

House Industry, Business and Labor Committee

HB 1154

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On behalf of Blue Cross Blue Shield of North Dakota and our over 350,000 members we respectfully oppose HB 1154. We have serious concerns that this bill closely resembles a version of any willing provider legislation for dentists. The freedom to contract and establish provider networks are components central to the business of insurance and keeping health care costs low. Requiring carriers to contract with any willing provider and eliminating our ability to terminate existing contracts removes our ability to eliminate providers from our network that might not have the best interests of our members in mind. Examples of reasons we might terminate an existing contract include fraud, embezzlement, and malpractice, but also can include things like breach of contract, charging members in full at the time of service and then refunding the money after payment from BCBSND, billing high charges or collecting too much cost-sharing. None of these are pro-consumer.

Every insurer has credentialing requirements (and perhaps other written “qualifications” but credentialing being the standard), but there could be an instance – even if it’s once in a blue moon - when the credentialing requirements are satisfied but the insurer nonetheless does not want to extend a participation agreement. The amended language requires that an insurer contract with the provider as long as the provider has met the insurer’s “qualifications.” In other words, the insurer’s discretion is gone.

If an insurer’s position is that it will always, forever and with no exceptions extend a participation agreement to any provider that satisfies the insurer’s qualifications, then the revised language is fine. However, if the insurer wants to retain control of its network and discretion not to contract with a provider even if the provider otherwise satisfies the insurer’s credentialing and qualifications, the language is bad.

Worse yet, if the language is enacted and an insurer attempts to use discretion in a one-off situation, the provider could have a cause of action against the insurer and the insurer could be subject to regulatory and criminal penalties. We simply don’t see how the language is not an any willing provider mandate. If the provider satisfies the insurer’s credentialing/qualifications, an insurer **MUST** contract with the provider. The insurer loses control over the network and has no discretion.

It is worth mentioning that we are unclear what problem this bill solves for BCBSND members. Rather, we feel it provides special treatment for the dentists in the state as opposed to their patients. North Dakotans enter into hundreds of contracts throughout their lifetimes whether it be movie rental agreements, terms of use posted on internet websites, product return rights for e-tailers such as Amazon and eBay, license provisions on the back of sporting and concert tickets, apartment leases, car purchases, extended warranties on appliances, and home mortgages. Contracts are a part of life. Like most states, North Dakota has an entire title of law that governs contracts (Title 9, N.D.C.C.), and state and federal courts are highly-adept at reviewing and resolving contractual disputes that arise. Dentists, in the performance of their profession, are no different than other North Dakotans in so far as contracts being a part of their lives; however, their contracts relate to the operation of a dental business. HB 1154

requires that dentists receive special treatment and protections above and beyond the Title 9 provisions of North Dakota law that are generally applicable to North Dakotans. Such special treatment is an unnecessary government intrusion into the long-standing tenet of freedom to contract, and dentists are certainly not a class of North Dakotans needing special protections.

Dentists are highly-educated professionals who engage in an array of contracts every year as part of their normal business operations, so it is fair to assume that they fully understand contracts or have the ability to obtain the professional assistance of an attorney or accountant for those services. Just like all other North Dakotans, dentists have an obligation to read and understand their contracts before signing, and the Legislative Assembly should not pass legislation that gives dentists special treatment when entering into contracts.

HB 1154 is also problematic because it will necessarily create a host of additional operational and administrative requirements that cause expense, and those expenses will ultimately be borne by dental insurance members in the form of increased premiums. BCBSND also inquired with the North Dakota Department of Insurance to see if there were any complaints or inquiries on dental insurance and there were not any. Additionally, BCBSND has a Dental Advisory Board, and we have not heard from the dentists, nor the North Dakota Dental Association on this issue. HB 1154 is a solution for dentists, not consumers, that should be handled directly rather creating an unnecessary special section of code to protect dentists from the contracts they deal with every day.

Due to the concerns raised above, BCBSND opposes 1154.

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