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September 11, 2023

Chiquita Brooks-LaSure, Administrator  
Centers for Medicare & Medicaid Services (CMS)  
Department of Health and Human Services (HHS)  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

CMS-1784-P  
RIN 0938-AV07

Dear Administrator Brooks-LaSure:

On behalf of our 40,000 members, the Academy of General Dentistry (AGD) is pleased to offer comments on the 2024 Medicare Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies proposed rule. AGD dentists provide a full range of dental care to patients across all demographic and socio-economic segments throughout the country. The AGD's comments are focused on the CMS' proposals on oral health provisions included in the proposed rule.

Our representative republic is designed around a tripartite structure whereby CMS and HHS are part of the Executive branch. As such, the Agency (CMS) is charged with administering and enforcing legislation drafted by Congress and signed into law by the President.

The AGD is aware of various legislative proposals to either 1) create a "Medicare for All" health care system or 2) add dental Medicare benefits to Medicare Part B, or physician payments. To date, Congress has not passed legislation that enacts either of these proposals. Additionally, the AGD is not aware of any new federal law relating to dental benefits that would expand CMS' authority.

As there is no new law that would expand CMS' authority regarding dental provisions, it is inappropriate for the Agency to seek to create an end around congressional actions in the situation where the Congress finds it challenging to pass a new law. As there is no new authority from the Congress, AGD opposes the inclusion of dental benefits into Medicare.

The Congressional Budget Office (CBO) issued a monthly budget review for July 2023.<sup>1</sup> The federal budget deficit for the first ten months of fiscal year (FY) 2023 is \$1.6 trillion. This amounts to more than twice the budget deficit at the same period in FY 2022; the U.S. budget is on an unsustainable trajectory. As such, federal agencies must be very judicious when seeking to add new spending to government programs.

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<sup>1</sup> Congressional Budget Office. Monthly Budget Review: July 2023. August 8, 2023. [Monthly Budget Review: July 2023 \(cbo.gov\)](https://www.cbo.gov/publications/2023/08/08-monthly-budget-review-july-2023)

### **The 2024 CMS Proposal**

*“We are proposing to codify in section § 411.15(i)(3)(i)(A) additional policies to permit payment for certain dental services that are inextricably linked to, and substantially related and integral to, the clinical success of, other covered services.*

*We are: (1) proposing to allow payment for dental examinations, diagnostic, and treatment services prior to and during certain treatments for cancer (chemotherapy and CAR-T cell therapy);*

*(2) proposing to allow payment for dental examinations, diagnostic, and treatment services prior to and during antiresorptive and/or antiangiogenic drug therapy associated with the treatment for cancer; ...*

*Furthermore, we propose that payment under the applicable payment system could also be made for services that are ancillary to these dental services, such as x-rays, administration of anesthesia, and use of the operating room as currently described in our regulation at § 411.15(i)(3)(ii).”<sup>2</sup>*

AGD opposes the inclusion of dental benefits into Medicare and the codification of the above language in the final rule.

### **Chronic Conditions**

CMS is seeking additional information regarding clinical scenarios that would include dental services involved in the treatment of chronic conditions such as, but not limited to, diabetes (87 FR 69686). CMS does not possess legislative authority for the expansion of dental applications relating to chronic disease conditions. This type of proposal is unconscionable in our current regulatory and federal budgetary environment. It would have significant financial costs for the federal government and the American public.

### **Joint Replacement Surgery**

AGD again maintains that the CMS has provided insufficient scientific justification for dental services prior to hip and knee arthroplasty to be included in the final rule. Furthermore, AGD members, the American Dental Association, and other dental community members have engaged with the American Academy of Orthopaedic Surgeons (AAOS) previously on a consensus statement for the prophylaxis of antibiotics prior to joint replacement surgery. Assessing the relevant data, grading the evidence, and determining the appropriate use criteria is a time consuming and labor-intensive endeavor. The last determination was that the data were inconclusive for the need of antibiotics prior to joint replacement surgery.

Furthermore, there is growing antibiotic resistance due to overuse in human and animal populations. A recent study concludes that maintaining good oral hygiene is preferable than antibiotic prophylaxis prior to invasive dental procedures to prevent late periprosthetic joint infections.<sup>3</sup>

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<sup>2</sup> Centers for Medicare & Medicaid Services 2024 Physician Fee Schedule: <https://public-inspection.federalregister.gov/2023-14624.pdf>

<sup>3</sup> Springer, BD, Baddour, LM, Lockhart, PB, Thornhill, MH. Antibiotic Prophylaxis for Prosthetic Joint Patients Undergoing Invasive Dental Procedures: Time for a Rethink? J Arthroplasty. Jul 2022; 37(7):1223-1226. doi: 10.1016/j.arth.2022.02.014.

## **HBOT**

Hyperbaric Oxygen Therapy (HBOT) allows the body to absorb increased oxygen saturation that can reduce inflammation, aid in vascular, collagen, and bone growth, in addition to accelerating wound healing.<sup>4</sup> Researchers observed positive developments with the use of HBOT in cases of osteonecrosis of the jaw induced by bisphosphonates.<sup>5</sup> Covering HBOT treatments may prove to be economically advantageous for the Medicare program.

## **In Closing**

The AGD thanks the CMS for consideration of our comments on the 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies proposed rule. We look forward to the opportunity to work with CMS officials throughout the year so there is adequate time to assess all upcoming proposals. If you have questions or would like to discuss our comments in greater detail, please contact Daniel J. Buksa, JD, CAE, Associate Executive Director, Public Affairs, by phone at (312) 440-4328 or via email at [daniel.buksa@agd.org](mailto:daniel.buksa@agd.org).

Sincerely,



Hans P. Guter, DDS, FAGD  
AGD President



Myron (Mike) Bromberg, DDS  
AGD Chair, Legislative & Governmental Affairs Council  
AGD Congressional Liaison



Darren S. Greenwell, DMD, MAGD  
AGD Chair, Dental Practice Council

HPG: jk

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<sup>4</sup> Thomas, et.al. Hyperbaric Oxygen Therapy: A Review of the Evidence and Clinical Implications. Br J Hosp Med. 2016;77(7):454-458.

<sup>5</sup> Freiberger, JJ. Utility of Hyperbaric Oxygen in Treatment of Bisphosphonate-related Osteonecrosis of the Jaws. J Oral Maxillofacial Surg. 2009 May;67(5 Suppl):96-106. doi: 10.1016/j.joms.2008.12.003.

Cc: Colleen Lawler, CAE, IOM  
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