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U.S. Department of Health and Human Services Issues Final Rule on Essential Health Benefits

The Affordable Care Act (ACA) ensures that health plans offered in the individual and small group markets, both inside and outside of the Affordable Insurance Exchanges (also called marketplaces), offer a comprehensive package of items and services, known as “essential health benefits.” Essential health benefits must include items and services within 10 categories, including pediatric services covering oral and vision care.

On February 25, 2013, the U.S. Department of Health and Human Services (HHS) issued a final rule entitled “Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation.” The final rule establishes age 19 as the limit for pediatric services. The rule notes, however, that states are permitted to increase this maximum age in defining pediatric services.

The final rule provides for standards to supplement a state’s base-benchmark plan when the plan does not provide coverage for one or more of the 10 essential health benefits. HHS notes in the final rule that the agency’s research indicated that most pediatric oral care services are provided through stand-alone dental plans. As a result, HHS offered targeted policy options to address the gap.

Specifically, the final rule provides states with two options for supplementing base-benchmark plans that do not include benefits for pediatric oral care coverage:

- The Federal Employee Dental and Vision Insurance Program (FEDVIP) dental plan with the largest enrollment, or
- Benefits available under that state’s separate Children’s Health Insurance Program (CHIP) program, if one exists, to the eligibility group with the highest enrollment.

The pediatric dental benefits available under CHIP vary by state. To learn what benefits are available in a certain state, click here. According to HHS, the FEDVIP dental plan with the largest enrollment is the MetLife Federal Dental Plan – High Option. However, HHS notes in the final rule that as a result of comments received, HHS will continue to monitor implementation of dental benefits under the ACA and assess the need for future regulatory action.

As readers may recall, ADEA joined other dental and health profession organizations in submitting comments to HHS when these rules were being proposed. Specifically, the comments expressed concern about the treatment of stand-alone dental plans in the proposed rule.

The final rule provides that stand-alone dental plans will have a separate out-of-pocket maximum, subject to a standard of “reasonableness.” The final rule notes that exchanges will decide what constitutes a reasonable out-of-pocket maximum for stand-alone dental plans. HHS also noted that the agency anticipates issuing further interpretative guidance for the federally-facilitated exchanges in sub-regulatory guidance related to stand-alone dental plans.

Additionally, the final rule changes the target actuarial value (AV)—also commonly referred to as cost-sharing—from 75% to 70% for a “low” stand-alone dental plan. The target AV for a “high” stand-alone dental plan remains 85%.

The final rule also clarifies that, outside of an exchange, an individual or family must be offered coverage of all 10 categories of essential health benefits, including pediatric dental services, either through one policy or through a combination of a medical policy and an exchange-certified stand-alone dental plan.
U.S. Department of Justice Says States May Cut Medicaid Payments to Providers

In December 2012, in the case of Managed Pharmacy Care v. Sebelius, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit ruled that the state of California was permitted to cut Medicaid provider payments. Though the ruling only applies to California and the Medi-Cal program, it has implications for other states which are considering Medicaid cuts, and must obtain approval by the U.S. Department of Health and Human Services. As a result of the ruling, the provider plaintiffs in the case requested a hearing in front of the full court.

On February 22, the U.S. Department of Justice filed documents in Managed Pharmacy Care v. Sebelius, noting that states are able to reduce Medicaid payment rates in order to alleviate budgetary pressures. Specifically, the U.S. Department of Justice noted that, “it is entirely appropriate for a state to review its Medicaid plan to determine whether it can continue to satisfy its statutory obligations at lower payment rates.” The documents filed by the U.S. Department of Justice indicate that HHS has determined that ensuring beneficiary access rather than assessing provider costs is the most appropriate way to assess whether payment rates are sufficient and that California’s provider rate cut met that test.

Appeals Court Upholds Ban on Flavored Tobacco Products in New York

On February 26, in the case of U.S. Smokeless Tobacco Mfg. Co., et al. v. City of New York, the U.S. Court of Appeals for the Second Circuit affirmed a lower court’s decision upholding a New York City ordinance limiting the sale of flavored tobacco products.

