



December 22, 2014

The Honorable Sylvia Mathews Burwell, U.S. Department of Health and Human Services

The Honorable Marilyn Tavenner, Centers for Medicare & Medicaid Services

Attention: CMS-9944-P

P.O. Box 8016

Baltimore, MD 21244-8010

Sent electronically via [www.regulations.gov](http://www.regulations.gov)

Re: HHS [Notice](#) of Benefit and Payment Parameters for 2016

Dear Secretary Burwell and Administrator Tavenner,

The National Association of Dental Plans (NADP) offers the following recommendations to the November 26, 2014 Federal Register Notice of Benefit and Payment Parameters for 2016 (Notice). The role of dental benefits within the Affordable Care Act (ACA) as a HIPAA-excepted benefit is complicated and we appreciate the Notice's attention to that fact. However, further clarification needs to be made to recognize the variations between medical and dental insurance.

NADP's comments reflect concern on the Notice's implications to dental benefits offered as part of Qualified Health Plans (QHP) or within Stand Alone Dental Plans (SADP).<sup>i</sup> These comments parallel the order of the Notice, not the order of importance to the dental benefits industry.

**Section §147.104: C. Health Insurance Reform Requirements 1. Guaranteed Availability of Coverage (p.70681)**

Clarifies individuals have 60 days from a triggering event to select a plan.

**1. Recommendation**

NADP recommends a 30 day period for selection of a plan to parallel the current commercial market.

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**Section §147.106:** *C. Health Insurance Reform Requirements 2. Guaranteed Renewability of Coverage (p.70681)*

Provides detailed concern related to mergers and acquisitions among carriers and the impact on enrollees.

**2. Recommendation**

Guaranteed renewability is not applied to SADPs as they are HIPAA-excepted benefits; however, there are state processes in place related to carrier mergers so as not to interrupt enrollee coverage. In addition, mergers are typically a year or multi-year process with carriers integrating timelines that will follow external technical deadlines such as the maintenance of HIOS numbers. NADP recommends HHS not address carrier merger scenarios as there are processes already in place addressing concerns laid out in the Notice.

**Section §155.205:** *G. Exchange Establishment Standards 2. General Functions of an Exchange a. Consumer Assistance Tools and Programs of an Exchange (p.70704)*

Clarifies the applicability of English proficiency assistance, and discusses additional requirements.

**3. Recommendation**

As mentioned in the Notice, QHP and SADP issuers offer language assistance call centers, which have been used with great success by enrollees. NADP agrees carriers should offer a notice to their enrollees in multiple languages with the availability and instructions on how to reach the carrier's language assistance call center.

Additional interpretation elements, such as translated documents, are not warranted for SADPs. Consumers impacted by these services from a dental carrier offering pediatric oral services is far less than a medical carrier servicing an entire population. In states which have mandated additional language assistance, the requests by enrollees have been so minimal that the costs associated with additional elements such as translated documents or consumer surveys have not been warranted and are excessive when compared to the small and voluntary nature of the dental premium. NADP opposes any application of requirements beyond language assistance call centers and a corresponding notice.

In general, when language assistance is studied in the future by reviewing consumer requests, the assessment should differentiate between medical and dental policies and be included as part of any evaluation.



**Section §155.335:** *G. Exchange Establishment Standards 3. Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs a. Annual Eligibility Redetermination (p.70707)*

Reviewing whether automatic reenrollment ‘hierarchies’ would be beneficial in assisting consumers in maintaining coverage and the factors that should be included in determining auto, or “passive” reenrollment.

**4. Recommendation**

Prior to any discussion regarding new hierarchies, NADP recommends addressing the need to uncouple the purchase of QHPs and SADPs. Reenrollment and direct enrollment is currently problematic for SADPs as enrollees cannot keep their SADP if they seek to change their QHP.

