

Testimony on HB 1154
William R. Sherwin
North Dakota Dental Association
Senate Human Services Committee
March 9, 2020

Good Morning Chairman Lee and members of the Senate Human Services Committee, my name is William Sherwin, Executive Director of the North Dakota Dental Association. I would like to thank you all for your time today to speak on HB 1154 our “Dental Care Bill of Rights.” This legislation was adopted from the national model at NCOIL piloted by our very own Representative Keiser who is our sponsor here in North Dakota as well. Our Dental Care Bill of Rights includes three sections/issues that I will walk through with you briefly:

1. Network Leasing – Fair and Transparent Network Contracting

Insurance companies can “sell/lease” dentists off to different insurance networks without the dentist’s knowledge or consent, significantly impacting the insurance benefits available to their patients. This erodes patient/dentist trust, which can lead to assumptions in treatment plans and costs based on a false understanding of patient coverage.

In a typical insurance network arrangement, dentists are fully engaged as they choose to join a network, allowing dentists to understand and discuss the terms of their agreement with patients as needed. In states that allow network leasing to proceed without adequate protections, the insurance network may transfer the rights to a dentist’s contract to another insurance company without seeking the dentist’s knowledge or consent. As a result, dentists may not be able to adequately advise patients on financial planning around dental services.

The North Dakota Dental Association is advocating for network leasing laws that would expand transparency and provide an opportunity for dentists to accept or refuse these contracts, establishing basic fairness while reducing occurrences of unexpected bills following a procedure.

2. Prior Authorization – Claim Payments Guarantee

To the typical patient, an insurer’s authorization means, barring unusual circumstances, payment for the service(s) authorized prior to treatment will be made by the benefit carrier.

Unfortunately, an emerging trend among payers has been to deny a claim for a service that was authorized by the benefit carrier. Patients and their dentists rely upon this promise to pay and are caught off-guard when payment is denied.

In submitting an authorization request, dentists are making a good-faith effort to explain the treatment plan so insurers may determine, prior to the service, if the plan raises any concerns with regard to payment. Once authorization is established, patients and dentists feel assured insurers' coverage will be delivered. When the promise to pay is altered after care is delivered, patients and doctors are left in an unexpected financial bind.

Carriers should be compelled to comply with their promise to pay that is included in preauthorization communications. The intent of proposed legislation is to ensure carriers honor their commitment provided in prior authorizations when there are no extenuating circumstances.

3. Retroactive Denial – Fairness in Claim Payment Refund Requests

Dental plans have the ability to review claims after payment has been delivered and request claims payment refunds under certain circumstances. The profession is interested in laws that restrict the timeframe allowed to request such a refund. Laws in this category restrict refund requests to six months to a year after payment.

Dental benefit plans have become more complex as they adjust to competition and related market pressures. One such adjustment is a greater emphasis on plans auditing claims after payments are made as a means to control their expenditures. While it is appropriate for plans to audit payments for errors and adjust accordingly, it is unreasonable to ask dentists to refund payments several years after plans have made erroneous payments and discover it. The NDDA recognizes the value of public policy that limits the amount of time dental carriers may request a refund for an erroneous claim payment. Such laws establish a reasonable statute of limitations on insurers' refund requests, similar to the existing statute of limitations for providers to file claims for covered services.

As small business owners and employers, dentists are careful in establishing their practice budgets. They must plan carefully, especially as carrier payments for covered services are usually

less than dentists' regular fees. It places an undue burden on the practice to repay carriers for a mistake carriers made in paying claims many years after the mistake was made.

Dentists participating in insurers' networks have a limited amount of time to file claims for covered services, usually less than a year. After that, insurers can refuse to pay anything. This time limit ensures the claim process remains efficient and avoids having to retrace the history of services many years later. The same logic should apply to carriers requesting a refund many years after they send a payment, where carriers ask dentists to refund a claim payment. Just as dentists are limited in claiming payment for covered services, plans should be similarly limited in the time they have to claim a refund on a payment they made by mistake.

For these reasons and the reasons outlined in your handouts, I would ask the committee to please support HB 1154, give the bill a due pass recommendations and follow the direction of the North Dakota House, NCOIL and so many states across our country on fair and transparent contracting processes in the dental insurance market.

