twelfth Step Ministry Inc.
The Zellner Foundation for Military Vets
VetPark's ATV
Veterans National Recovery Center
Voices For Awareness Foundation
Voices for Non-Opioid Choices
Warren Coalition
West Warwick Prevention Coalition
Will Bright Foundation
Young People in Recovery
Youth 180, Inc.