As 2014 to 2015 is the first year for passive reenrollments and the utilization of the crosswalk template, NADP recommends delaying any discussion of hierarchies within reenrollment until at least two years of data can be reviewed and consumer surveys can be administered by the FFM. Consumer surveys will provide a better understanding of an enrollee’s choice of benefits and inform government on the best future hierarchies and processes to facilitate those choices. Hierarchies should not be based on premium alone.

**Section §155.400:** *G. Exchange Establishment Standards 4. Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans a. Enrollment of Qualified Individuals Into QHPs (p.70707)*

Proposes consistent premium payment deadlines to correlate with an enrollee’s effective date.

**5. Recommendation**

NADP recommends the FFM parallel the commercial market and make the effective date for a new enrollee’s policy occur when carriers receive payment and the carriers correlate the starting date to the 1<sup>st</sup> or 15<sup>th</sup> of the month from that date as proposed in the Notice. The Notice provides an alternative to provide additional days after the coverage effective date to receive payments; however, this raises concerns. Allowing for a delayed initial payment places the carrier at financial risk for claims, and may strain the carrier’s relationship with the provider, if a consumer never pays for their policy and the carrier seeks repayment of claims. While it is completely understood that enrollees may face difficulties and pay a premium late, there are grace periods built into their policies after they have been effectuated that can address these scenarios.

**Section §155.410:** *G. Exchange Establishment Standards 4. Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans b. Annual Open Enrollment Period (p.70708)*



Changes the open enrollment period to October 1 and extends through December 15 of the calendar year preceding the benefit year, to start in year 2015.

#### 6. Recommendation

NADP supports the proposed timeline within the Notice and recommends this provision be clarified as applying only to the Individual (AHBE) Exchange, while the SHOP remains open with ongoing enrollment for employers.

#### **Section §155.705, §155.735, §156.285: G. Exchange Establishment Standards 6. Exchange Functions: SHOP (p.70712)**

Clarifies continuation of coverage for former SHOP employees; also addresses minimum participation requirements, credit card usage and other select issues.

#### 7. Recommendation

- The Notice extends the small group participation standards to the small group private market, which NADP opposes as it would cause adverse selection between Exchange certified SADPs and non-certified SADPs, as they both exist in the private marketplace.
- NADP endorses the addition of credit cards for employers as flexible payment options are important. However, the credit card processing fees should be allowed as an added charge for this accommodation. Processing fees cannot be absorbed by the carriers as the minimal and voluntary dental premium would be adversely impacted.
- NADP recommends termination notices should only be forwarded to employees and their adult dependents - there is no need to provide termination notices to dependent children. In addition, termination notices provided within 30 days are more appropriate than the Notice proposal at 24/48 hour turnaround times.
- The market remains in flux due to the changes of the ACA, and NADP recommends a two-year delay to defining the increase of the small group market to 100 employees.

#### **Section §156.115: H. Issuer Standards Including Exchanges 2. Essential Health Benefits Package b. Provision of EHB (p.70717)**

Clarifies EHB coverage for pediatric services should continue until the end of the plan year in which the enrollee turns 19.

#### 8. Recommendation

NADP strongly opposes this proposal as it drastically conflicts with all other ACA and commercial policies. When a child turns 19, it is a qualifying event and the child can be shifted to adult SADP coverage. This follows the current SEP standards as described within these regulations.

The proposed change would require difficult administrative **manual** changes for carriers along with confusion to the brokers and agents as a non-standard practice. A longer policy



year with additional months of pediatric coverage will increase the cost of premium. This will cause the refiling of policies or create an added expense for policies that are in force. Allowing the termination of the pediatric dental benefits on the birthdate the enrollee turns 19 or at the end of the same month is logical and more in keeping with other qualifying event trigger dates and common industry practice.

**Section §156.120: H. Issuer Standards Including Exchanges 2. Essential Health Benefits Package c. Collection of Data to Define EHB (p.70718)**

Allows for a State to choose a new benchmark for the 2017 plan year by choosing a QHP offered in 2014 which meets EHB requirements (with some exceptions).

