August 28, 2017

Mr. Demetrios Kouzoukas
Principal Deputy Administrator and
Director of the Center for Medicare
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Deputy Kouzoukas:

Thank you for meeting with us on August 2, 2017 regarding the implementation of the portion of the Physician Fee Schedule (PFS) Rule relating to application of Medicare Advantage (MA) providers (42 CFR Part 422) for dentists providing supplemental dental services to MA Plan beneficiaries.

As stated in our March 27, 2017 letter to Secretary Price, we believe the Rule requiring dentists to enroll in Medicare to provide supplemental services through Part C - or MA - plans using the CMS Form 855i Medicare Enrollment Application for Physicians and Non-Physician Practitioners is inappropriate and places an unnecessary burden on dentists who do not otherwise perform Medicare covered services. While the Rule is not scheduled to be enforced until January 1, 2019, we urge you to withdraw the mandate in the Rule as it concerns dentists or immediately delay the implementation of the Rule and substantially modify its application to dentists. We have the following recommendations regarding how CMS can enforce the Rule and maintain adequate oral health services for America's seniors.

RECOMMENDATION I: We strongly urge CMS to rescind its interpretation that the Rule's Part C provider enrollment requirement applies to dentists delivering supplemental services to MA Plan beneficiaries.

Reasons this requirement should not be applied to dentists:

- Traditional Medicare does not cover the vast majority of services performed by dentists. So, dentists providing services in MA Plan networks are not providing services that are paid directly by Medicare in most instances;
- The 855i form requires the physician to bill Medicare directly and provide electronic fund transfer bank information to be paid by Medicare; however, dentists do not bill and are not paid directly by Medicare for most services;
- Dentists are not a "high risk" provider category under the GAO Report (GAO-15-448) cited by the Rule as requiring increased Medicare provider enrollment oversight; and
- Enrolling dentists who only provide supplemental dental services under MA Plans was clearly not anticipated by the "burden statement" of the Rule.

It is important to note that the incentive for dentists to enroll is not the same as it is for medical service providers. Because traditional Medicare does not cover a vast majority of the services performed by dentists, the primary reimbursement a dentist receives is from the dental benefit plan that supports the MA Plan. Current dental plan networks provide choice for seniors who are provided or purchase a supplemental dental benefit as part of their MA Plan. Mandating dentist enrollment for payment by these dental plans will narrow the networks and make basic oral health care costlier for seniors. Eliminating the mandate will allow dental plans to continue to provide seniors with their choice of dentist from broad networks of dentists.

RECOMMENDATION II: Delay the implementation of the Rule for dentists until there are adequate numbers of dentists "enrolled in approved status" to assure the delivery of oral health services is not disrupted for MA Plan beneficiaries.

Should CMS hold to its interpretation that the Rule requires the "enrollment in an approved status" by dentists providing supplemental dental services to MA Plan beneficiaries, we would then recommend a delay to avoid disruption of dental services to the 14 million beneficiaries projected to receive supplemental dental benefits in 2019 and to minimize the administrative burden on the 100,000 dentists in MA Plan dental networks today.

Clearly, the burden estimate related to enrollment of MA providers and suppliers in the Rule does not anticipate the need to enroll 90,000 to 100,000 individual dentists[1]. Indeed, the burden statement narrowed the 64,000 total applications by groups and stated that only 16,000 new physicians would need to be enrolled. Dentists are part of this segment of 16,000: but, in reality, they number four to eight times the total. Even if MA Plans and their dental contractors could get the majority of dentists to file applications for enrollment, this volume of applications could not be processed in the short window of time before dental plan submissions in March to MA Plans for their development of proposals for 2019 Plan Year.

It has taken more than three years to get a little over 50,000 dentists to enroll with CMS using the simple Form 855o to order, refer, or prescribe so that Medicare beneficiaries can access their Part D prescription drug benefits. The Rule, as currently interpreted, would require these dentists to re-enroll using the complex Form 855i and for another 40,000 to 50,000 dentists who have chosen to opt out or have not yet taken an action to enroll as well. This massive outreach and enrollment effort would need to be accomplished over the next six months so actuaries would have the proper data to provide service rates to MA Medical Plans to prepare filings for CMS by the June deadline. This truncated schedule will result in higher rates for seniors as dental plans will need to assume a lower number of providers in networks.

There is precedent for delaying the enrollment requirement out of concern for disrupting beneficiaries' access to care. The original Part D enrollment rule was promulgated on May 23, 2014 for an effective date of June 1, 2015. That date was delayed at least four times and is currently set to be enforced on January 1, 2019. These delays were through various interim rules, bulletins, and notices as follows:

1) May 6, 2015: CMS published an interim final rule delaying the deadline to 1/1/2016.
2) June 1, 2015: notice of new deadline, 6/1/2016.
3) March 1, 2016: notice of new deadline, 2/1/2017.
4) October 31, 2016: notice of phased-in enforcement and delay to 1/1/2019.
5) May 30, 2017: notice that CMS will not implement phased-in enforcement. Deadline remains 1/1/2019.