The City Council banned flavored tobacco to reduce teen smoking. Signed into law October 28, 2009, the ordinance prohibits the sale of any flavored tobacco products throughout the five boroughs except in a tobacco bar.

A three-judge panel of the U.S. Court of Appeals for the Second Circuit rejected claims by smokeless-tobacco manufacturers that the city ordinance is preempted by the Family Smoking Prevention and Tobacco Control Act (Act). Specifically, the plaintiffs, manufacturers and distributors of smokeless-tobacco products, claimed that because federal law regulates various aspects of the sale and use of tobacco products, the City was preempted from adopting its restrictions on the sale of flavored tobacco.

According to the three-judge panel, because the ordinance only applies to the sale of a finished tobacco product, it does not interfere with the government’s job of regulating the manufacture of tobacco products under the Act.

The Effect of the Sequester on States

On March 1, 2013, the Office of Management and Budget (OMB) issued a memo to the heads of all executive departments and agencies informing them that President Obama had issued a sequestration order. Also, the OMB issued a report on March 1 to the U.S. Congress. The report provides calculations of the amounts and percentages by which various budgetary resources are required to be reduced.

Under the requirements of the 2011 Budget Control Act (BCA) as amended by the recently passed American Taxpayer Relief Act (ATRA), both defense and non-defense programs are subject to sequestration.

The White House has released an interactive map indicating how individual states will be impacted by the sequester. The interactive map details state-by-state cuts to education, research and innovation, and public health (click on the “Download the full fact sheet” to the right of the public health icon to view the full list of state cuts).
Arkansas and Florida Pursuing New Medicaid Models

The U.S. Department of Health and Human Services (HHS) has verbally given Arkansas permission to pursue a plan that would provide private health insurance to anyone between 0 to 138% of the federal poverty level, giving coverage to more than 200,000 of the currently uninsured, according to Matt DeCample, a spokesperson for Governor Mike Beebe (D-AR). Mr. DeCample indicated that Arkansas has not submitted a formal waiver request to HHS. The Governor is waiting on the Arkansas General Assembly to consider legislation related to the Medicaid model. Governor Beebe brought several Medicaid model questions and ideas from legislators to his recent meeting with HHS Secretary Kathleen Sebelius.

Florida Governor Rick Scott (R-FL) recently announced his plan to support a three-year expansion of the state’s Medicaid program under the Affordable Care Act (ACA). However, members of the Florida House and Senate opposed the Governor’s recommendation to expand Medicaid under the ACA. Instead, S.P.B. 7038 has been proposed by the Senate Committee on Appropriations. The proposed bill would establish a new program called Healthy Florida. The legislative intent of the bill states that Healthy Florida will cover uninsured adults utilizing a unique network of providers and contracts through which enrollees will receive a comprehensive set of benefits and services. Essentially, the bill privatizes the Medicaid program by allowing low-income citizens who qualify for the program to select coverage from among approved private health plans. Click here to view a bill analysis of S.P.B. 7038.

Iowa Governor Proposes Alternative to Medicaid Expansion

On March 4, 2013 Governor Terry Branstad (R-IA) unveiled the Healthy Iowa Plan that will cover all of the approximately 89,000 uninsured Iowans earning below 100% of federal poverty level. The plan touts four pillars to reduce health care costs while improving health care: 1) provide quality care utilizing Accountable Care Organizations (ACOs); 2) utilize a value based reimbursement model to incentivize providers to deliver quality care and provide better outcomes for patients; 3) implement personal responsibility mechanisms to encourage citizens to be cost-conscious consumers of health care as well as healthy behaviors; and 4) use a sustainable financing strategy to provide budget certainty.

Governor Branstad stated that “The Healthy Iowa Plan is a modern health plan that will pay providers to care for their whole population and based on the quality of care they deliver, while rewarding positive health outcomes.”

