

PUBLICATION

The Evolution of Medical Necessity for Dental Services in the 2023 Medicare Physician Fee Schedule Proposed Rule

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Historically, Medicare only has paid for dental services in certain limited circumstances in which a service is an integral part of a specific treatment of a beneficiary's primary medical condition. Legislative efforts to expand Medicare coverage of dental services have once again fallen short, which leaves lawmakers and CMS trying to sort out how seniors can receive broader access to dental care. In a June 29, 2022, letter to CMS Administrator Chiquita Brooks-LaSure, more than 100 members of the U.S. House of Representatives indicated that CMS could increase Medicare's coverage of some dental services by expanding its definition of "medically necessary" dental care. In the letter, lawmakers highlighted the serious issues stemming from seniors' lack of access to affordable dental care, which is a point that dental advocates have been making for years.

Almost half of Medicare beneficiaries have not seen a dentist in the past year, nearly 20 percent of seniors have lost all their teeth, and 68 percent suffer from periodontal disease – a condition that causes loss of soft and hard tissue that hold teeth in the mouth.¹ The lawmakers made an important point in their letter by explaining that the definition of medical necessity for dental services does not reflect current understandings based on research. Research in the last 10 years has evidenced that oral health is integral to achieving overall health.² More than 90 percent of all systemic conditions have been proven to have oral manifestations.³ Furthermore, poor oral health can exacerbate chronic conditions such as diabetes, dementia, respiratory disease, and heart disease that are prevalent in the senior population.⁴

In the CY 2023 Medicare Physician Fee Schedule Proposed Rule (Proposed Rule), CMS proposes to codify a more expansive interpretation of Medicare coverage for dental services in an effort to provide seniors with better access to vital dental care that can improve medical outcomes.

Proposed Coverage for Dental Services Inextricably Linked to, Substantially Related to, and Integral for Clinical Success of Other Covered Medical Services

In the Proposed Rule, CMS seeks to clarify Section 1862(a)(12) of the Social Security Act, which permits Medicare Part A payment for inpatient hospital services in connection with the provision of dental services if the individual, because of their underlying medical condition and clinical status or the severity of the dental procedure, requires hospitalization in connection with providing such services.

CMS expresses its belief that there are instances when a Medicare beneficiary may require dental services that are in direct connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth (generally excluded from coverage) and application of Medicare Part A payment would apply when the patient's hospitalization is required because of (1) a patient's underlying medical condition and clinical status, or (2) the severity of the dental procedure.

CMS differentiates services that are covered because they are "substantially related to and integral to the success of other covered medical services" from services that "are in connection with dental services" within the meaning of Section 1862(a)(12). Based on this distinction, CMS interprets Section 1862(a)(12) to permit Medicare payment under Part A and B for these dental and other related services that are "inextricably linked to, and substantially related and integral to the clinical success of, certain other covered medical services,"

regardless of whether the services are furnished in an inpatient or outpatient setting. In short, CMS is proposing to clarify that the Section 1862(a)(12) exclusion would not apply because these services are not in connection with the care, treatment, filling, removal, or replacement of teeth or structures supporting the teeth. Rather, in these circumstances, the dental services would be covered as they are inextricably linked to and substantially related and integral to the success of certain other covered medical services.

Based on this interpretation, CMS proposes to amend its regulation at § 411.15(i) to clarify that the Section 1862(a)(12) exclusion does not apply to dental services provided in conjunction with medical services that are inextricably linked to, and substantially related and integral to the clinical success of, covered medical services.

In the proposed rule, CMS also expressed its belief that dental services furnished to identify, diagnose, and treat oral or dental infections before organ transplant, cardiac valve replacement, or valvuloplasty fall under the exception for services that are inextricably linked to, and substantially related and integral to the clinical success of, these other covered medical services. CMS specifically notes that in these circumstances, the necessary treatment to eradicate an infection may not be the totality of the recommended dental services for a given patient. To the extent that such services are considered immediately necessary to eliminate or eradicate the infection or its source before the surgery, they would be considered inextricably linked to, and substantially related and integral to the clinical success of, the organ transplant, cardiac valve replacement, or valvuloplasty services.

