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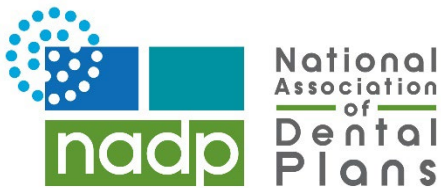
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General Comment

Please see the attached comments from the National Association of Dental Plans.

Attachments

NADP ltr re 2023 NBPP Final



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January 27, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Blvd.
Baltimore, MD 21244

RE: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023 (CMS-9911-P)

Dear Administrator Brooks-LaSure,

The National Association of Dental Plans (NADP) appreciates the opportunity to provide comments on the proposed rule: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023 (CMS-9911-P) as published in the Federal Register on January 5, 2022.

The rule would introduce new network adequacy requirements for standalone dental plans (SADPs) and medical Qualified Health Plans (QHPs) participating on marketplace platforms, increase disclosures for downstream entities, and make other changes that effect dental coverage. NADP is seeks to provide recommendations on several provisions:

Network Adequacy Requirements (§ 156.230)

- **Time and Distance Requirements:** NADP seeks clarification that the requirements for medical QHPs to include dental providers in their networks are only applicable if the medical QHP provides an embedded pediatric dental essential health benefit (EHB). Under the ACA, medical QHPs are not required to include the dental EHB if there is a SADP offering coverage in the same area.¹ Adding a requirement that medical plans not offering an embedded dental benefit must include dental providers in their networks or justify their absence would create redundancies which could confuse dental coverage requirements and the role of SADPs on the marketplaces.

¹ 42 U.S. Code § 18022(b)(4)(F)

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- **Reporting on Telehealth:** Due to the highly limited utilization of teledentistry by dental providers and the significant administrative burden associated with telehealth data collection, SADPs should be exempt from reporting on telehealth services through the Essential Community Provider/ Network Adequacy (ECP/NA) template.
- **Waited Period Requirements:** NADP seeks affirmation that the scope of waiting period requirements includes only dentists currently classified as dental specialists on ECP/ NA reporting forms providing care in a non-emergency setting. Additionally, to match the standard working calendar of most dental practices the waiting period should be measured in business days instead of calendar days.
- **Administrative Burden Calculation:** NADP believes that the estimated burden on SADPs for network adequacy data collection underestimates the cost of collection and should be reassessed. In particular, the telehealth data collection requirements would substantially increase costs, as dental plans do not currently collect data on who is offering teledentistry services.
- **Essential Community Providers:** NADP suggests the increase in the essential community provider (ECP) requirements for SADPs be altered to 25% in PY2023 and reevaluated in future rulemaking. While dental plans actively recruit ECPs and participate in federal programs to offer dental coverage to underserved communities, there are significant barriers to recruitment and maintenance of ECP providers in dental networks. Dental ECPs often work part time at a facility and focus on care for the uninsured or those enrolled in government programs instead of private insurance. Furthermore, NADP also requests the time between contact attempts for ECP justification for dental providers be extended from 90 days to 180 days, as the current frequency of contacts has not proven successful in increasing ECP participation.

Downstream Entities (§ 156.340): NADP requests an extension of the timeline for implementation of the requirements for delegated entities to retain information until PY2024. The requirements would apply to dental plans operating as downstream entities for medical QHPs offering embedded dental benefits and could require an expansion of administrative capacity and data storage resources that would be challenging to implement in the proposed timeframe.

User Fee: NADP supports maintaining the user fee at 2.75% on FFEs and 2.25% on SBE-FPs as stated in the proposed rule.

Independent Purchase of SADPs on Marketplaces: NADP recommends CMS allow individuals to purchase an SADP on the marketplace without purchasing a medical FFE, expanding access to dental coverage through a trusted, centralized platform for those who may have medical coverage through other means including employment or Medicare.