Dental Care Bill of Rights

HB 1154 – Dental Insurance Reform

1. Retroactive Denial – Fairness in Claim Payment Refund Requests

- Dental insurers audit their claim payment/adjudication activities before and after payments are made to dentists to ensure accuracy and efficiency. Sometimes, insurers require dentists to repay claim payments when the insurers discover they paid a claim mistakenly. While it is appropriate for plans to audit payments for errors and adjust accordingly, it is unreasonable to ask dentists to refund payments several years after plans make erroneous payments.
- The value of *Retroactive Denial* laws is that they establish a reasonable statute of limitations on insurers' refund requests, similar to the existing time limitations for dentists to file claims for covered services they have provided.
- Under existing *Retroactive Denial* laws, dental insurers are limited to a reasonable time period (typically 6 - 12 months) where they can request refunds from dentists when they have paid claims in error.

2. Prior Authorization – Claim Payments Guarantee

- Insurers occasionally issue a "prior authorization" that details for both the patient and the dentist how much the insurer will pay for a treatment plan, which helps reduce confusion and helps patients know what to expect financially.
- Insurers sometimes deny payment for the care they authorized, or reduce the amount they promised to pay for the services. When authorized care is denied, this can result in an emergency financial situation for the patient and doctor, increasing stress and throwing up an unnecessary barrier to future care due to lack of trust in the insurance carriers.
- *Prior Authorization* laws hold dental insurers to paying what they promised in the authorization.

3. Virtual Credit Card – Fairness in Claim Payment/Transaction Fees

- There is a growing trend for insurance carriers to pay a claim by issuing a credit or debit card rather than a paper check or direct deposit. Typically, the transaction involves no physical card, but rather a series of numbers the dentist enters into a website or terminal in order to complete the claims payment transaction.

- The virtual credit card payment method includes a per transaction fee of as much as 5% - to be paid *by* dentists in order to collect the claim payment. In some cases, the insurance carrier offers no other alternative for paying its claims, and may even share in the revenue generated from the fees the dentists must pay to receive the funds.
- The value of *Virtual Credit Card* laws is that they do not prohibit this payment method, but simply inform dentists of other payment options and allow dentists to opt for a different payment method.

4. Network Leasing – Fair and Transparent Network Contracting

- Dental insurers occasionally lease or rent the “in-network” relationship they have established with a dentist to another entity. This can happen without the dentist’s consent or knowledge. As the contract a dentist signs with a carrier is leased to other entities, which can happen years after the initial contract is signed, it can obligate the dentist to deeply discounted fees for a larger patient base than anticipated. This behind-the-scenes approach to building networks erodes patient and dentist trust.
- *Network Leasing* laws expand transparency before networks are leased and provide an opportunity for dentists to accept or refuse the contracts to which they would be obliged.

5. Medical Loss Ratio (MLR) – Transparency of Patient Premiums in Dental Care

- The federal government requires major medical plans pay certain percentages of the collected premiums for medical care vs. administrative costs. For example, large group plans must spend at least 85% of their collected premiums on care delivered to patients and no more than 15% can be spent on administrative costs and profit.
- No such requirement exists for dental plans which are considered “excepted benefits.”
- Patients seeking to maximize the value of the coverage they purchase would benefit from knowing how much of the carriers’ premiums are invested in the care they receive. State laws establishing a reporting requirement will ensure that dental plans are more transparent to the people they serve.

Regulating Network Leasing to Preserve Patient Benefits



Insurance companies can pawn dentists off to a different insurance network without the dentist's knowledge or consent, significantly impacting the insurance benefits available to their patients.

Patient Concerns

Without network leasing laws, health care transparency suffers. Patients and providers should be fully informed about the costs of care as early as possible in any health care transaction. Leased networks often have the opposite effect. Because leased networks operate "silently", the provider and patients are unable to determine coverages and discounts. This erodes patient/dentist trust, which can lead to assumptions in treatment plans and costs based on a false understanding of patient coverage.

Without protections in law, the PPO contracting entities can include dentists in an agreement without their knowledge, consideration or consent. Likewise, there are no protections for dentists from having to comply with various terms, conditions and fee schedules to which they had no opportunity to consider, negotiate or accept/reject.

Solution

The North Dakota Dental Association is advocating for network leasing laws that would expand transparency and provide an opportunity for dentists to accept or refuse these contracts, enforcing basic fairness while reducing occurrences of unexpected bills following a procedure. One third of states currently employ such legislation.

What Are the Benefits of Network Leasing Laws?

- Dentists are fully engaged as they choose to join a network, allowing dentists to understand and negotiate the terms of their agreement.
- As a result, dentists and patients are informed partners as they discuss financial planning around future procedures.

Proposed Network Leasing Laws in North Dakota



Dental Care Bill of Rights

HB 1154 – Dental Insurance Reform



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Provider Network Leasing Legislation is Gaining Momentum Across the Nation

► PASSED IN

20 states

In **California**, **AB954**, passed in 2019, requires that a provider network contract allows a provider to opt out of third-party access, while identifying all third parties.

