December 21, 2015

Andy Slavitt, Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Humans Services
P.O. Box 8016
Baltimore, MD 21244-8016
Sent via www.regulations.com

Re: **CMS-9937-P**; Notice of Benefit and Payment Parameters for 2017

Dear Administrator Slavitt,

The National Association of Dental Plans (NADP) appreciates the opportunity to provide comments on the proposed Notice of Benefit and Payment Parameters for 2017 (NBPP) as published in the Federal Register December 2, 2015. NADP appreciates the multiple issues the NBPP addresses and is commenting on those areas that specifically impact our dental plan members. Our comments include recommendations we believe are critical in developing quality and affordable dental policies for consumers.

DENTAL MAXIMUM OUT OF POCKET §156.150: The NBPP proposes tying the annual maximum out of pocket (MOOP) limit to the consumer price index for dental services (dental CPI). The amounts will increase by multiples of 25 dollars, with the dollar modification for one child doubled for two or more children. Current regulations set the dental MOOP at $350 per child and $700 per family but have not included a method for increasing this cost, whereas the Affordable Care Act established the medical MOOP and included a specific formula for its increase over time.

Recommendation:

NADP supports the proposal; however, there are several factors which need to be clarified in the NBPP prior to adoption:

- The consumer dental index baseline should be initiated from 2014. This will parallel the initial medical baseline as well as provide an increase to the MOOP sooner. It will take a significant increase of the MOOP if CMS wants to promote coverage with no cost sharing for preventive and diagnostic services at a 70 percent AV level as mentioned in the preamble.

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- The methodology needs to be clear that CPI increments are cumulative starting from January 2014 and not renewed each year; i.e. for 2016 filings which carriers file mid-year in 2015 (through their respective Departments of Insurance), they will review the increase of the dental CPI of January 2015 from January 2014 for their calculation. Issuers need the ability to accurately estimate the increase per year for their filings.

- Any change to the MOOP calculation and methodology must also be applied to dental plans seeking off Exchange certification.

NETWORK ADEQUACY §156.230: The NBPP proposes multiple new network adequacy requirements for Qualified Health Plans (QHPs) on the Federally-facilitated Exchanges (FFE). The regulations specify two requirements CMS is considering applying to Stand Alone Dental Plans (SADPs) but offers comments on applying other requirements. CMS also asked for comments on applying other QHP network mandates to SADPs and whether CMS should require their network standards on all QHPs (and SADPs) regardless if they are on the FFE.

Recommendation:

There is an increase of scrutiny on health plans as they develop new policies which offer narrow networks to better manage costs. This type of network design is not generally consistent with the structure of the dental industry, and we have not seen issuers narrowing dental networks. The NBPP also addresses continuity of care and balance billing within this section, both of which are also non-issues within the dental industry.

NADP recommends the NBPP network adequacy requirements not be placed on dental plans and allow the states' oversight of insurance issuers to continue. It is within their purview and a state's right to adopt network adequacy requirements for carriers operating in their states. Adding an additional layer of federal review is unnecessary and causes administrative chaos while increasing costs with no clear benefit.

- One of the two proposals CMS requested comment on is application of a notification requirement to dental plans. Issuers will need to provide written notice to enrollees 30 days prior to the discontinuation of a provider if an enrollee is seen on a regular basis by the provider. Within a DHMO, this action is necessary and consistent with current practice as enrollees are assigned to a provider; however, in a DPPO a consumer can choose and change providers at their will and a "regular basis" would be very difficult to define in the dental space. Dentists can prescribe bi-annual or annual visits with 'ongoing' treatment usually taking less than a month or just a few visits. Currently, the dentist is aware of which patients are enrolled in a carrier's plan and will notify those enrollees when they leave a network.

  This type of notification is not provided by dental plans today and would be very difficult and expensive to implement. The cost estimate provided for QHPs would be much higher for SADPs due to the relative cost of premium, which was not estimated in the NBPP. Additional time for comments would be necessary for NADP to provide an accurate calculation.

- Another section on continuity of care also requires issuers to pay at in-network levels during active treatment should a provider be terminated without cause, and continue to do so until the treatment is resolved or 90 days – whichever is less. The NBPP proposes defining 'active treatment' with four different scenarios that are related to emergencies, which does not incorporate dental services. Dental plans already have continuity of care clauses within their filings as dentists are required to complete a course of treatment or episode of care that begins prior to termination, thereby making this requirement redundant and unnecessary.

- The second proposal applied to dental plans is related to balance billing. CMS requests issuers provide notices to enrollees when there is a possibility of charges from an out-of-network provider at least 10 business days prior to the benefit being provided.

  There are no general circumstances in which enrollees of a dental plan would be faced with out-of-network billing. Dental emergencies or procedures done within a hospital or facility are covered by medical insurance. Orthodontia is a potential add-on policy but not required as an Essential Health Benefit, and those costs are always discussed prior to moving forward with treatment. Per discussion by the National Association of Insurance Commissioners, dental plans should be exempt from requirements related to hospital and facility services.

Additional Network Adequacy Standards: The NBPP includes numerous network requirements for QHPs and request comments on whether they should be applied to dental plans. As CMS evaluates these mandates and applicability to SADPs, the Agency should consider:

- Dental network standards or requirements should be applied consistently regardless if the policy is an SADP or a dental network embedded within a QHP. From a dental network administration perspective, a carrier's dental network supporting Essential Health Benefits (EHB) is the same, and rules should be equivalent in order to maintain a level playing field for carrier's networks supporting dental EHB in both SADPs and QHPs.

