



August 31, 2022

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

Submitted electronically to: <http://www.regulations.gov>

**Re: CMS-1770-P (Section II.L.)**

Administrator Chiquita Brooks LaSure:

**Nurses for America** is pleased to provide the Centers for Medicare & Medicaid Services (CMS) comments on the proposals and request for information on Medicare Parts A and B Payment for Dental (Section II.L.) in the proposed rule on Medicare and Medicaid Programs: CY2023 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies, Medicare Shared Savings Program Requirements, etc. (CMS-1770-P).

**I. Introduction to Comments**

Nurses for America is a group of nurses (formerly Nurses for Biden/Harris) advocating to support nurses, democracy, Biden/Harris policies, voter rights, health equity, Medicare, Medicaid, reproductive rights, gun control, and candidates who support these policies in the 2022 midterms. We recognize the need for improved dental coverage in Medicare. Without this coverage, millions of older adults and people with disabilities in our nation cannot afford the care they need to get and stay healthy. Now, the Biden Administration has an opportunity to deliver a critical piece of this popular, much needed benefit to our nation's older adults and people with disabilities.

We applaud CMS for recognizing the need to maximize its authority to cover "medically necessary" dental care in Medicare. 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.<sup>i</sup> Improved Medicare coverage for medically necessary dental care would help millions of people get healthy without having to make impossible financial tradeoffs and would mitigate some of these health inequities.

Acting to maximize this authority as is being proposed and explored in this proposed rule would help some of the very people who need dental coverage the most. **Overall, we strongly support the proposed clarification of CMS’s authority on “medically necessary” dental coverage, and we will address several of the specific issues and questions that CMS has solicited input in the comments that follow.**

## **II. Comment on Proposal to Clarify Interpretation of the Statutory Dental Exclusion**

CMS proposes to clarify and codify the agency’s interpretation that certain dental services may not be subject to the Medicare’s payment exclusion for dental services under Section 1862 (a)(12) of the Act because they are “inextricably linked to, and substantially related and integral to the clinical success of, a certain covered medical service.”

This proposal is an important recognition and clarification of CMS’s existing authority, which will help to ensure that Medicare beneficiaries can access and afford more of the dental care they need to advance their health. The Medicare statute does not bar payment for dental services needed in connection with the covered treatment of a medical condition. We agree with a wide array of stakeholders that CMS’s existing interpretation of its authority in this area is unnecessarily restrictive, and may contribute to inequitable access to dental services—and thus inequitable health outcomes-- for Medicare beneficiaries. Moreover, this updated interpretation of authority would be consistent with coverage in other areas, such as the “medically necessary” exemption with respect to the statutory exclusion of payment for foot care.<sup>ii</sup>

We are pleased to see that 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 legal consensus supporting the actions CMS has proposed, as well as adding coverage for additional medical scenarios that CMS is considering.<sup>iii</sup> Additionally, we know there is clinical consensus from many leading medical experts and professional associations, **including Nurses for America**, about the importance of dental care in these and other medical treatments.<sup>iv</sup> **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.**

## **III. Comment on Additional Proposals and Requests for Information**

### **a. Clarifying and Codifying Payment Policies for Certain Dental Services**

CMS proposes to clarify and codify existing examples of “medically necessary” dental coverage. Medicare’s dental policy already recognizes the following examples of dental services that are payable because they are integral to a covered

medical service: the wiring of teeth when done in connection with an otherwise covered medical service, the reduction of a jaw fracture, the extraction of teeth to prepare the jaw for radiation treatment of neoplastic disease, dental splints when used in conjunction with covered treatment of a medical condition, and an oral or dental examination performed as part of a comprehensive workup prior to renal transplant surgery. 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 valvuloplasty procedures.

