

Congress of the United States
Washington, DC 20515

September 6, 2022

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

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

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

Dear Administrator Chiquita Brooks LaSure:

We are 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).

As members of Congress, we have long recognized the need for improved dental coverage in Medicare. Without this coverage, millions of seniors and people with disabilities across the Nation will remain unable to afford the care they need to get and stay healthy.

We applaud CMS for recognizing the need to maximize its authority to cover “medically necessary” dental care in Medicare. Broader Medicare coverage for medically necessary dental care would help beneficiaries get healthy without having to make impossible financial tradeoffs. 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.¹

As we will continue to pursue legislation for more comprehensive dental coverage in Medicare, we recognize the Biden Administration has the ability to immediately deliver a critical part of this popular, much needed benefit. In addition to helping millions of people who need care now, CMS's action on “medically necessary” dental care can help to build critical infrastructure, such as increased provider participation and more robust Medicare dental coding, which can ease the path to more comprehensive dental coverage in the future.

We are writing to reiterate that, under the statute as written by Congress, CMS has the authority under current law to cover “medically necessary” dental care through Medicare, and that acting to maximize this authority as is being proposed 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 on which CMS has solicited input in the following comments.

I. Comment on Proposal to Clarify Interpretation of the Statutory Dental Exclusion

CMS proposes to clarify the agency’s interpretation that certain dental services may not be subject to 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 as written by Congress, 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 contributes to inequitable access to dental services—and thus inequitable health outcomes—for Medicare beneficiaries. Moreover, an 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.ⁱⁱ

We believe there is strong legal consensus supporting the actions CMS has proposed, as well as clinical consensus from many leading medical experts and professional associations about the importance of dental care in these and other medical treatments.ⁱⁱⁱ **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 as appropriate.**

II. 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 services, which 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 urge CMS 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. 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.”

We are pleased 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. Access to oral health care would make a significant difference in health outcomes, as well as health care costs, in these instances.^{iv,v,vi,vii} Moreover, lack of access to oral health care exacerbates health inequities in many of these disease areas, such as diabetes, heart disease, and cancer.^{viii} 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.^{ix} **We encourage CMS to apply “medically necessary” authority in as broad a range of clinical scenarios as possible.**

c. 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 should keep up with growing clinical evidence and evolving standards of care to ensure patients receive coverage for all medically necessary services. **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’s proposed “medically necessary” dental coverage authority.**

d. 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 regulations at § 411.15(i) to ensure that the covered dental care that is part of a comprehensive workup prior to renal transplant surgery can take place in an inpatient or outpatient setting.

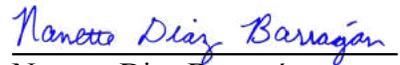
We believe that coverage—and thus care—should not be unnecessarily limited by the care setting, and that CMS is not constrained by its statutory authority. **We strongly agree with CMS’s proposal to implement this Medicare coverage and payment in *either an inpatient or outpatient setting* as it is clinically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

We strongly support CMS’s proposed rules, which 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 encourage CMS to use its statutory authority to the fullest extent possible to deliver comprehensive Medicare coverage for all medically necessary dental care.

Sincerely,



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Member of Congress



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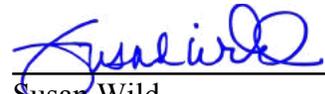
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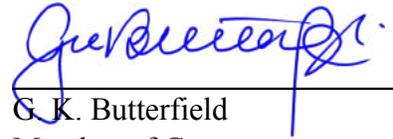
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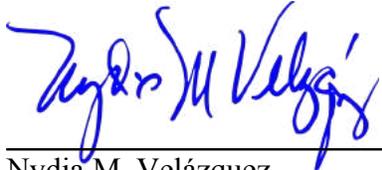
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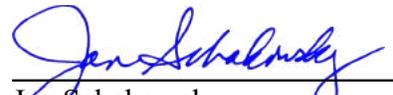
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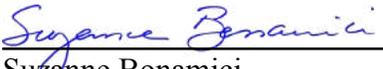
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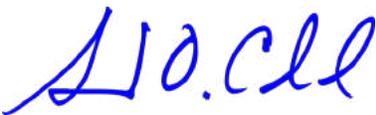
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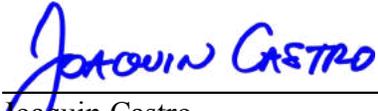
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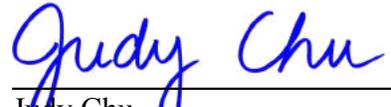
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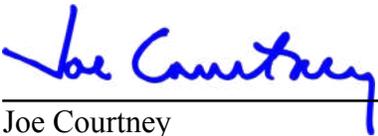
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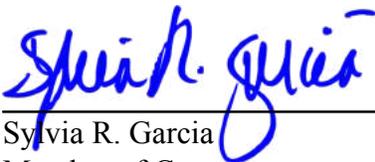
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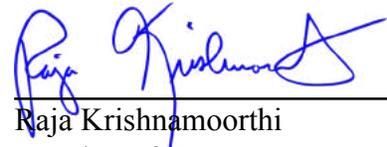
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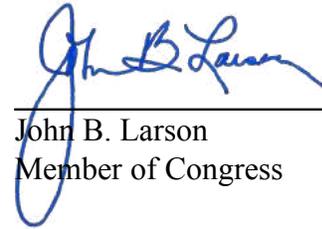
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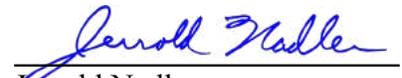

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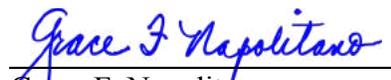

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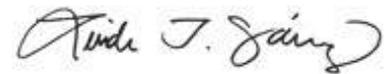
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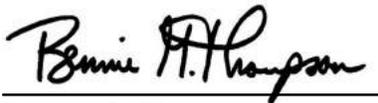
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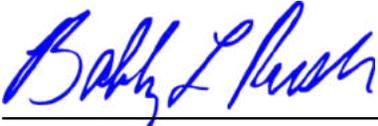
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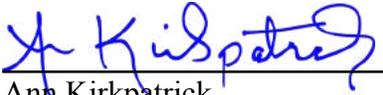
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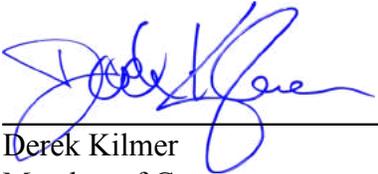
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