**9. Recommendation**

HHS needs to be cognizant that in 2014, some QHP issuers chose to embed the EHB pediatric dental benefits. While the services in a new benchmark would meet EHB, the selection of an embedded benefit should not negate the ability of QHP issuers to exclude pediatric dental benefits nor a SADP from offering the pediatric dental benefits that is embedded in the benchmark—just as they do under HHS rules today. As well, there are variations between the QHP and SADP policies that make it difficult for consumers to understand and compare the value and cost/benefit differences of the options available. NADP recommends a more transparent shopping experience for the pediatric dental benefit, whether embedded in a QHP or offered in a separate policy.

**Section §156.130: H. Issuer Standards Including Exchanges 2. Essential Health Benefits Package f. Cost Sharing Requirements (p.70723)**

Proposes accumulations of cost sharing as they relate to limitations and calendar versus plan policy year.

**10. Recommendation**

NADP recommends the regulations follow more closely the commercial market. While the Notice proposes a change to insurance policies to accumulate cost sharing during the plan year, NADP recommends coverage to parallel today's current market, which allows the offer of products to employers that accumulate out-of-pocket spending on a calendar year basis even when the policy year is not on a calendar year basis.

The Notice's proposal mainly impacts group business; small employers reset the annual limitation on cost sharing at the plan's renewal but will accumulate claims toward the new limit on a calendar year basis. Changing all claims systems to align with the proposal would require significant work and potentially increase rates. Note small employers prefer the current approach as it allows them to align with many other benefits that



accumulate on a calendar year basis, as well as allows them to shop for coverage whenever they choose through the year.

**Section §156.230: H. Issuer Standards Including Exchanges 3. QHP Minimum Certification Standards c. Network Adequacy Standards (p.70726)**

Tightens network adequacy (NA) standards and proposes new provider directory requirements

**11. Recommendation**

- The Notice cites ACA 1311 as including dental plans as part of the network standards; however, this section of the law does not include dental plans. In addition, while CMS's "Letter to Issuers 2014" may have applied network adequacy standards to SADPs, the letter only provided detailed guidelines for QHP networks, regarding various medical providers and hospital systems (not SADPs). SADPs were subjected to a requirement without any guidance as to what that standard meant. Therefore CMS is applying standards to Exchange certified SADPs but have not outlined those guidelines.
- NADP would recommend CMS to evaluate 2014 Exchange-certified SADPs to gauge whether NA standards should even be applied. In 2012, 89% of all active dentists in private practice participated in dental networks. NADP recommends the deletion of dental plans from NA standards, and more specifically, this section as NA is only applied to Exchange-certified SADPs. The Notice should be made clear that NA standards do not apply to SADPs nor non-Exchange certified dental policies in the private market. State insurance regulators should maintain their oversight and continue to monitor and regulate dental networks when appropriate.
  - o According to HHS, there are currently 4,900 Dental Health Professional Shortage Areas (HPSAs)<sup>ii</sup>. While 89% of dentists participate in a network, this leaves areas in which very few dentists are available. The Notice states the general availability of out-of-network providers will not be counted for purposes of meeting NA requirements. SADPs need the ability to utilize out-of-network providers in some counties to meet state NA standards.
- The notice regulates continuity of care to lessen the probability of missing care when an enrollee changes carriers and their current provider is not part of the new carrier's network. Carriers of both QHPs and SADPs already have transitional care as part of their current provider contracts. In addition, transitional care usually is related to chronic or acute medical conditions, which does not typically occur in pediatric dental except for medically necessary orthodontia, which is a condition specifically addressed in those enrollee and provider contracts.
- The Notice includes new requirements related to provider directories. QHP and SADP issuers make concerted efforts to keep their directories updated with the latest provider information. However, dental offices generally have a small staff, and in many cases the dentist does not contact carriers when they change their status. Once a carrier is aware of a provider change, that modification should be implemented within 30 days in a carrier's online directory. Carriers should not be penalized when a provider is delinquent in forwarding



updated information to the issuer. In addition, clarification is needed when referencing a ‘complete’ directory and whether this would differ between QHPs and SADPs.

