

[First Reprint]

SENATE, No. 765

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

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District 26 (Essex, Morris and Passaic)

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SYNOPSIS

Prohibits carrier from precluding dentist from billing covered person under certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on June 9, 2022, with amendments.



(Sponsorship Updated As Of: 6/9/2022)

1 AN ACT concerning dental insurance and supplementing
2 P.L.1997, c.192 (C.26:2S-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. A carrier shall not preclude a participating dentist from
8 billing a covered person for a covered service under a dental plan
9 and collecting payment from the covered person for the covered
10 service if the participating dentist:

11 (1) notifies the covered person prior to performing the covered
12 service that the dentist may not be paid by the carrier and that the
13 covered person is responsible for payment of the covered service;

14 (2) provides the covered person an explanation, in writing, of
15 the benefits and material cost differences of suitable alternative
16 options for the service, and that the alternative selected may not be
17 covered by the plan, in advance of it being performed;

18 (3) obtains the covered person's consent, in writing, to the
19 performance of the service and the participating dentist makes the
20 written consent available to the carrier upon request; and

21 (4) accepts as payment in full the amount the participating
22 dentist would have accepted from the carrier under the covered
23 person's dental plan, including bundled payments.

24 A participating dentist that receives payment for a covered
25 service from a covered person that exceeds the amount the
26 participating dentist is obligated to accept under the covered
27 person's dental plan shall refund to the covered person the
28 difference between the amount accepted by the participating dentist
29 from the covered person and the amount the participating dentist is
30 obligated to accept under the covered person's dental plan.

31 b. Notwithstanding the provisions of subsection a. of this
32 section, this act shall not apply in cases where the service
33 performed by the participating dentist is required as a result of a
34 prior service by the dentist that was inconsistent with ¹**[the quality**
35 **of care in the practice of dentistry]** generally accepted practice
36 standards¹ as determined by a licensed dentist, and this act shall not
37 permit billing covered persons for:

38 (1) equipment used by the participating dentist;

39 (2) overhead expenses incurred by the participating dentist; or

40 (3) laboratory costs or other services customarily associated
41 with the performance of covered services unless:

42 (a) the participating dentist receives prior written consent from
43 the covered person in advance of the performance of the service;
44 and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted June 9, 2022.

1 (b) the participating dentist has explained, in writing, the
2 benefits and material cost differences of suitable alternative options
3 for the service, and that the alternative selected may not be covered
4 by the plan, in advance of it being performed.

5 c. A carrier shall not maintain a dental plan that:

6 (1) based on the participating dentist's contracted fee for
7 covered services, uses down-coding in a manner that prevents a
8 dental provider from collecting the fee for the actual service
9 performed from either the dental plan or the patient; or

10 (2) uses bundling of covered services in a manner where a
11 procedure is labeled as nonbillable to the patient unless,
12 ¹ **【consistent with quality of care in the practice of dentistry】** under
13 generally accepted practice standards¹, the procedure may be
14 provided in conjunction with another procedure.

15 d. Nothing in this act shall exempt or limit any dentist from the
16 provisions of the "Insurance Fraud Prevention Act," P.L.1983,
17 c.320 (C.17:33A-1 et seq.).

18 e. As used in this act:

19 "Bundled Payments" means the practice of combining distinct
20 dental procedures or components of a more extensive procedure
21 into one procedure for billing purposes.

22 "Carrier" means an insurance company, health service
23 corporation, hospital service corporation, medical service
24 corporation, dental service corporation, dental plan organization or
25 health maintenance organization authorized to issue dental
26 contracts, policies, or plans in this State.

27 "Covered person" means a person on whose behalf a carrier
28 offering a dental plan is obligated to pay benefits for or provide
29 dental procedures or services pursuant to the plan.

30 "Covered procedure or service" means a dental care procedure or
31 service for which a reimbursement is available under a covered
32 person's dental plan, or for which a reimbursement would be
33 available but for the application of contractual limitations including,
34 but not limited to, deductibles, copayments, coinsurance, waiting
35 periods, annual or lifetime maximums, frequency limitations,
36 alternative benefit payments, or any other limitation, or services not
37 reimbursable by the carrier due a provision in the dental plan.

38 "Dental plan" means a benefits plan, policy, or contract which
39 pays or provides dental expense benefits for covered procedures or
40 services and is delivered or issued for delivery in this State by or
41 through a carrier either on a stand-alone basis or as part of other
42 coverage including, but not limited to, health benefits coverage.

43 Dental plan shall not include the following plans, policies, or
44 contracts: accident only, credit disability, long-term care, Medicare
45 supplement coverage; TRICARE supplement coverage, coverage
46 for Medicare services pursuant to a contract with the United States
47 government, the State Medicaid program established pursuant to
48 P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ FamilyCare Program

1 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), coverage
2 arising out of a worker's compensation or similar law, the State
3 Health Benefits Program, the School Employees' Health Benefits
4 Program, or a self-insured health benefits plan governed by the
5 provisions of the federal "Employee Retirement Income Security
6 Act of 1974," 29 U.S.C. s.1001 et seq., coverage under a policy of
7 private passenger automobile insurance issued pursuant to
8 P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital confinement
9 indemnity coverage.

10 "Down-coding" means the adjustment of a claim submitted to a
11 dental plan to a less complex or lower cost procedure code. Down-
12 coding does not include a carrier's adjustment of payment for
13 procedures which were improperly or inaccurately billed.

14 "Participating dentist" means a dentist who has entered into a
15 contract with a carrier to provide dental services to covered persons
16 for a predetermined fee or set of fees.

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18 2. This act shall take effect on the 90th day next following
19 enactment, and shall apply to dental contracts or plans issued or
20 renewed after the effective date.