REGULATORY COMMENT LETTER

SUBMITTED TO CMS BY AAPD-ADA-AAOMS ON OR ACCESS

by C. Scott Litch COO and General Counsel

Below is the regulatory comment letter submitted to CMS by AAPD, ADA, and AAOMS.

Sept. 13, 2022

Dear Administrator Brooks-LaSure:

On behalf of the members of the American Academy of Pediatric Dentistry **(AAPD)**, the American Dental Association **(ADA)** and the American Association of Oral and Maxillofacial Surgeons **(AAOMS)**, we are writing to provide comments on the Hospital Outpatient Prospective Payment System **(HOPPS)** proposed rule for calendar year (CY) 2023 (Proposed Rule).[1] On behalf of our organizations' dentist members, we appreciate the opportunity to comment on the HOPPS Proposed Rule. Over the past several years, our groups have held frequent meetings with the Centers for Medicare and Medicaid **(CMS)** staff regarding the critical lack of operating room **(OR)** access for dental procedures for patients who require general anesthesia, and we applaud CMS for taking the first step in this proposed rule toward addressing this crisis.

In this regard, we are pleased to express our strong support for reclassification of the CPT code generally used to report dental procedures performed in hospital outpatient settings (CPT 41899) into the Ambulatory Payment Classification **(APC)** that includes other dental procedures (proposed reclassification of CPT 41899 from APC 5161 to 5871). The resulting increase in Medicare payment for dental procedures that require general anesthesia has the potential to mitigate the current reimbursement obstacles to OR access.

However, we remain concerned that dental rehabilitation and other dental procedures performed in Ambulatory Surgical Centers **(ASCs)** are not yet included on the ASC Covered Procedures List **(CPL)**, and therefore, are not eligible for coverage when performed in ASC settings. Since the ASC CPL is broadly used not only by Medicare but also by other third-party payers (including many state Medicaid programs), Medicare's exclusion of these procedures from the CPL significantly impacts Medicare and non-Medicare patients, including Medicaid-covered children and the disabled in desperate need of dental surgical procedures. Without access to ASCs, dentists are concerned that the current crisis in OR access for children, the disabled and those with special needs as well as those without timely access to a hospital due to geographic limitations will continue.

It is particularly important that CMS address this issue now. The 2023 proposed Physician Fee Schedule (PFS) proposes to expand the dental procedures eligible for Medicare coverage and suggests that further expansion may be forthcoming. If this expanded dental coverage is finalized, it is critical that there be sufficient OR access for those Medicare patients who need general anesthesia for the safe performance of their newly covered dental procedures. Access to ASCs is highly likely to be necessary if these patients are to obtain needed dental treatment in a safe environment in a timely manner.

It appears that dental procedures historically have been excluded from the CPL for two reasons. First, 42 CFR § 411.15 excludes ASC coverage for dental procedures performed "in connection with the care, treatment, filling, removal, or replacement of teeth, or structures directly supporting the teeth" with the exception of certain procedures requiring inpatient hospitalization. Since Medicare coverage for virtually all dental procedures were considered to be precluded by this provision, there presumably was no need to include them on the ASC list. However, assuming that the 2023 PFS Proposed Rule is finalized, there will be a significant (and potentially expanding) number of dental procedures that will be covered by Medicare that are not performed in connection with the care, treatment filling, removal or replacement of teeth but rather in connection with the performance of other Medicare-covered services (such as transplantation).Under these circumstances, 42 CFR § 411.15 should no longer preclude the inclusion of dental procedures on the CPL.

The second obstacle to coverage is presented by 42 CFR §416.166(c)(7), which precludes ASC coverage of procedures that can "only" be reported using an unlisted code, such as CPT 41899. There are several ways for CMS to address this issue. For example, CMS could modify the regulations to delete §416.166(c)(7), thereby allowing ASCs to report dental procedures using the same unlisted code used by hospitals; CMS could create a new HCPCS Level II code for use by ASC store port dental procedures performed under general anesthesia; or CMS could include individual CDT codes on the CPL. In fact, the 2023 PFS Proposed Rule implicitly supports an approach that would include individual CDT codes in HOPPS and on the ASC list, since it notes that the expanded dental coverage may include numerous CDT codes that are listed in the preamble to the Proposed Rule. The CDT list includes CDT codes used to report dental services to eradicate infections when performed to facilitate organ transplantation, which are often also used to perform dental surgical rehabilitation.[2]

Our organizations recognize that including all applicable CDT codes to report newly covered dental procedures in the HOPPS system and on the CPL may require additional consideration by CMS. In light of the urgency of the situation, however, and **as an interim solution, we urge CMS to consider including a single CDT code on the ASC list to be used to report covered dental procedures in ASC settings. Specifically, we urge CMS to consider including CDT D9420 on the ASC list in the 2023 HOPPS Final Rule, on an interim final basis:**

D9420–Hospital or Ambulatory Surgical Center Call

Since this proposal was not included in the 2023 HOPPS Proposed Rule (and could not have been included since dental coverage was limited at the time), this proposal should be included in the 2023 HOPPS Final Rule on an interim final basis, subject to public comment. We believe that this interim solution provides a way to ensure that any patients whose dental treatment is eligible for coverage under the 2023 PFS Final Rule and whose treatment cannot be performed safely without general anesthesia, can access needed dental treatment in a timely manner. This approach also provides CMS with the opportunity to further consider whether to add individual CDT procedures to the HOPPS and to the ASC CPL to facilitate access to Medicare-certified ORs for patients whose dental treatment qualifies for coverage under the 2023 PFS final rule.

CONCLUSION

The ADA, AAPD, and AAOMS appreciate the opportunity to comment on the 2023 HOPPS Proposed Rule and offer recommendations for how to address dentistry's concerns. These comments are also supported by the following additional organizations:

Academy of General Dentistry

American Academy of Periodontology

American Association of Endodontists

American College of Prosthodontists

American Dental Education Association

American Society of Dental Anesthesiologists

American Student Dental Association

If you have any questions about these comments, please do not hesitate to contact Julie Allen at *Julie.allen@powerslaw.com* or (202) 494-4115.

Sincerely yours,

American Academy of Pediatric Dentistry

American Dental Association

American Association of Oral and Maxillofacial Surgeons

1. *87 Fed. Reg. 44502 (July 26, 2022).*
2. *The preamble to the 2023 PFS Proposed Rule specifically provides that Medicare cover the following types of dental procedures in conjunction with organ transplants: pulling of teeth (CDT D7140, D7210), removal of the infection from tooth/actual structure, such as fillings (e.g., CDT D2000-2999), periodontal therapy for removal of the infection that is surrounding the tooth, such as scaling and root planning (e.g., CDT D4000-4999, and more specifically D4341, D4342, D4335 and D4910), or end odontic therapy for removal of infection from the inside of the tooth and surrounding structures, such as root canal (e.g., CDT D3000-3999).*