



Introducing Legislation to Prohibit Fee Capping for Non-Covered Services

A State Advocacy Toolkit

Background

Several major multiline dental benefits carriers have begun adding contract language that allows them to set fees with providers for all dental services, including services that their contracts do not cover with those carriers. When a dental benefit carrier enacts a policy holding its providers to a maximum allowable charge for non-covered services, its dentist providers are forced to abide by these fee structures. To enact a fee cap on non-covered services, a dental benefits carrier must amend the current contract it has with its existing providers. Typically, such amendments include language along these lines:

Dentist may bill a Member for non-covered services (which are defined as any service for which no payment is made under the applicable plan or arrangement for any reason, including but not limited to, services in excess of contractual maximums, services not covered under plan design, and services denied due to contractual limitations). Dentist's charge to Member for non-covered services may not exceed the Maximum Allowable Charge for the applicable CDT code as specified in the most current Maximum Allowable Charge schedule. Fees for all non-covered services will be collected from the Member, and not billed to the Carrier.

The provider then has the choice of signing the new contract, thus accepting the new fee caps, or terminating his or her contract. If the provider elects not to sign, then he or she will be excluded from the provider networks presented to patients by that carrier's dental plans.

Scope of the issue

Because dental benefits carriers can fall under the protections of the Employee Retirement Income Security Act of 1974 (ERISA), this is both a national and state issue; state laws, such as the one passed in Rhode Island do not exempt dentists from ERISA dental insurance plans that want to implement this policy change. ERISA is a federal law that sets minimum standards for retirement and health benefit plans in private industry. Insurers that cover large employee groups who self-insure will more likely fall under ERISA jurisdiction.

The AGD will endeavor to partner with the American Dental Association (ADA) on the federal legislation, as the ADA's Council on Government Affairs (CGA) has drafted legislation to prevent ERISA plan carriers from setting fees for non-covered services. The scope of this toolkit, however, is intended for advocacy endeavors at the state level.

Impact of carriers enacting such policy

To stay competitive with each other, dental benefit carriers are arguing that market pressures and the need to gain a marketing advantage are the reasons they are implementing this policy. Market need, the carriers assert, is being driven by patients who can save money on services not covered by their dental benefit plan and see value in limiting their out-of-pocket expenses. However, if the capped fee is below what the dentist believes is fair and reasonable, he or she may no longer offer that specific service to that carrier's patients, thus limiting the patients' treatment options. In some markets, providers may elect to stop participating with certain carriers. In either case, the patient could face decreased access to desired care.



EXISTING AGD POLICY

“Resolved, that third party payers should not determine fees for procedures that are not covered and/or reimbursed in their policies. And be it further, resolved, that the appropriate AGD agencies be directed to help AGD constituents develop legislation that will prevent third party payers from setting fees for non-covered and/or non-reimbursed procedures.”

ADVOCACY EFFORTS

Legislative Strategy

Legislators can be divided into three categories: members who will almost surely be with you, those who will surely be against you, and those in the “undecided” middle. Contact those likely to be with you first in order to ensure that they know what you’re advocating and why. Don’t assume that they will vote your way. However, focus your main lobbying efforts on those in the undecided group, who can be swayed if you provide enough facts and produce enough positive public pressure. Target your opponents only if time allows or if you have some special card to play with them.

How to Meet Legislators

The more legislators you know, the more effective you will be as a lobbyist for your cause. Several ways to build and improve relationships with legislators are provided below.

Be politically active as an individual (nonprofit organizations can’t support a specific candidate (unless they have their own PAC) but you can). Volunteer to put campaign signs in your yard, work on a campaign, attend political functions, or buy tickets to political fund-raisers.

Let your dental office be a hook. Invite legislators to visit and show them the services and products you provide. Be sure to include legislators’ families as well.

Have your constituent give awards. If your constituent has any reason to recognize the contributions of an elected official, do it publicly and with as much media attention as possible.

Go through the backdoor. If you’re affiliated with a local business or civic group, encourage that group to work with a legislator. When the time is appropriate, use that connection to educate the legislator on oral health issues.

Be direct. Call a legislator and simply say that you

would like to meet at a convenient time to discuss areas of mutual interest. Offer to help provide information on oral health issues in response to constituent mail. If you’re nervous about taking the first step, find other AGD members and approach legislator as a group.

Get to know the staff. If a legislator’s staff members like you, you’re more likely to get to know the legislator directly.

Be polite. Thank legislators for their actions. Publicize their good work, and let them know you will spread the word. If they voted as you hoped they would on a bill, send a thoughtful, handwritten note.

Arrange group meetings. Invite legislators to meet with members of your constituent. Ask them to speak to the group on effective lobbying techniques.

