

Date: March 22, 2024

To: Board of Trustees
American Dental Association (ADA)

Re: Declining NCOIL DLR-framework

Dear Board of Trustees,

In light of the announcement of your upcoming meeting to reevaluate the ADA/NCOIL Agreement, the Massachusetts Dental Society would like to offer insight into how this agreement could be improved upon. In accordance with the ADA Bylaws, ADA Policies, and adopted Parliamentary Procedures, we offer the following points:

A. The NCOIL-Terminology is inaccurate:

The terms section of the NCOIL Agreement (Section 3) adopts DLR terms that are not tailored to dentistry. The DLR terms inappropriately reference to 45 CFR 158¹, and unnecessarily mandate states to mirror definitions used for reporting health benefit plans.² (Attachment A - NCOIL Agreement)

Three terms of Concern:

1. The term "Nonprofit Community Expenditures" in Section 3(d)(i)(B)³ creates a known loophole - which allows insurers to redirect patient care funds to their own affiliated non-for profit companies.

For example, in 2019, Delta Dental of Massachusetts (DDMA) literally "contributed" \$291 Million to its non-profit parent company (Catalyst Institute), while only paying \$177 Million in Patient Care that same year. **(See Attachment B - 2019 DDMA Form 990)**

Furthermore, in 2018, DDMA transferred \$335 Million to Catalyst Institute, while only paying \$185 Million for patient care that same year.⁴

This pattern of contribution is allowed by the Section 3 terms of the NCOIL DLR-framework, and these funds would be exempt from the DLR reporting - leading to an inflated DLR calculation.

¹ Section 3(d)(i) (A) and (B) of proposed Act refers to terms in 45 CFR 158, which was designed for medical plans.

² Section 3(d)(ii) of proposed Act mandates that definitions follow similar definitions for health benefits plans in the state.

³ Section 3(d)(i)(B) creates this loophole by adopting the definition at 45 CFR 158.162(c).

⁴ 2018 Form 990 and 2019 Form 990 - Dental Services of Massachusetts (DBA Delta Dental of Massachusetts).

2. The term "Quality Improvement Activity" (QIA) is another known financial loophole in the NCOIL framework,⁵ which allows non-claims expenses to be counted in the DLR numerator (as if they were patients claims paid).

QIA's have been the subject of significant litigation and abuse by medical insurers in the past decade. Dental insurers argued for this loophole during the Massachusetts Question 2 DLR hearings. However, Massachusetts draft regulations restricted the language at 45 CFR 158.150, closing the loophole with the following protective language:

*"Quality Improvement Activity (QIA). An activity designed to improve dental quality that is performed equitably by or **through a provider** to all patients, requires clinical expertise, increases the clinical wellness and promotion of health activities, produces clinical outcomes that can be objectively measured and can produce verifiable results, be directed toward individual Members of a Carrier's plans or segments of Members, as well as populations other than Members (as long as no additional costs are incurred for the non-Members, and as long as the activity can be supported by evidence-based medicine, best clinical practices, or supported by criteria issued by professional dental associations that meets all the requirements of 45 C.F.R 158.150(b)). A QIA may include disease management, case management, and other dental management expenses. A QIA **does not include any activities that are identified under 45 C.F.R. 158.150(c), that have any overlap with administrative expense items** specified under M.G.L. c. 176X, § 2(b)(i)-(x), that have any marketing component that displays the name of the Carrier, or that are paid for by the Carrier to any affiliate of the Carrier in any way, either directly or indirectly." (emphasis provided)*

3. While the term broker "commissions" must be reported as an administrative expense according to 45 CFR Part 150, the Center of Medicaid Services (CMS) provides an exemption to reporting 45 CFR Part 150 DLR commissions. The effect of the CMS exemption is that insurer can hide commissions.

For example, an insurer that pays 10% in broker commissions expenses may reduce their premium received by that 10%, so that only 90% of what the patient paid is included as premium revenue (the DLR denominator). In that way, the patient has lost 10% of each premium dollar, but the DLR does not reflect that 10% reduction. The commission becomes a non-DLR "pass-through" to the patient - leading to an inflated DLR calculation.

Therefore, by agreeing to 45 CFR 150, the NCOIL DLR-framework provides three major loopholes that will lead to false reporting and reduced premium-value to the patient.