Hydrocodone Moves to a Schedule II Controlled Substance in New York

On February 27, 2013 Attorney General Eric T. Schneiderman (D-NY) issued an open letter to health care professionals alerting them that the prescription painkiller hydrocodone is a Schedule II controlled substance under New York State law. The schedule change was made effective the week of February 27. The change from Schedule III to Schedule II subjects all strengths, formulations and combination products of hydrocodone to a variety of stricter controls, including a prohibition on automatic refills. The schedule change was mandated as part of Attorney General Schneiderman’s Internet System for Tracking Overprescribing law, or I-STOP, S.B. 7637, which was signed in to law last year in an effort to curb abuse of addictive prescription drugs such as hydrocodone.

According to Attorney General Schneiderman, statewide prescriptions for hydrocodone filled increased from 3.8 million to 4.5 million from 2007 to 2009, an increase of 18.4%, while those for oxycodone increased 82%.
South Carolina Asks Federal Government to Restrict the Items in the Supplemental Nutrition Assistance Program to Healthy Purchases

Lillian Koller, State Director of the South Carolina Department of Social Services (DSS), has asked the federal government for assistance in developing a waiver to reduce the list of allowed items under the federal Supplemental Nutrition Assistance Program (SNAP) in South Carolina to healthy purchases. Beginning March 2013, a series of meetings will be held around the state to solicit public input on how the program should be changed. According to information released by the DSS, 417,702 households received SNAP benefits totaling more than $114 million during January 2013.

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) serves to safeguard the health of low-income pregnant, postpartum, and breastfeeding women, infants, and children up to age 5 who are at nutritional risk by providing nutritious foods to supplement diets. Interestingly, eligible foods under WIC are limited to such items as fruit and vegetable juices, milk, and baby food and iron-fortified infant formula. Soda is specifically not allowed.

U.S. Department of Health and Human Services Announces State Innovation Model Awards

On February 21, the U.S. Department of Health and Human Services (HHS) announced the recipients of State Innovation Model awards. The State Innovation Models Initiative will provide up to $300 million in awards to 25 states. The initiative will allow states to test or design state-based multi-payer payment and delivery system reforms. Out of the $300 million awarded, $250 million will support 6 states that are in the model-testing phase:

- **Arkansas** will expand access to patient-centered medical homes for chronic care management and preventive services. (up to $42 million)
- **Maine** will support the formation of Accountable Care Organizations (ACOs), to fund health care infrastructure projects such as data analytics capability for multi-payer claims data, and support the development of new workforce models for the transformed system. (up to $33 million)
- **Massachusetts** will help transform primary care practices into patient-centered medical homes—capable of assuming accountability for cost and offering care coordination, care management, enhanced access to primary care, coordination with community and public health resources, and population health management. (up to $44 million)
- **Minnesota** will expand the range of services provided by ACOs, such as long-term social services and behavioral health. Minnesota will also create "Accountable Communities for Health" with community organizations to further integrate health care, public health and social services. (up to $45 million)
- **Oregon** will expand its Medicaid Coordinated Care Organization (CCO) model to Medicare and private plans. (up to $45 million)
- **Vermont** will test and compare three models: a shared-savings ACO model; a bundled payment model; and a pay-for-performance model. (up to $45 million)


New York and Mississippi Approach Limits on Sugary Drinks Differently

A New York City regulation limiting the size of sugar-sweetened drinks available for purchase at restaurants, street carts, movie theaters and sporting events to 16 ounces, was overturned by the Supreme Court of the State of New York, County of New York one day before it was to take effect. The American Beverage Association, joined by several New York restaurant and business groups, filed the
initial lawsuit aiming to overturn the restriction, arguing in part, that the Board of Health did not have the authority to ratify the new rules unilaterally. Justice Milton A. Tingling writing for the court noted that the city regulation was “arbitrary and capricious.” However, Mayor Michael Bloomberg (I-NY) strongly supports regulations on sugary beverages, and as a result, the City of New York has filed an appeal.

