

[Second Reprint]

SENATE, No. 2853

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 27, 2020

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Financial Institutions and Insurance Committee on June 2, 2021, with amendments.



(Sponsorship Updated As Of: 1/28/2021)

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 ²[1. a. A carrier shall not include in an agreement between the
8 carrier and a participating dentist a provision that:

9 (1) allows the carrier to deny payment to a participating dentist
10 for a ¹covered¹ procedure performed or for a ¹covered¹ service
11 provided on behalf of a covered person; and

12 (2) prohibits the dentist from collecting the amount owed from
13 the covered person for that procedure or service.

14 b. ¹Nothing this act shall exempt or limit a participating dentist
15 from the provisions of the “Insurance Fraud Prevention Act,”
16 P.L.1983, c.320 (C.17:33A-1 et seq.).

17 c. ¹As used in this section:

18 “Carrier” means an insurance company, health service corporation,
19 hospital service corporation, medical service corporation, dental
20 service corporation, dental plan organization or health maintenance
21 organization authorized to issue dental contracts ¹, policies,¹ or plans
22 in this State.

23 ¹“Covered person” means a person on whose behalf a carrier
24 offering a dental plan is obligated to pay benefits for or provide dental
25 procedures or services pursuant to the plan.

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

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

39 For the purposes of this act, dental plan shall not include the
40 following plans, policies, or contracts: accident only, credit disability,
41 long-term care, Medicare supplement coverage; TRICARE
42 supplement coverage, coverage for Medicare services pursuant to a
43 contract with the United States government, the State Medicaid
44 program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

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 October 22,2020.

²Assembly AFI committee amendments adopted June 2, 2021.

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

10 "Participating dentist" means a dentist who has entered into a
11 contract with a carrier to provide dental services to covered persons for
12 a predetermined fee or set of fees.]²

13

14 ²1. a. A carrier shall not preclude a participating dentist from
15 billing a covered person for a covered service under a dental plan
16 and collecting payment from the covered person for the covered
17 service if the participating dentist:

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

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

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

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

31 A participating dentist that receives payment for a covered
32 service from a covered person that exceeds the amount the
33 participating dentist is obligated to accept under the covered
34 person's dental plan shall refund to the covered person the
35 difference between the amount accepted by the participating dentist
36 from the covered person and the amount the participating dentist is
37 obligated to accept under the covered person's dental plan.

38 b. Notwithstanding the provisions of subsection a. of this
39 section, this act shall not apply in cases where the service
40 performed by the participating dentist is required as a result of a
41 prior service by the dentist that was inconsistent with the quality of
42 care in the practice of dentistry as determined by a licensed dentist,
43 and this act shall not permit billing covered persons for:

44 (1) equipment used by the participating dentist;

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

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

1 (a) the participating dentist receives prior written consent from
2 the covered person in advance of the performance of the service;
3 and

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

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

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

13 (2) uses bundling of covered services in a manner where a
14 procedure is labeled as nonbillable to the patient unless, consistent
15 with quality of care in the practice of dentistry, the procedure may
16 be provided in conjunction with another procedure.

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

20 e. As used in this act:

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

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

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

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

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

45 Dental plan shall not include the following plans, policies, or
46 contracts: accident only, credit disability, long-term care, Medicare
47 supplement coverage; TRICARE supplement coverage, coverage
48 for Medicare services pursuant to a contract with the United States

1 government, the State Medicaid program established pursuant to
2 P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ FamilyCare Program
3 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), coverage
4 arising out of a worker's compensation or similar law, the State
5 Health Benefits Program, the School Employees' Health Benefits
6 Program, or a self-insured health benefits plan governed by the
7 provisions of the federal "Employee Retirement Income Security
8 Act of 1974," 29 U.S.C. s.1001 et seq., coverage under a policy of
9 private passenger automobile insurance issued pursuant to
10 P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital confinement
11 indemnity coverage.

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

16 "Participating dentist" means a dentist who has entered into a
17 contract with a carrier to provide dental services to covered persons
18 for a predetermined fee or set of fees.²

19

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