

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-03 Medicare National Coverage Determinations	Centers for Medicare & Medicaid Services (CMS)
Transmittal 10337	Date: August 27, 2020
	Change Request 11755

Transmittal 10128, dated May 8, 2020, is being rescinded and replaced by Transmittal 10337, dated, August 27, 2020, to change business requirement 11755-04.2.1.1 to deny claims and provides revised messaging. The Claims Processing Manual at section 410.4 has been revised accordingly. All other information remains the same.

SUBJECT: National Coverage Determination (NCD30.3.3): Acupuncture for Chronic Low Back Pain (cLBP)

I. SUMMARY OF CHANGES: The purpose of this change request is to inform MACs that CMS will cover acupuncture for chronic low back pain (cLBP) effective for claims with dates of service on and after January 21, 2020.

The Federal government creates NCDs that are binding on the MACs who review and/or adjudicate claims, make coverage determinations, and/or payment decisions, and also binds quality improvement organizations, qualified independent contractors, the Medicare appeals council, and Administrative Law Judges (ALJs) (see 42 Code of Federal Regulations (CFR) section 405.1060(a)(4) (2005)). An NCD that expands coverage is also binding on a Medicare advantage organization. In addition, an ALJ may not review an NCD. (See section 1869(f)(1)(A)(i) of the Social Security Act.)

EFFECTIVE DATE: January 21, 2020

**Unless otherwise specified, the effective date is the date of service.*

IMPLEMENTATION DATE: October 5, 2020 - A/B MACs and SSM Edits (except BR 13); January 4, 2021 - BR 13 CWF only

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED-Only One Per Row.

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
R	1/30.3/Table of Contents/Acupuncture
N	1/30/3.3/ACUPUNCTURE for Chronic Lower Back Pain (cLBP)
R	1/30./3.1/Acupuncture for Fibromyalgia
R	1/30/3.2/ ACUPUNCTURE FOR OSTEOARTHRITIS

III. FUNDING:

For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

**Business Requirements
Manual Instruction**

Attachment - Business Requirements

Pub. 100-03	Transmittal: 10337	Date: August 27, 2020	Change Request: 11755
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SUBJECT: National Coverage Determination (NCD30.3.3): Acupuncture for Chronic Low Back Pain (cLBP)

EFFECTIVE DATE: January 21, 2020

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I. GENERAL INFORMATION

A. Background: Acupuncture is the selection and manipulation of specific acupuncture points through the insertion of needles or “needling,” or other “non-needling” techniques focused on these points. There are several variations to traditional acupuncture including shallow needling, intradermal needling, or intramuscular needling with or without a sensation of numbness, tingling, electrical sensation, fullness, distension, soreness, warmth or itching felt by a patient around an acupuncture point. Acupuncturists may additionally seek a sensation of tenseness or dragging to the needles obtained by twirling, plucking or thrusting of acupuncture needles.

The National Coverage Determination (NCD) for Acupuncture (30.3), issued in May 1980, states that Medicare reimbursement for acupuncture, as an anesthetic or as an analgesic, or for other therapeutic purposes, may not be made. Accordingly, acupuncture was not considered reasonable and necessary within the meaning of §1862(a)(1) of the Social Security Act (the Act). In 2004, the Centers for Medicare & Medicaid Services (CMS) considered the use of acupuncture for fibromyalgia and determined that there was no convincing evidence for the use of acupuncture for pain relief in patients with fibromyalgia (NCD 30.3.1). Similarly, in that same year, CMS concluded that there was no convincing evidence for the use of acupuncture for pain relief in patients with osteoarthritis (NCD 30.3.2).

B. Policy: Upon the most recent national coverage analysis for acupuncture specifically targeted for chronic low back pain (cLBP) CMS determined it will cover acupuncture for cLBP under section 1862(a)(1)(A) of the Act up to 12 visits in 90 days are covered for Medicare beneficiaries under the following circumstances:

- For the purpose of this decision, cLBP is defined as:
 - 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.
- An additional 8 sessions will be covered for those patients demonstrating an improvement. No more than 20 acupuncture treatments may be administered annually. Example: If the 1st service is performed on March 21, 2020, the next service beginning a new year cannot be performed until March 1, 2021. This means 11 full months must pass from the date of the 1st service before eligibility begins again.

