

Please Support
S.765, Sponsored by the Senators Pou and Pennacchio
Senate Commerce Committee
June 9, 2022

Good morning, Madame Chairwoman and Members of the Committee.

My name is Jim Schulz, and I am the Director of Governmental and Public Affairs for the New Jersey Dental Association. With me today is Mr. Arthur Meisel, the NJDA Executive Director and General Counsel.

Thank you for allowing us the opportunity to speak in favor of S.765, which would end the unfair business practice of disallowing participating dentists to collect payments for services they have rendered to their insured patients at the patient's request. Thank you, Madame Chair, for your leadership and understanding on this important matter.

S.765, is a pro-consumer piece of legislation that enables consumers to determine and approve their choice in dental treatment services. Under the legislation, dentists must gain informed written consent prior to treatment being performed, which includes explaining to the patient that they are responsible for any unpaid claims by their dental insurance plan.

Dental insurers continue to encroach on the traditional insurance arrangement, seizing more and more ground on becoming not only the payer for care, but also the arbiter of the personal clinical healthcare decisions trained professionals and patients make through the development of contractual sleight-of-hand called the disallow clause.

Dental insurers use disallow clauses to both deny a claim for a dental care AND prohibit the doctor from collecting any fees associated with the services they have already provided to the patient. This is almost always invoked by a dental plan in an ex post facto way.

Ultimately, disallow clauses only enrich a dental plan's bottom-line, and materially interfere with the doctor-patient relationship by forcing the marketplace into pre-selecting what types of procedures will be paid for and what will not. This places doctors in the untenable position of either providing the ethically right dental care to their patients and risk not being compensated for it or ignoring the right healthcare choice and jeopardizing the welfare of their patients.

Ironically, as we have seen at the NJ Dental Association, dental plans routinely pay for dental treatments that have been disallowed when a patient goes to a different dentist for that same treatment.

I want to be clear, nothing in this legislation prohibits, requires, or reduces a dental insurance plan's right or ability to deny a claim or pay for something outside of its contracted terms. Nor does this legislation enable a dentist to charge a patient more than the contractually bound accepted fee.

This legislation does not increase premium costs because it does nothing to encumber more expense by a dental plan.

This legislation empowers a patient to be able to make informed decisions about care and which types of products and services they may choose to have contrary to contractual requirements that a plan may arbitrarily set for payment purposes.

S.765 helps fortify the doctor-patient relationship, and very fairly, and straightforward, says that dentists will be able to be paid for dental treatment that they perform and was previously agreed to by the patient before it began.

It does not deny the choice of dental plans to ever deny a claim, nor does this legislation harm patients who have been treated for their ailments. It will not raise premiums, nor will it harm the bottom-line of plans. It will however prohibit carriers from denying a claim AND prohibiting patients from paying for dental care they choose to receive.

S.765 levels the dental patient experience between those who are insured and those who are not. Patients who do not have dental benefits, even those who have discount dental plans, follow the same process with their dentists as insured patients do. A course of treatment is discussed, including the cost, then they agree to a treatment plan and then they decide to pay for the work they had performed. The difference is that a claim gets submitted for payment assistance on behalf of an insured to a dental insurance carrier.

Dental plans still maintain the right to make a choice on what to cover or not. Plans still make a choice what to pay for or what not.

The “disallow clause”, when used, makes participating dentists look like “bad guys” to their patients, who now question whether the service should have been performed when, in fact, the service was not only necessary, but it also was discussed and requested by the patient.

It will increase premiums

- No, it will not. This legislation does not compel a dental plan from paying a claim or any portion of a claim.

It will harm the consumer by increasing their costs

- No, it will not. The legislation requires a dentist to explain to the patient the procedure in advance that they are obligated to pay whatever amount is unpaid by their plan. They then must consent, in writing, to the work being performed before it is completed. There is no surprise billing here and the patient understands they will have a financial obligation.

Disallow enables carriers to stop Fraud

- Fraud is clearly illegal and not to be tolerated. In fact, carriers are required to report suspected fraud immediately to the NJ the Office of Insurance Fraud Prosecutor. What's more, when carriers suspect fraud, they can and should investigate before paying a claim.

Disallow enables carriers to reign in abusive doctors who over treat their patients

- No, it does not. Doctors are responsible for their patients. This is the cornerstone of the doctor-patient relationship. The doctor must treat the patient's needs and not treat to the patient's insurance coverage. Clinical judgment is a licensure issue and not a dental carrier issue. If a dental plan, or a patient, suspects abusive practices by the doctor they should inform the State Board of Dentistry and register a complaint. Providing dental services that are unneeded on a patient is also a form of fraud under current law. In those instances, the carrier is again obligated, under law, to report the doctor.

Disallow enables Doctors to Balance Bill

- No, it does not. In fact, this legislation's impact is limited only to dentists participating in a dental plan. It does not impact dentists who do not participate. Dentists are required by dental plans to attempt to collect the full amount of the accepted fee from the patient, whether that claim is paid or denied. As we all know, rarely do dental plans ever cover the full cost of dental treatment services, and patients are required to pay the difference between what the plan pays and what the accepted fee is. This is not balance billing. This is collecting the balance of the bill. Ironically, dentists who do not collect the balance of the accepted fee, and who do not disclose a professional courtesy discount, may be subjected to an audit by a dental plan and required to reimburse the plan for inappropriate billing practices.
- Conversely, balance billing, as defined under law, and by dental plans, is when a provider attempts to collect the difference in amount between their full fee and the accepted fee determined by the dental plan. Nothing in this legislation causes balance billing to occur. And nothing in this legislation changes the patient's financial obligation for dental treatment services that are paid or denied by a dental plan.

The Disallow Legislation is Pro-Consumer

- S.765 empowers patients by requiring a doctor to obtain consent in writing for the services being performed prior to work being performed. It enables patients to choose products and materials they want, and are willing to pay for, and not be denied that right by a dental plan. The legislation strengthens the doctor-patient relationship by setting in law a discussion about treatment, and possible alternatives, as well as payment responsibilities prior to work being performed.

Thank you for your time and consideration today. I respectfully ask that you vote in favor of this important piece of legislation. We are happy to answer any questions you may have.