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VIA ELECTRONIC SUBMISSION

September 6, 2022

Re: CMS-1770-P— Medicare and Medicaid Programs; CY 2023 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicare and Medicaid Provider Enrollment Policies, Including for Skilled Nursing Facilities; Conditions of Payment for Suppliers of Durable Medicaid Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); and Implementing Requirements for Manufacturers of Certain Single-dose Container or Single-use Package Drugs to Provide Refunds with Respect to Discarded Amounts

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1770-P, P.O. Box 8016
Baltimore, MD 21244-8016

Dear Administrator Brooks-LaSure:

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the **2023 Physician Fee Schedule** proposed rule. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable and equitable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to over three million people with Medicare, family caregivers, and professionals each year.

We applaud the Centers for Medicare & Medicaid Services (CMS) for its proposals to reinterpret the current unnecessarily restrictive definition of “medically necessary” dental care and, broadly, to investigate reimbursement rates and other rules that may be narrowing the supply

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of providers and treatment of mental health and substance use disorders. These two issues affect many of the callers to our national helpline and providing additional coverage, treatment options, and resources to populations who need this care is vital for the well-being of millions of people with Medicare.

Proposed Revisions to the "Incident to" Physicians' Services Regulation for Behavioral Health Services

CMS proposes to allow marriage and family therapists, licensed professional counselors, addiction counselors, and certified peer recovery specialists to provide behavioral health services while under general supervision rather than "direct" supervision. We support this proposal, and urge CMS to consider if other providers, such as licensed social workers, could also be made more available. Ensuring an adequate workforce is critical to achieving a high-value health care system that meets the needs of the people it serves, including ensuring access to health care services. But there is a devastating workforce shortage in behavioral health and addiction care services. Approximately 130 million Americans lived in mental health professional shortage areas as of September 2021.[1] The need for care has increased during the COVID-19 pandemic, exacerbating challenges for an already overtaxed community of providers.[2] Enabling all providers to work to the full extent of their scope of practice is essential to addressing these workforce and access to care concerns, especially with respect to behavioral health care. These provisions will better engage the full panoply of behavioral health care providers in meeting the needs of Medicare beneficiaries.

Proposals and Request for Information on Medicare Parts A and B Payment for Dental Services

There is no whole-body health without dental health, and Medicare's lack of dental coverage is a barrier to care for millions of beneficiaries. Medicare's lack of dental coverage not only leaves oral health care unaffordable for millions of Americans. It also exacerbates underlying racial, geographic and disability-related health and wealth disparities.[3] Improved Medicare coverage for medically necessary dental care would help people with significant health concerns avoid impossible financial tradeoffs and access the care they need to treat their conditions.

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[1] Kaiser Family Foundation, "Mental Health Care Health Professional Shortage Areas (HPSAs)" (last accessed September 2, 2022), https://www.kff.org/other/state-indicator/mental-health-care-health-professional-shortage-areas-hpsas.

[2] Government Accountability Office, "Behavioral Health: Patient Access, Provider Claims Payment, and the Effect of the COVID-19 Pandemic" (March 31, 2021), https://www.gao.gov/assets/gao-21-437r.pdf.

3 Georgia Burke, Amber Christ & Jennifer Goldberg, "Adding a Dental Benefit to Medicare: Addressing Racial Disparities" (October 2019), https://justiceinaging.org/wp-content/uploads/2019/10/Addressing-Oral-Health-Equity-by-Adding-a-Dental-Benefit-to-Medicare.pdf.

We will continue to advocate for Congress to create a comprehensive dental benefit in Medicare Part B because we strongly believe that older adults and people with disabilities should have reliable oral care to prevent dental issues, preserve healthy teeth and tissue, and treat oral and dental conditions of every kind. But reinterpretation of the "medically necessary" standard for Medicare coverage of dental care is vital to provide dental services that that are inextricably linked to, and substantially related and integral to the clinical success of, covered medical services.

Thus, we applaud and fully support CMS's proposal to reopen this important conversation and urge the agency to allow coverage for these important dental services. There is strong legal basis and clinical consensus supporting the actions CMS has proposed, as well as for covering the additional medical scenarios that CMS is considering.[4]

Specifically, CMS is considering dental coverage related to a variety of clinical scenarios, including certain surgical procedures, transplants, cancer treatments, diabetes and other chronic disease management, immunosuppression, heart disease treatments, and other circumstances. There is strong agreement from many leading medical experts and professional associations about the importance of dental care in these and other medical treatments.[5] We strongly support the proposed clarification and codification of existing authority, and, as discussed below, we encourage CMS to apply this authority in all settings and clinical circumstances where it is appropriate.

CMS proposes to clarify and codify existing examples of "medically necessary" dental coverage under section 1862(a)(12) of the Act to permit Medicare payment under Parts A and B for dental services where the dental service is inextricably linked to, and substantially related and integral to the clinical success of, certain other covered medical services and allow payment to be made, regardless of whether the services are furnished in an inpatient or outpatient setting. Current Medicare policy recognizes a limited number of these dental services which are spelled out in various sub-regulatory guidances, including policy and national coverage determination manuals.[6] We support this codification and clarification.

CMS also proposes to codify additional specific examples in which the proposed coverage standard applies, including dental examinations and necessary treatment performed as part of a comprehensive workup prior to organ transplant surgery, cardiac valve replacement, or

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[4] *See, e.g.*, King and Spalding LLP, "Medicare Coverage of Certain Dental Diseases," (July 30, 2020), available upon request. *See also* Center for Medicare Advocacy, "Legal Memorandum: Statutory Authority Exists for Medicare to Cover Medically Necessary Oral Health Care" (January 3, 2019), https://medicareadvocacy.org/legal-memorandum-statutory-authority-exists-for-medicare-to-cover-medically-necessary-oral-health-care/.

[5] *See, e.g.*, Santa Fe Group, "Clinical Consensus on Medically Necessary Dental Care" (last accessed September 2, 2022), https://santafegroup.org/wp-content/uploads/2020/08/clinical-consensus-on-medically-necessary-dental-care.pdf.

[6] 87 FR 45860, 46035.

valvuloplasty procedures. We support CMS's proposal to recognize these additional examples and urge CMS to make clear that they are illustrative and do not prevent a Medicare Administrative Contractor from making a determination that payment can be made for dental services in other circumstances not specifically addressed within this proposed rule and as outlined in the proposed amendments to § 411.15(i).[7]

CMS seeks public comment on the clinical evidence connecting oral health care with outcomes for a number of other specific clinical scenarios, including joint replacement surgery, head and neck cancer treatment, therapies and treatments that cause immunosuppression, jaw reconstruction, and other medical and surgical procedures. We encourage CMS to apply "medically necessary" authority in as broad a range of clinical scenarios as possible, following clinical evidence of appropriateness.

CMS also proposes the establishment of a process within the annual rulemaking cycle by which the agency would review and consider additional clinical scenarios that may fall under this "medically necessary" dental authority. We strongly support this proposal. Given the importance of oral health care, the "medically necessary" coverage standard must keep pace with growing clinical evidence and evolving standards of care in order to be meaningful.

Conclusion

Thank you again for this opportunity to provide comment. For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Counsel for Federal Policy at JCarter@medicarerights.org or 202-637-0962.

Sincerely,

Fred Riccardi

Fred Riccardi
President
Medicare Rights Center

[7] *Id.* at 46037.