B. The NCOIL-Reporting is inaccurate: (due to the False Terminology)

As explained above, the terminology of the NCOIL framework controls the DLR reporting, which leads to a:

1. Deflated Denominator: (by excluding Premium Revenue)

- a. "Non-Profit Community Expenditures" are excluded from the denominator, while funds are "contributed" to non-profit affiliates - falsely Inflating the DLR.
- b. "Commissions" are excluded from the denominator, even though patients are paying the broker through their premium payment - falsely Inflating the DLR.

⁵ Section 4(b) of the NCOIL framework adopts all terms in 45 CFR Part 158 "commencing with 158.01" - thereby capturing the 45 CFR Part 158 version of QIA (located at 158.150).

2. Inflated Numerator: (by including Non-Claims Expenses)

- a. "Quality Improvement Activities" (QIA)⁶ are freely added to the numerator up to 5% - falsely inflating the DLR Reporting.

Therefore, the Reporting section of the NCOIL DLR-Framework is misleading and meaningless.

C. The NCOIL-DLR Fails to Reverse the Profit-Strategy:

A meaningful DLR regulation forcibly reverses an insurer's profit-strategy

from: Insurers "make more by *spending less* on patient care."

to: Insurers "make more by *spending more* on patient care."

The NCOIL DLR-framework, does not force this change, because it allows **insurers to control the minimum DLR** - a dysfunctional self-regulation.

This dysfunctional self-regulation stems from the fact that the model act lacks a fixed minimum DLR. The NCOIL framework instead utilizes an unprecedented "roving DLR," based on a roving standard deviation.

The "roving DLR" system effectively allows all insurance plans to co-trend to an "in-common" financial comfort zone that perpetuates the existing "make more by *spending less* on patient care" profit-strategy - rendering the NCOIL-DLR meaningless.

To further weaken the DLR, the Act utilizes a 3-year average for the DLR calculation (making it easier to trend above the already weak standard deviation provision), a 3% safe-harbor (from the already weak standard deviation provision), a 42-month delay in implementing a minimum DLR (if a plan fails the already weak standard deviation provision), a minimum-DLR-waiver option at the discretion of the insurance commissioner (for plans that have failed the already weak standard deviation provision).

Additionally, the Act language only triggers discipline after 2 "***consecutive***" years of non-compliance, which enables an insurer to alternate failure years indefinitely to evade the trigger.

Simulations have demonstrated⁷ that the model Act's roving DLR can easily be manipulated to neutralize the DLR so that it is merely "administrative red-tape".

In Summary, the NCOIL-DLR **does not reverse the insurer's profit-strategy** - rendering it a meaningless DLR.

Respectfully yours,

Board of Trustees
Massachusetts Dental Society

⁶ While the QIA's are unrestricted in their character, they are also given an arbitrary and capricious high limit of 5% of premiums, whereas medicine QIA is typically under 1%.

⁷ <https://www.youtube.com/watch?v=iVq2yww3P8A&t>

ATTACHMENT A

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CHIEF EXECUTIVE OFFICER: Thomas B.
Considine



PRESIDENT: Rep. Tom Oliverson, TX
VICE PRESIDENT: Asw. Pamela
Hunter, NY
TREASURER: Sen. Paul Utke, MN
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Rep. Deborah Ferguson, AR

National Council of Insurance Legislators (NCOIL)

Medical Loss Ratios for Dental (DLR) Health Care Services Plans Model Act

**Sponsored by Del. Steve Westfall (WV)*

**Co-sponsored by Rep. Rita Mayfield (IL)*

**Adopted by the NCOIL Health Insurance & Long Term Care Issues Committee on January 26, 2024. To be placed on the Executive Committee's agenda for final ratification at the 2024 NCOIL Spring Meeting on April 14, 2024.*

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Section 1. Title

This Act shall be known and cited as the "[State] Medical Loss Ratios for Dental (DLR) Health Care Services Plans Act."

Section 2. Purpose

The purpose of this Act is to provide for transparency of the expenditure of dental health care plan premiums, and to require annual reports and remediation if the dental loss ratio falls below a certain percentage.

Section 3. Definitions

(a) "Commissioner" means the Insurance Commissioner of this state.

(b) "Dental carrier" or "carrier" means a dental insurance company, dental service corporation, dental plan organization authorized to provide dental benefits, or a health benefits plan that includes coverage for dental services.

