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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

RIN 0938-AV09

Dear Administrator Brooks-LaSure:

On behalf of our 40,000 members, the Academy of General Dentistry (AGD) is pleased to offer comments on the Medicare Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems 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 CMS' proposals on oral health provisions included in the proposed rule.

Our representative republic is designed around a tripartite structure whereby the CMS and HHS are part of the Executive branch. As such, the Agency (CMS) is charged with administrating 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.[1] 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.

The Code on Dental Procedures and Nomenclature (the CDT Codes)

CMS proposed to include dental services that are inextricably linked to, and substantially related and integral to the clinical success of, other covered medical services (hereafter in this discussion, "inextricably linked to other covered services"); for CY 2024.Specifically. that Medicare Part A and B

[1] Congressional Budget Office. Monthly Budget Review: July 2023. August 8, 2023. Monthly Budget Review: July 2023 (cbo.gov)

payment can be made for certain dental services inextricably linked to Medicare-covered services for the treatment of head and neck cancers.[2]

TABLE 61: CY 2024 PROPOSED SURGICAL PROCEDURES FOR THE ASC CPL

CY 2024 CPT/HCPCS/CDT Code	CY 2024 Long Descriptor
D4210	Gingivectomy or gingivoplasty - four or more contiguous teeth or tooth bounded spaces per quadrant
D4211	Gingivectomy or gingivoplasty - one to three contiguous teeth or tooth bounded spaces per quadrant
D4212	Gingivectomy or gingivoplasty to allow access for restorative procedure, per tooth
D4260	Osseous surgery (including elevation of a full thickness flap entry and closure) - four or more contiguous teeth or tooth bounded spaces per quadrant
D4263	Bone replacement graft - retained natural tooth - first site in quadrant
D4270	Pedicle soft tissue graft procedure
D4273	Autogenous connective tissue graft procedure (including donor and recipient surgical sites) first tooth, implant, or edentulous tooth position in graft
D7111	Extraction, coronal remnants - primary tooth
D7140	Extraction – erupted tooth or exposed root (elevation and/or forcep removal)
D7210	Surgical removal of an erupted tooth requiring removal of bone and/or sectioning of tooth and including elevation of mucoperiosteal flap if indicated
D7220	Removal of impacted tooth – soft tissue
D7230	Removal of impacted tooth – partially bony
D7240	Removal of impacted tooth – completely bony
D7241	Removal of impacted tooth – completely bony, with unusual surgical complications
D7250	Surgical removal of residual tooth roots (cutting procedure)
D7270	Tooth reimplantation and/or stabilization of accidentally evulsed or displaced tooth
D7310	Alveoloplasty in conjunction with extractions - four or more teeth or tooth spaces, per quadrant
D7311	Alveoloplasty in conjunction with extractions - one to three teeth or tooth spaces, per quadrant
D7472	Removal of torus palatinus
D7473	Removal of torus mandibularis

[2] Centers for Medicare & Medicaid Services 2024 the Medicare Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems proposed rule: https://public-inspection.federalregister.gov/2023-14768.pdf

D7510	Incision and drainage of abscess-intraoral soft tissue
D7511	Incision and drainage of abscess - intraoral soft tissue - complicated (includes drainage of multiple fascial spaces)
D7520	Incision and drainage of abscess-extraoral soft tissue
D7550	Partial ostectomy/sequestrectomy for removal of non-vital bone
D7950	Osseous, osteoperiosteal, or cartilage graft of the mandible or maxilla - autogenous or nonautogenous, by report
G0330	Facility services for dental rehabilitation procedure(s) performed on a patient who requires monitored anesthesia (e.g., general, intravenous sedation (monitored anesthesia care) and use of an operating room

CMS should consider whether the use of the following codes accomplishes the clinical success of other covered medical services. AGD shares the following specific comments on the CDT Codes listed above:

- CDT Code 4260-osseous surgery is not a pre-surgical code, but rather a code used to provide definitive and on-going support for teeth with periodontal disease. It generally requires non-surgical preparatory procedures and healing prior to providing osseous surgery, as well as healing and monitoring post-operatively. In lieu of this code, most hospitalists will recommend extractions to facilitate the more immediate need of the associated cancer surgery being considered.

- CDT Codes 4210, 4211, 4212 are surgical codes that, similar to CDT Code 4260 of osseous surgery, generally require non-surgical therapy and healing prior to their usage, in addition to post-operative evaluation and healing after their usage. Generally, teeth that might benefit from these codes are sacrificed to expedite the needed medical procedure.

- CDT Code 4263-bone replacement graft requires 3-6 months healing prior to evaluation of its success. If used in conjunction with teeth removed to prepare a patient for significant medical procedures, waiting the required amount of time for the graft to heal will prolong the needed medical procedure. Insufficient healing time greatly lowers the effectiveness of this procedure.

- CDT Code 4270-pedicle soft tissue grafting is normally used in healthy and well-maintained patients receiving therapy for periodontal disease. It is not generally used to prepare teeth for significant medical procedures.

Multiple Procedures

Page 456 of Prepublication Rule:

"*We believe our proposal to package payment for dental services under the OPPS is consistent with existing packaging payment principles in the OPPS. The OPPS regularly packages payments for multiple interrelated items and services into a single payment to create incentives for hospitals to furnish services most efficiently and to manage their resources with maximum flexibility. We believe applying these principles to the furnishing of dental services in the OPPS is appropriate and would incentivize clinical resource efficiencies.*

In addition to proposing to package payment for dental services to promote clinical resource efficiencies, there are also several dental services that would nevertheless be packaged under our regulation at 42 CFR § 419.2(b). For example, payment for dental services described by add-on odes, like CDT ode D2953 (each addtnl cast post) would be packaged under the OPPS consistent with § 419.2(b)(18). Therefore, we propose to package payment for CDT code D2953 with the procedures with which it is performed. We refer readers to the regulation at § 419.2(b) for a full list of items and services for which payment is packaged or conditionally packaged."

AGD does not believe that when dentists engage in multiple procedures (with CDT Code D2953) on the same patient that other dentists are similarly engaging in the same dental activity. Consequently, there appears to be significant room for interpretation. This language also provides a license for payment bundling resulting in lower payments.

In Closing

The AGD thanks the CMS for consideration of our comments on the 2024 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems 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.

Sincerely,

Hans P. Guter, DDS, FAGD
AGD President

Myron (Mike) Bromberg, DDS
AGD Chair, Legislative & Governmental Affairs Council
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Darren S. Greenwell, DMD, MAGD
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HPG: jk

Cc: Colleen Lawler, CAE, IOM
Executive Director
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