Colorado Society of Anesthesiologists
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Dear Members,

Governor Polis is currently considering a decision to fully remove or comprehensively "opt-out" of the federal Center for Medicare & Medicaid Services (CMS) safety requirement that physicians supervise nurse anesthetists in procedures involving CMS beneficiaries in Colorado. This safety requirement is one of the Medicare Conditions of Participation (CoP) and is required in facilities that wish to bill Medicare or Medicaid. The impetus for this change includes pressure from the Colorado Hospital Association –

1. Letters to Governor Polis in June of 2022 and February 2023, specifically promoting opting out from federal practice standards.
2. Upcoming expiration of federal emergency actions relating to COVID-19 pandemic. (In early 2020 a nationwide Public Health Emergency was declared which included a temporary exemption of the CMS physician supervision standards). The perceptions of Governor Polis and his staff are that opting out of physician supervision standards would not represent a change from current practice. What we, as practicing anesthesiologists are aware of, is that there has been no change in actual practice (physician supervision of CRNA's) during this public health emergency.

This is not the first time that Colorado anesthesiologists have dealt with the threat of removing this important safety requirement. In 2010, former Governor Bill Ritter, Jr. issued an opt-out limited to critical access hospitals and specified rural hospitals. The opt-out exempted nurse anesthetists in those facilities from the requirement for physician supervision. As a result, the 2010 partial opt out did not result in any improvement of access to care nor any reduction in cost of care but did reduce the number of anesthesiologists in those facilities. There are no known peer reviewed journal articles or State of Colorado reports demonstrating any improvement of access to care or reductions in costs associated with this limited opt-out. However, there is clear evidence that the limited opt-out caused a reduction in the number of anesthesiologists in those facilities.

The Colorado Society of Anesthesiologists had an opportunity to meet with the Governor and express our concerns on February 2nd. We emphasized primarily patient safety concerns. The proper patient preparation for and administration of anesthesia is a complex and technically demanding medical process that requires physician supervision. Nurse anesthetists are qualified and important members of the anesthesia care team but cannot replace a physician. Compared to physicians, nurse anesthetists have about half the education and one-fifth the hours of clinical training. Removing physician supervision from anesthesia in surgery lowers the standard of care and jeopardizes patients' lives. The Colorado Society of Anesthesiologists opposes any policies that eliminate patient-centered, physician-led anesthesia care, which not only saves lives but reduces cost. We presented several outcome research studies that support our position.

Silber et.al. "Physician anesthesiologist Care Decreases Risk of Death and Complications." Anesthesiology 2000;93(1):152-163-increased likelihood of death when anesthesia not provided by physician anesthesiologist (these were patients undergoing general and or orthopedic procedures (usually hip or knee replacement). Overall, the odds of death were 8% higher and the odds of preventable deaths due to complication (failure to rescue) were 10% higher when anesthesia was not provided by physician anesthesiologist.

Memtsoudis et.al. "Hospitalization After Surgery Far Less Likely if Physician Anesthesiologist Provides Care" J Clin Anesthesia 2012;24(2):89-95-Odds of unexpected disposition to (hospital admission or death) was 80% higher when nurse anesthetist provided the care than when a physician anesthesiologist provided the care.

These and other resources will be provided on CSA website. Noteworthy is that the studies most quoted by AANA Dulisse 2010, Pine 2019, Hogan 2010, and Needleman 2009 were all funded by AANA, and rely on Medicare data contaminated by the QZ problem. The research that we are quoting all has independent funding.

CSA presented arguments that debunked the positions that opting out increased access to anesthesia care, particularly in rural areas. Since 2016, five studies have been published in peer reviewed journals examining the relationship between opt-out and anesthesia access. All five published studies found that opt-out was not associated with an increase in access to anesthesia care.[1, 2, 3, 4] The 2019 Graduate Nurse Demonstration Project which was mandated as part of the Affordable Care Act of 2010, found "ninety-six percent of alumni who are [nurse anesthetists] …reported working in urban settings. This is not surprising, as [nurse anesthetists] may be more likely to work in urban settings with larger anesthesia departments.[5] Most recently, a 2021 *Journal of Rural Health* article provided in part, "Given that we found no evidence that being in an opt-out state increases the odds of using CRNAs in hospitals, we contribute to the growing literature suggesting that states adopting the opt-out policy have not realized increased health care access or reduced health care costs."[6]

