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May 27, 2025

Pamela Bondi
Attorney General
Department of Justice (DOJ)
950 Pennsylvania Ave.
Washington, D.C. 20530

Andrew N. Ferguson
Chairman
Federal Trade Commission (FTC)
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex C)
Washington, D.C. 20580

Mehmet Oz, M.D.
Administrator
Centers for Medicare & Medicaid Services
(CMS)
7500 Security Boulevard
Baltimore, MD 21244

Robert F. Kennedy Jr.
Secretary
Health and Human Services (HHS)
200 Independence Avenue, SW
Washington, D.C. 20201

<https://www.regulations.gov/docket/ATR-2025-0001> (Docket No. ATR-Hi2025-0001)

Dear General Bondi, Administrator Oz, Chairman Ferguson and Secretary Kennedy,

On behalf of our 40,000 members, the Academy of General Dentistry (AGD) is offering the following response to your request for information (RFI) on deregulation. AGD dentists provide a full range of dental care to patients across all demographic and socioeconomic segments throughout the country.

Following the Supreme Court's decision to overturn the Chevron doctrine in *Loper Bright v. Raimondo*, federal agencies should no longer be granted broad discretion in the development of proposed rulemaking.¹ The AGD's comments focus on several areas of concern to general dentists.

CHIRA/ Anti-competitive (Public Law 116-327)

For several years, AGD advocated for changes to the McCarran-Ferguson Act. On January 13, 2021, the President signed the Competitive Health Insurance Reform Act of 2020 (CHIRA), which repeals certain portions of the McCarran-Ferguson Act that had previously protected dental and health insurers from anti-trust liability. In the four subsequent years, the DOJ has not issued guidance or regulations to clarify the constraints and ramifications of the new law. As a result, insurance companies have not changed their payment practices.

The majority of dentists in the U.S. are small business owners. Since no guidance or regulations have been executed or disseminated for CHIRA, large insurers are free to continue business as usual. Insurers may restrict competition, increase premiums, decrease reimbursements, and narrow consumer choice.

AGD realizes that CHIRA exempts the collection, compilation and dissemination of historical loss data, actuarial services if it does not involve a restraint of trade and developing an insurance policy form

¹ U.S. Supreme Court, Decided June 25, 2024, https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

that will not require adherence to that standard form. The AGD specifically requests that the DOJ move forward with guidance and/or regulations to implement CHIRA.

Rescind FTC noncompete (Rule 16 CFR Part 910)

The AGD requests reconsideration and withdrawal of the rule to ban noncompete arrangements. These agreements have traditionally been under the purview of the individual states.

Translation Services Section 1557 of Affordable Care Act (ACA) (42 USC 18116)

The AGD believes that reasonable accommodations are necessary for those patients with limited English language proficiency (LEP); however, the language assistance provisions in Section 1557 of the ACA are excessive and should be repealed. Section 1557 requires health care providers to deliver mandatory language translation services and post notices of consumer rights in the 15 languages most commonly spoken in the state.

Requirements for posting nondiscrimination notices and taglines have proven to be challenging to implement for members. Dental practices with 15 employees or more are required to post notices: a Notice of Nondiscrimination and Taglines. These notices must be posted in the dental practice's office, website, and additional publications and communications targeted to patients and the public.

Furthermore, entities with fifteen or more persons must designate and authorize at least one employee, a "Section 1557 Coordinator," to coordinate the covered entity's compliance with its responsibilities under section 1557 and this part in its health programs and activities, including the investigation of any grievance communicated to it alleging noncompliance with section 1557 or alleging any action that would be prohibited by section 1557. This regulation is costly and difficult to administrate and should be repealed.

Medicaid

Many dentists find the paperwork and administrative burdens associated with Medicaid participation to be excessive. Medicaid paperwork, claims processing, and eligibility verification can be time-consuming and complex, especially for smaller dental practices.

Additionally, some dentists hesitate to accept Medicaid due to low reimbursement rates which can result in significantly less access to care for vulnerable populations. The American Dental Association estimates that only one in three dentists participate in the Medicaid program.² Simplifying administrative processes and increasing reimbursement could increase Medicaid participation rates.

Fair Insurance Reform

Insurance plans should not require dentists to accept set fees for non-covered services. The Employee Retirement Income Security Act (ERISA) regulates self-funded dental plans at the federal level but regulations are needed that would:

² American Dental Association, Health Policy Institute, September 2022

<https://www.ada.org/resources/research/health-policy-institute/coverage-access-outcomes/dentists-in-medicaid>

- Prevent insurers from classifying non-covered services as covered by providing nominal payment;
- Allowing contract extensions beyond two years if the provider agrees; and
- Prohibit insurers from requiring a specific dental lab or equipment supplier.

Health Professional Shortage Areas (HPSA) Designations (42 USC 5.3)

The previous Health Resources and Services Administration (HRSA) designated a dentist shortage where the ratio of the population to providers is less than 3500 to one (or 3000 to one if there are unusually high needs in the community). Kaiser Family Foundation maintains that designations are not withdrawn until a Federal Register notice is published, generally once a year on or around July 1.³ The published number of HPSA designations may erroneously include HPSAs proposed for withdrawal and health professional shortage areas HPSAs lacking accurate data. The AGD, whose members continue to serve as a resource for federal officials' input, is unaware of any HPSA designations being withdrawn.

HPSA designations, based on obsolete and/or incomplete data, have the potential to impact the dental workforce in the following ways:

- Misguided funding allocations;
- Practitioner specialization choices that may exacerbate shortages of either generalist or specialist numbers;
- Policy decisions affecting loan repayment, Medicaid reimbursement rates, immigration policies aimed at a potentially nonexistent dentist shortage, and
- Incentive to open more dental schools – creating a market surplus whereby graduating dentists cannot find work.

AGD requests that the HPSA program be reexamined and provides assurances to the public that up-to-date data is being used.

In Closing

The AGD thanks the DOJ, CMS, the FTC, and HHS and others for considering our comments on deregulation. We look forward to the opportunity to work with federal officials. If you have questions or would like to discuss our comments in greater detail, please contact Daniel J. Buksa, JD, CAE, Executive Director, by phone at (312) 440-4328 or via email at daniel.buksa@agd.org.



Chethan Chetty, DDS, MAGD

³ *Primary Care Health Professional Shortage Areas (HPSAs). Timeframe: as of September 30, 2022.* Kaiser Family Foundation <https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

AGD President

CC: jk

Cc:

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Executive Director

Academy of General Dentistry