



May 31, 2019

The Honorable Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Blvd.  
Baltimore, MD 21244

RE: Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organization and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans in the Federally-facilitated Exchanges and Health Care Providers (CMS-9115-P)

Dear Administrator Verma,

The National Association of Dental Plans (NADP) appreciates the opportunity to provide comments on the Proposed Rule: “Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organization and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans in the Federally-facilitated Exchanges and Health Care Providers” as issued in the Federal Register on March 4, 2019.

The proposed regulation exempts stand alone dental plans (SADPs) participating in Federally Facilitated Exchanges (FFE) from the minimum QHP certification standard that would require the implementation of an open application programming interface (API) for patients to retrieve their health data. We agree with this exemption and commend CMS on its rationale in Section III (C)(2)(4)(i), which states:

*“issuers of SADPs offer enrollees access to a unique and specialized form of medical care. We believe the proposed standards and health IT investment would be overly burdensome for SADP issuers as related to their current enrollment and premium intake and could result in SADP issuers no longer participating in FFEs, which would not be in the best interest of enrollees.”*

Furthermore, when discussing the consumer benefit of accessing dental health data, the same section of the proposed rule goes on to state:

*“...we do not anticipate similar [to medical] widespread usage with respect to SADPs. Therefore, we believe that the utility of access to issuers’ data is less applicable to dental*

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*coverage, and do not believe it would be in the interest of qualified individuals and qualified employers in the state in which an FFE operate to not certify SADPs because they do not provide patient access to their data through an openly published API.”*

We believe this to be true of dental plans and benefits as offered in other programs impacted by this regulation, including Medicaid, CHIP, and Medicare Advantage. Access to dental health data through an open API may not provide the same outsized benefit it could provide to major medical patients. This would mean that if dental plans were required to develop an open API, their costly work would likely be underutilized, and at the cost of increased premiums.

- **Recommendation:** Reconsider the impact the proposals could have on the delivery of dental benefits through CHIP, Medicaid, and Medicare Advantage. If the findings conclude that standards do not align or are not appropriate for dental, CMS should consider exempting dental benefits and plans as offered in those programs from the proposed rule as is currently proposed for SADPs on FFEs.

Dental plans occupy a unique position in medical care. In the Medicare Advantage program, for example, dental carriers are providers of supplemental benefits; they credential providers, maintain networks of clinicians, and administer claims on behalf of a medical organization or Medicare Advantage Organization (MAO). Thus, the proposed dissemination of data at patient request will necessitate communication across entities, connections that may not exist currently, and at a rate/speed that may not be feasible.

Furthermore, while the electronic submission of dental claims has increased over time, approximately 30 percent of claims are received non-electronically or via paper. Additionally, 82 percent of claims are processed within 5 days, with the remaining 18 percent taking 6 days or longer. The dental plan industry is committed to the adoption and expansion of use of data, records, and electronic transactions. However, the current adoption and use of certain electronic transactions and the fact that 61% of dental offices are solo practitioners will challenge implementation of the proposed requirements and within the proposed deadlines.

The implementation of this rule as written could also potentially leave dental patients, providers, and plans vulnerable to data theft or misuse. An open API may be utilized by any developer, meaning patients could potentially download or use an app that collects their data and resells it to third parties. This creates several issues. First, a patient’s personal health information would become available to the highest bidder. Next, providers and plans could potentially be interacting with software that can damage their own systems. This is especially concerning under the proposed timeline which will require rapid development and deployment of new health IT systems. Without additional safeguards, the potential for data misuse is high.

As drafted, the regulation will impose burdensome and costly requirements with a substantial impact to the administration of a typically lower cost benefit, which will ultimately raise costs to states for CHIP and Medicaid programs and for MA beneficiaries in the form of premiums. Given this and the background outlined in this letter, we strongly recommend CMS reconsider application of the proposed regulations to dental benefits as offered through Medicaid, CHIP, and Medicare Advantage.

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If the proposed rules are applied to dental benefits as part of these programs, the following should be considered or clarified:

- **Implementation timeline:** an effective date of CY 2020 is not feasible given the impacts to disparate systems and entities involved in the provisions of dental benefits in these programs. A more reasonable approach would be phased-in implementation beginning in CY 2022, perhaps with the benefit of efficiencies learned in a pilot effort of smaller scale.
- **Information security:** Data security is paramount for insurers and patients. How will carriers confirm the apps or software utilizing an open API are trusted and how will this impact the dental insurer's brand and reputation if there is a breach? How will patients and plans be guaranteed that data such as family history is not sold, exchanged, or transferred to third parties through an app utilizing an open API? Are patients and plans safe from inter-app data collection?
- **Information transfer and delivery between MAOs and partners:** How will sharing and release of patient data and establishment of APIs work between delegated entities of MA or contractors for Medicaid plans? Will the data be required to come from the MAO, or will the delegated entity need to provide it?

NADP is appreciative of the opportunity to provide comments on the proposed rule. Please contact me with any questions regarding these comments at [eaugustini@nadp.org](mailto:eaugustini@nadp.org) or 972-458-6998 x111. Again, thank you for your consideration.

Sincerely,



Eme Augustini  
Director of Government Relations

#### **NADP Description:**

NADP is the largest non-profit trade association focused exclusively on the dental benefits industry. NADP's members provide dental HMO, dental PPO, dental Indemnity and discount dental products to 200 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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