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Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services (CMS)
Department of Health and Human Services (HHS)
7500 Security Boulevard
Baltimore, Maryland 21244-1850

[CMS-9895-P]
RIN 0938-AV22

Dear Administrator Brooks-LaSure:

On behalf of our 40,000 members, the Academy of General Dentistry (AGD) is pleased to offer comments on the 2025 Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2025; Updating Section 1332 Waiver Public Notice Procedures; Medicaid; Consumer Operated and Oriented Plan (CO-OP) Program; and Basic Health Program proposed rule.¹

AGD dentists provide a full range of dental care to patients across all demographic and socio-economic segments throughout the country. The AGD's comments are focused on the CMS's proposal on essential health benefits (EHB) for non-pediatric dental services included in the proposed rule.

Provision of EHB (§ 156.115)

CMS proposes to remove the regulatory prohibition on issuers, including routine non-pediatric dental services as an EHB, allowing states to add routine adult dental services as an EHB by updating their EHB-benchmark plans. The agency has stated that removing this prohibition would not mean that routine non-pediatric dental services would be an EHB, even in states with an EHB-benchmark plan that currently describes routine non-pediatric dental services as a non-EHB-covered benefit. CMS notes that this proposal would not require any state to add such services as an EHB, nor would the agency consider any existing language regarding routine non-pediatric dental services in any state's current EHB benchmark plan to have the effect of adding such services as an EHB. Under this proposal, a state seeking to provide any routine non-pediatric dental services as an EHB would be required to update its EHB-benchmark plan to include such services as an EHB.

CMS has acknowledged that, if this proposal is finalized, it may impact plans that are not directly subject to the EHB requirements, such as self-insured group health plans and fully insured group health plans in the large group market, that are required to comply with the annual limitation on cost sharing and restrictions on annual or lifetime dollar limits in accordance with applicable regulations with respect to such EHB.

¹ Federal Register / Vol. 88, No. 225 / Friday, November 24, 2023 / Proposed Rules,
<https://www.govinfo.gov/content/pkg/FR-2023-11-24/pdf/2023-25576.pdf>

The agency has further solicited comment on its understanding that routine non-pediatric dental services are commonly covered as an employer-sponsored or other job-based benefit to a degree that warrants removing the prohibition on their provision as an EHB.

ACA

The Patient Protection and Affordable Care Act (ACA) created minimum federal standards, otherwise known as essential health benefits. The ACA was designed to bend the cost curve, reduce insurance costs, and increase health care choices. By all objective measures, the ACA has not accomplished its goals.^{2,3,4} Health care costs continue to climb year after year while options for health plans decrease.

The AGD opposes the CMS's proposal to redefine non-pediatric dental services as an EHB. Our position is based on the recommendations that the ACA, in its entirety must be rethought as the program continues to fail American citizens with excess costs and fewer options for affordable health care. Additionally, this proposition adds to the growing tendency of the agency to increase its reach into requiring dental services in federal government programs. Furthermore, CMS is using regulatory discretion as no legislative mandate would anticipate recent actions in the Medicare and Medicaid programs.

Medicaid

The ACA expanded Medicaid programs by creating incentives for states and allowing eligibility for adults up to 133 percent of the federal poverty level (FPL).⁵ As of March 2020, Medicaid and the Children's Health Insurance Program (CHIP) enrollments have grown to 71.6 million individuals and a 24.7 percent increase over baseline.⁶

Data from the American Dental Association (ADA) Health Policy Institute (HPI) estimates that fewer than one-third of dentists accept Medicaid patients into their practices.⁷ Medicaid requires higher administrative burdens and provides lower reimbursements than other federal programs and dental benefit/insurance programs. If CMS seeks to add the participation of dentists to Medicaid, federal officials may seek to address those two specific barriers to care.

² Weiner, J. Did the Affordable Care Act Contain Costs? A Ten-Year Look. Penn Leonard Davis Institute of Health Economics. February 2020, Volume 23, No. 2. https://ldi.upenn.edu/wp-content/uploads/2021/06/LDI-Issue-Brief-2020-Vol.-23-No.-2.pdf?_ga=2.259058186.1663264394.1695927477-282008354.1695927477

³ Numeroff, R. A Predictable Surprise: Twelve Years After Obamacare and We Are Worse Off Than Ever. Forbes. August 3, 2022. <https://www.forbes.com/sites/ritanumerof/2022/08/03/a-predictable-surprise-twelve-years-after-obamacare-and-we-are-worse-off-than-ever/?sh=3f23b15a1777>

⁴ Moffit, RE, Haislmaier, EF, Owcharenko Schaefer, N. Why Expanding Obamacare is Not the Answer. The Heritage Foundation. April 16, 2020.

⁵ Overview of the Affordable Care Act and Medicaid. Medicaid and CHIP Access Commission. <https://www.macpac.gov/subtopic/overview-of-the-affordable-care-act-and-medicaid/>

⁶ Medicaid Enrollment Changes Following the ACA. Medicaid and CHIP Access Commission. <https://www.macpac.gov/subtopic/medicaid-enrollment-changes-following-the-aca/>

⁷ Dentists Who Participate in Medicaid: Who Are They, Where Do They Locate, How Do they Practice? ADA September 2022. <https://www.ada.org/en/resources/research/health-policy-institute/coverage-access-outcomes/dentists-in-medicaid#:~:text=September%202022%20%2D%2061%20min,to%20those%20who%20do%20not.>

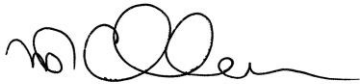
Employer-Sponsored Benefits

Employer-based dental benefits are included in most company plans. A Kaiser Family Foundation survey in 2019 found that 92% of large firms offered dental insurance to their employees.⁸ The effects on the private market of an EHB for non-pediatric dental services are unknown at this time. However, the track record of many provisions in the ACA has not yielded results that have benefitted the majority of health care consumers. Proposals that transfer regulatory management and resources to the states may achieve more favorable results.

Closing

The AGD thanks CMS for considering our comments on the proposed 2025 Patient Protection and Affordable Care Act rule. We look forward to the opportunity to work with CMS officials throughout the year so there is adequate time to assess all upcoming proposals. If you have any questions, please contact Daniel J. Buksa, JD, CAE, Associate Executive Director, Public Affairs, by phone at (312) 440-4328 or via email at daniel.buksa@agd.org if you would like to discuss our response in greater detail.

Sincerely,



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Academy of General Dentistry President

MO: jk

CC: Colleen Lawler, CAE, IOM
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Darren Greenwell, DMD, MAGD
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⁸ Kaiser Family Foundation. 2019 Employer Health Benefits Survey, Sept. 25, 2019. <https://www.kff.org/report-section/ehbs-2019-section-2-health-benefits-offer-rates/#:~:text=Among%20large%20firms%20offering%20health%20benefits%20in%202019%2C%2092%25%20offer,last%20asked%20%5Bfigure%202.20%5D>.