



Medicare Educational Brief

Introduction

The ASA Medicare Survey Working Group was created with the goal of providing you with background information to accompany the ASA Medicare Survey. The survey was designed by Dr. Lisa Conboy, MA, MS, ScD, Director of Research, New England School of Acupuncture. Your survey response will be shared with your state association, and the anonymized results may also be analyzed for future publication in a peer-reviewed journal.

The purpose of taking the Medicare survey is to support your state association in assessing the position of its members on the question of seeking the inclusion of Licensed Acupuncturists as a provider group under Medicare. If you have questions about any of the information presented in this document, please reach out to Mori West, ASA Insurance Committee Chair (Insurance@ASAcu.org), or Amy Mager, ASA Board Liaison to the Medicare Survey Working Group (VCPublicPolicy@ASAcu.org).

Disclaimer: This document provides general information about Medicare and the acupuncture profession, and the information presented is accurate to the best of our abilities at the time of publication. Some information may change as the situation develops, and it is neither intended to, nor able to provide detailed individual or state-specific information.

Background

Medicare is a federal health insurance program for people who are 65 and older, as well as younger people with disabilities and certain significant medical conditions. It is administered federally, and major changes to Medicare inclusion typically require amending the Social Security Act (SSA) via an act of Congress.

As part of its national coverage determination process, on Tuesday, January 21st, 2020, the Centers for Medicare and Medicaid Services (CMS) announced their decision for Medicare to cover acupuncture for chronic low back pain (cLBP) ([link](#)). Currently only this one condition is named, and there are limitations on treatment and billing, but this development added to a sense of urgency for the profession to provide clear direction on the question of if and how to pursue more comprehensive inclusion for Licensed Acupuncturists under Medicare. To clarify, acupuncture for a specific condition has been included (which is under the purview of CMS to change), but Licensed Acupuncturists are not a part of Medicare, and including this entire licensure group would require an act of Congress, with amendment of the SSA.

The American Society of Acupuncturists (ASA), composed of the Board of Directors and a Council of 34 voting-member state acupuncture associations, represents licensed acupuncturists throughout the United States on a national level. The ASA Council determines public policy for the ASA Board of Directors to enact.

Your responses to this survey will guide your state association's vote in an upcoming Council vote on pursuing inclusion in Medicare as providers. Currently the ASA does not have a position on this point of action, and the ASA Board needs formal direction by the Council on this topic. Thank you for participating in this important decision for the profession!

- I. Opportunities and Challenges
- II. Medicare Educational Brief

Question: Should the ASA pursue the addition of the Licensed Acupuncturist licensure group (including all state equivalent licensure designations) into the Social Security Act so as to become Medicare providers?

IF LAc's are Included...

Opportunities	Challenges
<ul style="list-style-type: none"> ● <u>Influence and Credibility:</u> CMS influences health policy nationwide; being recognized as a named provider type increases credibility for the profession. Medicare is an influential factor amongst private insurers, and inclusion could leverage LAc's to have a more prominent voice in the evolution of our nation's healthcare system. ● <u>Expand Access:</u> Being able to offer direct care to 58 million people covered by Medicare. ● <u>Market growth for Acupuncture</u> is expected to grow rapidly over the next 5 years. Inclusion would secure our place as providers to meet this demand. ● <u>Position LAc's as Primary Providers of Acupuncture Services:</u> The demand for acupuncture is increasing. Currently there are other providers already included in Medicare who are able to provide acupuncture services in some capacity including MD's, DO's, DC's. Others are seeking to provide acupuncture: PT's, PA's, and ARNPs. ● <u>Direct Billing Without Supervision:</u> Acupuncture is now already covered by Medicare for cLBP. With inclusion, LAc's could bill directly and remove the requirement for "appropriate supervision" now required as "auxiliary providers". ● <u>Maximize Pay Rate:</u> CMS pay rates for acupuncture already exist and influence the pay rates for other federal programs such as the VA. Inclusion may result in LAc's being paid the highest rate allowable for similar specialists whereas billing through other providers may decrease reimbursement to LAc's. ● <u>Expanded Coverage:</u> Currently, acupuncture is only covered for cLBP by CMS determination. Becoming covered providers could open the 	<ul style="list-style-type: none"> ● <u>Disruption of Care</u> LAc's who do not enroll in Medicare will be unable to treat Medicare beneficiaries, including those with Medicare Advantage for Medicare <u>covered diagnoses</u>. Medicare beneficiaries whose providers are unwilling to enroll in Medicare would have to change providers for treatment of cLBP, and any diagnoses added by Medicare in the future. ● <u>Administrative Burden:</u> If Acupuncturists become Medicare providers they could no longer bill secondary plans without enrolling and receiving a denial from Medicare. Currently, acupuncturists can charge Medicare beneficiaries cash and/or bill secondary plans and accept reimbursement without requiring a denial letter. ● <u>Investment of Resources at the national professional level:</u> Gaining inclusion will require significant financial and volunteer resources. An ongoing investment would be required to maintain reimbursement rates, add services, and respond to regulatory actions. ● <u>Document and Billing Considerations:</u> Providers not already knowledgeable would have to seek out training in billing and record keeping to satisfy legal requirements. ● <u>Reimbursement Considerations:</u> Practitioner income may be negatively impacted due to limited reimbursement and/or increased overhead to accommodate the administrative tasks and logistics involved in billing for Medicare. ● <u>Job Satisfaction:</u> Without an opt-out clause, Acupuncturists would be required to perform administrative tasks comparable to all insurance requirements. (Some LAc's prefer not to take