Solicit an introduction. Talk to your patients and colleagues – you’ll probably find one who can introduce you to a legislator.



SAMPLE LEGISLATIVE TEXT

AN ACT

RELATING TO INSURANCE - DENTAL SERVICE CORPORATIONS

Introduced By:

Date Introduced:

It is enacted by the _____ Legislature as follows:

SECTION 1. Chapter _____ of the General Laws entitled _____ is hereby amended by adding thereto the following section:

(new section number). Contracts with providers for dental services. - (a) No contract between a dental plan of a health care entity and a dentist for the provision of services to patients may require that a dentist provide services to its subscribers at a fee set by the health care entity unless said services are covered services under the applicable subscriber agreement. "Covered services," as used herein, means services reimbursable under the applicable subscriber agreement, subject to such contractual limitations on subscriber benefits as may apply, including, for example, deductibles, waiting period, or frequency limitations.

(b) For the purposes of this section "dental plan" shall include any policy of insurance which is issued by a health care entity which provides for coverage of dental services not in connection with a medical plan.

SECTION 2. This act shall take effect upon passage.

Seeking a Sponsor for Your Bill

The legislator who sponsors your bill is often key to its success. A strong, respected sponsor greatly enhances your chances or passing the bill. If you can get the chair of the committee or the leader of the particular chamber to introduce the bill, you have an excellent start.

When asking a legislator to sponsor a bill, be prepared to answer all questions. Have a draft of the bill language or at least a list of the points you want the bill to include. If the legislator is interested in sponsoring the bill, legislative counsel or the bill-drafting office can get the bill into the correct format.

Be prepared to tell the legislator what support you can provide, who else supports the bill, problems that could



arise, and your initial analysis of the vote count in the legislature. Never misrepresent yourself or your position. After a legislator has agreed to sponsor your bill, make sure you know what role he or she expects you to play from that point forward.

Timing and Other Strategic Considerations

The sponsor may want you to lobby for cosponsors in addition to building public support for the bill. The legislator may be able to pick up a few cosponsors by speaking with colleagues but will probably want you to do the legwork needed to secure a broad range of supporters.

You should also discuss the timing of events. Which chamber—House or Senate—should begin work on the bill (i.e., which chamber is more likely to pass it)? When should the bill be introduced? When should hearings be held? Is there an upcoming event that ties in with your subject that could help gain media attention? Is there a

particularly good time for a vote to occur? However, keep in mind that you may not have the luxury of choosing your timing or following a set strategy.

Other Groups—Proponents and Opponents

If other advocates are working on the same issue in the legislature, try to coordinate with them to avoid duplicating efforts. You don't want the opposition to know your plan, but make sure that all groups supporting the bill have at least a vague idea of the strategy. In *some* circumstances, it's a good idea to speak with the bill's likely opponents. Acting early to bring those people in may avert some problems later. This strategy is sometimes good in cases where the opposition is able to swing more of the votes in its favor.

Working with Legislators

Most legislators are knowledgeable about a broad range of causes but may rely on staff, constituents, and special interest groups to provide detailed information. If you have no experience with a legislative body, research which legislators you should contact first.

Legislative Staff

Don't underestimate the importance of legislative staff members. They're often legislators' most trusted advisors and usually are more accessible than the legislators themselves. Staff members can also provide information about the district and how to organize effective grassroots help.



Where and When to Meet

Many legislators prefer to meet constituents in their home districts rather than in the state capitol. If you want to meet with a key legislator who is not from your area, enlist a member of your constituent from that area to initiate contact and accompany you to the meeting.

If you spend time at the state capitol while the legislature is in session, you will be able to meet with a variety of legislators. When discussing the merits of a position, keep the following tips in mind.

- If possible, call ahead for an appointment so that you can sit down and discuss the issue. If time doesn't permit such a meeting, go to the state capitol during the legislative period and try to "run into" the legislator in the hallway. These meetings aren't very satisfying, but you can usually deliver a few important facts. Always have a short fact sheet or summary on hand to leave with the legislator.
- When speaking with a legislator, always identify yourself first. Even if you've met the legislator previously, restating your name and affiliation will help the legislator focus on what you're saying.
- Don't threaten or antagonize legislators no matter what the provocation. If a legislator opposes your position, be polite and express gratitude for the legislator's willingness to meet with you. Remember, there may be a future bill that you both will agree on.
- Listen closely to the legislator's questions and provide honest, sincere answers. If you don't know the answer, tell the legislator you will do the research and provide the information later.
- If a legislator has taken a neutral stance on a bill, ask what concerns or questions he or she has about the legislation. If it's concern about what the bill will do to citizens in the legislator's district, try to allay those fears by getting citizens to contact the legislator in support of the bill. Don't be so insistent on the legislator taking a position that you end up alienating him or her.
- Always know the status of the bill.
- Be brief with your appeal, but follow up when new information arises—such as a change in the bill which was of concern to the legislators, or a related event occurring in the legislator's district.
- If the legislator has been good on this issue before, it's important to know that and to express thanks.
- As you meet with each legislator, keep notes on the meeting, his or her position on the bill or issue, and any questions that came up.
- If you meet with a legislator in the state capitol, arrive early and be prepared to wait. Don't be surprised if the legislator is only available talk between sessions or is pressed for time. The appropriate time to lobby legislators depends on your message and whether or not the legislature is in session. If your purpose is simply to educate a legislator, meet when the legislature isn't in ses-

