



December 10, 2020

Representative Deborah Ferguson
Representative George J. Keiser
NCOIL Committee on Health Insurance & Long-Term Care Issues

Dear Representatives Ferguson and Keiser:

On behalf of the National Association of Dental Plans (NADP¹), America's Health Insurance Plans (AHIP²), and the American Council of Life Insurers (ACLI³) we thank you for the opportunity to provide comments on the proposed Transparency in Dental Benefits Contracting Model Act ("Model Act") which was first introduced at the 2019 December meeting of the NCOIL Health Insurance & Long-Term Care Issues Committee.

We thank you for the modifications that have been made to this proposed model over the past several months to address concerns we have raised. We also thank the American Dental Association for their continued efforts to reach agreement with us on our points of concern. There are still a few unresolved issues with the Model Act from our perspective that we would like to note here.

We appreciate that the Model Act recognizes that network leasing is an important practice that creates value for employers, providers, and consumers by expanding carriers' networks. Through leasing arrangements, dentists receive access to new market segments and new patients. Consumers receive the benefits of broader provider networks, including increased access to care and choice of provider. Broader networks, from or made possible by leasing, result in lower costs for consumers, both for premiums and cost sharing on dental care services. Dental network leases also are key to providing ACA-required dental benefits and meeting state network adequacy requirements for many health and dental plans.

¹ NADP is the largest non-profit trade association focused exclusively on the dental benefits industry. NADP's members provide dental HMO, dental PPO, dental indemnity and discount dental products to more than 200 million Americans with dental benefits. Our members include the entire spectrum of dental carriers: companies that provide both medical and dental coverage, companies that provide only dental coverage, major national carriers, regional, and single state companies, as well as companies organized as non-profit plans.

² AHIP is the national association whose members provide coverage for health care and related services to hundreds of millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

³ ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

Over the last several years dental associations in several states have raised questions about dental network leasing practices. Dentists have expressed a desire for greater transparency in leasing, as well as legislative mandates requiring insurance carriers to allow providers to opt out of network leasing. Because we strive to be sensitive to providers' concerns, we have worked with state dental associations to craft compromise legislation that resolves their issues while also preserving network leasing as a practice, which is beneficial to all parties.

We support provider choice with regard to participation in a carrier's leasable network. In addition to choice, we believe providers should be well-informed about leasing arrangements in which they participate with carriers or leasing companies, and we support efforts to enhance communication between providers and these entities. However, **we are concerned with language in the Model Act pertaining to leasing opt-out and notification requirements during the contract renewal process and request that this language be removed.** It is important to note that contracts generally renew on an annual basis and that this process often occurs in an automated manner, making the requirements of the Model Act impractical, operationally challenging, and administratively burdensome to facilitate. The Model Act requires carriers to inform providers of all third parties in existence through an internet website updated every 90 days and also notify providers of new third parties purchasing the network 30 days in advance, and we believe these practices are more than sufficient to keep providers well-informed of all third-party arrangements without also requiring a list be given to providers when the contract is renewed.⁴ The Model Act also permits the provider to choose not to participate in third party access at the time the contract is renewed.⁵ We believe that provisions in the Model Act granting the provider this same opt-out choice when material modifications relevant to leasing are made to a contract, and prior to any subsequent leasing arrangements taking effect, sufficiently achieves the goal of ensuring that dentists have ample opportunities to elect whether to participate in leasing, rendering this language pertaining to renewals unnecessary. Furthermore, providers can always terminate their arrangement with the contracting entity in accordance with the termination provisions of their contractual arrangement with the vendor. Again, **we ask that all language pertaining to renewals be removed from the Model Act.**

We recognize that the Model Act also contains additional provisions unrelated to network leasing. Some of these provisions, like regulations on prior authorization, have been enacted by a handful of states in recent years. **We urge you to add language to the Model Act distinguishing prior authorizations from other communications, such as pre-treatment estimates, which are voluntary and non-binding.**

Unlike a pre-treatment estimate, a communication is considered prior authorization only if there is a requirement by the carrier or plan that services be authorized prior to being rendered in order to be covered. A pre-treatment estimate is an optional process whereby providers and members can request information about benefit coverage and cost and receive an estimate. A pre-treatment estimate is neither a guaranty of payment nor a determination of the necessity for the service. While NADP appreciates efforts to help patients and their dentists anticipate the cost of dental services before such services are rendered, legislation that fails to recognize the fundamental differences between a prior authorization and pre-treatment estimates, and use these terms interchangeably without recognizing their meaning, lead to confusion among providers and consumers.

⁴ Section I. Responsible Leasing Requirements when Leasing Networks; C. 4.

⁵ Section I. Responsible Leasing Requirements when Leasing Networks; B.

We appreciate that the Model Act includes language in a drafting note indicating “dental services are not authorized through pre-treatment estimates”, but we urge you to add language plainly stating that a **pre-treatment estimate for dental services shall not be considered a prior authorization** and provide additional clarification that a pre-treatment estimate means a voluntary request for a projection of dental benefits or payment that does not require authorization. This approach mirrors legislation enacted last year in the state of North Carolina⁶ and introduced in Texas.⁷

Thank you again for your time and consideration of these important issues. We remain committed to working with you and other members of the NCOIL Committee on Health Insurance & Long-Term Care Issues to address the needs of providers while also protecting consumers of dental services in the United States.

Sincerely,



Teresa Cagnolatti
Director of Government
and Regulatory Affairs,
NADP



Karen Melchert
Regional Vice President, ACLI



Brendan Peppard Regional
Director, State Affairs, AHIP

⁶ North Carolina G.S. 58-3-200(c)

⁷ Texas HB 2486