- Treatment must be discontinued if the patient is not improving or is regressing.

Physicians (as defined in 1861(r)(1)) of the Act may furnish acupuncture in accordance with applicable state requirements.

Physician assistants (PAs), nurse practitioners (NPs)/clinical nurse specialists (CNSs) (as identified in 1861(aa)(5)) of the Act, 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,
- 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.

Auxiliary personnel furnishing acupuncture must also be under the appropriate level of supervision of a physician, PA, or NP/CNS required by regulations at 42 CFR §§ 410.26 and 410.27.

All types of acupuncture including dry needling for any condition other than cLBP are non-covered by Medicare.

II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility									
		A/B MAC			D M E M A C	Shared- System Maintainers				Other	
		A	B	H H H		F I S S	M C S	V M S	C W F		
11755 - 03.1	Effective January 21, 2020, contractors shall cover acupuncture for cLBP for patients that meet the specific coverage indications and criteria described at Pub. 100-03, NCD Manual, section 30.3.3.	X	X								

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility						
		A/B MAC			D M E M A C	C E D I		
		A	B	H H H				
11755 - 03.2	MLN Article: CMS will make available an MLN Matters provider education article that will be marketed through the MLN Connects weekly newsletter shortly after the CR is released. MACs shall follow IOM Pub. No. 100-09 Chapter 6, Section 50.2.4.1, instructions for distributing MLN Connects	X	X					

Number	Requirement	Responsibility				
		A/B MAC			D M E D I	C
		A	B	H H H		
	information to providers, posting the article or a direct link to the article on your website, and including the article or a direct link to the article in your bulletin or newsletter. You may supplement MLN Matters articles with localized information benefiting your provider community in billing and administering the Medicare program correctly. Subscribe to the “MLN Matters” listserv to get article release notifications, or review them in the MLN Connects weekly newsletter.					

IV. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A

"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: All other recommendations and supporting information: N/A

V. CONTACTS

Pre-Implementation Contact(s): Wanda Belle, 410-786-7491 or wanda.belle@cms.hhs.gov (Coverage and Analysis) , Patricia Brocato-Simons, 410-786-0261 or Patricia.BrocatoSimons@cms.hhs.gov (Coverage and Analysis) , David Dolan, 410-786-3365 or David.Dolan@cms.hhs.gov (Coverage and Analysis) , Yvonne Young, 410-786-1886 or Yvonne.Young@cms.hhs.gov (Institutional Claims Processing) , Yvette Cousar, 410-786-2160 or Yvette.Cousar@cms.hhs.gov (Physician Claims Processing)

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR).

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

ATTACHMENTS: 0

Medicare National Coverage Determinations Manual
Chapter 1, Part 1 (Sections 10 – 80.12)
Coverage Determinations
Table of Contents
(Rev. 10337; 08-27-20)

30.3 - Acupuncture

30.3.1– Acupuncture for Fibromyalgia

30.3.2 – Acupuncture for Osteoarthritis

30.3.3 – Acupuncture for Chronic Lower Back Pain (cLBP)

30.3 – Acupuncture

(Rev. 10337, Issued: 08-027-20, Effective: 01-21-20, Implementation: 06-24 - 20 - A/B MACs; 10-05-20-SSM Edits; 01- 04-21 - BR 13 CWF only)

A. General

Acupuncture is the selection and manipulation of specific acupuncture points by a variety of needling and non-needling techniques.

B. Nationally Covered Indications

Effective for claims with dates of service on and after January 21, 2020, acupuncture is only covered for chronic low back pain under section 1862(a)(1)(A) of the Social Security Act (the Act). See National Coverage Determination section 30.3.3 for specific coverage criteria.

C. Nationally Non-Covered Indications

Medicare reimbursement for acupuncture, as an anesthetic, or as an analgesic or for other therapeutic purposes, may not be made unless the specific indication is excepted. All indications for acupuncture outside of NCD section 30.3.3 remain non-covered.