Wait Time Standards

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At § 156.230 the proposed rule identifies that for SADPs “only the dental provider specialty within the Specialty Care (Non-Urgent) category of the appointment wait time standards would apply”. NADP seeks clarification from CMS that the dental providers included in the category of specialty care (non-urgent) are only those providing specialist dental treatment. In the PY2022 ECP/ NA reporting template,² dental providers are split into four categories:

- General Dentistry
- Endodontists
- Periodontists
- Orthodontists

Endodontists, periodontists, and orthodontists are all considered dental specialists, and therefore should be the only dental providers included in the waiting period requirements. Additionally, unlike hospitals or other medical facilities most dental providers do not treat patients seven days a week. NADP suggests that the waiting period standard instead be measured in business days, which would more accurately reflect the timeframe dental providers are treating patients.

Time and Distance Requirements for SADPs and QHPs

NADP seeks clarity on the application of the dental provider time and distance requirements for medical QHPs. The proposed rule indicates that the same dental provider requirements would be made for medical and dental plans on the marketplaces. However, the overwhelming majority of medical QHPs do not offer dental coverage, instead relying on SADPs to cover the pediatric dental essential health benefit and offer adult dental coverage. Since 2014, every state has had more dental offerings than medical QHPs and there have always been dental coverage options available for individuals enrolling on the marketplace platform. NADP seeks clarity from CMS that the requirements for medical QHPs to meet time and distance standard for dental providers apply only to those medical QHPs which offer an embedded dental benefit. Otherwise, many medical QHPs would be required to establish networks for dental providers even when they are not offering dental benefits as part of their plan offerings.

Telehealth Data Collection

NADP recommends that CMS exempt standalone dental plans and embedded dental coverage in a medical QHP from the proposed rule’s telehealth data collection requirement. While teledentistry is an emerging format for dental providers to provide care to patients, its limited utilization and

² <https://www.qhpcertification.cms.gov/s/PY2022EcpNetworkAdequacyTemplate.xlsx?v=1>



implementation make it considerably less common than telehealth options in medical plans. Dental providers are usually only able to bill dental plans for two CDT codes;³

D9995 – synchronous; real-time encounter. (Reported in addition to other procedures (e.g., diagnostic) delivered to the patient on the date of service.)

D9996 – asynchronous; information stored and forwarded to dentist for subsequent review. (Reported in addition to other procedures (e.g., diagnostic) delivered to the patient on the date of service.)

Both codes are limited in utilization and coverage. During the initial phase of the COVID-19 pandemic in 2020, teledentistry utilization rose for individuals in areas where dental offices were closed by law.⁴ Dental care providers sought to utilize teledentistry services as a means of preventing an emergency room visits for oral pain when hospital resources were under significant strain. By August of 2020, most dental offices resumed treating patients at pre-COVID levels and teledentistry use returned to normal rates. Dentists were able to resume exams in person and provide treatment with extremely low risk of COVID-19 transmission thanks to longstanding PPE requirements in dental settings.

While teledentistry oral exams may be still be covered under these CDT codes, there are few providers who use them regularly. Surveying dental providers in a plan's network would not provide an increased access to dental coverage through teledentistry, instead it would impose a large administrative burden on plans to determine the teledentistry availability from an extremely small group of providers.

Essential Community Providers

NADP suggests the implementation timeline of the increase in the essential community provider requirements for SADPs be amended to 25% in PY2023 and re-evaluated in future rulemaking as needed. Dental ECPs provide vital coverage in low-income areas through clinics, educational institutions, and private practices. The Ryan White HIV/AIDS program specifically allocates funds for dental treatment, which is critical for immunocompromised patients undergoing treatment for HIV/AIDS. Before 2017, SADPs were required to meet a 30% threshold of ECPs in network to be certified on the exchanges. This was changed to 20% in 2017, and the proposed rule would increase the requirement to 35%. While NADP agrees that ECPs are critical to oral health in low-income

³https://www.mouthhealthy.org/~media/ADA/Publications/Files/ADAGuidetoUnderstandingandDocumentingTeledentistryEvents_v3_2021Aug20210804t165513.pdf?la=en

⁴ Ghai S. Teledentistry during COVID-19 pandemic. *Diabetes Metab Syndr.* 2020;14(5):933-935.



communities, SADPs on the exchanges encounter multiple obstacles that would limit improvements to oral health access by increasing the ECP requirement.