- Network requirements should not be applied to coverage offered on the commercial market, and should remain under state purview. Application to these policies would place an unfair advantage between dental plans in the private market and issuers offering off-Exchange certified dental policies. In addition, it will cause unnecessary administrative challenges when determining state regulations versus federal regulations, Exchange requirements versus the commercial market, and tracking requirements which apply to EHB coverage and dental policies that do not offer these benefits.

- The NBPP requested feedback on metrics for network standards. Currently, there are no network standards within the dental industry and very few states require time or distance standards. These types of requirements are usually considered after complaints are filed with the state, which has not been the case with dental networks. A factor unique to dental networks is many dentists perform specialty services, but are typically counted as 'General Dentists' for network adequacy calculations. NADP is working with states that are interested in dental requirements to make sure

they are appropriate to the industry in which ratios would be different for both dentists and dental specialists.

EXCHANGE FUNCTIONALITY: Throughout the NBPP, CMS offers additions and changes to the Marketplaces which have a direct impact on issuers operating on those Exchanges. Dental plans within Exchanges are essential - consumer surveys continue to illustrate the importance of having those options, as well as the capacity to earn revenue for the Exchanges. CMS must keep in mind the importance of dental plans and the particular impact the NBPP regulations could have on the industry. Following are recommendations from the dental plan industry:

Recommendation:

- **Selective Choice (preamble):** Within the NBPP preamble, CMS requests feedback on allowing FFE states to become selective contractors, allowing them to choose which issuers can offer plans within their states. NADP opposes this suggestion due to the multiple complexities it creates. If there are rotating issuers on an Exchange how would enrollees be transferred from different issuers each year? Issuers do not have the capacity to negotiate with each individual state; they would need to concentrate on populous states, leaving smaller states with less options and competition. At this time, CMS should continue to encourage issuers to remain on Exchanges. If there have been complaints from consumers on too many options, then consider adding additional consumer tools or slightly limiting the policies offered; selective contracting would not be the answer to this issue.

- **User Fees §156.50**: As CMS considers a new State Based Exchange-Federal Platform (SBE-FP) to allow greater flexibility for states, there is a potential for duplicative user fees from CMS, healthcare.gov and the state leasing the platform. NADP encourages CMS to be cautious with this issue as these types of additional costs increase premiums overall.

- **Essential Community Providers (ECP) §156.235**: While the NBPP does not change ECP requirements, NADP encourages CMS to continue its flexibility and allowance for justification as dental issuers cannot meet the current ECP ratios. As noted in our August 4, 2015 comments, it has been difficult to encourage dental ECPs to join networks, and dental plans have provided documentation to CMS on their efforts. NADP advocates for continued review of the dental ECP listing and flexibility on this issue as CMS waits for additional data collection.

- **Open Enrollment §155.410**: Per the NBPP, NADP encourages CMS to shorten the enrollment period to end on December 15. From discussion with issuers, enrollees who purchase coverage after the December 15 deadline for coverage starting on January 1 are less likely to pay the premium. An extended open enrollment does not equate to additional effectuated enrollees. While NADP supports a shorter enrollment period, this must be accompanied with adequate time frames for plan certification and plan preview.

  Each year there are new features within the FFE and the response rate on problem tickets continues to be problematic for dental plans. Just this year, dental plans were informed at the conclusion of plan preview that a new dental icon was put into place that would erroneously

display certain dental policies. While a sentence describing the error was included on the consumer-facing portal, the issue was never resolved nor have we been informed how CMS will address the issue for 2017 plans. These perpetual bumps in the road are concerning and even more so with inadequate plan preview time and dental ranking low on the priority list of technical fixes.

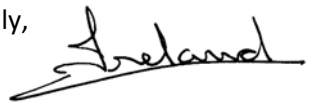
- **SHOP Vertical Choice §155.705**: The NBPP has proposed a vertical option for employees within the Small Business Health Options Program (SHOP) in which an employer can choose a carrier and offer all metal levels to their employees. Comments are invited on this proposal as well as allowing states to determine whether they want to offer this option within their SHOP. NADP approves of providing broader options and offering a vertical choice for employees but opposes allowing individual states to opt in or out of this option. The FFE-SHOP needs to remain as streamlined as possible to contain costs and lessen administrative mistakes by issuers, states and CMS.

- **Notice of Errors §156.1256**: The NBPP proposes when a display error occurs, the issuer should be responsible for the error and allow for a special enrollment period to the enrollee. While that is understandable, it should be clear this only applies to issuer error; if the error is due to the lack of a response from a vendor, regulator or an IT error that the issuer could not correct within CMS or state timeframes, this cannot be required of issuers.

- **Enrollment Data**: While not part of the NBPP, NADP continues to be concerned over the lack of transparency in reporting dental plan enrollment. NADP encourages CMS to provide effectuated (in addition to selected) enrollment by state, age group, and embedded versus separate dental policies to parallel the data offered regarding QHPs.

NADP appreciates the opportunity to provide our comments to the NBPP as it relates to dental plans, and is thankful for the continued support from CMS staff. We look forward to future discussions. If you have any questions, please direct them to NADP's Director of Government Relations, Kris Hathaway at (972)458-6998x111 or khathaway@nadp.org.

Sincerely,



Evelyn F. Ireland, CAE
Executive Director

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 more than 90 percent of the 205 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.