Opting out similarly fails to save patients' or taxpayers' money. Medicare (and in a majority of states, Medicaid) pays the same for the totality of the anesthesia care whether the service is provided by a physician anesthesiologist, a physician anesthesiologist medically directing a nurse anesthetist or anesthesiologist assistant, a nurse anesthetist supervised by the operating surgeon, or in those rare circumstances where it takes place, a nurse anesthetist practicing without physician supervision. When a physician anesthesiologist medically directs a nurse anesthetist, the Medicare payment is divided equally between the physician and the nurse. When a surgeon supervises a nurse anesthetist, the surgeon does not receive any portion of the anesthesia fee; the full amount goes to the nurse anesthetist or his or her employer. The amount of the Medicare payment, no matter how it is allocated, is the same regardless of who provides the anesthesia care.

There is little support from the general public for opt-outs. Surveys repeatedly show patients want physicians in charge. In a recent American Medical Association survey, 91 percent of respondents said that a physician's years of medical education and training are vital to optimal patient care, especially in the event of a complication or medical emergency. Eighty-four percent said that they prefer a physician to have primary responsibility for the diagnosis and management of their health care. [7] A survey

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[1] Sun EC, Miller TR, Halzack NM. In the United States, "Opt-Out" States Show No Increase in Access to Anesthesia Services for Medicare Beneficiaries Compared with Non-"Opt-Out" States. A&A Case Reports. 2016; 6(9):283-5

[2] Sun EC, Dexter F, Miller TR. The Effect of "Opt-Out" Regulation on Access to Surgical Care for Urgent Cases in the United States: Evidence from the National Inpatient Sample. Anesthesia & Analgesia. 2016; 122(6):1983-91.

[3] Sun EC, Dexter F, Miller TR, Baker LC. "Opt Out" and Access to Anesthesia Care for Elective and Urgent Surgeries among U.S. Medicare Beneficiaries. Anesthesiology. 2017; 126(3):461-71.

[4] Schneider JE, Ohsfeldt R, Li P, Miller TR, Scheibling C. Assessing the impact of state "opt-out" policy on access to and costs of surgeries and other procedures requiring anesthesia services. Health Econ Rev. 2017; 7(1):10.

5 The Graduate Nurse Education Demonstration Project: Final Evaluation Report, Centers for Medicare and Medicaid Services. August 2019. https://innovation.cms.gov/files/reports/gne-final-eval-rpt.pdf (p.95).

[6] Feyereisen SL, Puro N, McConnell, W. Addressing provider shortages in rural America: The role of state opt-out policy adoptions in promoting hospital anesthesia provision. J Rural Health. 2021; 37(4):684-691.

[7] Baselice & Associates conducted a telephone survey on behalf of the AMA Scope of Practice Partnership between March 8–12, 2012. Baselice & Associates surveyed 801 adults nationwide. The overall margin of error is +/- 3.5 percent at the 95 percent level.

commissioned last summer by National Survey Research Group, commissioned by CSA clearly demonstrated overwhelming support of Colorado Residents for physician involvement in anesthesia care. Every query led the same conclusion, "Colorado Voters wants a physician providing their anesthesia care for major surgery by large margins."

As part of the process of considering an opt out, the Governor consulted with the Colorado Medical Board, led by an anesthesiologist, and the Board voted unanimously to oppose an opt out, citing lack of evidence of safety, no measurable improvement in access, and a belief that this was not in the best interests of Coloradans.

Finally, I want to thank the leadership of the Colorado Society of Anesthesiologists and the American Society of Anesthesiologists. Without their support, and that of our members, it would have been impossible to advocate for patients and the safety of all Coloradans. It is an honor to help lead this organization and to help our membership protect patients.

I have no doubt that many of you will hear about this in your hospitals in the coming days or weeks. Our position is strong and evidence based. Below you will find reference materials for further resources.

While this message is meant to keep you abreast of the current state of the situation, please watch your inbox as I may need your help in the near future petitioning our government on behalf of patient safety. If I may be in service to you in any way, please feel free to contact me through the CSA or my contact information below.

Respectfully,
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Baselice & Associates conducted an internet survey of 802 adults on behalf of the AMA Scope of Practice Partnership, July 12-19, 2018. The overall margin of error is +/- 3.5 percent at the 95 percent confidence level.