

Integrative Pain Treatment Subcommittee Recommendation

Doctors of Oriental Medicine

September 9, 2022

Recommendation: Reimburse Doctors of Oriental Medicine in Medicaid Centennial Care and Fee-For-Service Medicaid, at a level equal to the New Mexico ACA Benchmark Plan, for at least 20 acupuncture visits per calendar year, for all New Mexico Medicaid recipients.

1. The purpose of this proposed recommendation is to:

- a. Provide equal access to non-pharmacologic pain management for Medicaid recipients, as has been recommended by the Overdose Prevention and Pain Management Advisory Council since 2019.

2. Rationale for this proposed recommendation:

- a. Effective treatment of pain without opioids reduces the burden of addiction and overdose deaths.
- b. Doctors of Oriental Medicine have a broad scope of practice and treat much more than just pain, using a variety of methods in addition to acupuncture. They are also able to order lab tests and imaging. New Mexico does not have a sufficient number of primary care physicians, and DOMs can help make up for that lack.
- c. Acupuncture is defined as an Essential Health Benefit under New Mexico's ACA standards, but it is not being covered by Centennial Care under most circumstances, and DOMs are not Centennial Care providers.
- d. There has been quite a bit of movement toward coverage of acupuncture by government health insurance programs: 1) Medicare now covers acupuncture for chronic low back pain, albeit in a very limited way; 2) the VA offers acupuncture to veterans, and hires acupuncturists; 3) 16 states include acupuncture in their Medicaid benefits; 4) In NM, Presbyterian offers some coverage of acupuncture for dual-eligible (Medicare/Medicaid) members, and elderly or disabled New Mexicans covered by the Self-Directed Community Benefit program can include acupuncture in their health care budget.
- e. Despite these programs, most New Mexico Medicaid beneficiaries have no access to coverage for acupuncture or other services of DOMs. Those just slightly less financially stressed, who are able to get 100% subsidized plans through the ACA, do have coverage, typically for at least 20 visits per year, but many of our poorest and most medically fragile citizens are left out.

3. The data supporting this proposed recommendation (Please also refer to the recommendations document from the Doctors of Chiropractic, as it includes data regarding acupuncture):

- a. Evidence Based Acupuncture has provided good summaries of evidence for the effectiveness of acupuncture for pain and other conditions (see references below).
“Acupuncture has been demonstrated to activate a number of the body’s own opioids as well as improving the brain’s sensitivity to opioids. A number of other biochemicals involved in pain reduction have been found to be released or regulated by acupuncture stimulation, including ATP and adenosine, GABA and substance P. In the context of ineffective and often dangerous pharmaceutical options for pain, acupuncture represents a safe and effective alternative with a long track-record of successful use.”
- b. Various NIH publications have recommended the use of acupuncture as well as other non-pharmacologic treatments.
- c. In 16 states, there is at least some Medicaid coverage of acupuncture, with varying eligibility benefits and limitations. In our state, Presbyterian offers some coverage of acupuncture for dual-eligible (Medicare/Medicaid) members, and elderly or disabled New Mexicans covered by the Self-Directed Community Benefit program can include acupuncture in their health care budget. While these programs are helpful, they still leave most low-income New Mexicans behind.
- d. According to Medicaid.gov, as of April 2022 New Mexico has enrolled 870,319 of our people in Medicaid and CHIP. This means that almost 41% of our population lacks access to important non-pharmacological treatment for pain and other conditions.

4. Current statute, rules, regulations, or recently proposed legislation related to this recommendation:

- a. **(Points a-k are taken from the New Mexico Acupuncture and Oriental Medicine Practice Act.)** Doctors of Oriental Medicine (DOMs) are licensed in New Mexico as Physicians. (61-14A-3.C. NMSA 1978)
- b. DOMs are Primary Care Providers. (61-14A-3.F. NMSA 1978, & 13 NMAC 10.13.9.1.1)
- c. DOMs are licensed to diagnose, treat and prescribe for any disease, illness, injury, pain or other physical or mental condition. (61-14A-3.E. NMSA 1978)
- d. DOMs have a wide-ranging scope of practice including most areas of diagnostic testing and an extensive array of treatment options, including manipulation and other physical

medicine modalities. Some DOMs have expanded practice licensure that includes injection therapy. (61-14A-3.G. NMSA 1978, & 16 NMAC 2.2)