Consistent with this precedent, we ask that CMS delay the enforcement of the MA enrollment requirement until proper networks can be established to ensure MA beneficiaries are able to access the Medicare benefit they have chosen and purchased.

RECOMMENDATION III: Deem the 51,350 dentists that have been approved under CMS Form 855o as being "approved" for purposes of providing supplemental dental services under MA Plans.

Since our meeting on August 2, CMS has provided updated enrollment numbers for dentists that

[1] Federal Register, Vol. 81, No. 220, Tuesday, November 15, 2016, pg. 80539 *"Based on preliminary data, we estimate that 64,000 MA providers and suppliers will have to enroll in Medicare under Sec. 422.222 in order to treat beneficiaries. About half of the approximately 64,000 unenrolled providers and suppliers are individuals and the other half are organizations. We do not have data at this point to confirm the number of unenrolled individuals who are physicians as opposed to non-physician practitioners. For the purposes of fulfilling the requirements of the PRA, we will project that one half (16,000) are physicians and the other half (16,000) are practitioners."*

have been approved under Form 855i and Form 855o (see Attachment I). The dentists that have enrolled for the specific purpose of allowing Medicare beneficiaries access to their Medicare Part D Prescription benefits are most likely dentists who have Medicare-aged patients who are enrolled in MA. The updated total of 51,350 dentists who have enrolled using Form 855o is about half of the dentists that we estimate are now contracted to MA Plans to provide supplemental dental benefits and only about a quarter of the 202,000 active licensed dentists. The most current data shows that only 8,407 dentists are enrolled through the 855i form and would be fully compliant with the enrollment mandate as it is currently being interpreted.

Requiring additional outreach and action by the over 50,000 dentists who have been responsive to CMS and its requirements is unnecessary, burdensome, and duplicative for the dentists, CMS, and the dental plans that participate in Part C. This group of dentists should not have to re-enroll and be re-approved to provide the supplemental dental services they now provide to MA Plan beneficiaries.

As you know, about 75% of dentists are in solo practice or practice with only one or two other dentists. Conducting outreach to dentists is a labor intensive, time consuming process that would be best focused on the 50,000 dentists providing supplemental dental services to MA Plan beneficiaries that have not enrolled.

RECOMMENDATION IV: Modify the 855o for additional dentist applicants to include the purpose of providing supplemental dental services to MA Plan beneficiaries.

The 855i form was intended for individual practitioners who perform Medicare covered services and are reimbursed by Medicare for those services. Dentists do not perform Medicare covered services and those providing general dental services through MA Plans do not bill Medicare. The Form 855o was developed, with input from the American Dental Association, for dentists (and other providers) who do not plan to bill Medicare but see Medicare-aged patients and write their patients Part D covered prescriptions.

CMS is now requiring that dentists who provide supplemental dental services for MA Plan beneficiaries to enroll using the more onerous Form 855i. We believe it makes sense to build on the foundation that has been established with dentists using Form 855o to continue to allow them to see their Medicare-aged patients and still not bill Medicare.

As you know, the Office of Program Integrity expressed willingness to examine use of the Form 855o in the July 6, 2017 response to our organizations April 11, 2017 letter requesting exclusion of dentists from the MA provider enrollment mandates of the Rule. There is flexibility in this requirement since the Rule does not require a specific form for enrollment. The Form 855i is simply referenced in the burden statement for the purpose of estimating time and cost of enrollment for physicians and non-physicians.

To create a useable form for the purposes of enrolling as part of a supplemental dental network providing dental services to MA Plan beneficiaries, CMS should modify the use of the Form 855o and add a check box for being part of a dental network providing supplemental dental benefits to MA Plan beneficiaries. Since the process of modifying CMS forms and preparing related educational materials takes time, a delay in the application of the Rule for dentists will be needed parallel to this modification.

CMS should also assure that, in any form, guidance or bulletin, dentists' application to be recognized as part of a dental network providing supplement dental benefits to MA Plan beneficiaries is <u>not an application to bill Medicare directly or to accept Medicare rates of payment</u>. Even with the language in the purpose and certification of the current Form 855o stating that physicians enrolling for the purpose of ordering or prescribing under Part D "…do not and will not send claims to a Medicare Administrative Contractor (MAC) for the services they furnish." concern about these issues has been a hurdle in getting dentists to enroll on the Form 855o for Part D of Medicare. The hurdle will still exist for this additional enrollment purpose and should be addressed in both the designated application form and guidance.

