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January 31, 2020

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

RE: Medicaid Program; Medicaid Fiscal Accountability Regulation (CMS-2393-P)

Dear Administrator Verma,

The National Association of Dental Plans (NADP) appreciates the opportunity to provide comments on the Proposed Rule: "Medicaid Program; Medicaid Fiscal Accountability Regulation" as issued in the Federal Register on November 18, 2019.

CMS requested comment on the definition of the proposed new permissible class of health insurance, which may include:

... insurers that issue policies for the group market and/or the individual market, including such coverage with high-deductible or "catastrophic" plans. The proposed class would also include issuers of short-term limited-duration policies as defined in § 144.103, as well as issuers of coverage for "excepted benefits" defined in 45 CFR 146.145 in the group market and the individual market at 45 CFR 148.220, such as dental-only and vision-only policies.

NADP is concerned that the expansive scope of this definition creates a class significantly different from any other class currently codified. The proposed class of "health insurance" would not only include carriers with drastically different benefits and costs, but also group together plans who offer different forms of coverage.

Recommendation: NADP strongly urges CMS to reconsider the addition of health insurance as a permissible class. The proposed class would create the potential for financial harm to dental benefits consumers, result in a decline in dental coverage, and deviate significantly from the intent and scope of existing statute.

Taxes on Stand-alone Dental Plans

Health care related taxes¹ are designed to aid states in fulfilling their obligation to fund Medicaid programs. § 433.68 explains that a health care related tax (commonly

¹ 42 CFR § 433.68

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referred to as a provider tax) must be specific to a “permissible class”. Within each class, the tax must be “broad based and uniform”, covering all non-government providers in the class. For example, if a state levies a tax on hospitals, it must tax every hospital in the state, not just those that accept Medicaid patients.

As a result of the broad-based and uniform requirement, the proposed health insurance class would require any state implementing a health care related tax on health insurance to include stand-alone dental plans (SADPs). If the proposed class is codified, a state may implement a tax of up to 6% on “premiums, covered lives, or revenue.” When taxes are levied on SADPs, it hurts everyone. A tax of up to 6% would be a substantial burden on employers, employees, and families who purchase dental plans. Consumers rely on stable and low premiums in the dental benefits market and are extremely price sensitive. Over the last 5 years, the industry has had negative price growth in some years, and the highest positive yearly change was only 1.35%. Dental plan premiums are also on average only 1/12 of medical premiums. In a survey, NADP found that should there be a tax on dental benefit premiums, more than half of those surveyed would drop dental coverage for themselves and their families.²

NADP has consistently opposed the implementation of taxes on SADPs because of their effect on the price consumers pay for dental care and the potential that increased cost could lead to lost coverage. By requiring health care related taxes on health insurance to include excepted benefits like stand-alone dental plans, NADP is concerned that the likelihood of states taxing SADPs increases. This would mean that an assessment of up to triple the federal health insurance tax (HIT) would be permissible. In 2019 President Trump signed into law the Further Consolidated Appropriations Act of 2019 (H.R. 1865) repealing the HIT, citing concerns surrounding its impact on the cost of insurance.³

Health Insurance Permissible Class Scope

Currently, 49 states and DC use health care related taxes to finance their share of Medicaid spending, including 44 taxes on nursing facilities and 40 on hospitals.⁴ While there are many types of nursing facilities⁵ and hospitals⁶, both classes are narrow compared to the proposed health insurance class. Medical plans, dental plans, and others that would be included in the proposed class are disparate in price, structure and function. In Medicaid, dental benefits are often administered separately from medical, and SADPs are sold independently of medical plans on federal and state insurance exchanges. SADPs are classified as excepted benefits under the Affordable Care Act and are not required meet the same plan structure requirements as medical plans. Dental coverage alone will not satisfy the employer or individual mandate. While a small rural hospital and a flagship university hospital may vary drastically

² NADP. “2012 Consumer Survey.” National Association of Dental Plans, May 2012. Ordering information at www.nadp.org.

³ Maurer, Mark. “Finance Chiefs Relieved After Repeal of Cadillac Tax.” The Wall Street Journal. Dow Jones & Company, December 23, 2019. <https://www.wsj.com/articles/finance-chiefs-relieved-after-repeal-of-cadillac-tax-11577137387>.

⁴ KFF. “States and Medicaid Provider Taxes or Fees.” The Henry J. Kaiser Family Foundation, November 13, 2018. <https://www.kff.org/medicaid/fact-sheet/states-and-medicaid-provider-taxes-or-fees/#footnote-223170-1>.

⁵ 42 CFR § 440.40

⁶ 42 CFR § 409.10



in their size or specialization, they much more closely resemble each other than medical and dental plans in structure, regulation, and purpose.

Health insurance is also a different type of service altogether from existing classes. All 18 existing permissible classes relate to the direct provision of care. While insurance and insurance carriers are integral to the healthcare ecosystem, they serve a different function from medical professionals rendering care. 42 CFR § 433.56 stipulates that the administration may create classes that are “Other health care items or services not listed above on which the State has enacted a licensing or certification fee”. In the three previous expansions of the list of permissible classes^{7,8,9} each respective administration limited their expansions to include only facilities or services that are involved in the direct provision of care. The creation of a new health insurance class would deviate from this precedent, and radically expand the scope of the statute.

While NADP members intimately understand the value of Medicaid programs, we believe that the proposed expansion of permissible class will harm the general population of dental patients with private coverage, reduce utilization, and damage the stability of the dental insurance ecosystem. We hope that the administration will consider other options for creating new financing avenues for state Medicaid programs.

NADP is appreciative of the opportunity to provide comments on the proposed rule. Questions regarding our comments should be directed to Teresa Cagnolatti, Director of Government & Regulatory Affairs at tcagnolatti@nadp.org or 972-458-6998 x111. Again, thank you for your consideration.

Sincerely,



Eme Augustini
Executive Director

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 more than 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.

⁷ 57 FR 55138

⁸ 58 FR 43180

⁹ 73 FR 9698

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