**We support CMS’s proposal to clarify and codify the existing examples of “medically necessary” dental coverage. We also support CMS’s proposal to recognize, as additional specific examples, dental examinations and necessary treatment performed as part of a comprehensive workup prior to organ transplant surgery, cardiac valve replacement or valvuloplasty procedures.**

b. Covering medically-related dental services in inpatient and outpatient settings

CMS proposes to interpret the statute to permit Medicare payment for dental services “inextricably linked to, and substantially related and integral to the clinical success of, certain other covered medical services” and “to allow payment to be made, *regardless of whether the services are furnished in an inpatient or outpatient setting*”. CMS is also specifically proposing to revise regulation at § 411.15(i) to ensure that the covered dental care that is part a comprehensive workup prior to renal transplant surgery can take place in an inpatient or outpatient setting.

We believe that coverage—and thus care-- should not be unnecessarily limited by the care setting, and that CMS is not constrained by its statutory authority. **We agree with CMS’ proposal to implement this Medicare coverage and payment in *either an inpatient or outpatient setting as it is clinically appropriate and in line with the statutory authority in the legislation passed by Congress.***

c. Comments on covering additional clinical scenarios under “medically necessary” authority

CMS is seeking 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. CMS also asks whether there are “types of surgery, or

clinical scenarios involving acute or chronic conditions that would have an improved patient outcome if certain dental services are furnished, such that those dental services should be considered so integral to the standard of care that the preclusion on Medicare payment should not apply”. CMS is also seeking comment on the “clinical evidence supporting the necessity of oral health care *after* the provision of certain medical procedures and treatments”.

Our constituents have made it clear to us that access to oral health care would make a huge difference in their health outcomes, including in these instances. Moreover, lack of access to oral health care exacerbates health inequities in many of these disease areas, such as diabetes, heart disease, and cancer. We also understand that clinical evidence linking oral health care to improved health outcomes is extensive in many of these scenarios, and growing quickly in others. **We encourage CMS to apply “medically necessary” authority in as broad a range of clinical scenarios as possible.**

d. Establishment of a Process to Consider Additional Clinical Scenarios for Future Updates.

CMS 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. Given the breadth of health issues connected to oral health and proper oral health care, the “medically necessary” coverage standard needs to be able to keep up with growing clinical evidence and evolving standards of care in order to be meaningful to our constituents. **We strongly support CMS’s proposal to implement a process that provides for the future review and addition of further clinical scenarios that meet the criteria laid out in CMS’ proposed “medically necessary” dental coverage authority.**

## **Conclusion**

**Nurses for America** appreciates the opportunity to provide comments about these proposed rules. If finalized, the proposed rules will make a considerable difference for our nation’s older adults and people with disabilities who are struggling to afford and access the oral health care they need to stay healthy. We are grateful to Administrative officials, the scores of advocates, and Members of Congress, who have worked for years to get us to this point. For additional information, please contact **Erin Hartnett at [erinhartnett223@gmail.com](mailto:erinhartnett223@gmail.com)**

Sincerely,

**Erin Hartnett DNP, PPCNP-BC, CPNP, FAAN,  
Founder, Nurses for America**

---

<sup>i</sup> Christ, A., G. Burke and J. Goldberg. Adding a Dental Benefit to Medicare: Addressing Racial Disparities. Justice in Aging. October 2019. <https://www.justiceinaging.org/wp-content/uploads/2019/10/Addressing-Oral-Health-Equity-by-Adding-a-Dental-Benefit-to-Medicare.pdf>.

<sup>ii</sup> Medicare Benefit Policy Manual, Ch. 15, § 290.

<sup>iii</sup> “Medicare Coverage of Certain Dental Diseases.” King and Spalding LLP. July 30, 2020. Available upon request. See also “Legal Memorandum: Statutory Authority Exists for Medicare to Cover Medically Necessary Oral Health Care.” Center for Medicare Advocacy. January 3, 2019. <https://medicareadvocacy.org/medicare-info/dental-coverage-undermedicare/#legal-memorandum-statutory-authority-exists-for-medicare-to-cover-medically-necessary-oral-health-care>.

<sup>iv</sup> Clinical Consensus on Medically Necessary Dental Care. Santa Fe Group. Accessed June 30, 2022. <https://santafegroup.org/wp-content/uploads/2020/08/clinical-consensus-on-medically-necessary-dental-care.pdf>.