door to more diagnoses being covered. Similarly, if more diagnoses are added by CMS (e.g. all musculoskeletal pain syndromes), LAc's would be best positioned to treat.

- **Job Growth:** Inclusion could increase the number of [jobs for graduating students](#).
- **Integrated Healthcare:** Inclusion could increase opportunities to develop and participate in integrative care models in new settings.
- **Research Opportunities:** Inclusion could increase opportunities to participate in [research and data analysis that Medicare conducts](#) which then informs the rest of the U.S. healthcare system.

Potential Long Term Benefits (5-10 yrs):

- **Inclusion in 'Medicare For All':** this model has become a mainstream healthcare policy talking point. Possible development: if Medicare expands beyond the 65 and older population, LAc's would need to be included as providers in order to directly access this patient population.
- **Medicare Program Eligibility:** As Medicare providers, LAc's may become eligible to participate in [Alternative Payment Model \(APM\) programs](#) which incentivise high-quality and cost-effective care programs by providing bonuses to practitioners for keeping patients out of hospitals.
- **Education:** Inclusion *might* enable LAc's to participate in [Medicare internship and residency](#) programs. This remains to be determined.

insurance.) This could impact the job satisfaction of some practitioners and the appeal of the profession to potential practitioners. Our SMEs, (subject matter experts), have differing opinions on whether or not we will receive an opt out clause.

- **Reshaping the profession:** Inclusion as Medicare providers would shape the profession, in that all providers would need to engage in third party payer systems in some way in order to access the US senior population and some specific other populations.

Frequently Asked Questions

May 29, 2020

Frequently Asked Questions

Q1: Are Acupuncture services currently covered by Medicare?

A: Yes. Acupuncture for chronic low back pain was added as a covered service to Medicare by the [CMS Decision Memo For Acupuncture For Chronic Lower Back Pain](#) on January 21, 2020. Prior to this decision acupuncture was not covered by Medicare.

Q2: Are Licensed Acupuncturists currently Medicare providers?

A: No. Licensed Acupuncturists are not currently listed as a Medicare provider group in the Social Security Act. However, they are able to provide acupuncture as “auxiliary personnel” under the CMS Decision Memo.

Q3: What is meant by “auxiliary personnel”?

A: Provider groups are defined in the relevant sections of the Social Security Act. Providers who furnish services covered by Medicare, but who are not listed as Medicare provider groups, fall under the category of “auxiliary personnel.”

Q4: Can Licensed Acupuncturists currently bill Medicare for Acupuncture services?

A: No. As “auxiliary personnel,” Licensed Acupuncturists cannot directly bill for acupuncture services under Medicare. Under the recent CMS decision, billing is done by the supervising physician, physician assistant, or nurse practitioner/clinical nurse specialist.

Q5: What does “supervision” mean in this context?

A: Auxiliary personnel furnishing acupuncture must be under the “appropriate level” of supervision as determined by the supervising physician, physician assistant, or nurse practitioner/clinical nurse specialist as required by CMS regulations. CMS defines three levels of supervision: general, direct, and personal. The current language lacks some specificity and definition, and we await further clarification on its interpretation. It is generally believed this will mean the lowest level of supervision.