D. Other

N/A

(This NCD last reviewed January 2020.)

30.3.3 – Acupuncture for Chronic Lower Back Pain (cLBP)

(Rev. 10337, Issued: 08-027-20, Effective: 01-21-20, Implementation: 06-24 - 20 - A/B MACs; 10-05-20-SSM Edits; 01- 04-21 - BR 13 CWF only)

A. General

Acupuncture is the selection and manipulation of specific acupuncture points by a variety of needling and non-needling techniques.

B. Nationally Covered Indications

Effective for services performed on or after January, 21, 2020, CMS will cover acupuncture for Medicare patients with chronic Lower Back Pain (cLBP.) Up to 12 visits in 90 days are covered for Medicare beneficiaries under the following circumstance:

- *For the purpose of this decision, cLBP is defined as:*
 - *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.*
- *An additional 8 sessions will be covered for those patients demonstrating an improvement.*
- *No more than 20 acupuncture treatments may be administered annually.*

- *Treatment must be discontinued if the patient is not improving or is regressing.*

Physicians (as defined in 1861(r)(1) of the Social Security Act (the Act) may furnish acupuncture in accordance with applicable state requirements.

Physician assistants (PAs), nurse practitioners (NPs)/clinical nurse specialists (CNSs) (as identified in 1861(aa)(5) of the Act), 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,*
- *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.*

Auxiliary personnel furnishing acupuncture must be under the appropriate level of supervision of a physician, PA, or NP/CNS required by our regulations at 42 CFR §§ 410.26 and 410.27.

C. Nationally Non-Covered Indications

All types of acupuncture including dry needling for any condition other than cLBP are non-covered by Medicare.

D. Other

N/A

(This NCD last reviewed January 2020.)

30.3.1– Acupuncture for Fibromyalgia

(Rev. 10337, Issued: 08-027-20, Effective: 01-21-20, Implementation: 06-24 - 20 - A/B MACs; 10-05-20-SSM Edits; 01- 04-21 - BR 13 CWF only)

A. General

Acupuncture is the selection and manipulation of specific acupuncture points by a variety of needling and non-needling techniques.

B. Nationally Covered Indications

N/A for acupuncture for fibromyalgia.

C. Nationally Non-Covered Indications

Effective for claims with dates of service on and after April 16, 2004, after careful reconsideration of its initial non-coverage determination for acupuncture, the Centers for Medicare & Medicaid Services (CMS) concludes that there is no convincing evidence for the use of acupuncture for pain relief in patients with fibromyalgia. Study design flaws presently prohibit assessing acupuncture's utility for improving health outcomes. Accordingly, CMS determines that acupuncture is not considered reasonable and necessary for the treatment of fibromyalgia within the meaning of §1862(a)(1) of the Social Security Act, and the national non-coverage determination for acupuncture for fibromyalgia continues.

D. Other

N/A

(This NCD last reviewed April 2004.)

30.3.2 – Acupuncture for Osteoarthritis

(Rev. 10337, Issued: 08-027-20, Effective: 01-21-20, Implementation: 06-24 - 20 - A/B MACs; 10-05-20-SSM Edits; 01- 04-21 - BR 13 CWF only)

A. General

Acupuncture is the selection and manipulation of specific acupuncture points by a variety of needling and non-needling techniques.

B. Nationally Covered Indications

N/A for acupuncture for osteoarthritis.

C. Nationally Non-Covered Indications

Effective for claims with dates of service on and after April 16, 2004, after careful reconsideration of its initial non-coverage determination for acupuncture, the Centers for Medicare & Medicaid Services (CMS) concludes that there is no convincing evidence for the use of acupuncture for pain relief in patients with osteoarthritis. Study design flaws presently prohibit assessing acupuncture's utility for improving health outcomes. Accordingly, CMS determines that acupuncture is not considered reasonable and necessary for the treatment of osteoarthritis within the meaning of §1862(a)(1) of the Social Security Act, and the national non-coverage determination for acupuncture for osteoarthritis continues.

D. Other

N/A

(This NCD last reviewed April 2004.)