



March 11, 2025

RE: Senate Bill 2375

Dear Chairman Warrey and members of the House Industry, Business and Labor Committee:

On behalf of the American Council of Life Insurers (ACLI)¹, we appreciate the opportunity to provide comments to express our concerns associated with Senate Bill 2375. In its current form, this bill would create guidelines which allow two or more dental providers to jointly negotiate with dental insurers. This bill would make North Dakota the only state in the country that allows competing dentists to collectively bargain their fees and other contract terms with insurance companies in whose networks they choose to participate. We are concerned that if enacted as currently drafted, SB. 2375 would lessen competition among dental providers, increase costs for the job creators and individuals who buy insurance, and lower quality for patients.

No Other State Permits Dentists to Collectively Bargain Their Fees and Other Terms

This legislation would 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.² 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).

SB. 2375 Authorizes Joint Fee-Related Negotiations That Are Prohibited by Antitrust Laws

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.” Proponents of

¹ ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States.

² 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.

the law recognized these prohibitions in testimony before the Senate Human Services Committee. The representative of the North Dakota Dental Association testified in the Senate Human Services Committee on February 10, "The reason that we need this bill today is because it is illegal for us to jointly negotiate with the carriers as it stands." Yet, SB 2375 would authorize competing dentists to jointly negotiate their fees and fee-related contract terms with dental carriers in whose networks they choose to participate, leading to higher costs for policyholders.

Proponents of SB 2375 have 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 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. Despite claiming otherwise, Section 1(1) authorizes independent dental providers to engage in joint negotiations that directly impact provider fees, with no apparent state oversight (*see, e.g.*, Section 1(1)(n) (dentists may jointly negotiate "formulation and application of reimbursement methodology"); Section 1(1)(o) (dentists may jointly negotiate "inclusion or alteration of a contractual term or condition"). Sections 1(2) and (3) authorizes competing dentists to communicate among themselves and "engage in related joint activity relating to fees and fee-related matters" with no apparent state oversight. As for the remainder of Section 1(2), we have significant legal concerns that the bill does not provide sufficient state oversight to shield private parties' fee-related conduct from antitrust liability, and our members are concerned about being dragged into costly and unproductive litigation as a result of this legislation.

Thank you for your consideration of our anti-trust concerns as the bill is currently drafted and we look forward to working with you and other interested parties on this bill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Young". The signature is fluid and cursive, with the first name "Alex" and the last name "Young" clearly distinguishable.

Alex Young
Legislative Director, State Relations
ACLI