

United States Senate

WASHINGTON, DC 20510

December 21, 2012

The Honorable Kathleen Sebelius, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

Thank you for your continued efforts to expand access to care for patients across the country as you work to implement the essential health benefits provisions in the Affordable Care Act. We write regarding three related issues of critical importance to expanding and maintaining access to affordable pediatric dental coverage and oral care as they relate to CMS-9980-P, the "Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation" proposed rule.

First, we again urge the Department of Health and Human Services (HHS) to clarify that stand-alone dental plans are allowed to provide the pediatric dental coverage component of the Essential Health Benefits requirements outside of the Exchanges in the individual and small group markets, as they can inside the Exchanges. While stand-alone dental plans will qualify as meeting the Essential Health Benefit Package (EHBP)'s dental component inside the Exchanges, the same standard has not yet been made for plans operating outside of the Exchanges. Today 99% of Americans with commercial dental coverage receive that coverage through a separate or stand-alone dental policy. If a clarification is not made in the final rule, dental coverage in both the pediatric and adult populations will be disrupted, with children separated from their parents' policies and their dentists.

Congress intended to expand pediatric dental coverage and to allow stand-alone dental plans to provide pediatric dental coverage both inside and outside the Exchanges. The Stabenow amendment, adopted by the Finance Committee during consideration of the Affordable Care Act (ACA), clearly intended that stand-alone dental plans be able to meet the dental component of the EHBP. It stated that "required pediatric dental benefits in the non-group and small group markets (in and outside an exchange) may be separately offered and priced from other required health benefits." This intention was also reiterated in a colloquy in September of 2011.

We urge you to use the Department's legal authority to clarify that stand-alone dental plans can provide the pediatric oral component of EHBP outside the Exchanges. HHS has the legal ability to make this clarification based generally on the Department's "reasonable" interpretation authority where Congress has not "directly spoken to the precise question at issue." The Department also has the ability, based on the authority that the ACA gives to the Secretary, to define the essential health benefits in a scope equal to that of a typical employer plan. The Department has used its interpretive authority to clarify other issues where the ACA ambiguity presents conflicts with Congressional intent.

Second, we urge HHS, in partnership with the Internal Revenue Service (IRS), to ensure that pediatric dental coverage is required as an Essential Health Benefit for the purposes of meeting the Minimum Essential Coverage requirement for families with children.

Too many children suffer needlessly from dental problems that are overwhelmingly preventable, and we know oral health is integral to the overall health of children, affecting even their ability to learn in school. The goal of the essential health benefits package, which included pediatric oral care as one of the 10 general categories of coverage, was to ensure that all children have guaranteed access to the essential care they need including dental care.

We believe the Affordable Care Act statute is clear with regard to the requirement for pediatric dental coverage. Section 1302(b)(1)(J) of the law establishes the requirement that “the Secretary shall define the essential health benefits... that... shall include... Pediatric services, including oral and vision care.” Section 1311(d)(2)(B)(ii) which allows “plans that provide limited scope dental benefits” to be offered in the exchange, does so only “if the plan provides pediatric dental benefits meeting the requirements of section 1302(b)(1)(J). Therefore allowing stand-alone dental plans to offer coverage in an exchange is only permissible to meet the EHBP’s requirement for pediatric dental coverage if that coverage has not been obtained in some other way. In addition, the IRS guidelines on advance premium tax credits include stand-alone pediatric dental as part of the subsidy calculation for essential benefits which further indicates that it is part of the EHBP.

Expanding access to pediatric dental coverage as a required part of the EHBP, regardless of how it is provided, was also the clear intent of Congress. The Stabenow amendment adopted by the Finance Committee stated that “stand-alone dental-only together with a qualified health plan that provides all of the other required benefits satisfies the required benefits standards.” Thus, the amendment is clear that both the medical coverage and the dental coverage are required to meet the required benefit standards. Moreover, in a colloquy in September, 2011, Senator Bingaman thanked the Finance Committee Chairman “for working so closely with us and a number of our colleagues to ensure that the Affordable Care Act includes children's oral health care as part of the essential benefits package.” HHS has the authority to “define the essential health benefits” to be included in the EHBP, in accordance with the listed general categories of coverage including pediatric oral services.

Third, we are concerned that by not specifying the cost-sharing limit for stand-alone dental plans and only stating that the limit be “reasonable,” the rule, if finalized without clarification, could lead to increased out-of-pocket costs, making pediatric dental services unaffordable for families. In the colloquy on September, 2011 Senator Stabenow stated that the intention of the law was that “all stand-alone dental plans fully comply with the same level of relevant consumer protections that are required for qualified health plans.” Senator Bingaman also noted that the law intended for children with coverage through the exchange to “have the same level of benefits and consumer protections, including all cost sharing and affordability protections, with respect to oral care.” Therefore we urge the Department to specify the out-of-pocket limit for dental policies, and ensure that whether a family purchases stand-alone dental in combination with a medical plan or a comprehensive plan that includes medical and dental coverage, their out of pocket costs would be the same.

Thank you for your attention to these critical issues. Requiring coverage of pediatric dental benefits (for individuals up to age 19) and the ability to purchase non-duplicative coverage, from either a stand-alone dental carrier or a medical plan, with equally applied relevant consumer protections both inside and

outside an Exchange, will ensure that children across the country are able to get the dental care they need, and that in some cases can save their life.

We look forward to working with you to ensure that every child will now have access to affordable dental care.

Sincerely,

Debbie Stabenow

Shirley Brown

May of Gardner

[Signature]

John J. Kerry

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Bob Casey, Jr.

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Dianne Feinstein

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