While many of the providers on the finalized CMS ECP list offer dental care, clinics may not accept reimbursement from private insurance, instead connecting their patients with Medicaid or CHIP programs (which include pediatric dental coverage in every state and some form of non-emergency adult dental in 31 states) or offering free treatment for which costs are covered by local, state, and federal grants. In the Ryan White program, providers are compensated for patients who cannot afford dental treatment through the Dental Reimbursement Program. Other providers like Federally Qualified Health Centers may have dental care available but it is often oriented towards those who can't afford dental coverage or are enrolled in Medicaid or CHIP.⁵ These populations have significant dental care needs and the limited resources of some ECPs may reduce their capacity to work with private plans. For these reasons contacting ECP providers are also a difficult part of dental network recruitment.

As a result, there is often not a direct correlation between increasing requirements for ECP coverage for SADPs and increased access to dental care. For SADPs to attempt in good faith to meet the ECP threshold, NADP requests a slower rollout of the ECP requirement, raising the rate to 25% in PY2023 and evaluating its effect on dental access. A slower rollout would allow more time for dental plans to conduct thorough outreach to ECP providers and ensure more meaningful access to care through SADP coverage when enrollees encounter ECP providers.

NADP also suggests that increased attention be given by CMS in recruiting dental providers to become ECPs and examine ways to improve equity in dental coverage by encouraging states to expand Medicaid coverage to include a comprehensive adult dental benefit, which has been repeatedly shown to improve oral health outcomes and reduce oral health related hospitalizations.

Independent Purchase of SADPs

Finally, NADP recommends that CMS allow for the independent purchase of dental plans from medical QHPs on the federal marketplaces. The marketplaces have been an important avenue for access to dental coverage and have allowed individuals to shop for dental plans on a trusted platform to easily compare benefits and premiums. However, because Healthcare.gov links enrollment of medical and dental plans, consumers using the federal marketplace are prohibited from purchasing a dental plan separate from a Qualified Health Plan (QHP).

⁵ Crall J. et al. Improving the Oral Health Care Capacity Of Federally Qualified Health Centers. *Health Affairs*. 2020; 35(12).



In contrast, states have facilitated independent purchase of dental coverage on SBMs (including every state that has switched to a state-based marketplace since 2018) and in so doing have seen an increase in annual dental enrollment. State officials have praised independent purchase as an effective means of promoting oral health coverage. This option, consistent with current law, would be particularly beneficial to consumers who do not have access to dental coverage through their employer or Medicare.

Conclusion

NADP is appreciative of the opportunity to provide comments on the proposed rule and continues to be dedicated to expanding oral health coverage through the exchange platforms.

Questions regarding our comments should be directed to Owen Urech, Director of Government Relations at ourech@nadp.org or by phone at (972) 458-6998 x 111. 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 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.

National Association of Dental Plans

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Comment on CMS-2021-0196-0001

Submitter Information

Email: ashaw@deltadental.com
Organization: Delta Dental Plans Association

General Comment

Enclosed is a comment letter to the Proposed 2023 Notice of Benefit and Payment Parameters from the Delta Dental Plans Association. Please contact Adam Shaw, Director of Federal Policy & Regulatory Affairs, for further information at ashaw@deltadental.com or (443) 571-7707.

Attachments

Delta Dental Plans Association Comment Letter to 2023 Proposed Notice of Benefit and Payment Parameters

January 27, 2022

Ms. Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9911-P
P.O. Box 8016
Baltimore, MD 21244-8016

Re: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023 (CMS-9911-P)

Dear Administrator Brooks-LaSure:

I am writing on behalf of Delta Dental Plans Association (Delta Dental) in response to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services' (CMS) proposed rule entitled "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023" (Proposed Rule), published on January 5, 2022.

