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National Association
of Dental Plans

December 4, 2020

The Honorable Alexander Azar
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Securing Updated and Necessary Statutory Evaluations Timely (HHS–OS–2020–0012)

Dear Secretary Azar,

The National Association of Dental Plans (NADP) offers the following comments on the proposed rule “Securing Updated and Necessary Statutory Evaluations Timely” published in the Federal Register on November 4, 2020. The rule would require the Department of Health and Human Services (HHS) to review every economically significant regulation within 10 years of its effective date or, for regulations older than 10 years, within two years of the effective date of this rule. If a regulation is not reviewed by its respective deadline, it will be repealed. While NADP values the important role administrative review plays in improving public policy, we are concerned that this rule will cause significant uncertainty and has the potential for unintended consequences.

- **Recommendation:** NADP opposes the rule in its current form and encourages HHS to reconsider the repeal of regulations after the 10-year mark if a review is not completed. The potential for regulations lapsing unintentionally without any review would lead to extensive confusion and compliance concerns for dental benefits plans by creating a regulatory environment that is subject to near-constant change. An extension of the comment period of the rule by 150 days would also assist the dental benefits industry in fully assessing the impact of the proposed rule.

While most insurance regulation is conducted at the state level, many rules implemented by the federal government impact the dental benefits industry. These range from requirements for plans participating in government programs or

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exchanges to the very organization of programs including Medicaid, CHIP, and Medicare Advantage. These programs are governed by extensive federal rulemaking dating back over a decade, with tens of thousands of pages in explanation, policy analysis, and implementation guidance. Each rule underwent an economic analysis at the time of its implementation as is required by law. For example, the 2016 Medicaid Managed Care Final Rule totals over 400 pages in the Federal Register, and extensively altered care delivery, cost control, contracting, network, and reporting requirements for Medicaid managed care programs. The rule required extensive public input and analysis in order to fully evaluate its impact., NADP's members spend significant resources on both policy analysis and compliance each year to ensure their business is operating well within federal and state requirements as well as providing the best coverage and experience for enrollees. The introduction of uncertainty surrounding termination of regulations could increase regulatory complexity, radically increase compliance costs, and significantly impact plans that participate in public programs such as Medicaid and CHIP by requiring those plans to establish systems to monitor HHS review deadlines, track which regulations are still applicable, and engage HHS to encourage timely review of important regulations.

NADP members value effective and periodic regulatory review. Alongside stakeholder engagement, revisiting previous federal actions is a critical step in policy evaluation. Annually, NADP engages with CMS on the Notice of Benefit and Payment Parameters for the federal exchanges, improving policy and tuning it to the needs of plans, consumers, and the marketplace. But the proposed rule leaves open the door for the expiration of regulations without any review and does not provide an effective backstop for the possibility of unintentional rule expiration. Furthermore, the proposed rule does not include a prioritization scheme for regulatory review, leaving further uncertainty as to how regulations will be ordered for review and if major rules will be reviewed before the expiration deadlines.

Unintentional rule expiration could also negatively impact consumers and dental benefits enrollees. HHS regulations set safety guidelines for medical devices, food, prescription drugs, and other goods critical to oral health. An unintentional expiration of these guidelines or regulations surrounding the execution of government programs could harm quality of care or consumer safety.

While NADP has initial concerns about the proposed rule, a further analysis of its impact to the dental benefits industry would require an extension of the comment period. If possible, an extension of 150 days, for a total of 180 days of comments would significantly improve our ability to evaluate the true scope of the potential impact of this rule.

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NADP is appreciative of the opportunity to provide comments on the proposed rule. Questions regarding our comments should be directed to Owen Urech, Government Relations Analyst at ourech@nadp.org or 972-458-6998 x108. 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.

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