Passed in 2020, **Nebraska's L774** asks that the third-party access provision of any provider network contract be clearly identified, and that dental providers have the option to opt-out of third-party access.

In **New Jersey**, **AB2507**, passed in 2018, ensures that dental providers have the option to opt out of network leasing arrangements. Dental carriers are required to identify and regularly update information regarding third parties.

North Carolina's SB252, passed in 2019, requires that insurers proactively identify all third parties with network access, and that such third parties are in compliance with the network contract's terms. Providers can choose not to participate in third-party access to the provider network contract.

► To learn more about Network Leasing Legislation in North Dakota, please contact the North Dakota Dental Association at 701-223-8870 or by email at wsherwin@smilenorthdakota.org

Protecting Patients by Holding Insurers Accountable for Prior Authorizations



An insurer's authorization means they agree to make payment for the service(s) being sought prior to treatment. However, an increasing number of insurers are denying claims for services previously authorized, reversing their agreement with both patients and dentists.

Patient Concerns

In submitting an authorization request, dentists are making a good-faith effort to explain the treatment plan so insurers may determine, prior to the service, whether coverage is granted and what costs patients will need to pay. Once authorization is granted, patients should have a right to be assured that their procedure will be covered. When the promise to pay is reversed after care is delivered, patients and dentists are left in an unexpected and unfair financial bind, effectively disrupting treatment planning.

Solution

The North Dakota Dental Association is advocating for legislation to hold insurance companies accountable to their promise to pay. "Promise to Pay" legislation ensures that patients have all the information they need so that they can plan for all health care costs. In the last two years, five states have enacted laws to address this unfair practice, demonstrating the state law can and should require insurance companies to stand by their commitment to pay.

What Are the Benefits of Prior Authorization Laws?

- Avoiding surprise costs preserves the trust between patients and their providers, preventing confusion for all parties.
- Patients are far more likely to seek care if they can rely on their insurance carrier's commitment to pay, fully understand which portions of treatment will be covered, and are accurately informed of out-of-pocket costs.

Proposed Prior Authorization Laws in North Dakota

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Prior Authorization Legislation is Gathering National, Bipartisan Support

► PASSED IN

9 states

HB 1211, passed in **Colorado** with overwhelming support in 2019, renders all legal prior authorizations valid for a minimum of six months after approval. Authorizations may only be voided in situations involving fraud or lapse of coverage.

HB 429, passed in **Louisiana** in 2018, prohibits dental carriers from denying any claims approved in prior authorization, barring circumstances involving exhausted/inadequate coverage or fraud.

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Restricting Retroactive Denial to Prevent Surprise Billing and Protect Patients



Retroactive denial allows insurance companies to require dentists to repay claims already paid to them when insurers discover they paid a claim mistakenly, even if the claim was processed years ago. This results in surprise billing – at the expense of patients.

Patient Concerns

Retroactive denials often result in an unexpected bill for the patient and erodes trust between patients and their dentists, creating uncertainty that can keep patients from seeking care in the future. Patients and dentists alike should be able to expect timely, accurate billing settlements when working with insurers.

Solution

The North Dakota Dental Association is working to pass reforms to limit the time frame within which an insurer may demand a refund on a claim they have already paid out. As a result, “surprise bills” are limited within a reasonable amount of time, typically 6 or 12 months.

What Are the Benefits of Retroactive Denial Laws?

- Adopts a statute-of-limitations approach, establishing a reasonable timeline to conclude health care coverage transactions.
- Establishes accountability and responsibility on the part of insurers in managing their processes and administration of benefits, ultimately helping to keep overall health care costs down.
- Careful management of claims payment administration reduces unexpected health care costs that add to the cost of care in the long run.

Proposed Retroactive Denial Laws in North Dakota

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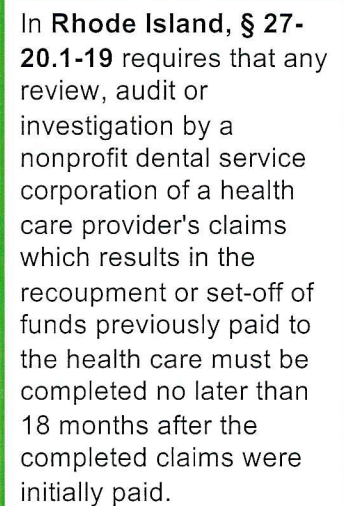


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24 states



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