On March 18, Governor Phil Bryant (R-MS) signed into law S.B. 2687, also called the Anti-Bloomberg Bill. The new law essentially prohibits municipal leaders from regulating food and drink in local restaurants. Additionally, under the new law, no political subdivision may restrict the sale, distribution, growing, raising or serving of foods and nonalcoholic beverages that are approved for sale by the U.S. Department of Agriculture (USDA) or other federal or state government agencies. This provision of the new law prohibits municipalities from placing limits on the amount of sugary nonalcoholic beverages sold to consumers.

North Carolina State Board of Dental Examiners and 14 Dentists File Lawsuits Against Dental One, Inc., and DentalCare Partners Inc.

The North Carolina State Board of Dental Examiners (dental board) and 14 individual dentists filed two separate lawsuits on February 18 against Dental One, Inc. (Dental One), and DentalCare Partners Inc. (DCP) as well as related limited liability corporations for the unlawful practice of dentistry, breach of fiduciary duties, breaches of contract, deceptive trade practices, and other claims.

The suits allege that the entities are practicing dentistry without a license and interfering with dentists’ clinical decisions, resulting in unnecessary treatment and unwarranted billing of patients. To view the complaint filed by the dental board click here. To view the complaint filed by the dentists click here.

Proposed Michigan 2020 Plan Offers Free College Tuition for All Michigan High-School Students

The Michigan 2020 Plan would provide Michigan high school graduates – public, private or home-schooled – with the opportunity to have the cost of their college education paid for in its entirety. According to the proposed plan, the maximum amount of the grant would be equal to the median tuition level (currently $10,617/year) of all of Michigan's public universities. Students could choose to attend any of Michigan's community colleges or public universities and use that money toward the cost of tuition, books and other eligible expenses. If the cost of tuition exceeds the amount of their grant, the student would be required to pay the difference. Additionally, the plan calls for forming an independent commission, to identify the least effective tax credits and incentives. The tax credits and incentives would be eliminated to raise the estimated $1.8 billion needed for the plan. S.B. 223, which mirrors the Michigan 2020 Plan, has been introduced by Senator Rebekah Warren (D-MI) and has 9 co-sponsors. The bill has been referred to the Senate Committee on Appropriations for consideration.

State Policy Updates

- Massachusetts

The Massachusetts Board of Registration in Dentistry (Board) released a policy advisory that allows dentists to use facial injectables such as Botox and dermal fillers. However, under the policy, licensed dentists must hold an American Dental Association (ADA) Board Certification in Oral and Maxillofacial Surgery or have successfully completed the following training: a minimum of eight (8) hours in administration of botulinum toxins and/or eight (8) hours in administration of dermal fillers. The training must be accredited by the American Dental Association’s Continuing Education Recognition Program (CERP), the Academy of General Dentistry’s Program Approval for Continuing Education (PACE), or other nationally-recognized and accredited entity approved by the Board.
• **Michigan**

On March 1, 2013 Governor Rick Snyder (R-MI) announced that the City of Detroit is in a financial emergency and has determined that the appointment of an emergency manager is needed to assist the city in its financial recovery. The Governor reached this decision after a review of a report and supplemental documentation issued February 19 by the Detroit Financial Review Team. The report cites general fund deficits, a significant depletion of cash, and long-term liabilities such as health care expenditures as major issues affecting the financial stability of the city.

However, under Public Act 72 of 1990 (Local Government Fiscal Responsibility Act), the city had 10 calendar days to request a hearing before the governor or his designee. Following the hearing, or after the 10-day period expires, the governor must confirm or revoke his original determination. If confirmed, the management of the emergency would be assigned to the Local Emergency Financial Assistance Loan Board (ELB), who would be charged with appointing an Emergency Financial Manager (EFM).

On March 14 Governor Snyder confirmed that after reviewing the information presented by the city during the appeal hearing, he remained convinced that an EFM was needed for Detroit. As a result, the ELB named Kevyn Orr as the city’s emergency financial manager, effective March 25. Mr. Orr earned both a bachelor's degree and law degree from the University of Michigan, and has practiced in the areas of business restructuring, financial institution regulation and commercial litigation since 1984.