See p.3 for clarification of “supervision”

https://docs.google.com/document/d/1rEbGKvpARUPVqjawbrz8_aB-lxbIDHL3yda7SgNJjG8/edit

Q6: Why is supervision required?

A: Medicare providers must supervise CMS-defined auxiliary personnel. Licensed Acupuncturists are currently not named providers under the Social Security Act, hence they are considered auxiliary personnel and require supervision.

Q7: Which CPT codes are covered, and what are the current reimbursement rates?

A: The acupuncture codes 97810, 97811, 97813, 97814, 20560, and 20561 are covered. Medicare fee schedules are based on a payment formula for each service, which can vary by state and state regions. Please see the Addendum at the end of this document for examples from different states and billing examples. The CMS Fee Schedule Search can be found [here](#).

The current national average fee schedule for acupuncture services is:

97810: \$37.89
97811: \$28.87
97813: \$42.22
97814: \$34.65
20560: \$26.71
20561: \$39.70

Q8: Can any other professions currently provide Acupuncture services for cLBP under Medicare?

A: Yes. Besides Licensed Acupuncturists, professions meeting the qualifications below can currently provide acupuncture services:

- Physicians (as defined in 1861(r)(1)) may furnish acupuncture under applicable state requirements.
- Physician assistants, nurse practitioners/clinical nurse specialists (as identified in 1861(aa)(5)), and auxiliary personnel may furnish acupuncture if they meet all applicable state requirements

-and- have a master or doctoral-level degree in acupuncture or oriental medicine from a school accredited by the Accreditation Commission for Acupuncture & Oriental Medicine (ACAOM);

-and- a current, full, active, and unrestricted license to practice acupuncture in a State, Territory, or Commonwealth (i.e., Puerto Rico) of the United States or District of Columbia.

Q9: How are provider groups added to Medicare?

A: An act of Congress to amend the Social Security Act is required to add new providers under Medicare.

Q10: If Licensed Acupuncturists were added as a provider group under Medicare, how would that affect billing practices?

A: If Licensed Acupuncturists were added as providers under Medicare, they would no longer be “auxiliary personnel” and would be able to bill Medicare directly without supervision.

Q11: If Licensed Acupuncturists were added as a provider group under Medicare, would they have to enroll in Medicare to treat Medicare beneficiaries?

A: Yes. The only way a Medicare provider group without an opt-out clause (see Q13 & Q14 below) can treat a Medicare beneficiary for a covered condition, (Currently that is cLBP), is by being enrolled in Medicare.

A Medicare provider group can treat a Medicare patient for a non-covered condition with an Advanced Beneficiary Notification. This must be signed at every visit.

If legislation is passed to amend the Social Security Act to add Licensed Acupuncturists as providers, and an “opt-out” clause is not included, then the following would apply:

If the LAc enrolls as a Medicare provider, they:

- Have the option to become either a participating or non-participating provider.
- Are required to accept the Medicare payment rate (defined below) for covered services.
- Would only bill Medicare for covered conditions and services and would be allowed to collect cash for any diagnosis or services not covered. As Medicare doesn't cover preventative treatments, then those preventative treatments could be charged separately for cash.
- Could treat Medicare Advantage Members.

If the LAc does not enroll as a Medicare provider, they:

- Would not be able to treat any Medicare beneficiaries for any condition. Medicare Advantage members can continue care with you for any conditions not covered by Medicare.

Q12: What does Participating and Non-Participating mean?

A: Medicare enrollment provides two options - participating and non-participating. Both options require billing Medicare for covered services. ([Mandatory Claims Submission rule](#))

Participating (“Par”): Participating providers are required to wait to receive payment from Medicare (“accept assignment”) and collect the copay from the beneficiary.

They agree to be reimbursed according to the Medicare fee schedule, and they will be listed online as a Medicare provider.

Non-Participating (“Non-Par”): Non-Participating providers may choose to accept assignment and receive payment from Medicare directly, or receive payment at time of service from the beneficiary and bill Medicare for patient reimbursement.

Non-participating providers are bound to the “limiting rate,” which is 15% more than the participating allowed amount (see Addendum for billing example).

See [this page](#) for more information about Par/Non-Par.

Q13: What does it mean to “Opt-out” as a Medicare provider?

A: When a provider “opts-out” it means that they choose not to be involved in any Medicare program. Not all professions named as Medicare providers are allowed to “opt-out.”

