

# 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)**

**Senator JOSEPH PENNACCHIO**

**District 26 (Essex, Morris and Passaic)**

**Co-Sponsored by:**

**Senator Bramnick**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(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.).

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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 the quality of  
35 care in the practice of dentistry as determined by a licensed dentist,  
36 and this act shall not permit billing covered persons for:

37 (1) equipment used by the participating dentist;

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

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

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

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

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

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

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

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

12 e. As used in this act:

13 "Bundled Payments" means the practice of combining distinct  
14 dental procedures or components of a more extensive procedure  
15 into one procedure for billing purposes.

16 "Carrier" means an insurance company, health service  
17 corporation, hospital service corporation, medical service  
18 corporation, dental service corporation, dental plan organization or  
19 health maintenance organization authorized to issue dental  
20 contracts, policies, or plans in this State.

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

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

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

37 Dental plan shall not include the following plans, policies, or  
38 contracts: accident only, credit disability, long-term care, Medicare  
39 supplement coverage; TRICARE supplement coverage, coverage  
40 for Medicare services pursuant to a contract with the United States  
41 government, the State Medicaid program established pursuant to  
42 P.L.1968, c.413 (C.30:4D-1 et seq.), the NJ FamilyCare Program  
43 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), coverage  
44 arising out of a worker's compensation or similar law, the State  
45 Health Benefits Program, the School Employees' Health Benefits  
46 Program, or a self-insured health benefits plan governed by the  
47 provisions of the federal "Employee Retirement Income Security  
48 Act of 1974," 29 U.S.C. s.1001 et seq., coverage under a policy of

1 private passenger automobile insurance issued pursuant to  
2 P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital confinement  
3 indemnity coverage.

4 “Down-coding” means the adjustment of a claim submitted to a  
5 dental plan to a less complex or lower cost procedure code. Down-  
6 coding does not include a carrier’s adjustment of payment for  
7 procedures which were improperly or inaccurately billed.

8 “Participating dentist” means a dentist who has entered into a  
9 contract with a carrier to provide dental services to covered persons  
10 for a predetermined fee or set of fees.

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

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#### STATEMENT

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19 This bill prohibits a carrier from precluding a participating dentist  
20 from billing a covered person for a covered service under a dental plan  
21 and collecting payment from the covered person for the covered  
22 service if the participating dentist:

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

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

30 (3) obtains the covered person’s consent, in writing, to the  
31 performance of the service and the participating dentist makes the  
32 written consent available to the carrier upon request; and

33 (4) accepts as payment in full the amount the participating dentist  
34 would have accepted from the carrier under the covered person’s  
35 dental plan, including bundled payments.

36 Under the bill, a carrier is prohibited from maintaining a dental  
37 plan that:

38 (1) based on the participating dentist’s contracted fee for covered  
39 services, uses down-coding in a manner that prevents a dental provider  
40 from collecting the fee for the actual service performed from either the  
41 dental plan or the patient; or

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

46 The provisions of the bill do not apply in cases where the service

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- 1 performed by the participating dentist is required as a result of a prior
- 2 service by the dentist that was inconsistent with the quality of care in
- 3 the practice of dentistry as determined by a licensed dentist.