Without any of the modifications recommended in this letter, 12 to 14 million MA Plan beneficiaries - over 60% of the MA enrolled population - will experience disruption and loss of continuity of dental care. This will occur through the elimination of their supplemental dental services if networks cannot be enrolled and approved for Plan Year 2019, a reduction in dentists available as "in network" providers, higher out-of-pocket costs for premiums and co-pays if coverage can be continued but a beneficiary's dentist is out-of-network, or full out-of-pocket payment of dental services if a supplemental dental benefit cannot be provided.

As we discussed in our meeting, there are connections between oral health and overall health especially for adults with periodontal disease and high-cost, chronic medical conditions. A 2017 study conducted by Aetna, that is in process of publication, found that without access to dental benefits, the cost of medical services increased 5% overall (see Appendix II). Of course, there are greater cost impacts relating to untreated periodontal disease for those individuals with chronic medical conditions like diabetes, stroke, and heart disease. Our organizations are continuing to look into the downstream impacts on the costs to the Medicare program if oral health services are eliminated or substantially reduced for MA Plan beneficiaries by application of this Rule. As more detailed information becomes available, we will certainly share the data with you and your staff.

In closing, the dental profession and the dental benefits industry believe that serious, negative consequences will result from full implementation of the Rule with regard to dentists participating in networks providing supplemental dental benefits to MA Plan beneficiaries. While the Rule is not scheduled to be enforced until January 1, 2019, we urge you to withdraw the mandate in the Rule as it concerns dentists or immediately delay the implementation of the Rule and substantially modify its application to dentists as we have outlined.

Respectfully,

/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

/s/
Theresa McConeghey
Chair
National Association of Dental Plans

/s/
Evelyn Ireland, CAE
Executive Director
National Association of Dental Plans

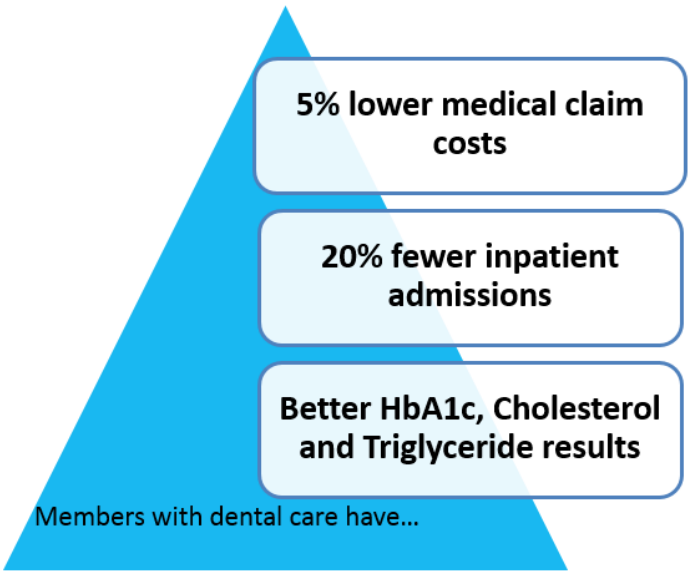
/s/
Jason Daughn
Vice President
Government Relations
Delta Dental Plans Association

Attachment I: 8/9/2017 CMS DATA on Dentist Medicare Enrollment in Approved Status

Form Type	Specialty Code	Specialty	Enrollment Status	Enrollment Count
855I	19	ORAL SURGERY	Approved	5,789
855O	19	ORAL SURGERY	Approved	14,649
OPT OUT	19	ORAL SURGERY	Opt Out	5,024
855I	85	MAXILLOFACIAL SURGERY	Approved	2,128
855O	85	MAXILLOFACIAL SURGERY	Approved	474
OPT OUT	85	MAXILLOFACIAL SURGERY	Opt Out	471
855I	C5	DENTIST	Approved	402
855O	C5	DENTIST	Approved	32,899
OPT OUT	C5	DENTIST	Opt Out	3,598
855I	99	UNDEFINED SPCLTY DENTIST RELATED	Approved	88
855O	99	UNDEFINED SPCLTY DENTIST RELATED	Approved	3,328
OPT OUT	99	UNDEFINED SPCLTY DENTIST RELATED	Opt Out	124
			TOTAL Approved under 855i	8,407
			TOTAL Approved under 855o	51,350
			TOTAL Approved Overall	59,757

Attachment II: Aetna Study on Impact of Dental Care on Medical Costs and Overall Health Presented in NADP June 28-2017 Webinar

Aetna 2017 Study Results
Heart Disease/Hypertension & Diabetes



[2] 2017 Statistically valid study of Aetna clients with continuous dental coverage from 2013 through 2015 with and without Dental Care. Client demographics in age, gender, geography, risk score, dental & medical plan design and comorbidities were nearly identical.

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