

April 11, 2017

The Honorable Tom Price  
Secretary  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Secretary Price:

On behalf of the 161,000 members of the American Dental Association (ADA), the world's oldest and largest dental professional organization; the National Association of Dental Plans, the largest non-profit, national trade association focused exclusively on the entire dental benefits industry; and Delta Dental Plans Association, the nonprofit national association of Delta Dental member companies, which collectively make up the nation's leading dental benefits provider, with enrollment of more than 73 million Americans served by the country's largest dental network with over 150,000 Delta Dental dentists, we respectfully request that you re-examine the enrollment requirement for dentists and other health care professionals who participate in Medicare Part C or Medicare Advantage (MA) plans.<sup>1</sup>

Specifically, we believe the final rule requiring participating dentists to enroll in Medicare Part C or MA plans using the CMS Form 855i Medicare Enrollment Application for Physicians and Non-Physician Practitioners places an unnecessary burden on dentists who do not otherwise submit claims to Medicare. One of the stated purposes of this requirement is to "ensure that Medicare enrollees receive items or services from providers and suppliers that are fully compliant with the requirements for Medicare enrollment."<sup>2</sup> We believe that this objective can be achieved without requiring full enrollment in Medicare through the current MA enrollment process.

Our associations applaud the Department of Health and Human Services' and the Department of Justice's efforts to prevent fraud, waste, and abuse. We are equally committed to ensuring that our members who participate in MA plans comply with all Medicare requirements. However, the enrollment process used by the MA system already protects Medicare beneficiaries. For instance, MA plans already include an addendum to the dentist agreement that requires that:

- The dentist may not discriminate against a Medicare enrollee by refusing services because of Medicare enrollment or status.
- The dentist may not discriminate against a Medicare enrollee based on his/her health condition.
- The dentist must keep a Medicare enrollee's records for a period of ten (10) years.

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<sup>1</sup> 81 Fed. Reg. 80170, 80429-40 (Nov. 15, 2016).

<sup>2</sup> *Id.* at 80446.

- Periodically the Centers for Medicare & Medicaid Services (CMS) may request the dentist's records for audits. The MA plan will provide notice of any audit and assist the dentist, if requested, in cooperating with the audit.
- The dentist must let the MA plan know immediately if he or she or any employees or subcontractors are debarred, excluded, suspended or otherwise prohibited from participating in any federal health program.
- The dentist must comply with all laws including Medicare and other federal health program laws, e.g., the federal Anti-Kickback, False Claims Act, and other laws designed to eliminate fraud, waste and abuse in federally-funded programs.
- The dentist may only collect deductibles, copays, and other contractually permitted amounts from the Medicare enrollee, but may not collect amounts which are the legal obligation of the MA plan.

Dentists have already demonstrated that enrolling as a Medicare provider is problematic, as evidenced by their reluctance to enroll as Part D prescribers.<sup>3</sup> As you are aware, the Form 855o - Medicare Enrollment Application for Eligible Ordering and Referring Physicians and Non-Physician Practitioners - was developed by CMS with the assistance of the ADA to provide an alternative form of enrollment to those who do not otherwise participate in the Medicare program. Recent guidance from CMS has made this new MA enrollment requirement even more onerous to our members and plan participants as it has removed the option of enrolling using the CMS Form 855o. The CMS Form 855i is significantly more involved and requires information not needed by CMS, as the claim process is handled by the MA plan.

The industry believes that serious, negative consequences will result from full implementation of the final regulation, including large numbers of dentists choosing not to participate in MA plans and less access to care for Medicare beneficiaries. While the final regulation is not scheduled to take effect until January 1, 2019, we urge you to withdraw this regulation. We request an opportunity to discuss these concerns with you or the appropriate officials at CMS. Please contact Dr. Frank Kyle in the ADA's Washington, DC Government Affairs office at 202-789-5175 or [kylef@ada.org](mailto:kylef@ada.org) to set up a meeting or if you should have any questions.

Sincerely,

/s/

Gary L. Roberts, D.D.S.  
President  
American Dental Association

/s/

Kathleen T. O'Loughlin, D.M.D., M.P.H.  
Executive Director  
American Dental Association

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<sup>3</sup> Medicare Program; Medicare Prescription Drug Program, 42 C.F.R. § 423.120

/s/

Theresa McConeghey  
Chair  
National Association of Dental Plans

/s/

Evelyn Ireland, CAE  
Executive Director  
National Association of Dental Plans

/s/

Steven R. Olson  
President and CEO  
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