

Protocol Title: ASA Medicare Survey  
Protocol Faculty Sponsor: Jennifer Anne Stone  
Protocol Number: 2006296056  
Principal Investigator: Lisa Ann Conboy

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## Medicare Educational Brief

Please note all additions are highlighted in yellow as of 6/30/2020

### 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.

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## 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"> <li>● <b>Influence and Credibility:</b> CMS influences health policy nationwide; being recognized as a named provider type increases credibility for the profession. <a href="#">Medicare is an influential factor amongst private insurers</a>, and inclusion could leverage LAc's to have a more prominent voice in the evolution of our nation's healthcare system.</li> <li>● <b>Expand Access:</b> Being able to offer direct care to <a href="#">58 million people</a> covered by Medicare.</li> <li>● <b>Market growth for Acupuncture</b> is expected to grow rapidly <a href="#">over the next 5 years</a>. Inclusion would secure our place as providers to meet this demand.</li> <li>● <b>Position LAc's as Primary Providers of Acupuncture Services:</b> 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 <a href="#">ARNPs</a>.</li> <li>● <b>Direct Billing Without Supervision:</b> Acupuncture is now <a href="#">already covered by Medicare</a> for cLBP. With inclusion, LAc's could bill directly and remove the requirement for "appropriate supervision" now required as "auxiliary providers".</li> <li>● <b>Maximize Pay Rate:</b> CMS pay rates for acupuncture already exist and influence the pay rates for other federal programs such as the VA. Inclusion <b>may</b> result in LAc's being paid the highest rate allowable for similar specialists</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Investment of Resources at the national professional level:</b> 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.</li> <li>● <b>Document and Billing Considerations:</b> Providers not already knowledgeable would have to seek out training in billing and record keeping to satisfy <a href="#">legal requirements</a>.</li> </ul>

whereas billing through other providers may decrease reimbursement to LAc's.

- **Expanded Coverage:** Currently, acupuncture is only covered for cLBP by CMS determination. Becoming covered providers could open the 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.
- **Creating access: Opportunity to treat historically medically underserved populations** such as Black, Latino, Native Americans and the urban poor. We can serve these populations and allow them access to acupuncture under Medicare, which they may not otherwise be able to afford.

**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.

# 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.

### **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: 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.

### **Q8: 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.

### **Q9: 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.

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.

### **Q10: How could we as practitioners in Medicare, play a role in offering better healthcare?**

**A: By providing services to the Medicare population, historically underserved populations would gain access to Acupuncture.**

Medicare is the closest approximation to a universal health care plan. Historically underserved, disenfranchised, and socioeconomically disadvantaged populations such as BIPOC communities (Black, Indigenous, Latino/LatinX) would gain access to Acupuncture in large

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numbers. The expansion of services in these communities also serves as an avenue to then inspire more members of those communities to become Acupuncture Medicine practitioners.

### **Q11: 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:**

**In follow up to the June 24 Town Hall, How Medicare Recognition Would Affect the Acupuncture Profession, the ASA and the NCCAOM would like to provide additional information about Medicare participation and Medicare reimbursement.**

### **THE PATH TO MEDICARE INCLUSION FOR LICENSED ACUPUNCTURISTS**

It is important to note that the legislative effort to establish acupuncturists as Medicare providers will be strategic and reflect the unique interests and needs of the acupuncturist profession. The legislative process would ensure that acupuncturists have participation options, including the ability to opt-out of the Medicare program.

The process for obtaining Medicare recognition requires specific legislative steps, but within those steps, the unique acupuncture practice model will be reflected and protected. The path the acupuncturist profession takes toward Medicare recognition will not mirror the path the chiropractor profession has had to take. Each profession has its own unique needs and challenges, making both professions' paths separate and distinct. They should neither be compared nor considered one in the same.

### Medicare Highlights

Many non-physician Medicare providers currently have the ability to opt out of Medicare.

**Non-physician providers seeking Medicare recognition can also obtain the right to opt out of Medicare through legislation.** Medicare establishes a formula to set reimbursement rates that considers a series of value factors (time and intensity, practice costs, and malpractice costs) as well as geography to set individual practitioners' reimbursement rates. The reimbursement figures mentioned during the June 24, 2020 Town Hall were hypothetical and not indicative of actual Medicare reimbursement rates.

### Medicare Inclusion

Since its inception in 1965, Medicare has expanded many times to encompass more populations, provider types, and services. Medicare recognition for a provider type requires Congress to amend Title XVIII of the Social Security Act through the formal legislative process. This process would require a member of Congress to introduce legislation to recognize acupuncturists as Medicare providers. This legislation that would instruct Medicare to recognize acupuncturists would as well as to enable acupuncturists to opt out of the program.

### Medicare Participation Options

Medicare provides the following participation options if certain criteria are met:

Not enroll in Medicare.

- Agree not to provide Medicare beneficiaries services that Medicare covers.
- Provide services to Medicare beneficiaries for acupuncture services that Medicare does not explicitly cover.

Enroll in Medicare as a participating provider.

- Accept assignment of claims for the services furnished to Medicare beneficiaries.
- Accept Medicare-permitted amounts, in full, and agree not to accept more from the beneficiary than the Medicare deductible and coinsurance. o Submit all beneficiary claims to Medicare.
- Receive reimbursement directly from Medicare.

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- Appear in Medicare provider directories.

#### Enroll in Medicare as a non-participating provider

- Accept Medicare, but take assignment on a case-by-case basis.
- Charges up to 15-percent more than Medicare's approved cost of service.
- Receive 5-percent less in Medicare reimbursement (compared to participating practitioners).
- Require beneficiaries to pay upfront for services and receive reimbursement from Medicare.

#### Opt Out of Medicare.

- Agree to opt-out of Medicare for two-year periods by submitting an affidavit to Medicare confirming this decision.
- Agree not to submit bills to Medicare for reimbursement.
- Sign a contract with each Medicare beneficiary affirming that neither party can receive payment from Medicare and that beneficiaries directly pay the practitioner, out-of-pocket.

#### Medicare Practitioners who can Currently Opt Out of Medicare

- Doctors of medicine or osteopathy, doctors of dental surgery or dental medicine, doctors of podiatry, doctors of optometry, those who are legally authorized to practice dentistry, podiatry, optometry, medicine, or surgery by the State in which such function or action is performed.
- Physician assistants, Nurse practitioners, Clinical nurse specialists, Certified registered nurse anesthetists, Certified nurse midwives, Clinical psychologists, Clinical social workers, Registered dietitians or nutrition professionals.

#### Medicare Part B Reimbursement

Medicare establishes a physician fee schedule each year to set prices for over 7,000 covered services. Medicare prices each service by using the Resource-Based Relative Value Scale (RBRVS), which assigns value to billing codes. Medicare Physician Fee Schedule uses the

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following relative value units (RVUs) to set reimbursement rates for covered procedures.

- Work RVU: Relative time and intensity related to furnishing Medicare services.
- Practice Expense RVU: Costs of maintaining a practice, (space, supplies, equipment, staff).
- Malpractice RVU: Costs of malpractice insurance.

Medicare uses its Geographic Practice Cost Indices to adjust these three RVU values for geographic cost variations by multiplying the sum of the adjusted RVUs by a conversion factor that Congress sets each year.