

January 27, 2025

Jeff Wu
Acting Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Contract Year 2026 Policy and Technical Changes to the Medicare Advantage and Medicaid Programs (CMS-4202-P)

Dear Acting Administrator Wu:

The American Dental Association (ADA), on behalf of our 159,000 member dentists, appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule, "Contract Year 2026 Policy and Technical Changes to the Medicare Advantage and Medicaid Programs" (CMS-4202-P).

As the leading advocate for oral health, the ADA supports policies that advance access to high-quality, affordable dental care and promote transparency in healthcare delivery. This proposed rule addresses critical areas impacting Medicare Advantage (MA) beneficiaries, including network adequacy, marketing standards, and supplemental benefits. We commend CMS for its ongoing commitment to improving beneficiary protections and ensuring informed choice, and we are pleased to provide our perspective on specific provisions of this rule that intersect with oral health care and patient outcomes.

Removing Waiver of Liability Requirements Imposed by Medicare Advantage Plans for Dental Claim Appeals

Some Medicare Advantage plan sponsors are imposing onerous restrictions on dentists that should only be reserved for providers providing core Part B services under both traditional Medicare and Medicare Advantage. One of these restrictions is only allowing dentists to participate in the appeal of a claim denial under a supplemental benefit if they sign a Waiver of Liability agreement. This agreement states that if a dentist pursues the appeal and the claim denial is upheld on appeal, then the dentist is unable to collect the remaining balance from the patient.

Currently, this type of arrangement is onerous for a supplemental benefit and discourages dentists from assisting their patients during an appeal of a claim. Because of the potential chilling effect on network participation and interference with the dentist-patient relationship, these agreements should not be used when providing Medicare Advantage supplemental dental benefits. In fact, the agreements only assist Medicare Advantage plans in saving costs while not providing a promised supplemental benefit they agreed to provide to consumers.

ADA requests that CMS provide guidance to Medicare Advantage plans that Waivers of Liability should not be used with supplemental dental benefits. Doing so will ensure that Medicare Advantage beneficiaries will be able to fully utilize their promised supplemental

benefits and not interfere in a dentist's ability to assist their patients in an appeal of a claim denial.

Promoting Informed Choice – Format Provider Directories for Medicare Plan Finder

The ADA supports CMS's proposal to require MA provider directory data to be integrated into the Medicare Plan Finder (MPF) in a standardized format. This change represents a significant step toward improving transparency and accessibility for beneficiaries as they navigate their healthcare options. By enabling users to easily identify Part B enrolled, in-network providers within their Medicare Advantage plans, CMS is addressing a critical barrier to informed decision-making.

However, to further enhance the utility of these directories, ADA recommends expanding the proposal to include MA plans offering supplemental benefits, such as dental, vision, and hearing services in requirements related to maintaining accurate provider directories. These benefits play a pivotal role in overall health, and ensuring that beneficiaries can readily identify network providers would promote more comprehensive plan comparisons and informed enrollment choices. Most dentists are not enrolled in Medicare Part B but often participate in MA plan networks to provide care for beneficiaries with supplemental benefits.

Additionally, we suggest CMS explores opportunities to partner with the ADA and Health Level Seven International (HL7) to develop, support, and incentivize dental-specific FHIR(c) pilots that would ultimately result in interoperability standards which enhance provider directory data and workflows. Such collaboration could facilitate a streamlined approach to data integration and ensure the long-term accuracy and consistency of provider directories across platforms.

The ADA appreciates CMS's focus on reducing complexity for beneficiaries and stands ready to assist in advancing policies that improve access to critical health services, including dental care.

Promoting Informed Choice – Enhancing Review of Marketing and Communications

The ADA commends CMS for its proposal to expand the definition of marketing under Medicare Advantage and Part D programs, which ultimately strengthens oversight of communications materials and mitigates misleading or confusing advertising practices. The proposed changes, which would require a broader array of materials to be submitted for CMS review, are a vital step toward protecting beneficiaries and promoting transparency in the Medicare Advantage market.

It is widely known that many consumers select Medicare Advantage plans based on a plan's offering of supplemental benefits. In an analysis by Deft Research, 52% of Medicare Advantage beneficiaries selected their plan based on its inclusion of a supplemental dental benefit.¹ Advertisements for Medicare Advantage plans mention supplemental dental benefits, which are often promoted as "dental coverage" or "dental benefits". Yet, in recent research published by the Journal of the American Medical Association (JAMA), only 8.4% of Medicare Advantage plans included a supplemental dental benefit that would be considered a "comprehensive dental benefit."² Using terms such as "dental coverage" or "dental benefits" can often be misleading to consumers. ADA believes more up-front

¹ Deft Research (2024). Medicare Age-in Study

² Simon L, Vujcic M, Nasseh K. (2024). Availability of Dental Benefits Within Medicare Advantage Plans by Enrollment and County. JAMA. doi:10.1001/jama.2024.24814

transparency about the structure and limitations of these supplemental dental benefits can help consumers make more informed choices of their plans.

