



American Association of Oral and Maxillofacial Surgeons

August 25, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1772-P
P.O. Box 8010
Baltimore, MD 21244-1810

Submitted online via www.regulations.gov

Re: File Code CMS-1772-P Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Proposed Rule

Dear Administrator Brooks-LaSure:

The American Association of Oral and Maxillofacial Surgeons (AAOMS) represents more than 9,000 oral and maxillofacial surgeons (OMSs) in the United States. AAOMS appreciates the opportunity to comment on the proposed 2023 revisions to the Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems, published in the July 26, 2022, *Federal Register* (Vol. 87, No. 142, pages 44502-44843).

AAOMS commends CMS on efforts to improve access to high-quality and affordable health care. However, AAOMS also has concerns that certain aspects of the proposed rule do not sufficiently address current barriers in access to high-quality dental care and treatment across all care settings.

Proposed update to unlisted dental procedure/service

AAOMS appreciates CMS' review and consideration of the geometric mean cost and claims data for code 41899 (Unlisted procedure, dentoalveolar structures). AAOMS agrees with CMS that the current assignment of Ambulatory Payment Classification (APC) of 5161 (Level I ENT Procedures) is not reflective of the geometric mean cost of the dental services currently assigned to APC 5871 (Dental Procedures), or an accurate representation of the resource costs associated with the range dental surgical services that 41899 must currently be utilized to report. As such, **AAOMS supports CMS' proposal to change the assigned APC for 41899 from APC 5161 (Level I ENT Procedures) to clinical APC 5871 (Dental Procedures) as this is the most clinically appropriate APC series for this code.**

Ensuring the proposed CY 2023 APC rate is payable in both hospital outpatient departments and the inpatient setting would not only help to alleviate some of the financial uncertainty faced by hospitals when scheduling dental surgical cases but would also allow the surgeon the opportunity to determine the most clinically appropriate care setting for his or her patient. **AAOMS strongly supports making the proposed CY 2023 facility fee for 41899 payable in either the hospital outpatient or inpatient setting.**

Limitations in access to dental care across all care settings may work to exacerbate health inequity

AAOMS supports CMS's overarching commitment to patient safety but wishes to emphasize that evolving technology and treatment modalities have allowed for increasingly complex procedures to be performed safely and efficiently across a wide range of care settings, including ambulatory surgery centers (ASCs). This proposal does not address the barriers that exist for both pediatric and adult patient access to dental rehabilitation surgery in an ASC setting.

Lack of hospital-based OR access is further magnified by medical staffing shortages, industry-wide inflation and the residual backlog of cases spurred by the COVID-19 pandemic. Other challenges exist for patients unable to access hospital facilities because of geographic or transportation limitations. AAOMS believes that ASCs have the potential to mitigate many of these external pressures. Indeed, industry research indicates the health care system as a whole benefits when procedures migrate to the ASC from more costly care settings.

Currently, unlisted codes – including 41899 – are not permitted under federal regulation (42 CFR §416.166) to be covered in an ASC setting. AAOMS echoes the concerns voiced throughout the dental sector that such a preclusion works to further exacerbate existing health inequities for patients unable to access hospital facilities. **AAOMS requests CMS consideration for the addition of 41899 to the ASC Covered Procedures List (CPL), or, as an alternative, allow current and future CDT codes to be billed by an ASC and add appropriate CDT codes to the ASC covered procedures list. Such codes may include but not be limited to D9420-hospital or ambulatory surgical center call; extraction codes D7140 thru D7240; incision and drainage codes D7510-D7521; and related general anesthesia. We further request that 41899 and/or these CDT codes be payable in an ASC setting at the CY 2023 proposed APC rate under the OPSS (\$1,958.92).**

Proposed changes to the Inpatient Only (IPO) List

It is the firm belief of AAOMS that a practitioner should have the opportunity to determine the most clinically appropriate care setting for their patient. As a specialty society, we recognize that the CMS classification of certain surgical procedures, both in terms of patient safety standards and reimbursement framework, often dictates the pattern of coverage throughout the healthcare industry, for commercial carriers as well as in federally funded programs.

In CMS' proposal to remove eight OMS musculoskeletal procedures from the Inpatient Only (IPO) List, including 21141, 21142, 21143, 21194, 21196, 21347, 21366, and 21422, it is recognized that most outpatient departments are equipped to provide these procedures, the

simplest procedures described by the codes may be performed in most outpatient departments and that the procedures are related to codes that CMS has already removed from the IPO List.

AAOMS appreciates CMS' acknowledgment that these services may be safely furnished in hospital outpatient departments and thus satisfy the criteria for removal from the IPO List. If finalized, this proposal has the potential to expand access to care for the surgical correction of certain craniofacial anomalies and the treatment of a number of face and jaw fractures. As such, **AAOMS appreciates and supports CMS' decision to remove eight musculoskeletal procedures from the Inpatient Only List as follows: 21141, 21142, 21143, 21194, 21196, 21347, 21366, and 21422.**

Proposed updates to the List of ASC Covered Surgical Procedures

AAOMS appreciates CMS' unwavering commitment to patient safety and understands the statutory requirement that mandates review and updating of the list of covered procedures in the ASC setting. However, **we are disappointed that CMS did not propose to accept any of the nominations for addition to the ASC Covered Procedures List submitted by our association.** AAOMS is committed to providing safe, high-quality patient care and our concerns remain that excluding certain services from coverage across a wide range of care settings will create patient hardships, further exacerbating the health inequity gap while simultaneously increasing program expenses.

AAOMS appreciates that CMS has clarified the current mechanism for nominating procedures for addition to the ASC CPL. We also appreciate the agency's proposed development of a technical infrastructure to facilitate this process in the future. AAOMS will further evaluate our recommendations based on CMS' guidance as we develop nominations for future agency consideration.

Payment for non-opioid pain management drugs and biologicals

Oral and maxillofacial surgery is the surgical specialty of dentistry. As such, management of our patients' pain in conjunction with invasive procedures is an important aspect of providing the best quality patient care. AAOMS and its members are very aware of the risks associated with exposure to opioids. As such, we appreciate CMS' continued efforts to evaluate evidence-based non-opioid pain management alternatives for separate payment in certain care settings.

AAOMS supports CMS' proposal to continue making separate payment for Exparel® (as described by HCPCS code C9290 (Injection, bupivacaine liposome, 1 mg)) as a non-opioid pain management drug that functions as a supply in a surgical procedure under the ASC payment system.

While AAOMS appreciates CMS' policy that allows separate reimbursement for certain non-opioid pain management drugs in the ASC, the fact remains that precluding such drugs from separate payment in the hospital outpatient setting places a considerable number of surgical patients at risk of being unnecessarily exposed to opioids. As such, **AAOMS encourages CMS to consider extending this policy to allow separate payment for non-opioid pain management drugs in the hospital outpatient setting.** This would provide all patients,

regardless of where they are treated, access to the wide array of FDA-approved, safe, effective and clinically appropriate non-opioid therapies.

Thank you for your consideration of these comments. Please contact Patricia Serpico, AAOMS Director of Health Policy, Quality & Reimbursement, with any questions at 800-822-6637, ext. 4394 or pserpico@aaoms.org.

Sincerely,

A handwritten signature in black ink that reads "J. David Johnson, Jr. DDS". The signature is written in a cursive style with a large, stylized initial "J".

J. David Johnson, Jr. DDS
AAOMS President