



March 11, 2025

**RE: Senate Bill 2375 – OPPOSE**

Dear Chairman Warrey and Members of the Committee,

On behalf of the National Association of Dental Plans (NADP), we appreciate the opportunity to provide comments on SB 2375. As introduced, this bill would allow two or more dental providers to jointly negotiate with dental insurers. SB 2375 would decrease competition, increase costs for employers, decrease quality of care for patients, and place plans at unnecessary risk for litigation.

Allowing providers to negotiate nearly every aspect of the provider-plan relationship would impede several internal processes put in place to protect consumers and providers, including claims review. Claims review protects patients from waste, fraud, and abuse which could harm their oral or overall health with serious long-term implications. The National Health Care Anti-Fraud Association estimates that dental fraud, waste and abuse costs approximately \$12.5 billion, or 5% of total spending on dental care in the U.S. each year. Allowing for the negotiation of utilization management criteria and procedures, clinical practice guidelines, definitions of medical necessity and other conditions of coverage would significantly reduce the ability of dental plans to protect patients, leaving them more susceptible to waste, fraud, and abuse. Preserving this patient protection is paramount because most patients are unable to determine themselves whether waste, fraud, or abuse has occurred. Patients rely on these processes to ensure that any services performed are necessary and appropriate.

SB 2375 would also make North Dakota an outlier. We are not aware of any state in the nation that allows competing dentists to jointly negotiate their fees and fee-related contract terms with insurance carriers. This is confirmed by the American Dental Association handout entitled “Joint Negotiation by Dentists with Carriers,” which dental proponents distributed at the February 10, 2025 hearing of the Senate Human Services Committee.<sup>1</sup> SB 2375 would provide collective bargaining rights to competing dentists in North Dakota that are not available to dentists in other states and that are not available to physicians or other health care providers in North Dakota (or for that matter to other competing businesses in North Dakota).

In our free market, competition-based economy, competitors are generally prohibited from collectively negotiating fees and fee-related contract terms. The above ADA handout acknowledges that antitrust authorities “regard joint negotiations over fees by independent health care providers with carriers as price-fixing—an antitrust violation.” The paper further states, “Federal antitrust laws generally prohibit joint negotiations by competitors because they can reduce market competition”, which was recognized by proponents of SB 2375 before the Senate Human Services Committee. It has been suggested that the bill creates immunity for conduct that would otherwise violate the antitrust laws (called “state action antitrust immunity”). As the ADA handout recognizes, state action antitrust immunity requires the anticompetitive conduct to be clearly expressed as state policy and “actively supervised” by the State. Because it authorizes conduct that would otherwise violate the antitrust laws, the state action immunity doctrine is

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<sup>1</sup> The ADA handout cites New Jersey and Texas, but those laws expired 17 (New Jersey) and 22 (Texas) years ago, and the Texas law did not apply to dentists. The handout also mentions Alaska, but that law does not apply to dentists either and Washington state, but its law is much narrower and more constrained and expressly prohibits health care providers from collectively bargaining fee-related terms.

narrowly-construed and disfavored by the courts. We are concerned that SB 2375 purports to authorize private parties to engage in conduct that is prohibited by federal antitrust laws and, if carried out, could embroil them in years of litigation that would do nothing other than to raise costs for policyholders.

Providers currently maintain the right to negotiate their contracts, including terms and fee schedules. Many of the other contract elements outlined in SB 2375 are already necessitated by state law or industry practice. For these reasons we believe that SB 2375, as written, would not be good for the insurance market, providers, or consumers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bianca", with a stylized flourish at the end.

Bianca Balale  
Director of Government Relations  
National Association of Dental Plans

*NADP is the largest non-profit trade association focused exclusively on the dental benefits industry. NADP's members provide dental HMO, dental PPO, dental indemnity and discount dental products to more than 200 million Americans with dental benefits. Our members include the entire spectrum of dental carriers: companies that provide both medical and dental coverage, companies that provide only dental coverage, major national carriers, regional, and single state companies, as well as companies organized as non-profit plans.*