- e. Under New Mexico law, DOM services are reimbursable in workers' compensation cases.(52-4-1.L. NMSA 1978)
- f. Auto Med-Pay insurance is mandated by NM law to reimburse for acupuncture and other DOM services in a non-discriminatory manner. (59A-32-22. NMSA 1978; & 59A-7-7.D. with 59A-22-32. NMSA 1978)
- g. Non-discriminatory coverage of DOM services, including acupuncture, is mandated for indemnity health insurers. (59A-22-32. NMSA 1978)
- h. Together with MDs, DOMs are defined in NM law as Practitioners of the Healing Arts. (59A-22-32.B.(2) NMSA 1978)
- i. Non-discriminatory coverage of DOMs by "nonprofit" healthcare insurers is mandated.(59A-47-28.2. NMSA 1978)
- j. HMOs must not discriminate against DOMs. (59A-46-36. NMSA 1978)
- k. **Key point: Under New Mexico law, DOMs' services are reimbursable by Medicaid.**(27-2-12 NMSA 1978) "Medical assistance programs: A. Consistent with the federal act and subject to the appropriation and availability of federal and state funds, the medical assistance division of the department may by rule provide medical assistance, **including the services of licensed doctors of oriental medicine**, licensed chiropractic physicians, licensed dental therapists and licensed dental hygienists in collaborating practice, to persons eligible for public assistance programs under the federal act."
- l. **Page 3 of the New Mexico Essential Health Benefits Benchmark Plan lists acupuncture as being covered at 20 visits per year. Page 1 states: "New Mexico changed its EHB-benchmark in 2020 to come into effect in plan year 2022."**
- m. Medicare began covering acupuncture for chronic low back pain in 2020, though only under limited circumstances.

5. Implementation requirements of this proposed recommendation include:

- a. To the best of our knowledge, no legislative action is necessary for DOMs to be included as Medicaid providers.
- b. Access to health care is limited by lack of providers in many parts of the state as well as by lack of coverage. Narrow insurance networks create an additional barrier. Insurers participating in Centennial Care could and should broaden their networks to include more DOMs, and state government could encourage this.
- c. Provider reimbursement must be adequate, accurate, and timely. Currently, the fiscal agent used by HSD, Palco, misses payments and does not correct its errors. There is no

realistic way for providers to compel it to do so. Combined with low reimbursement rates, this may push providers of all types away from participating in Medicaid.

- d. About 500 DOM licensees are present in New Mexico, practicing mostly in the larger cities. Including DOMs in the tax credit for rural health care providers would be one way of helping to increase access to acupuncture and other care around the state.

6. References

- a. NM Essential Health Benefits Benchmark Plan: https://www.cms.gov/cciio/resources/data-resources/ehb#New_Mexico
- b. *Acupuncture: An Overview of Scientific Evidence* <https://www.evidencebasedacupuncture.org/acupuncture-scientific-evidence/>
- c. *Acupuncture for Pain* A summary of studies on acupuncture for pain, including some mechanisms of action. <https://www.evidencebasedacupuncture.org/pain/>
- d. New Mexico Statutes 27-2-12. Medical assistance programs: https://www.lawserver.com/law/state/new-mexico/nm-statutes/new_mexico_statutes_27-2-12
- e. Missouri Department of Social Services, “New Complementary Health and Alternative Therapies for Chronic Pain Management,” 2019 <https://dss.mo.gov/mhd/providers/pdf/bulletin41-55.pdf>
- f. <https://www.oregon.gov/oha/OEBB/WebinarHandouts/2022-IC-HANDOUT-KP-Summary-of-Benefits-Medical-and-Vision.pdf>
- g. <http://www.careoregon.org/docs/default-source/coa/2022-member-materials/coa-benefit-highlights-sheet-english-2022.pdf>
- h. The Complementary and Integrative Health Waiver (CIH) for Colorado residents with spinal cord injuries and certain other conditions: <https://hcpf.colorado.gov/complementary-integrative-health-waiver-cih>
- i. <https://www.cms.gov/medicare-coverage-database/view/ncacal-decision-memo.aspx?proposed=N&NCAId=295>
- j. https://www.va.gov/WHOLEHEALTH/docs/AcupunctureFactSheet_508.pdf
- k. Kaiser Family Foundation summary on Medicaid usage in the US: <https://files.kff.org/attachment/fact-sheet-medicare-state-US>
- l. Medicaid and CHIP enrollment in NM: <https://www.medicare.gov/state-overviews/stateprofile.html?state=New-Mexico>

- m. The Centennial Care Community Benefit program, including the self-directed option for elderly and disabled residents: <https://www.medicaidplanningassistance.org/mexico-centennial-care/>