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March 9, 2021

The Honorable Judy Lee
North Dakota Senate Human Services Committee
600 East Boulevard
Bismarck, ND 58505-0360

Dear Chairwoman Lee and Members of the Senate Human Services Committee:

On behalf of the National Association of Dental plans, the leading national representative of dental benefits provided to over 200 million Americans, and on behalf of approximately 375,000 North Dakotans who have dental benefits, we respectfully oppose HB 1154.

We appreciate that HB 1154 recognizes that network leasing is an important practice that creates value for employers, providers, and consumers by expanding carriers' networks. Through leasing arrangements, dentists receive access to new market segments and new patients. Consumers receive the benefits of broader provider networks, including increased access to care and choice of provider. Broader networks, from or made possible by leasing, result in lower costs for consumers, both for premiums and cost sharing on dental care services. NADP supports provider choice with regard to participation in a carrier's leasable network. We also believe providers should be well-informed about leasing arrangements in which they participate with carriers or leasing companies, and we support efforts to enhance communication between providers and these entities.

However, we recognize that HB1154 also contains additional provisions unrelated to network leasing. Some of these provisions, like regulations on prior authorization, have been enacted by a handful of states in recent years. While NADP appreciates the sponsor's efforts to help patients and their dentists anticipate the costs of dental services before such services are rendered, **this legislation fails to recognize the fundamental differences between a prior authorization and other communications about benefits coverage which occur frequently between dental carriers and dental providers**, such as pre-treatment estimates.

National Association of Dental Plans

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The failure to accurately define a prior authorization in a way that is commonly understood and used by dental carriers and to distinguish the term from other, voluntary, benefit determination processes will ultimately lead to confusion among North Dakota's dentists and patients.

The definition of prior authorization in HB 1154, as currently drafted, is flawed in the following ways:

- HB 1154 does not recognize that a prior authorization, as used elsewhere in North Dakota Code¹, as defined in other state statutes², and as commonly understood by insurance carriers,³ is a process whereby a provider, typically on behalf of a patient, requests approval or authorization from the insurance carrier before delivering a treatment or service. **A communication is considered prior authorization only if there is a requirement by the carrier or plan that services be authorized, prior to being rendered, in order to be covered.** This is typically a process that is required if a patient needs a complex treatment.
- HB 1154 does not recognize that **a prior authorization is distinct from non-binding, voluntary communications between a dentists and insurance carriers, such as a pre-treatment estimate.** A pre-treatment estimate is an optional process whereby providers and plan members can request information about benefit coverage and costs and receive an estimate. A pre-treatment estimate is neither a guaranty of payment nor a determination of the necessity for the service.
- HB 1154 does not specify that **prior authorizations are written communications which are issued in response to requests submitted by a dentist using a format prescribed by the insurer.** The failure to specify the manner in which prior authorizations are obtained may lead dental providers and patients to mistakenly believe that phone calls or claims tools used to help a patient or dentist determine what the plan could cover and pay for are prior authorizations. These voluntary services may not check the patient's eligibility (until the date of service), incentive levels, maximum or deductible, or any additional coverage that may apply; they are not a guaranty of payment.

We strongly urge you prevent this unnecessary confusion by adding language to this bill plainly stating that a prior authorization does not include a voluntary, non-binding request for a projection of dental benefits or payment that does not require authorization. This approach mirrors legislation enacted last year in the state of North Carolina⁴ and introduced in Texas⁵.

¹ N.D.C.C. § 50-24.6-01

² Ind. Code § 27-1-37.5-7

³ <https://www.ahip.org/wp-content/uploads/Prior-Authorization-FAQs.pdf>

⁴ North Carolina G.S. 58-3-200(c)

⁵ Texas HB 2486



Further, we urge this Committee to clarify that a prior authorization must be written and submitted in format prescribed by the insurer.

NADP respectfully submits the following amendment language for this Committee's consideration:

"Prior authorization" means [written](#) confirmation by the covered person's dental benefit plan that the services sought to be provided by the dental provider meet the criteria for coverage under the covered person's dental benefit plan ~~as defined~~ [and are reimbursable at a specific amount, subject to applicable coinsurance and deductibles, and issued in response to a request submitted by a dentist using a format prescribed](#) by the covered person's dental benefit plan. [For purposes of this section, a prior authorization does not include a voluntary, non-binding request for a projection of dental benefits or payment that does not require authorization.](#)"

Thank you for your time and consideration of these important issues. We remain committed to working with you and with the dental provider community in North Dakota to address this matter in a way that is beneficial to the patients that we all serve.

Sincerely,



Teresa Cagnolatti
Director of Government and Regulatory Affairs

NADP Description:

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.

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