Across the nation, over 80 million Americans trust Delta Dental to ensure that they have access to the oral health care they need through our 39 member companies. Delta Dental member companies offer high quality, Patient Protection and Affordable Care Act-compliant products at affordable prices both on and off the Exchanges. As of the third quarter of 2021, our member companies offered coverage including stand-alone dental plans (SADPs) on the public Exchanges in 43 states and the District of Columbia, with over 800,000 individuals enrolled.

Overarching Comments

We support the Proposed Rule's goals of maintaining a stable regulatory environment, providing states additional flexibility, reducing unnecessary burdens on stakeholders, empowering consumers, ensuring program integrity, and improving affordability. Our comments include some additional recommendations that we believe will improve consumer choice and help ensure the ongoing affordability and accessibility of the pediatric dental benefit.

For ease of reference, our specific comments correspond to the order in which the provisions appear in the Proposed Rule, and not in order of priority.

Specific Comments

[User Fees: \(E. Part 156 - Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges; 1. FFE and SBE-FP User Fee Rates for the 2023 Benefit Year \(sec. 156.50\)\)](#)

The Proposed Rule would maintain the 2022 Benefit Year FFE user fee rate of 2.75 percent and the user fee rate for the SBE-FP of 2.25 percent. User fees are a cost that plans must factor in when deciding whether to participate on an Exchange. Avoiding increases in user fees may help to incentivize additional carriers to participate in the Exchanges, providing consumers with additional choice.

Recommendation: Delta Dental supports the proposed retention of the 2022 Benefit Year user fee rates.

Network Adequacy: (E. Part 156 – Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges; 11. Network Adequacy Standards (sec. 156.230))

Proposed Network Adequacy Approach. CMS proposes quantitative prospective network adequacy reviews for medical QHPs and SADPs offered through FFEs as part of the certification process. For the 2018-2022 plan years, CMS determined that all states had sufficient legal authority and means to assess the adequacy of plans’ provider networks. However, in 2021 a federal court vacated several CMS policies including the policy that deferred to states’ network adequacy reviews that met certain conditions.¹ In response, CMS proposes to evaluate network adequacy through time and distance and appointment wait time standards. Issuers that are unable to meet the proposed standards would be able to submit a justification to account for variances for CMS’s review and approval. If a plan uses tiered networks (as defined) to count toward satisfaction of network adequacy standards, providers must be contracted within the network tier that results in the lowest cost-sharing obligation to enrollees. CMS further proposes to collect information from all issuers on whether their network providers offer telehealth services.

- **Proposed Time and Distance Standards.** The Proposed Rule states that time and distance standards would be calculated at the county level and vary by county designation.² The county type designation method would be based on the population size and density parameters of individual counties, in alignment with the Medicare Advantage program. The Draft 2023 Letter to Issuers in the Federally-facilitated Exchanges (Letter) sets forth the proposed methodology³ and we are providing comments concerning the Letter’s provisions in a separate comment letter, in accordance with CMS’s instructions.
- **Proposed Appointment Wait Times.** CMS proposes that issuers would need to attest to meeting these standards, which would be based on a specialty list consisting of behavioral health, primary care (routine), and specialty care (non-urgent) services that is informed by prior federal network adequacy requirements and consultations with issuers and federal and state government programs such as Medicare Advantage and Medicaid.⁴ The dental provider specialty within specialty care (non-urgent) would apply to SADPs. CMS would conduct post-certification reviews to monitor compliance with the wait time standards in response to complaints or through random sampling. The Letter sets forth the proposed methodology⁵ and we are providing comments concerning the Letter’s provisions in a separate comment letter, in accordance with CMS’s instructions.

Discussion:

- **Comments on Proposed Time and Distance Standards.** Delta Dental appreciates that CMS’s proposal would be incorporating a quantitative network adequacy approach from Medicare Advantage that regulated entities are familiar with as opposed to adopting untried standards. While detailed time and distance and wait time standards may be suitable to measure medical network adequacy, they are quite complex and present extensive operational and reporting requirements. Dental benefits are different from medical benefits and the Proposed Rule’s methodology may not be germane to SADPs.

