



The Honorable Kathleen Sebelius
U.S. Department of Health and Human Services
Director Steve Larsen
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington D.C. 20201
Submitted via: regulations.gov

Dear Secretary Sebelius and Director Larsen:

The National Association of Dental Plans (NADP) appreciates the opportunity to provide comments on the Medical Loss Ratio (MLR) Annual Reporting and Rebate Calculation as posted in the Federal Register, Vol. 76, No.242, December 16, 2011, page 78267. NADP members provide over 80 percent of all dental benefits for Americans today, and we greatly appreciate the U.S. Department of Health and Human Services' (HHS) allowance for comments on the proposed information collection in the latest MLR regulations.

NADP and our members are requesting clarification that HIPAA excepted benefits are not required to be reported on the pending CMS-10418 MLR Annual Form:

1. When provided by carriers not subject to MLR which provide only excepted benefits reportable in columns 32-35¹, nor
2. by those carriers subject to MLR that also offer dental on a stand-alone or non-integral basis.

Recommendation: In final rules and forthcoming MLR Annual Forms, HHS should clarify carriers providing only HIPAA excepted benefits are not required to file the MLR Annual Form. Further, it should be clarified that carriers subject to MLR are not required to report HIPAA excepted dental benefits in columns (32-35) as these benefits are outside the scope of the MLR reporting requirement.

HHS has been very clear in ACA regulatory policies stating HIPAA excepted benefits are exempt from insurance market reforms. In the December 16, 2011 Essential Health Benefits Bulletin, HHS includes Footnote 14 "When dental or vision coverage is

¹ The range of benefits to be reported together in columns 32-34 includes uninsured or self-funded business, public program benefits like Medicare Advantage, Medicaid and State Children's Health Insurance Program, short-term, limited duration insurance and various programs covering state and federal employees.

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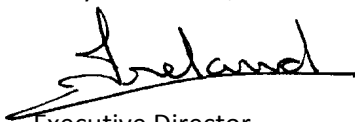
provided in plan that is separate from or otherwise not an integral part of a major medical plan, that separate coverage is not subject to the insurance market reforms in Title XXVII of the PHS Act.”

In the response letter to Mr. Lawson, September 8, 2010, (attached) HHS recognizes and reiterates the definition of HIPAA excepted benefits, stating “.... the exceptions for excepted benefits in ERISA and the Code remain in effect.” As well, during the NAIC discussion of the NAIC MLR Blanks Proposal, it was clearly stated the NAIC did not expect HIPAA excepted benefits to be included in the reporting of the MLR Annual Form as adopted on 8.17.10.

So while the record suggests that the MLR Annual Form would not include HIPAA excepted benefits, clarification would eliminate confusion that the insertion of columns 32-35 has created with regard to which carriers should use the Form to report.

NADP is greatly appreciative of your time and attention to our concerns, and we look forward to future discussions on these critical issues to the dental benefits industry. Questions regarding our comments should be directed to Kris Hathaway, Director of Government Relations at khathaway@nadp.org or 972 458-6998 x111. Again, thank you for your consideration.

Sincerely,
Evelyn F. Ireland, CAE



Executive Director
National Association of Dental Plans

NADP DESCRIPTION

NADP is the largest non-profit trade association focused exclusively on the dental benefits industry, i.e. dental PPOs, dental HMOs, discount dental plans and dental indemnity products. NADP’s members provide dental benefits to over 80% percent of the 176 million Americans with dental benefits. Our members include the entire spectrum of dental carriers: companies that provide both medical and dental coverage, companies that provide only dental coverage, major national carriers, regional and single state companies, as well as companies organized as non-profit plans.

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THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

September 8, 2010

Kurt L.P. Lawson, Partner
Hogan Lovells US LLP
Columbia Square
555 Thirteenth St, NW
Washington, DC 20004

Dear Mr. Lawson:

Thank you for your letter expressing concern over whether limited scope dental and vision benefits provided under a separate health plan or policy will continue to be exempt from the substantive requirements of the Public Health Service Act (PHSA).

Limited scope dental and vision coverage are considered to be "excepted benefits" provided they are (1) offered as separate benefit policy, certificate, or contract of insurance; or (2) not an integral part of the plan. To be considered not an integral part of the plan, in general, participants must have the right to elect not to receive coverage; and if a participant elects to receive coverage, the participant must pay an additional premium or contribution for that coverage. See section 2722 of the PHSA, section 732 of the Employee Retirement Income Security Act (ERISA), and section 9831 of the Internal Revenue Code (Code) and their implementing regulations at 45 CFR 146.145(c)(3), 29 CFR 2590.732(c)(3), and 26 CFR 54.9831-1(c)(3).

As outlined in the preamble to the interim final regulations relating to status as a grandfathered health plan, the exceptions for excepted benefits in ERISA and the Code remain in effect. Moreover, the Department of Health and Human Services (HHS) also stated in the preamble that it does not intend to use its resources to enforce the PHSA requirements with respect to nonfederal governmental plans that offer dental and vision benefits that meet the definition of excepted benefits. States have the primary enforcement authority for insurance companies that sell coverage meeting the definition of an excepted benefit. HHS encourages states to exercise the same discretion and will not consider the state to be failing to enforce the PHSA with respect to dental and vision plans that meet the definition of excepted benefits. See 75 FR 34538, 34539-34540 (published June 17, 2010).

Again, thank you for your letter and for your continued advocacy and leadership on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Sebelius". The signature is written in a cursive, flowing style.

Kathleen Sebelius