(c) "Dental health care service plan" or "plan" means any plan that provides coverage for dental health care services to enrollees in exchange for premiums, and does not include plans under Medicaid or CHIP.

(d) "Dental loss ratio" or "DLR" means percentage of premium dollars spent on patient care as calculated pursuant to subsection (i) in this section.

(i) The dental loss ratio is calculated by dividing the numerator by the denominator, where:

(A) The numerator is the sum of the amount incurred for clinical dental services provided to enrollees, the amount incurred on activities that improve dental care quality, and other incurred claims as defined at 45 CFR 158.140(a); and

(B) The denominator is the total amount of premium revenue, excluding federal and state taxes, licensing and regulatory fees paid, **nonprofit community expenditures as defined at 45 CFR 158.162(c)**, and any other payments required by federal law.

(1)(a) The Commissioner shall define by rule:

(I) expenditures for clinical dental services;

(II) activities that improve dental care quality;

1. Activities conducted by an issuer intended to improve dental care quality shall not exceed five percent of net premium revenue

(III) overhead and administrative cost expenditures; and

(ii) The definitions promulgated by rule pursuant to this Section must be consistent with similar definitions that are used for the reporting of medical loss ratios by carriers offering health benefit plans in the state. Overhead and administrative costs must not be included in the numerator.

Section 4. Transparency of Patient Premium Expenditures

(a) A carrier that issues, sells, renews, or offers a specialized dental health care service plan contract shall file a Dental Loss Ratio (DLR) annual report with the Commissioner that is organized by market and product type and contains the same information required in the 2013 federal Medical Loss Ratio (MLR) Annual Reporting Form (CMS-10418). The filing must also report additional data that includes the number of enrollees, the plan cost-sharing and deductible amounts, the annual maximum coverage limit, and the number of enrollees who meet or exceed the annual coverage limit.

(b) The DLR reporting year shall be for the fiscal year during which dental coverage is provided by the plan. All terms used in the DLR annual report shall have the same meaning as used in the federal Public Health Service Act (42 U.S.C. Sec. 300gg-18), Part 158 (commencing with 158.101) of Title 45 of the Code of Federal Regulations, and Section 1367.003.

(c) If data verification of the carrier's representations in the DLR annual report is deemed necessary, the commissioner shall provide the carrier with a notification 30 days to submit any information required by the Commissioner.

(d) By January 1 of the year after the Commissioner receives the dental loss ratio information collected pursuant to subsection (a) of this Section, the Commissioner shall make the information, including the aggregate dental loss ratio and other data reported pursuant to this Section, available to the public in a searchable format on a public website that allows members of the public to compare dental loss ratios among carriers by plan type by:

(i) Posting the information on the division's website; or

(ii) Providing the information to the administrator of an all-payer health claims database. If the Commissioner provides the information to the administrator, the administrator shall make the information available to the public in a format determined by the Commissioner.

(e) The Commissioner shall report the data in this Section to the Legislature.

Section 5. Excess Revenue and Rebate

(a) The Commissioner shall aggregate dental loss ratios for each carrier by year pursuant to Section 4 for each market segment in which the carrier operates. The commissioner shall calculate an average dental loss ratio for each market segment using aggregate data for a 3-year period including data for the most recent dental loss ratio reporting year and the data for the two prior dental loss ratio reporting years.

(1) Newer experience shall be subject to reporting standards at 45 CFR 158.121

(b) The Commissioner shall calculate an average dental loss ratio for each market segment using the data pursuant to subsection 5(a), identify as outliers dental plans that fall outside 1 standard deviations of the average dental loss ratio, and report those plans to the legislature consistent with the manner set forth in subsections 4(e) and 4(d) above.

(1) A carrier shall not be considered an outlier if its DLR in a market segment is within 3 percentage points of the average dental loss ratio. A higher threshold may be set in unique circumstances as determined reasonable by the commissioner.

(c) The Commissioner shall investigate those carriers that report a DLR lower than 1 standard deviations from the mathematical average, and may take remediation or enforcement actions against them, including ordering such carriers to rebate, in a manner consistent with 45 C.F.R. Part 158(B) of the ACA all premiums paid above such amounts that would have caused said carrier to have achieved the mathematical average of the data submitted in a given year for a given market segment.