• **Minnesota**

On February 19, Governor Mark Dayton (D-MN) signed into law H.F. 9. The new law expands Medical Assistance eligibility to 35,000 low-income adults. According to Governor Dayton, the expansion of Medical Assistance eligibility provides $129 million in projected savings for the 2014-15 biennium. This is in addition to the $1.3 billion Minnesota is already expected to save by 2015 as a result of the Affordable Care Act (ACA). Additionally, on March 20, Governor Dayton signed H.F. 5 establishing MNsure, a new marketplace where Minnesotans can choose health insurance. According to Governor Dayton, an estimated 1.3 million Minnesotans will benefit from H.F. 5, including nearly 300,000 Minnesotans who are currently uninsured. After federal tax credits, individual consumers will see an average 34% decrease in premiums for insurance purchased through MNsure. The average family will save $500 annually.

• **New Hampshire**

Senator Peggy Gilmour (D-NH) sponsored S.B. 193 which authorizes the licensure of dental therapists who may perform dental services under the supervision of a currently licensed dentist. Under the proposed bill, the permissible procedures would include the following (this list is not exhaustive): mechanical polishing; placement of temporary restorations, interim therapeutic restorations, temporary crowns, and recementing permanent crowns; and extractions of primary teeth and nonsurgical extractions of permanent teeth. The bill is currently pending in committee.

• **Vermont**

Representative David Sharpe (D-VT) sponsored H.B. 234, along with more than 30 co-sponsors. The bill imposes an excise tax on nonalcoholic sugar-sweetened beverages. The monies generated from the tax will be deposited in a fund and used for activities such as subsidizing school meals for low-income Vermonters. The bill is currently pending in committee.
Reports of Interest

The Association of State and Territorial Dental Directors (ASTDD) approved a new policy on preventing tobacco use and eliminating exposure to secondhand smoke. The policy notes that effective state and community programs should focus prevention efforts on the following: 1) prevention of youth initiation of tobacco use, 2) promoting tobacco use cessation, 3) eliminating exposure to secondhand smoke, and 4) identifying and eliminating tobacco-related health disparities.

The Chicago Dental Society issued a white paper finding that the Cook County Department of Public Health served approximately 11,900 dental patients in 2000; in 2009, it treated fewer than 5,000. The state’s fiscal year 2011 budget deficit resulted in cuts to public services, including public dental clinics. The Chicago Dental Society outlines several recommendations in the white paper, including creating a network of “dental homes” for underserved children and adults where patients can learn good dental hygiene under the ongoing care of a dentist and recruiting more dental school applicants from unserved and underserved communities, with the hope they will return to those communities to begin their careers.

The Center for Budget and Policy Priorities issued a report documenting the extent of state budget cuts for higher education and arguing that the cuts are hurting students and state economies. The report notes that in the past five years, state cuts to higher education funding have been severe and almost universal. After adjusting for inflation:

- States are spending $2,353 or 28% less per student on higher education, nationwide, in the current 2013 fiscal year than they did in 2008, when the recession hit.
- In many states the cuts over the last five years have been remarkably deep. 11 states have cut funding by more than one-third per student, and 2 states — Arizona and New Hampshire — have cut their higher education spending per student in half.

The National Commission on Physician Payment Reform issued a report detailing a series of recommendations aimed at curbing health care spending and improving quality of care by changing the way health care providers are paid. The recommendations call for eliminating stand-alone fee-for-service payments by the end of the decade.

KPMG, a national audit, tax, and advisory services firm, released an issue brief finding that approximately 5.3 million Americans could go without health coverage in the states not expected to join the Medicaid expansion under the Affordable Care Act (ACA).

The National Association of Medicaid Directors (NAMD) issued a white paper identifying and addressing the challenges as well as opportunities for Medicaid-relevant health system reform. Specifically, the paper notes that states should reduce the administrative burden and obstructions to innovative programs, and support Medicaid participation in multi-payer initiatives.