¹ *City of Columbus et al. v. Cochran*, 523 F. Supp. 3d 731 (D.MD. 2021)

² 87 FR 584 at 681.

³ <https://www.cms.gov/files/document/2023-draft-letter-issuers-508.pdf>

⁴ 87 FR 683.

⁵ <https://www.cms.gov/files/document/2023-draft-letter-issuers-508.pdf>

For example, dental benefits customarily are provided by a relatively large group of independent practices of general dentists, with a smaller cohort of independent dental specialist practices providing services like oral and maxillofacial surgery, orthodontics, and periodontics. On the other hand, medical benefits are commonly provided by practice groups many of which are quite large and are affiliated with provider systems.

For the foregoing reasons, a simpler, less burdensome methodology could appropriately assess dental network adequacy. For example, a threshold in terms of the number of dental providers in each SADP network as a percentage of all dentists in the state or, for a plan without a statewide service area, all dentists in the SADP's approved operating counties would also demonstrate adequacy of access yet would be simpler for both CMS and SADPs to effectuate and interpret.

An additional concern is that CMS does not specify whether dental specialists are included in the time and distance standards, and if so, which types of dental specialists are included. Thus, if the proposed time and distance standards are retained, clarification is needed on this point.

- **Comments on Proposed Wait Time Standard.** Delta Dental has several concerns about the proposed wait time standard. First, it is important to note that many dental carriers customarily have contractual wait time standards for participating network providers. Therefore, any additional benefits the proposed wait time standard may bring may not justify their additional reporting burden. Additionally, the Proposed Rule does not clearly indicate whether the wait time standard applies to general dentists and dental specialists or is limited to dental specialists. The preamble at page 683 states that “[f]or . . . SADPs, only the dental provider specialty within the Specialty Care (Non-Urgent) category of appointment wait time standards would apply.” Since “dental provider specialty” is not defined, clarification is needed as to whether the term means all dental providers (general dentists and specialists) or just dental specialists. Under either reading, clarification is needed as to which dental specialists CMS intends to include. If CMS retains the proposed wait time standards, Delta Dental believes that a uniform requirement would be difficult to meet in the non-urgent dental care setting and suggests different wait times for care provided in the urgent, non-urgent restorative, and preventative/maintenance settings. Under this approach, the different categories could be defined by reference to the Current Dental Terminology (CDT) codes.

The following comments apply to both the proposed time and distance and wait time standards:

- **Comments on Justification Process and Tiered Networks Rule.** We agree that a justification process should be available to QHP issuers that cannot meet the required standards. Further, CMS proposes tiered network requirements for both standards at proposed sec.156.230(a)(1).⁶ However, since tiered networks are less common in SADPs than in medical QHPs, the tiered network rules arguably are less necessary for SADPs. The preamble's stated reason for the tiered network proposal is that CMS is aware of instances in which issuers have attempted to satisfy QHP certification standards related to networks using providers that would require enrollees to pay higher cost-sharing.⁷ While Delta Dental agrees with CMS that the purpose of network adequacy rules is to ensure that QHP enrollees have reasonable access to a sufficient number and type of providers, the Proposed Rule does not discuss the prevalence of the cited problem. Rather than implement a new requirement that adds further complexity to SADPs' existing compliance burden, any issues may be addressed more effectively through enrollee feedback and the program integrity process.
- **Comments on Telehealth.** CMS proposes to require all issuers seeking QHP certification through the FFEs (which should include SADPs) to submit information about whether all their network providers offer telehealth services because this information could be relevant to CMS's analysis as to whether a QHP meets network adequacy standards.⁸ For the 2023 plan year, the telehealth data would be for

⁶ 87 FR 726-7.

⁷ 87 FR 684.

