

## **Suggested Provisions -- Joint Negotiations by Dentists with Carriers**

### **Establish a set of findings and declarations relative to joint negotiations by dentists with carriers**

- In some states that have this law or a history of legislation, a fairly robust list of findings sets the tone for the reason behind the need for this legislation.
- Suggest accessing states such as New Jersey law 52:17B-196.

### **Set up definitions and provisions that set the framework for allowable joint negotiation activities**

- Existing state laws provide reasonable sets of definitions and what terms need to be defined.
- Similarly, existing laws provide some guidance on framework for joint negotiations such as the need for state oversight to meet certain federal requirements (such as the Attorney General providing oversight), a process for petitioning the defined state agency to launch negotiations.
- Include the critical provisions that allow joint negotiation to proceed.
- Upon findings by the state of market inequalities, allow two or more independent dentists to jointly negotiate with the carrier and engage in related joint activity, as provided in the law regarding fees and fee-related matters, including, but not limited to, any of the following: (i.e. amount of payment, amount of discount and procedure code or other description of dental service covered by a payment and the appropriate grouping of the procedure codes, etc.).
- Negotiated contracts and any plan of action for implementing the contract terms must be approved by the state (i.e. Attorney General).

### **Develop the powers and duties of the state agency (i.e. Attorney General)**

- Examples, the Attorney General has up to 30 days to act on the petition or proposed contract, as applicable.
- The Attorney General shall approve a petition or a proposed contract if it is found that the benefits which are likely to result from the joint negotiations outweigh the disadvantages.
- Require the Attorney General to consider dentist distribution by specialty and effect on competition in the geographic service area of the carrier.
- The Attorney General must notify the carrier of the petition to negotiate under and provide the carrier with the opportunity to reply.
- Provide for process to appeal Attorney General denials.
- Provide for confidentiality.
- Require all parties to negotiate in good faith.

### **Prohibitions**

- The law does not permit a coordinated cessation reduction or limitation of the health care or dental services.
- It does not permit two or more physicians or dentists to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians or dentists, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier.
- It does not permit two or more physicians or dentists to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-physician or non-dentist health care provider from participating in the carrier's health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law.
- Provide advisory to dentists the potential for legal action against for violating federal antitrust law.