The Department of Health and Human Services (HHS), Office of Inspector General (OIG), has released a report finding that of the 45 states that responded to an initial survey conducted in the spring 2012, 35 states reported that they anticipate implementing streamlined eligibility and enrollment systems, streamlined application forms, and data sharing and matching by January 1, 2014 in state health subsidy programs such as Medicaid. However, states reported challenges, such as implementing the requirements by the target date and upgrading outdated eligibility and enrollment systems.

ADEA/Sunstar Americas, Inc./Jack Bresch Student Legislative Internship

The ADEA/Sunstar Americas, Inc./Jack Bresch Student Legislative Internship is a six-week, stipend-supported internship in the Advocacy and Governmental Relations portfolio of the ADEA Policy Center (ADEA AGR) in Washington, D.C. This student legislative internship provides a unique learning
experience for **predoctoral, allied, and advanced dental student residents, and fellows.** It is designed to encourage students to learn about and eventually—as dental professionals—to become involved in, the federal legislative process and the formulation of public policy as it relates to academic dentistry. It is open to any predoctoral, allied, or advanced dental student resident, or fellow who is interested in learning about and contributing to the formulation of federal public policy with regard to dental education, dental research, and the oral health of the nation. Funded through the generous support of Sunstar Americas, Inc., the student intern will be a member of the ADEA AGR staff and will participate in congressional meetings on Capitol Hill, coalition meetings, and policy discussions among the ADEA Legislative Advisory Committee (ADEA LAC) and ADEA AGR staff.

An applicant must be a full-time predoctoral, allied, or advanced dental student resident, or fellow whose institution is willing to work with the student to identify an appropriate time, consisting of six weeks, during the school year to pursue the internship. **For additional information, please email Yvonne Knight, J.D., ADEA Senior Vice President for Advocacy and Governmental Relations, at KnightY@ADEA.org.** Applications are accepted on a year-round basis.

**Save the Date: ADEA Advocacy Day on Capitol Hill, April 17, 2013**

ADEA invites you to make your voice heard during **ADEA/AADR Advocacy Day on Capitol Hill, Wednesday, April 17, 2013, from 8:30 a.m. to 5:00 p.m.** This one-day event is co-sponsored by the American Association for Dental Research (AADR), and has been designed to provide all members of the dental education and research community an opportunity to advocate before Members of Congress and their staff for support on access to oral health care initiatives, pipeline programs for diverse students, and adequate funding for dental and craniofacial research.

ADEA/AADR Advocacy Day has been scheduled at this time to take advantage of a “window of opportunity” to visit with congressional members just before a critical period when funding allocations may be revised for federal programs and agencies, including the National Institute of Dental and Craniofacial Research. Don’t miss this opportunity to participate in Advocacy Day and demonstrate to Congress that, even during difficult economic conditions, oral health education and research must remain federal priorities.

Participants will attend a morning briefing on current policy issues impacting dental education, interface with Members of Congress during a luncheon, and advocate on behalf of their institutions and the dental education community during meetings with congressional members and staff.

Registration for ADEA/AADR Advocacy Day is complimentary, and participants will meet at Rayburn House Office Building Gold Room (#2168), Independence Avenue and South Capitol Street, Washington, D.C. 20003.

**To RSVP or inquire about hotel accommodations, please contact Jessica Vatnick at vatnickj@adea.org.** For additional information, please contact Yvonne Knight, J.D., ADEA Senior Vice President for Advocacy and Governmental Relations at knighty@adea.org or (202) 289-7201.
The ADEA Policy Center publishes the *ADEA State Update* monthly. Its purpose is to keep ADEA members abreast of state issues and events of interest to the academic dental and research communities.

© American Dental Education Association
1400 K Street NW, Suite 1100, Washington, DC 20005
Telephone: 202-289-7201, Website: [www.ADEA.org](http://www.ADEA.org)

Yvonne Knight, J.D.
ADEA Senior Vice President for Advocacy and Governmental Relations
(KnightY@ADEA.org)

Jennifer Thompson Brown, J.D.
ADEA Director of State Relations
(BrownJT@ADEA.org)

Amirah Salaam, J.D.
ADEA Director of Outreach and Advocacy
(SalaamA@ADEA.org)