(d) The report in subsection (b) shall be organized to show year-over-year changes in a carrier's outlier status relative to meeting the 1 standard deviation outlier standard at subsection (b). If the DLR for a carrier in a market segment does not increase and remains an outlier as defined in subsection (b) after 2 consecutive years, barring unique circumstances as determined reasonable by the commissioner, the carrier shall be subject to a minimum DLR percentage by market segment. The commissioner shall promulgate rules establishing the DLR percentage based on, at minimum, the average of existing carrier loss ratios by market segment in the state to be effective no sooner than 42 months after a carrier is determined to be an outlier as defined in this section.

(e) A carrier subject to remediation in subsections (c) and (d) shall provide any rebate owing to a policyholder no later than xxxxx of the fiscal year following the year for which the ratio described in subsection (a) of this section was calculated. The Commissioner may establish alternatives to direct rebates to include premium reductions in the following benefit year.

(f) The Commissioner may promulgate rules that create a process to identify carriers that increase rates in excess of the percentage increase of the latest dental services Consumer Price Index as reported through the US Bureau of Labor Statistics.

Section 6. Rules

The Commissioner shall adopt rules as necessary to effectuate the provisions of this Act.

Section 7. Effective Date

This Act shall take effect xxxxxxxx.

ATTACHMENT B

Form 990

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2019

Open to Public
Inspection

A For the 2019 calendar year, or tax year beginning 01-01-2019, and ending 12-31-2019

B Check if applicable: <input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Final return/terminated <input type="checkbox"/> Amended return <input type="checkbox"/> Application pending	C Name of organization Dental Service of Massachusetts Inc % FRANK A SCALISE Doing business as DELTA DENTAL OF MASSACHUSETTS Number and street (or P.O. box if mail is not delivered to street address) Room/suite 465 MEDFORD STREET City or town, state or province, country, and ZIP or foreign postal code BOSTON, MA 02129 F Name and address of principal officer: DENNIS J LEONARD 465 MEDFORD STREET BOSTON, MA 02129	D Employer identification number 04-6143185 E Telephone number (617) 886-1000 G Gross receipts \$ 343,557,986
I Tax-exempt status: <input type="checkbox"/> 501(c)(3) <input checked="" type="checkbox"/> 501(c) (4) (insert no.) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527	H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. (see instructions) H(c) Group exemption number ▶	
J Website: ▶ WWW.DELTADENTALMA.COM	K Form of organization: <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input type="checkbox"/> Other ▶	L Year of formation: 1966 M State of legal domicile: MA

NOTE ADDRESS

Part I Summary

Activities & Governance	1 Briefly describe the organization's mission or most significant activities: TO IMPROVE THE ORAL HEALTH OF ALL.		
	2 Check this box <input checked="" type="checkbox"/>		
	3 Number of voting members of the governing body (Part VI, line 1a)	3	12
	4 Number of independent voting members of the governing body (Part VI, line 1b)	4	11
	5 Total number of individuals employed in calendar year 2019 (Part V, line 2a)	5	0
	6 Total number of volunteers (estimate if necessary)	6	0
Revenue	7a Total unrelated business revenue from Part VIII, column (C), line 12	7a	57,576
	b Net unrelated business taxable income from Form 990-T, line 39	7b	56,576
Expenses	8 Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
	9 Program service revenue (Part VIII, line 2g)	0	0
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	297,473,146	294,533,102
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	9,126,102	3,297,995
	12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	0	0
	13 Grants and similar amounts paid (Part IX, column (A), lines 1–3)	306,599,248	297,831,097
	14 Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	184,221,110	177,479,050
	16a Professional fundraising fees (Part IX, column (A), line 11e)	105,832	0
	b Total fundraising expenses (Part IX, column (D), line 25) ▶ 0	0	0
Net Assets or Fund Balances	17 Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)		
	18 Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	90,197,161	86,354,602
	19 Revenue less expenses. Subtract line 18 from line 12	274,524,103	263,833,652
		32,075,145	33,997,445
Net Assets or Fund Balances	20 Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21 Total liabilities (Part X, line 26)	450,590,248	179,977,314
	22 Net assets or fund balances. Subtract line 21 from line 20	89,483,761	98,177,808
		361,106,487	81,799,506

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here	Signature of officer	2020-11-11	Date
	GREGORY P WINN TREASURER		
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date
	Firm's name ▶ ERNST & YOUNG US LLP	Check <input type="checkbox"/> if self-employed	PTIN P01595811
	Firm's address ▶ 200 CLARENDON STREET	Firm's EIN ▶	
	BOSTON, MA 021165072	Phone no. (617) 266-2000	

May the IRS discuss this return with the preparer shown above? (see instructions) ☒ Yes ☐ No

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 11282Y

Form 990 (2019)

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III ☒**1** Briefly describe the organization's mission:

TO IMPROVE THE ORAL HEALTH OF ALL.