ADA supports CMS's efforts to correct pervasive issues with generic and non-specific advertisements that lead to consumer confusion. By requiring more stringent oversight of these materials, CMS can significantly reduce marketing misrepresentation complaints and ensure beneficiaries are not misled by advertisements that omit critical details about plan coverage or benefits. To further support CMS's efforts, we recommend that marketing materials that mention specific supplemental benefits, such as dental or vision, include a standardized summary of these specific benefits available under a plan. These standardized summaries should include information such as limitations or exclusions on services, waiting periods, alternate benefit provisions, annual maximums, coinsurance, copays, deductibles and out of network benefits. Additionally, a specific supplemental benefit structure for dental or vision as marketed in one year should be allowed to be carried over into subsequent benefit years if the consumer continues to stay with the same plan (i.e. benefits should not be vastly different from one year to the next once the Medicare Advantage beneficiary has chosen to be part of the MA system).

The ADA urges CMS to finalize these proposed changes while considering how consistent messaging about supplemental benefits, such as dental care, can further enhance beneficiaries' ability to navigate their options effectively. ADA believes this can be accomplished by defining categories for dental plans based on coverage, out-of-pocket costs, or AV requirements. This would allow patients to determine choices based on two or three specified categories of dental plans. This could ultimately facilitate better decision-making and increased dental coverage for Medicare Advantage beneficiaries.

We look forward to partnering with CMS to improve transparency and protect the integrity of Medicare Advantage marketing practices.

Administration of Supplemental Benefits Coverage Through Debit Cards

The ADA supports CMS's efforts to codify existing guidance and introduce new protections for the administration of supplemental benefits through plan-furnished debit cards. By requiring these debit cards to be electronically linked to covered benefits through real-time identification mechanisms, CMS is taking an important step toward ensuring transparency, accountability, and ease of use for beneficiaries. However, we have concerns about the implementation of the proposal as described. Dental benefit and eligibility verification through the HIPAA-mandated X12 v5010 270/271 eligibility inquiry and response and the related CORE Operating Rules are currently insufficient to support the real-time identification mechanism of covered services as described. Current standards and systems lack the ability for health plans to return eligibility information related to telemedicine, prior authorization, remaining coverage benefits, tiered benefits, and procedure-level detail, among other issues. Further, data exchange for eligibility and benefits verification is conducted outside of the claim transaction and thus outside of the actual patient payment. The proposed administering of mandatory supplemental benefit through plan debit cards for dental would be better suited to a real-time claim adjudication process. Even so, additional development of industry consensus regarding standardization of workflow and technology would be critical to avoid added provider administrative burden if each MA organization is allowed to choose divergent processes during implementation. There must also be guidance around post payment audit and recoupment practices related to incorrect claim payments

(e.g. payment using a debit card for non-covered services) to ensure that providers are appropriately paid for services rendered.

To strengthen this proposal, we recommend CMS work with the ADA and dental industry stakeholders to develop clear guidance regarding claim filing requirements, real-time benefit verification as well as real-time claims processing both in situations where a debit card is used to administer the benefit as well as in situations where alternate mechanisms are sought for reimbursement. Establishing standardized processes for reimbursements with or without use of the debit cards at the point of care will be critical to safeguarding beneficiary access to covered benefits and minimizing administrative burdens on providers and enrollees.

The ADA also encourages CMS to consider the implications of these debit cards on provider reimbursement processes. Ensuring that the administration of these benefits integrates seamlessly with existing claims systems and dental practice management software will be critical to reducing confusion and avoiding delays in provider payments.

Furthermore, ADA opposes the use of processing fees that are associated with these debit cards to deliver Medicare Advantage supplemental benefits. As plan sponsors may not be offering an alternative in delivering these supplemental benefits, it forces providers to only accept this form of payment while penalizing them with an unnecessary administrative expense. ADA asks that CMS provide further regulatory guidance to Medicare Advantage plan sponsors on processing fees associated with these debit cards and establish that these processing fees must not be passed onto the provider or the Medicare Advantage beneficiary.

Additionally, CMS's solicitation of feedback on allowable over-the-counter (OTC) items with the use of debit cards presents an opportunity to ensure high-quality oral health products qualify for supplemental benefits. The ADA proposes that only oral health products bearing the ADA Seal of Acceptance be included in the list of eligible OTC items for purchase with these debit cards. The ADA Seal of Acceptance is a trusted mark of safety and efficacy, and its inclusion would align with CMS's goals of ensuring beneficiary access to high-quality, health-related products.