⁸ 87 FR 684.

informational purposes to help inform future development of telehealth standards and would not be displayed to consumers. As telehealth in dentistry (tele-dentistry) matures and develops and utilization increases, we agree that there could be value to this reporting. However, since tele-dentistry is newer and less widespread than telehealth, requiring dental carriers to report as to whether all their network providers use tele-dentistry would not yield useful information at this time.

Delta Dental agrees with CMS that the proposed telehealth reporting would result in an increased burden to SADPs,⁹ but has questions concerning the estimate in the Proposed Rule. First, the total projected time for completion of the Essential Community Provider/Network Adequacy template by SADPs, including the new telehealth reporting, is only four hours at a cost of \$280.90¹⁰ which does not include any time by a separate reviewer, as is often required. Delta Dental believes that the estimated hourly rate and the total estimated hours for completion of the ECP/NA template with the proposed changes are too low.

Recommendations: Delta Dental requests that CMS clarify whether the proposed time and distance standard is limited to general dentists only. Further, Delta Dental requests that CMS specify the definition of “dental provider specialty” for purposes of the appointment wait time standard in order to clarify whether the standard applies to general dentists and dental specialists or only dental specialists. In light of the foregoing, Delta Dental requests that the implementation of the proposed time and distance and wait time standards be delayed until 2024. Lastly, Delta Dental requests that SADPs be exempt from the proposed rules on tiered networks and telehealth reporting.

Network Adequacy: (E. Part 156 – Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges; 12. Essential Community Providers (sec. 156.235))

Proposed Essential Community Providers (ECPs) Approach. ECPs include Federally Qualified Health Centers and other providers set forth at sec. 156.235(c) that serve predominantly low-income and medically underserved individuals and provide medical and/or dental services. QHP issuers must include a sufficient number and geographic distribution of ECPs in their networks to ensure reasonable and timely access. A plan has a sufficient number and geographic distribution of ECPs if it demonstrates that its network includes at least a minimum percentage of ECPs as participating practitioners.¹¹ A plan that cannot satisfy the ECP standard must include a narrative justification as part of its QHP application.¹²

CMS proposes to increase the required ECP provider percentage from 20 to 35 percent beginning with the 2023 plan year.¹³ CMS would consider a plan to have met the standard if the issuer contracts with at least 35 percent of available ECPs in each plan’s service area to participate in its provider network. The same ECP calculation methodology outlined in 2018 guidance would apply. As in prior years, CMS anticipates that any QHP issuer falling short of the 35 percent threshold could satisfy the standard through ECP write-ins and justifications. CMS also proposes that plans that use tiered networks must contract with ECPs within the network tier that results in the lowest cost-sharing obligation to count toward the issuer’s satisfaction of the ECP standard.

Discussion. The preamble to the Proposed Rule states that “[i]n assessing the appropriate [plan year] 2023 ECP standard for medical QHP and SADP QHP certification, HHS has considered multiple options for strengthening our ECP policy. After careful consideration, HHS proposes the approaches described below.

⁹ Id.

¹⁰ 87 FR 699.

¹¹ 45 CFR 156.230(a)(2)(i).

¹² 45 CFR 156.235(a)(3).

¹³ See 87 FR 685. During the early years of the Exchanges, (2015-2017), the ECP threshold was 30 percent. See Id.

HHS also seeks comment on ideas for further strengthening ECP policy.”¹⁴ However, the section of the preamble on ECPs does not state the rationale for changing the ECP standard.¹⁵ CMS proposes a substantial increase from 20 to 35 percent that would in our estimation be difficult for many SADPs to meet. Therefore, it would aid in understanding the ECP proposal to have additional context about any deficiencies in the current ECP approach.

As noted above, not all ECP locations provide dental care, which may result in distorted results for SADPs. The numerator for the calculation of the ECP percentage consists of qualifying ECPs within the plan’s service area plus the number of good faith contract offers extended to Dental ECPs located within the plan’s service area that were rejected by the provider and identified by the issuer within its narrative justification.¹⁶ If the denominator includes ECPs that do not provide dental care, SADPs would be unfairly penalized.

