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February 9, 2024

MassHealth Dental Program
Executive Office of Health and Human Services (EOHHS)
Center for Health Information Analysis (CHIA)

Dear MassHealth Dental Program, EOHHS, and CHIA,

The Massachusetts Dental Society (MDS) hereby submits this letter in accordance with its official purpose, which includes "represent[ing] its members before agencies of the federal, state, and local governments in matters relating to the practice of dentistry."

The MDS, a constituent of the American Dental Association (ADA), has determined that the MassHealth agency is currently out of compliance with the federal law that outlines the dental rate-making standard. This letter is a respectful request that MassHealth come into compliance with this federal rate-making law.

I. BACKGROUND:

MassHealth's 2023 Access reports (see Attachment A) were provided by EOHHS on September 14, 2023 through an MDS-member's Public Records Request. With these reports, EOHHS provided the following disclosure statement:

"These documents comprise the full "Access Overview" reports submitted by EOHHS' contracted vendor, DentaQuest."

These reports demonstrate that MassHealth/ DentaQuest is assessing access using a "minutes to provider" model.¹ This method of assessment violates the federal law, as outlined below.

II. FEDERAL LAW:

MassHealth must fully comply with the Medicaid Act to receive any federal funds.² Substantial compliance is not enough.³ (see Attachment B)

A. MassHealth is currently out of compliance with the following federal EPSDT rate-making law:

42USC-1396a(30)(A)

¹ The reports use the following "minutes to provider" as access standards: General Dentist = 10 min; Orthodontist/Oral Surgeon/Pedodontist = 30 min. MassHealth has not analyzed any other provider types (endodontist/ periodontist/ hygienist).

² Federal Funds paid \$10.7 Billion (56%) of MassHealth \$19.2 Billion 2022 budget (https://massbudget.org/wp-content/uploads/2021/11/IssueBrief_MassHealth-Cost_SFY2022.pdf)

³ Pages 1 & 18 -Memorandum of Decision - July 14, 2005 - Health Care for All, Inc et al v. Governor Mitt Romney, et al.

"...assure that payments are....sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." (emphasis added).

B. MassHealth has violated this federal payment law in two ways (as evidenced in Attachment A):

MassHealth has replaced "care and services" with "minutes to provider."

"Minutes to provider" is a useless time-analysis, because it does not identify how long it takes to receive care and services. A patient may be 10-minutes away from a provider, yet months away from a cleaning or other procedure. "Care and services" was the specific language chosen for this law - and must be complied with. The advised way to determine availability of care and services is to annually call MassHealth providers to find out how long it takes to receive care for each service.⁴

MassHealth has not compared "the extent that such care and services are available to the general population in the geographic area."

According to this law, it is insufficient to merely determine "care and services" availability from MassHealth providers. MassHealth must also determine "care and services" availability to the general population (Non-MassHealth providers). The law requires that care and services availability for the two groups are compared to each other. In fact, according to the referenced federal law, it is this comparison that sets the payment rate.

The above violations of 42USC-1396a(30)(A) threaten not only access to care for the Commonwealth's most vulnerable patients, but also MassHealth's right to receive Billions in federal Medicaid funding (see footnote 2) in exchange for full Medicaid Act compliance.

III. HISTORICAL NONCOMPLIANCE WITH LAW:

As per 42USC-1396a(30)(A), MassHealth must set payments so that "care and services" for MassHealth children is "at least" as available as in the general population. Certainly today, that is not the case.

In the past, MassHealth has held its rate hearings with little change in rates. Between January 2009 and December 2023, MassHealth has only increased EPSDT fees by one fifth of 1% (see Figure 1), while inflation has risen by 45% in that same time period.

FIGURE 1

	NUMBER OF CODES	TOTAL PROCEDURE VALUE	
NUMBER OF EPSDT CODES WITH A VALUE	315	\$ 121,155.00	
NUMBER OF EPSDT CODES THAT INCREASED SINCE 2009	26	\$ 288.00	
PERCENT INCREASE ACROSS THE BOARD SINCE 2009		0.2%	One fifth of 1%

⁴ Via CMS-2439-P, the Center for Medicare and Medicaid Services (CMS) proposes that all states institute an annual "secret shopper" phone call system to assess procedure availability and wait times to assure access compliance.

IV. CONCLUSION:

The Massachusetts Dental Society respectfully requests that the MassHealth Program immediately begin a secret shopper analysis of Medicaid Providers and Non-Medicaid Providers. In the meantime, we propose that MassHealth implement an emergency increase in rates across the board by at least 10%⁵ - which will not meet 42USC-1396a(30)(A), but will give time to analyze and determine the degree to which MassHealth is out of compliance with the access to "care and services" prescribed in 42USC-1396a(30)(A).

Furthermore, the Massachusetts Dental Society respectfully requests that another rates hearing is conducted in September 2024 - to evaluate the results of the 42USC-1396a(30)(A) analysis - so as to further increase rates in compliance with this federal law.

Respectfully Submitted.

Dr. Abdul Abdulwaheed
President, Massachusetts Dental Society

Dr. Mouhab Rizkallah
Chair, MDS Dental Practice & Benefits Committee

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⁵ The proposed initial 10% increase is merely a stop-gap measure to begin to combat the 45% inflation increase (since 2009), which has never been addressed by MassHealth dental services rates reviews.