The ADA appreciates CMS's attention to improving the administration of supplemental benefits and looks forward to continued collaboration on ensuring these enhancements support efficient access to oral healthcare services.

Medical Loss Ratio (MLR)

The ADA appreciates CMS's proposed updates to MLR regulations for MA and Part D plans. These updates, which establish clinical and quality improvement standards for provider incentives and prohibit the inclusion of administrative costs in quality improvement activities within the MLR numerator, represent a step forward in ensuring that MA plans deliver meaningful value to beneficiaries. In terms of the standards for clinical and quality improvement activities tied to provider incentives, the ADA strongly encourages that measures developed by the Dental Quality Alliance be used for this purpose. DQA is an organization of major stakeholders in oral health care delivery that use a collaborative approach to develop oral health care measures.

While mandatory dental benefits are an integral part of MA plans and should be included in the calculation of MLR, optional dental benefits often fall outside of core plan requirements and are not included in the reported MLR. The ADA strongly supports the inclusion of optional supplemental dental benefits in the MLR calculations, especially as consumers are providing additional premium dollars for dental coverage that should go towards their care. The ADA also urges CMS to carefully consider the unique characteristics of dental benefits in Medicare Advantage plans when it is included in MLR calculations. Dental care differs in its distinct cost structures, utilization patterns, and coding architecture compared to traditional medical care. As such, applying existing MLR frameworks without recognizing these distinctions could inadvertently create inconsistencies or disincentives for plans to include robust dental coverage. One option to consider is requiring Medicare Advantage plans to separate out both their premiums collected and their claims paid out for the dental coverage they offer. This would ensure that most of the premium dollars are going towards patient care.

By aligning MLR policies with the specific needs and realities of dental benefits, CMS can better support access to oral healthcare while maintaining rigorous standards for quality and financial accountability.

Improving Experiences for Dual Eligible Enrollees

The ADA supports CMS's proposal to improve the experience of dual eligible enrollees by enhancing the integration of services provided under Medicare Advantage Dual Eligible Special Needs Plans (D-SNPs) and Medicaid. The introduction of integrated member ID cards and unified health risk assessments (HRAs) for applicable integrated plans is a critical step toward reducing administrative complexity and improving care coordination for these vulnerable populations.

Unified HRAs will enable care teams to develop more holistic and efficient care plans that address the full spectrum of enrollees' needs, including dental services. Oral health is often a neglected component of comprehensive care, yet it is essential for overall health and well-being. CMS's focus on integrated assessments presents an opportunity to ensure oral health is included in these evaluations, particularly given its significant impact on chronic conditions and quality of life for dual-eligible populations.

Additionally, the requirement for integrated ID cards simplifies access to both Medicare and Medicaid benefits. This change will reduce confusion for enrollees and facilitate smoother interactions with providers, particularly those offering dental services under Medicaid and Medicare Advantage plans. Ensuring that providers can easily verify enrollee eligibility and benefit details will help improve access to timely and necessary care. ADA requests that the specific benefit design of D-SNP be labeled or mentioned on ID cards so as to ensure that dental providers are fully aware of care coordination and what limitations may exist with each patient's coverage.

Taking these additional steps will help address systemic barriers to care for dual eligible individuals, including those related to oral health, and support CMS's broader goals of improving outcomes for this high-need population.

Ensuring Equitable Access to Medicare Advantage Services – Guardrails for Artificial Intelligence (AI)

The ADA commends CMS for its proactive approach in addressing potential risks associated with the use of artificial intelligence in services affiliated with Medicare Advantage. CMS is taking a critical step to safeguard the integrity of healthcare delivery by proposing guardrails to ensure that AI tools are utilized in a manner that promotes access and does not exacerbate existing disparities.

AI has immense potential to enhance care delivery and efficiency; however, as CMS rightly notes, its deployment must be carefully managed to prevent unintended consequences. Of particular concern is AI-generated claim denials and/or claim reviews that do not involve trained professionals and create additional roadblocks to access for patients. In short, greater efficiency for insurers should not come at the cost of patients finding it more difficult to access their plans. The ADA appreciates CMS's efforts to address these important issues and supports the integration of robust oversight mechanisms to ensure that AI enhances, rather than hinders, access to healthcare services.

The ADA appreciates the opportunity to provide feedback and commends CMS for its commitment to advancing informed choice and transparency within these critical programs. We urge CMS to carefully consider the ADA's recommendations, particularly regarding the inclusion of dental benefits in MLR calculations, improving supplemental benefit administration and marketing, and addressing the unique needs of dual-eligible enrollees.

Thank you for your attention to these issues. To facilitate further discussion, please contact David Linn, Director of Federal Affairs, at linnd@ada.org.

Sincerely,

/s/

Brett Kessler, D.D.S.
President

/s/

Raymond A. Cohlma, D.D.S.
Executive Director