

Brett H. Kessler, D.D.S.
President

July 17, 2025

Chair Michael “Sarge” Pollock
Vice-Chair Justin Boyd
Health Insurance and Long-Term Care Issues Committee
National Council of Insurance Legislators

Sent Via Email

RE: Transparency in Dental Benefits Contracting Model Act

Dear Chair Pollock and Vice-Chair Boyd,

On behalf of the 159,000 member dentists of the American Dental Association, we thank NCOIL for your interest in considering updates to the *Transparency in Dental Benefits Contracting Model Act* (model act). The 2020 model act addresses three dental insurance issues: *provider network leasing*, *prior authorization payment* and *virtual credit card payment options*.

As lawmakers, you are called upon each session to consider revisions to state laws to adopt improvements based on experience over time. Amendments are at the heart of the legislative process, and we welcome the opportunity to introduce amendments to the set of patient-friendly policies in the model act to improve patient experiences in using their dental insurance products.

The amendments the ADA proposes in NCOIL’s sunset review concern two sections within the model act: the Fair and Transparent Network Contracting Act and the Virtual Credit Card – Claim Payment/Transaction Fees Options Act:

Fair and Transparent Network Contracting Act

- **Section I**
 - *Subsection B and C(1)* - Revising the model’s option provision for dentists facing network lease offers from an opt-out method to an opt-in method;
 - *Subsection C(3)* - Revising notification methods concerning the list of insurers’ leased networks
- **Section II Exemptions (from the act)**
 - *Subsection 1* – Revising list of entities exempt from leasing regulations; removing “affiliates” from list of exempted entities

Virtual Credit Card – Claim Payment/Transaction Fees Options Act

- Include all forms of claim payment that include a fee to accept payment
- Change dentist acceptance process for payment modality from opt-out to opt-in
- Clarifies dentist election payment modality process
- Ensures continuity in dentists’ election of payment modality.

Dental insurance should be a simple process of premium-paying patients seeing their chosen dentist, health care being the utmost in personal choice, submitting the claim for covered services and enjoying the coverage for which they pay. Unfortunately, this simple process has become increasingly cluttered with contractual requirements that add layers of confusion and hidden costs to the health care system for patients and providers. Because of this trend, within the last few years, legislation has become

necessary, and NCOIL has played a significant role in launching patient protections to bolster the opportunity for positive outcomes for all stakeholders.

We ask that NCOIL continue in that role and consider further improvements in ensuring patients get the most out of their dental insurance.

Fair and Transparent Network Contracting Act Amendments

- *Change dentist response to lease offer from opt-out to opt-in*
- *Change/target modality of transparency communication to written communication*
- *Remove the status of “affiliate” from list of corporate relationships exempt from lease regulations*

Traditionally, dental insurance carriers set up their own provider networks and were responsible for their maintenance. In turn dentists, many of whom are small business owners, carefully evaluated operational expenses and their pool of patients when considering whether to join a network. It is a delicate balance, understanding overhead and how many in the patient pool are “in-network”, meaning the dental office will receive a reduced fee.

The traditional network model has changed considerably in recent years. Dental insurance carriers “lease” networks to each other and include clauses in their standard “take-it-or-leave-it” contracts that allow them to lease the network relationship with providers who sign on. The result has been less accountability and transparency for providers and patients alike.

Until recently, insurers retained the right by contract to stack more networks of *reduced-fee* patients onto dental practices without dentists’ consent. Prior to any leasing laws, practices had to simply accept that more patients would arrive at the door expecting the same high-level service while the practice collects less revenue for each “new” patient.

NCOIL saw value in promoting the establishment of transparency in network leasing by adopting the model act in 2020. Under NCOIL’s sunset review process, we invite consideration of an improvement to the provision concerning the ability to opt-out of insurers’ lease offers-creating a contractual process more attuned to the typical contract process. Few contracts are designed to establish auto-acceptance and require the signatory to opt out. A contract is an offer that requires consideration and acceptance, not capture and fight for escape. A simple change to the model aligns contracting procedures accordingly.