Recommendations: Delta Dental requests that any increase in the ECP percentage from 20 to 35 percent be delayed until 2024 while CMS provides additional information demonstrating the necessity for and possible alternatives to the increase. Delta Dental also requests that, for the purposes of calculating the ECP percentage for SADPs, confirmation that only ECP locations that provide dental services be included in the denominator as was the case under 2018 guidance.

Downstream Entities: (E. Part 156 – Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges; 14. Standards for Downstream and Delegated Entities (sec. 156.340))

In the Proposed Rule, CMS includes several changes to the rules on downstream and delegated entities (DDEs). Specifically, proposed sec. 156.340(b)(5) would add a requirement that all agreements between QHP issuers and their DDEs state that the relevant Exchange may demand and receive the DDE’s books, contracts, computers or other electronic systems, including medical records and documentation relating to the QHP issuer’s obligations under the section, in accordance with Federal standards, until ten years from the final date of the agreement period.

CMS states that the amendment pertains to record retention and is to ensure that the relevant Exchange authority has access to the records and information from DDEs that are necessary to ensure compliance with applicable minimum Federal standards related to Exchanges, and that the proposed amendments will better align the regulation with its intent and prevent confusion on the part of DDEs.¹⁷ The Regulatory Impact Analysis states that the proposed amendments are intended to hold QHP issuers in all Exchange models responsible for their DDEs’ compliance with applicable Exchange standards and to make their oversight obligations and the obligations of the DDEs, explicit.¹⁸ All proposed amendments to section 156.340 would be applicable as of the effective date of the final Notice of Benefit Payment and Parameters, which is generally 60 days after its publication.

The proposal represents a major change in the rules on DDEs with a short effective date for implementation. The proposal’s impact extends beyond record retention because DDEs would also be required to respond to information requests from Exchange authorities for up to ten years from the end of the DDE agreement. It is uncertain whether QHP issuers and their DDEs would need to amend contracts that are in effect during

¹⁴ 87 FR 685, 686.

¹⁵ 87 FR 684 also mentions ECPs but in the context of the explanation of the need for the proposed tiered network rule.

¹⁶ See *Addendum to 2018 Letter to Issuers in the Federally-facilitated Marketplaces* at 35, available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2018-Letter-to-Issuers-in-the-Federally-facilitated-Marketplaces-and-February-17-Addendum.pdf>

¹⁷ 87 FR 687.

¹⁸ 87 FR 715.

2022 solely to comply with the proposed change. If such amendments are necessary, Delta Dental is concerned about the level of compliance activities that would have to take place within the specified timeframe.

According to the preamble at page 715, CMS anticipates that the proposed change will impose a minimal burden on QHP issuers and DDEs, and notes that some issuers may need to make changes to existing contracts and record retention policies. Many QHP issuers have numerous DDEs that perform critical functions for them with contracts that would need amendments. The processes for amending such contracts and reviewing and revising the related record retention policies are frequently time-consuming and involve several departments at the QHP and the DDEs.

Additionally, the proposed amendment would increase DDEs' responsibility and risk. This often leads to DDEs increasing their rates which QHP issuers would have to absorb as an added expense. Delta Dental notes that the Proposed Rule does not contain an estimate of the costs that QHP issuers and their DDEs could expect to incur in order to comply with the new requirement and such an estimate would be valuable to regulated entities in analyzing the likely impact of the proposed change.

Recommendation: Delta Dental requests that CMS delay the implementation of the proposed provision to develop an estimate of the costs of the proposed amendment to the DDE requirements.

Thank you for the opportunity to comment on the Proposed Rule. We are available to provide additional information, in writing or through discussion, on ways to strengthen choice and access to dental care. Our member companies look forward to the publication of the final rule so they can prepare their 2023 filings.

Sincerely,



Adam M. Shaw
Director, Federal Policy & Regulatory Affairs