April 21, 2014

The Honorable Kathleen Sebelius, U.S. Department of Health and Human Services
The Honorable Marilyn Tavenner, Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 2021

Re: Exchange and Insurance Market Standards for 2015 and Beyond; **CMS-9949-P**

Dear Secretary Sebelius and Administrator Tavenner;

The National Association of Dental Plans (NADP) appreciates the opportunity to provide comments on the proposed rule CMS-9949-P regarding "Exchange and Insurance Market Standards for 2015 and Beyond" published by the Centers for Medicare & Medicaid Services (CMS) and the Department of Health and Human Services (HHS) in the Federal Register on March 12, 2014. In these comments, NADP will address a few of the areas covered in the Proposed Rule including:

A. Exchange Product Renewal and Discontinuation
B. SHOP Models and Timelines
C. Bases and Process for Issuer Decertification

A. Exchange Product Renewal and Discontinuation

As explained in the preamble to the proposed rule, sections 2702 and 2703 of the Public Health Service Act (PHS) require health insurance issuers in the group and individual markets to guarantee the availability and renewability of coverage. While the standard does not apply to dental plans as HIPAA-excepted benefits, the 2015 Letter to Issuers in the Federally-Facilitated Marketplaces (FFMs) indicates CMS's intent to use some elements of this proposed rule, particularly its definitions of uniform modifications of coverage, to effectively operationalize dental plan recertification and continuation on the Exchanges.

We agree with CMS's goal of ensuring predictability and continuity of coverage for consumers, and in regard to the use of this rule for that purpose, believe that CMS as Exchange administrator could utilize the definitions of uniform modifications of coverage as outlined in the

proposed rule to determine whether plans offered on Exchanges in 2014 would renew for 2015 coverage. While the definition of uniform modifications of coverage can be useful for determinations of Standalone Dental Plans (SADP) renewals of coverage in states managed by the FFM, HIPAA excepted benefits should continue to be excluded from the rule itself.

The proposed rule reiterates current regulation, which states a modification made solely pursuant to applicable Federal or state law would be considered a modification, rather than a withdrawal, and proposes additional criteria through which a change could be deemed a uniform modification of coverage. We agree with the intent of current regulation and the proposed rules that a modification made solely pursuant to applicable Federal or state law should not be considered a withdrawal.

Modifications to recertifying dental plans we anticipate will be considered uniform modifications of coverage based on a Federal law pertain to the change in the maximum out of pocket (MOOP) limits as required by the 2015 Benefit and Payment Parameter Regulations. NADP contracted Milliman for actuarial analysis of the 2015 MOOP limits and according to that analysis, necessary modifications carriers may employ to minimize premium increases could include an increase in the deductible, an increase in the types of services to which the deductible applies, or lowering plan coinsurance levels, while still maintaining the Actuarial Value (AV) within the required range. Plans may employ some or none of these examples; however, if no adjustments are made to the benefit plan structure to accommodate the lower MOOP limit, it is estimated to result in premiums increases for both the High 85% AV and Low 70% AV plans.

While the proposed renewal and discontinuation notices are not applicable to dental plans within this regulation, carriers typically provide consumers similar notices when plan design elements are changed or discontinued within appropriate time frames. Additionally, an Exchange may also have an interest in understanding which plans will be renewed or discontinued. We believe this can best be determined via the ongoing relationship that has been established between issuers and CMS Exchange Account Managers.

B. SHOP Models and Timelines

The Final Benefit and Payment Parameters Rule reiterated the Department's intent to offer employee-choice in the Small Business Health Options Program (SHOP) and clarified for separately offered dental plans, employers in federally-facilitated SHOPs (FF-SHOP) may either offer a single SADP or permit their employees to choose any SADP offered at a particular AV level.

With this proposed rule, CMS would allow state departments of insurance (DOI) to recommend a SHOP not provide employee choice if that option would result in adverse selection in the State's small group market or if there would be insufficient issuers of QHPs or SADPs to allow for meaningful choice among the plans in 2015. To clarify the timing of these DOI determinations, the proposed rule offers two options: (1) state DOIs would make recommendations prior to the close of the initial QHP application window, with sufficient time for issuers to decide whether or not to participate in SHOP for the following plan year or (2) state DOIs would have a specific window of time to make a recommendation

regarding employee choice after the initial application window. In the latter case, issuers could decide to withdraw their QHP applications based on the SHOP's decision.

- *Recommendation*: NADP reiterates our recommendation that for 2015 employers should select a specific dental carrier for their employees. The complexity of employee choice for employers, and the federal government as the administrator will be dramatically more complex than employer choice. We again strongly recommend employee choice not be implemented until the SHOP is stable and has at least a year's operational experience before initiating this benefit offering.

- *Recommendation*: To extricate issuers and regulators from substantial work in submitting and reviewing plans that may only be withdrawn at a later date, NADP supports the proposed timeframe whereby state DOIs would make recommendations regarding employee choice prior to the close of the initial QHP application window.

C. Bases and Process for Issuer Decertification

Regarding the bases and process for decertification of a QHP offered by an issuer through an Exchange, the proposed rule would add that HHS may decertify a QHP if the issuer substantially fails to meet the requirements related to the cases forwarded to QHPs issuers through the Health Insurance Casework System (HICS). As the system is currently employed, issuers experience little to no consistency in how levels of urgency are applied to each case and assigned to issuers. The sheer volume of these cases coupled with inconsistent assignment to urgency levels and issuers indicates a potential lack of oversight in this process. For these reasons, the use of the HICS system as a basis for potential decertification is concerning, and with little information known regarding the internal assignment process, decertification based on these grounds may be particularly difficult to defend in an appeal, which issuers are afforded in regulation.

- *Recommendation*: More information regarding the HICS assignment process and oversight should be made available and clarified.

Again, NADP is appreciative of the opportunity to provide comments on this proposed rule and the process CMS will employ to recertify dental plans on Exchanges. NADP looks forward to future discussions on the critical issues we addressed above. 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

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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 approximately 90 percent of the 187 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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