Part I Liquidation, Termination, or Dissolution. Complete this part if the organization answered "Yes" on Form 990, Part IV, line 31, or Form 990-EZ, line 36.
Part I can be duplicated if additional space is needed.

1	(a) Description of asset(s) distributed or transaction expenses paid	(b) Date of distribution	(c) Fair market value of asset(s) distributed or amount of transaction expenses	(d) Method of determining FMV for asset(s) distributed or transaction expenses	(e) EIN of recipient	(f) Name and address of recipient	(g) IRC section of recipient(s) (if tax-exempt) or type of entity	Yes	No	
2	Did or will any officer, director, trustee, or key employee of the organization:									
a	Become a director or trustee of a successor or transferee organization?								2a	
b	Become an employee of, or independent contractor for, a successor or transferee organization?								2b	
c	Become a direct or indirect owner of a successor or transferee organization?								2c	
d	Receive, or become entitled to, compensation or other similar payments as a result of the organization's significant disposition of assets?								2d	
e	If the organization answered "Yes" to any of the questions on lines 2a through 2d, provide the name of the person involved and explain in Part III. ►									

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or Form 990-EZ. Cat. No. 50087Z Schedule N (Form 990 or 990-EZ) (2019)

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Schedule N (Form 990 or 990-EZ) (2019)

Part I Liquidation, Termination, or Dissolution (continued)

Note. If the organization distributed all of its assets during the tax year, then Form 990, Part X, column (B), line 16 (Total assets), and line 26 (Total liabilities), should equal -0-.

3	4a	4b	5	6a	6b	Yes	No
3	4a	4b	5	6a	6b		

2 Did or will any officer, director, trustee, or key employee of the organization:

a Become a director or trustee of a successor or transferee organization?

b Become an employee of, or independent contractor for, a successor or transferee organization?

c Become a direct or indirect owner of a successor or transferee organization?

d Receive, or become entitled to, compensation or other similar payments as a result of the organization's liquidation, termination, or dissolution?

e If the organization answered "Yes" to any of the questions on lines 2a through 2d, provide the name of the person involved and explain in Part III. ►

Part II Sale, Exchange, Disposition, or Other Transfer of More Than 25% of the Organization's Assets. Complete this part if the organization answered "Yes" on Form 990, Part IV, line 32, or Form 990-EZ, line 36. Part II can be duplicated if additional space is needed.

1	(a) Description of asset(s) distributed or transaction expenses paid	(b) Date of distribution	(c) Fair market value of asset(s) distributed or amount of transaction expenses	(d) Method of determining FMV for asset(s) distributed or transaction expenses	(e) EIN of recipient	(f) Name and address of recipient	(g) IRC section of recipient(s) (if tax-exempt) or type of entity	Yes	No
1	contribution of investment assets		291,253,972	bookvalue	38-4016550	catalyst institute inc 465 Medford street boston, MA 02129	501(C)(4)		

2 Did or will any officer, director, trustee, or key employee of the organization:

a Become a director or trustee of a successor or transferee organization?

b Become an employee of, or independent contractor for, a successor or transferee organization?

c Become a direct or indirect owner of a successor or transferee organization?

d Receive, or become entitled to, compensation or other similar payments as a result of the organization's liquidation, termination, or dissolution?

e If the organization answered "Yes" to any of the questions on lines 2a through 2d, provide the name of the person involved and explain in Part III. ►

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or Form 990-EZ. Cat. No. 50087Z Schedule N (Form 990 or 990-EZ) (2019)

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Schedule N (Form 990 or 990-EZ) (2019)

Part III Supplemental Information.

Provide the information required by Part I, lines 2e and 6c, and Part II, line 2e. Also complete this part to provide any additional information.

Return Reference	Explanation
Schedule N, Part II, Line 2a	The organization transferred assets to its sole member, catalyst Institute, Inc. The organization and its sole member have the same board of directors.

Schedule N (Form 990 or 990-EZ) (2019)