The revisions under *Section I-subsections B and C(1)*, reduce the steps in contacting to the simple: *offer, consideration* and *accept/reject*. This change benefits insurers as they will know immediately whether their contracted dentist is in or out of the new leased network and can plan accordingly. Otherwise, awaiting an opt-out notice puts insurers in a state of limbo not knowing what the network will look like as they await dentists’ decision. With opt-in, patients will be able to make decisions based on network status more efficiently, and dentists will not be saddled with having to watch out for provisions in contracts that tie them down inappropriately. Dentists prefer treating patients, not sifting through contracts in fear of contract-capture.

Subsection C(3) simply acknowledges that contractual obligation materials are far too important to be left to chance of being lost in today’s tidal wave of random emails. Recognizing that insurers are sending unsolicited emails in droves to various audiences is the principal reason for shifting the notification to a more active process of managing written notices. This better ensures transparency.

Amendments to the provisions in Section II Exemptions relate to adapting policy to address unintended outcomes. The model currently allows for an exemption from the lease regulations if an insurer accessing the provider network is operating under the same brand licensee or an affiliate of the contracting entity.

This appears to be a sensible exemption; however, “affiliation” can be a broad term. It is feared carriers seeking to avoid the regulations find safe harbor in broadly adapting the term. Experience has shown that an insurer claimed a loose interpretation of “affiliation” with an otherwise unconnected entity accessing a network and therefore enjoyed an exemption from the law.

The spirit of the exemption is for an insurer designed to exchange networks within the bounds of its licensed brand; the term “affiliate” is too broad and invites abuse of legislators’ intentions to regulate this very unique aspect of commerce. We are not seeking to eliminate the exemption; instead, the language refines it appropriately.

Virtual Credit Card – Claim Payment/Transaction Fees Options Act Amendments

- *Change dentist option for VCC from opt-out to opt-in*
- *Include all forms of claim payment that include a fee to accept*
- *Clarifies dentist election must be transparent and clear*
- *Ensures dentists’ election on payment modality remains effective/does not default back to unapproved modality.*

Virtual credit card claim payment is where insurers send a series of numbers, similar to credit cards, whereupon the practice enters the numbers into payment devices or websites in order to accept payment. This process requires a reduction of the claim payment amount to cover costs of the process- *the recipient must pay to receive their due.*

Much of the same tenets discussed under the network leasing provisions apply to the virtual credit card (VCC) situation established by insurers. We seek the ability for dental practices to choose to accept payment by virtual credit card. The current method of requiring opting out of VCC hampers practices that then must continually find convoluted pathways to relief. Therefore, adopting an opt-in process sets the stage for immediacy on whether the provider prefers VCC or not. Adding in that the acceptance must be performed by ‘*express acceptance*’ is a nod toward clarity and transparency to ensure there’s no confusion on the particulars of the VCC opt-in selection.

We acknowledge that some practices value VCC claim payment process, but we would suggest that these practices have the opportunity to accept the process by opting in to it rather than the current model where it is cast upon a practice which requires time away for patient care to check the insurers’ boxes to opt out of the process.

As was described under the network leasing section, the practicality of single-step dentist approval of VCC payment far outweighs the multi-step process of recognizing VCC payment process, locating the process on how to opt-out, and going through the process of opting out. It would be more effective for insurers to know immediately which of their network providers are VCC providers and which are not. Dentists would decide immediately their preferred method as they balance the aforementioned cost of participating in networks and providing innovative and quality care.

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Additionally, dentists in VCC states have expressed concern that the law's definition of VCC allows for other payment modalities to include additional fees charged to the practice to release payment. In the spirit of VCC's protection, we propose the model apply to all similar situations where the claim payment is withheld until the provider pays the fee to release it.

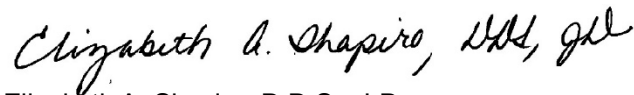
Finally, the amendments clarify that the choice the provider makes remains in place until a different choice of payment is selected.

We urge the members of the Health Insurance and Long-Term Care Issues Committee to support these amendments to the model act. The amendments serve NCOIL's mission to improve the quality of insurance regulation. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett H. Kessler, D.D.S.", written in a cursive style.

Brett H. Kessler, D.D.S.
President

A handwritten signature in black ink, appearing to read "Elizabeth A. Shapiro, D.D.S., J.D.", written in a cursive style.

Elizabeth A. Shapiro, D.D.S., J.D.
Interim Executive Director