

ADVOCACY NEWS

ADVOCACY ACTION

Medicare and Bariatric Surgery: *Are We Better off Today?*

In February 2006, to much public acclaim, Medicare announced an expansion of its coverage of bariatric surgery. As we look at this ruling nearly more than a year and a half later, a harsh reality becomes evident. Bariatric surgery, in many parts of the country, is no more available today to Medicare beneficiaries than it was prior to the ruling.

Understanding Medicare Coverage

Under Medicare, the Centers for Medicare and Medicaid Services (CMS), the agency that oversees Medicare, hires regional contractors (usually insurance companies) to determine benefit coverage and pay claims for Medicare beneficiaries. The vast majority of decisions on coverage are made at the local level by the regional contractors and not by Medicare itself.

Under this system, prior to February 2006, Medicare coverage for bariatric surgery varied widely. In some parts of the country, coverage was widely available, while in others it was non-existent.

The National Coverage Decision

With this disparity in mind, leaders of the American Society for Metabolic and Bariatric Surgery (ASMBS) along with many others, asked CMS to make a National Coverage Determination (NCD) regarding the surgical treatment of morbid obesity. An NCD requires that all Medicare contractors follow the same ruling. The intent of the NCD was to level the field by applying the same guidelines regarding the availability to and requirements for bariatric surgery.

After a very lengthy and intensive process, a positive NCD was released by Medicare validating bariatric surgery as a safe and effective treatment for morbid obesity and including a number of guidelines, some specific and some vague, regarding both the availability and requirements for bariatric surgery.

The Problem: Regional Contractors Continue to Limit Access

The NCD should have been the solution and granted widespread access to bariatric surgery to appropriately selected candidates, but it hasn't.

The problem is that the vague guidelines have allowed the regional contractors to interpret and administer the guidelines. As a result, some regional contractors are now developing their own criteria for certain requirements to access bariatric surgery (also called local coverage determination, or LCD). And these requirements, in the opinion of the OAC, are vastly limiting access to care. *(Please see the chart below for examples of how some regional contractors interpret the NCD.)*

Adding to the challenge is also what seems to be a lack of agreement between CMS and the Medicare contractors on who determines and interprets coverage policies. Examples of such vagueness and how Medicare contractors are interpreting the NCD:

Medicare NCD States	Medicare Contractor Interpretation through LCD Coverage Policy
Previously unsuccessful with medical treatment for obesity	Documented evidence of repeated failure of multiple attempts (usually 3) of at least 6 months each to lose weight on a supervised non-surgical management weight-loss program. <i>(Contractor with this requirement: Cigna Government Services)</i>
Have at least one co-morbidity related to obesity	Specifically defining co-morbidities. For example, hypertension (defined as blood pressure of 140 mmHg systolic and/or 90 mmHg diastolic) despite medical treatment with maximal doses of three antihypertensive medications. <i>(Contractor with this requirement: Trailblazer Health)</i>

Working to Improve Access

So how do we improve coverage? The OAC, in partnership with the ASMBS and others, is actively fighting this battle on many fronts. First, we continue to work with Medicare and CMS and advise them of major challenges patients experience accessing care.

We have begun working with the Medicare contractors advising them if we believe their policies are unfair or lack scientific basis. To date, we have had some limited success with the Medicare contractors but also have been told by some that they are not interested in revising their policies. As a result, we are now also considering further action on both the legal and legislative front to force local intermediaries to follow the spirit of the NCD.

Improving Medicare Access is Important

Medicare issuing an NCD was just the first step. We must actively continue to ensure that Medicare beneficiaries have access to bariatric surgery. Why is it so important? Remember that most commercial insurers follow Medicare's lead when it comes to coverage and policies. As such, fixing Medicare's coverage not only helps Medicare beneficiaries but also all of those seeking to access treatment for their morbid obesity.



Call to Action

If you have been personally affected by a Medicare contractor's LCD or have been unable to access bariatric surgery under Medicare, please share your story with us by calling (800) 717-3117 or e-mailing us at **info@obesityaction.org**.

We **need** to hear from you so we can share your story with Medicare as well as others supporting our efforts to improve care.

About the OAC

The Obesity Action Coalition (OAC) is a non profit patient organization dedicated to educating and advocating on behalf of those affected by obesity, morbid obesity and childhood obesity. The OAC distributes balanced and comprehensive patient educational materials and advocacy tools.

The OAC believes that patients should first be educated about obesity and its treatments and also encourages proactive patient advocacy. The OAC focuses its advocacy efforts on helping patients gain access to the treatments for morbid obesity. As a membership organization, the OAC was formed to bring patients together to have a voice with issues affecting their lives and health. To learn more about the OAC, visit www.obesityaction.org or contact us at (800) 717-3117.

OAC Resources

The OAC provides numerous beneficial resources for patients, as well as professionals. All OAC resources are complimentary and may be ordered in bulk. To request materials, please contact the OAC National Office at (800) 717-3117 or send an email to info@obesityaction.org.

Newsletters

- *Obesity Action Alert* - the OAC's free monthly electronic newsletter
- *OAC News* - OAC's quarterly education and advocacy newsletter

Brochures/Guides

- *Are you living with Obesity?* Brochure
- *Advocacy Primer: Your Voice Makes a Difference*
- BMI Chart

- OAC Insurance Guide
- State-specific Advocacy Guides
- *Understanding Obesity Series*
 - *Understanding Obesity Brochure*
 - *Understanding Obesity Poster*
 - *Understanding Morbid Obesity Brochure*
 - *Understanding Childhood Obesity Brochure*
 - *Understanding Childhood Obesity Poster*
 - *Understanding Obesity Stigma Brochure*



OAC Membership

The OAC was founded as the "patient voice" in obesity. As a membership organization, the OAC exists to represent the needs and interests of those affected by obesity and provide balanced and comprehensive education and advocacy resources. Membership in the OAC is integral in strengthening the voice of the millions affected by obesity. Various membership levels are available and each is accompanied with several valuable benefits such as:

- Official membership card/certificate
- Annual subscription to *OAC News* – OAC's quarterly educational and advocacy newsletter
- Subscription to *Obesity Action Alert* – monthly e-newsletter distributed on the 1st of each month
- Access to valuable educational resources and tools
- Patient representation through advocacy, in addition to information on advocacy issues concerning patients

Yes! I would like to join the OAC's efforts. I would like to join as a/an:

- Patient/Family Member: \$20
 - Professional Member: \$50
 - Physician Member: \$100
 - Surgeon Member: \$150
 - Institutional Member*: \$500 (*Surgery centers, doctors' offices, weight-loss centers, etc.*)
 - OAC Chairman's Council*: \$1,000 +
- * These membership levels have exclusive benefits.

Name: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Payment Information

Enclosed is my check (payable to the OAC) for \$ _____.

Please charge my credit card for my membership fee:

Discover® MasterCard® Visa® Amex®

Credit Card Number: _____

Expiration Date: _____ Billing Zip Code: _____

Mail to: OAC
4511 North Himes Ave., Ste. 250
Tampa, FL 33614

Or Fax to: (813) 873-7838