When a Medicare beneficiary sees a Medicare provider who has opted-out, the beneficiary enters into a private contract with the provider. The beneficiary pays the provider out-of-pocket and neither party is reimbursed by Medicare. The provider can treat Medicare beneficiaries by entering into a private contract with the beneficiary, and as such the provider is not bound by Medicare allowed amounts.

[Here](#) is the explanation of "opt-out" from CMS.

Q14: Could Licensed Acupuncturists get an “opt-out” clause as Medicare providers?

A: **It is unknown at this time.** Our SMEs, (Subject Matter Experts), shared differing opinions. Medicare doesn't cover preventative treatments, so preventative treatments can be charged separately for cash payments. Historically, provider groups have obtained the ability to “opt-out” through a separate amendment to the SSA after they have become providers under Medicare.

Previous attempts to amend the Social Security Act to add Licensed Acupuncturists as providers, dating back to 1979, have not included an “opt-out” clause. Although it would be more challenging to be added as a provider group with an opt-out clause than it would to be added without the clause, it would still be pursued in any legislative effort to add Licensed Acupuncturists as providers under Medicare.

Q15: Will Electronic Health Records (EHR) be required if I am a Medicare provider?

A: **Probably not.** Most Licensed Acupuncturists would be excluded from EHR requirements. Medicare providers billing less than or equal to \$90,000 to Medicare part B are not required to use EHR. Note that not all EHR systems are Medicare compliant. If required to use EHR, providers can use non-compliant EHR and be subject to a small percentage decrease in reimbursement. Note also that the level of documentation required by Medicare is similar to that required by all carriers.

Addendum

Sample State Medicare Fee Schedules

	<u>CA</u>	<u>NY</u>	<u>FL</u>	<u>TX</u>	<u>OH</u>	<u>Nat'l AVE</u>
97810	\$40.96	\$43.32	\$39.47	\$37.83	\$36.76	\$37.89
97811	\$30.81	\$33.06	\$30.42	\$28.59	\$28.19	\$28.87
97813	\$45.82	\$49.46	\$43.82	\$42.26	\$40.87	\$42.22
97814	\$37.37	\$39.70	\$36.22	\$34.52	\$33.63	\$34.65

Billing Examples

Hawaii	Participating Fee	Non-Participating Fee	Limiting Chg
97810	39.46	37.49	43.11
97811	29.64	28.16	32.38
97813	44.17	41.96	48.26
97814	35.99	34.19	39.32

Participating Provider: If a provider enrolled in Medicare as a Participating provider, and provided services that allowed them to bill for 2 units of acupuncture ($39.46 + 29.64 = \$69.10$), they would receive \$55.28 from Medicare (80% of allowed rates) and \$13.82 from the beneficiary (20% of allowed rates). As a participating provider they must collect either the deductible and/or co-insurance and bill Medicare directly and wait for the payment.

Non-Participating Provider: If a provider enrolled in Medicare as a Non-Participating provider, they have the option of either collecting cash at the limiting rate, which is 15% above the Medicare rate ($43.11 + 32.38 = \$75.49$), and submitting a bill for the beneficiary to get reimbursed. Alternately they can collect just the 20% of the Non-participating fee ($37.49 + 28.16 \times 20\% = \13.13) and wait for Medicare to reimburse the 80% remaining.

C. Past and Current Medicare Legislation

In the 1979 congressional session Representative John Burton of California introduced two bills to provide for Medicare and Medicaid coverage of acupuncturists' services. These bills were re-introduced in the 1981, 1983, and 1985 legislative sessions by Rep. Phillip Burton and Rep. Sala Burton. The bills did not receive a hearing in committee in any of those sessions.

In 1993 the Federal Acupuncture Coverage (FACA) bill, known as the "Hinchey Bill," was introduced by Representative Maurice Hinchey of New York, and was reintroduced for 10 consecutive sessions between 1995 and 2013. This bill would have added Licensed Acupuncturists as providers under the Social Security Act, however it also did not receive hearings in committee in any of those sessions. During the 2009-10 session, the national organization at the time created a position of support for this bill.

Most recently, the Acupuncture for Heroes and Seniors Act (AHSA) was introduced in 2015, 2017, and 2019 by Representative Judy Chu of California. This bill also would have added Licensed Acupuncturists as providers under the Social Security Act, but once again, did not receive hearings in committee during any of those sessions. There has been no official position on this bill by the ASA as of yet. Note: the ASA was formed in 2015, and so was not in existence prior to take part in legislative efforts.

ASA Medicare Survey Working Group