sion and things aren't as harried. Above all, be flexible and understanding of scheduling difficulties. If you're lobbying for or against a specific bill, keep in mind that some legislators like to be made aware of everything related to an issue as early as possible, while others don't want to be pressed on an issue until the bill is far enough along to warrant their attention. If the latter is the case, you should at least meet with staff or send written materials outlining the issue and your position.

- A combination of both approaches is often the most effective. Try to meet as early as possible with members who are on the committee that will consider the bill. For members who aren't on that committee, provide written information and, meet with their staff once the bill has begun to move.

The Meeting

Before you arrive for your appointment, decide on the specific points you want to make and what you want the legislator to do. Start the meeting by speaking about some

current legislative matter, or past success related to your issues. If you have a connection with the district—i.e., you live there, went to



school there, or represent specific groups from there—say so. Know the facts about your issue when you meet with the legislator and be prepared to answer questions. If you don't know the answers, don't provide incorrect information. Instead, that you will get the information and send it in a follow-up letter.

Most legislators are dealing with *many* bills, so don't overload them with books, articles, or studies; instead, point them to various resources, provide concise fact sheets and summaries, and offer your assistance. If you're asking a legislator to introduce a bill, be prepared to state specifically what needs to be included. If you have another request—such as casting a vote or sending a letter related to your issue—be clear and concise, but also flexible. If the legislator wants to discuss the issue at greater length, you can give him or her more background information and other material.

Different legislators prefer to be lobbied in different ways. After the meeting, write a thank-you letter to the legislator that restates the result of the meeting (e.g. We are thrilled that you have agreed to sponsor the bill to prohibit caps on non-covered services by insurance companies").

Thank You!



Talking Points



Carrier Argument: There are no cost savings to the carrier or group; this policy is strictly a consumer fee protection measure.

Dentist Rebuttal: While the carrier may see no immediate or direct cost savings, the carrier also endures no cost expenditure while promoting what it calls an additional patient benefit. That is, the carrier gets something for nothing by transferring the cost expenditure to the dentist.

Furthermore, by offering something without costing the carrier anything, the carriers are relieved from the obligation to provide coverage for a wider range of services, which would ultimately serve access to care best.

Lastly, if there is a broader concern of consumer protection, this must fall within the purview and discretion of the state legislature to act upon, and must not be used by private for-profit corporations to attain something for nothing.

Carrier Argument: When carriers are able to hold dentists to a maximum allowable charge for noncovered services, patients can get procedures that they might not otherwise seek.

Dentist Rebuttal: This policy could disrupt long-standing patient/dentist relationships. Additionally, the policy is unfair to private-pay patients since all patients would share the cost incurred by absorbing these additional discounts.

If carriers' were unable to cap patient payments, each dentist would be free to provide discounts on non-covered services to patients who may not be able to afford the dentist's full fees.

Dentists and patients may agree to such discount terms between themselves in a manner that fits patients' needs while also allowing dentists' to determine how to succeed in their small businesses, i.e., their practices.

Carrier Argument: The policy implemented by the carrier will only apply to procedures for which the carrier has credible data to develop reasonable fees; as a result, the impact to participating dentists will be minimal.

Dentist Rebuttal: Most dentists do not file claims for non-covered services, so the data relied upon by the carrier is likely not statistically valid and could be geographically biased. Further, many carriers do not even provide fee schedules. Some carriers cap fees for non-covered services by requiring the dentist to provide a prescribed discount to his or her usual fees, regardless of the nature of the non-covered service.

Carrier Argument: Fee caps for non-covered services allow carriers to remain competitive with each other and are being established in response to large group clients.

Dentist Rebuttal: Legislation prohibiting carriers from capping patient payment for non-covered services would affect all carriers equally in a given state. Therefore, regardless of pressure from large group clients, no carrier would face a loss of business to another carrier as a result of failing to meet such demands of a large group client.