To codify this, CMS is proposing to amend § 411.15 to include examples of such services that would be payable under Medicare Parts A and B as dental services that are inextricably linked to, and substantially related and integral to the clinical success of, other **covered** medical services, which include but are not limited to:

1. The dental or oral examination as part of a comprehensive workup before an organ transplant, cardiac valve replacement, or valvuloplasty procedure;
2. The necessary dental treatments and diagnostics to eliminate the oral or dental infections found during a dental or oral examination as part of a comprehensive workup before an organ transplant, cardiac valve replacement, or valvuloplasty procedure;
3. Reconstruction of a dental ridge when it is performed as a result of and at the same time as the surgical removal of a tumor;
4. The wiring or immobilization of teeth when done in connection with the reduction of a jaw fracture;
5. The extraction of teeth to prepare the jaw for radiation treatment of neoplastic disease; and
6. A dental splint, but only when used in conjunction with covered treatment of a medical condition.

CMS further proposes that Medicare Parts A and B payment would be made for these dental services, as applicable, regardless of whether they are furnished in an inpatient or outpatient setting. In addition, payment under the applicable payment system could be made for ancillary services and supplies furnished incident to these covered dental services, such as x-rays, administration of anesthesia, and the use of an operating room, regardless of whether the services are furnished in the inpatient or outpatient setting.

MACs May Continue to Make Coverage Decisions on a Claim-by-Claim Basis

Under current policy, CMS has delegated the authority to MACs to decide on a claim-by-claim basis whether a patient's circumstances fit in the coverage exclusion or exception set out in Section 1862(a)(12) and § 411.15 (i) of the Act. In the same vein, the proposed rule would not prevent a MAC from determining that dental services can be covered in other circumstances not specifically addressed in the Proposed Rule and proposed amendments to § 411.15(i).

Call for Comments

Lastly, the Proposed Rule requests comments on a number of issues, including but not limited to:

- Other types of clinical scenarios where dental services may be inextricably linked to, and substantially related and integral to the clinical success of, other covered medical services;
- The potential establishment of a process to identify and review submissions for CMS's consideration of additional dental services that are inextricably linked and substantially related and integral to the clinical success of other covered medical services;
- Whether there are other clinical scenarios involving acute or chronic conditions that would have an improved patient outcome if dental services were furnished, and if so, whether these services should be considered as inextricably linked to, and substantially related and integral to the clinical success of, certain covered medical services;
- Whether current policies for care management services make clear that time spent by physicians or non-physician practitioners on coordinating care with dentists regarding the performance and outcomes of services may be counted for purposes of applicable care management codes;
- Whether proposed rule policies will address any inequitable distribution of dental services for Medicare beneficiaries; and
- Ways to integrate payment for dental and oral healthcare services within existing and future payment models using the Innovation Center's waiver authority in existing or future service delivery models, including those focused on equity, care coordination, total cost of care, and specific disease conditions.

The Proposed Rule is a glimmer of hope that seniors may eventually have broader access to affordable dental services. It also acknowledges an improved understanding that the oral cavity — the mouth — is, as most dental professionals would say, the window to overall health.

¹ Congress of the U.S. June 29, 2022 Letter to Chiquita Brooks-LaSure.

² University of Illinois Chicago College of Dentistry, *The Surprising Connections Between Oral Health and Well Being* (Jan. 14, 2019), <https://dentistry.uic.edu/news-stories/the-surprising-connections-between-oral-health-and-well-being/> (last visited July 31, 2022).

³ Congress of the U.S. June 29, 2022 Letter to Chiquita Brooks-LaSure.

⁴ HEALTH AFFAIRS, *Medicare Dental Benefit Will Improve Health and Reduce Health Care Costs* (Feb. 28, 2019) <https://www.healthaffairs.org/doi/10.1377/forefront.20190227.354079/full/> (last visited July 31, 2022).