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Acupuncture Coverage in Medicare: Answering Some of the Big Questions

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Question: *I'm confused; does Medicare cover acupuncture now?*

The simple answer is yes for chronic low back pain, but when furnished by a licensed acupuncture provider, it must be under the adequate supervision of a physician, a physician assistant or a nurse practitioner. Acupuncture professionals have status as auxiliary personnel, which requires that the acupuncture provider be working as an employee of the medical corporation or provider. Let's go through the details and history of Medicare's approval of acupuncture.

Per Medicare, chronic pain is one of the most common reasons adults seek out medical care. Chronic pain is associated with loss of ability to perform activities of daily living, decreased mobility, opioid dependence, anxiety, depression and reduced quality of life.

Among individuals 65 years of age or older, approximately 1.4 million with both Medicare and Medicaid experience chronic pain and approximately 800,000 experience high-impact chronic pain. Of individuals with Medicare only, approximately 2.1 million experience chronic pain and more than 900,000 experience high-impact chronic pain. A higher prevalence of pain is associated with advancing age.

What Medicare Now Covers

Just as the Veterans Administration recognized the use of acupuncture to combat pain and reduce the use of opioids, Medicare is starting to address the same with the inclusion of acupuncture.

However, acupuncture inclusion to Medicare has parameters and is currently limited to chronic lower back pain. The Centers for Medicare & Medicaid Services (CMS) will cover acupuncture for chronic low back pain under section 1862(a)(1)(A) of the Social Security Act. Up to 12 visits in 90 days are covered for Medicare beneficiaries under the following circumstances:

For this Medicare decision, chronic low back pain is defined as pain:

- *Lasting 12 weeks or longer;*
- *Nonspecific, in that, it has no identifiable systemic cause (i.e., not associated with metastatic, inflammatory, infectious, etc., disease);*
- *Not associated with surgery; and*
- *Not associated with pregnancy.*

For those patients demonstrating an improvement, an additional eight visits will be allowed, but no more than 20 acupuncture treatments may be administered annually. Treatment must be discontinued if the patient is not improving or is regressing.

What It Doesn't: A Big Barrier to Overcome

While this is a very reasonable protocol, the barrier for acupuncture providers is the limitations to the providers who may bill and furnish acupuncture. At this time, there is no enrollment status for acupuncture providers, as CMS does not list acupuncturists as eligible providers; at least not acupuncturists who don't also have status as a physician, physician assistant or nurse:

Physicians (as defined in 1861(r)(1)) may furnish acupuncture in accordance with 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 masters- or doctoral-level degree in acupuncture or Oriental Medicine from a school accredited by the Accreditation Commission on Acupuncture and Oriental Medicine (ACAOM); and 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.

Auxiliary personnel furnishing acupuncture must be under the appropriate level of supervision of a physician, physician assistant, or nurse practitioner/clinical nurse specialist required by regulations at 42 CFR §§ 410.26 and 410.27.

As a result, the acupuncture provider must be under adequate supervision or essentially what is termed *incident to* a physician's professional service (§ 1861(s)(2)(A)), Inpatient Hospital Services (§ 1861(b)), Outpatient Hospital Services Incident to a Physician's Service (§ 1861(s)(2)(B)), and Physicians' Services (§ 1861(s)(1)).

A Potential Workaround? "Incident-To" Service

This means independent acupuncture providers would not be reimbursed by Medicare or have the ability to register for Medicare independently. The acupuncturist would need to meet certain and specific criteria to qualify for acupuncture to be "incident to."

There remains some interpretation, however, as typical "incident to" services state the physician must be in "direct supervision," meaning the physician is physically present in the office suite and immediately available to provide assistance and direction when the service is performed. The physician need not be in the room with the supervised practitioner; an "office suite" generally is considered to include offices within one building under a single lease. Buildings separated by a walkway, for example, would not qualify as an office suite.

The rule for acupuncture states "adequate supervision," which certainly would indicate that it may or would be different from direct supervision; but this has not been adequately defined as of this writing.

Therefore, taking the strict interpretation for "incident to," here are the basic requirements to meet the incident-to guidelines for Medicare payment:

A Medicare-credentialed physician must initiate a patient's care. If the patient has a new or worsened complaint, a physician must conduct an initial evaluation and management (E&M) for that complaint, and must establish the diagnosis and plan of care.

A physician must actively participate in and manage the patient's course of treatment. The exact requirement is usually defined by the state licensure rules for physician supervision of non-physician practitioners (NPPs) (e.g., the physician must see the patient every third visit).

Both the credentialed physician and the qualified NPP providing the incident-to service must be employed by the group entity billing for the service. (If the physician is a sole practitioner, the physician must employ the NPP.)

The incident-to service must be the type of service usually performed in the office setting and must be part of the normal course of treatment of diagnosis or illness.

A Great Starting Point; Now What Do we Do?

This may not be what many assumed with the vision of direct coverage and payment to an acupuncture provider. However, it is certainly more than was expected in this short period. The profession must work together toward legislation to allow acupuncture providers to register with Medicare similar to chiropractic providers. As more details and specifics become available, we will the first to inform the profession.

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