- The Notice addresses the concept of machine-readable files to allow the aggregation and easier comparison of providers within various networks for consumers. While this is an admirable goal, NADP opposes the proposal as carrier IT resources are still concentrating on Exchange displays and data transactions. SADPs in particular do not have any additional resources to devote to automation projects at this time.

**Section §156.235:** *H. Issuer Standards Including Exchanges 3. QHP Minimum Certification Standards d. Essential Community Providers (p.70727)*

Changes various components of ECP requirements from the CMS “Letter to Issuers” 2014.

**12. Recommendation**

Due to the geographic maldistribution of dentists, NADP requests flexibility for SADPs trying to reach the ECP 30% standard. While NADP appreciates the listing of dental providers forwarded by CMS, it remains difficult for SADPs to meet the ECP standard with many having to include narrative justifications. (The Notice only reflects on QHPs ability to reach the ECP ratio.)

NADP opposes the new requirement’s application to SADP, i.e. for there to be at least one ECP in each ECP category for each county. This provision should exempt dental providers as there may be counties in which ECP dentists do not practice and the categories are not appropriate to dental providers. HHS needs to recognize the differences between QHP and SADP on this particular topic as it was not addressed clearly in the Notice.

**Section §156.250:** *H. Issuer Standards Including Exchanges 3. QHP Minimum Certification Standards e. Health Plan Applications and Notices (p.70728)*

Requires the creation of language assistance documents

**13. See NADP Recommendation 3 §155.205**

**Section §156.1130:** *H. Issuer Standards Including Exchanges 7. Quality Standards a. Quality Improvement Strategy (p.70734)*

As part of the ACA, QHP issuers must implement a Quality Improvement Strategy (QIS) which improves the health outcomes for enrollees. The Notice requests comments on whether proposed QIS standards should be applied to SADPs.

**14. Recommendation**

Currently there are no industry-wide, recognized standards on quality in use in the dental industry; however, changes are taking place. Dental diagnostic codes are being introduced which will allow the study of risk based benefits. And in 2008 CMS proposed



the American Dental Association (ADA) take the lead in establishing the Dental Quality Alliance (DQA) to develop performance measures for oral health care. In 2013, DQA released their first set of measures; however, providers, academics, and payers need time to integrate the measures within their culture, administrative systems, including but not limited to EHRs and claims processing. While dental carriers can collect statistics to reflect these measures, the data will only be as good as the information reported by dental providers. Processes for collection of that data are not yet in place. CMS itself is only now in process of examining the creation of dental quality measures.

NADP recommends CMS recognize DQA as the entity to be utilized for dental quality measures in the future and to allow for flexible implementation timelines. In addition, NADP requests HHS encourage the dental provider community to collect and report data related to DQA measures when appropriate. While dental admittedly has lagged behind medical in clinical and quality measurements, this is a first step towards initiating a vital program for better oral health outcomes.

We greatly appreciate the opportunity to provide our expertise, and look forward to working together to improve access to affordable and quality dental care through the informed and correct implementation of ACA related regulations. For any follow up, please contact NADP's Director of Government Relations, Kris Hathaway at [khathaway@nadp.org](mailto:khathaway@nadp.org) or (972)458-6998x111.

Sincerely,



Evelyn F. Ireland, CAE  
Executive Director  
National Association of Dental Plans

#### Endnotes

<sup>1</sup> Within these comments, NADPs reference to QHPs are those plans that may have embedded pediatric dental benefits, and SADPs which offer pediatric dental as part of the essential health benefit package and therefore are in Exchanges or are Exchange certified – not SADPs offered in the private market.

<sup>1</sup> Dental HPSAs are based on a dentist to population ratio of 1:5,000.

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