

David J. Owsiany, J.D.
Executive Director – Ohio Dental Association
Proponent Testimony in Support of Senate Bill 148

Insurance & Financial Institutions Committee
Ohio Senate
Proponent Testimony
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Chairman Hackett, Vice Chairman Hottinger, Ranking Member Craig and members of the Senate Insurance and Financial Institutions Committee -

My name is David Owsiany, and I am the Executive Director of the Ohio Dental Association. As many of you know, the ODA is the professional association of dentists in the State of Ohio. We represent 70% of Ohio's practicing dentists with more than 5,300 member dentists across the state. Thank you for this opportunity to testify in support of Senate Bill 148.

There are more than 4,000 dental practices in Ohio, delivering dental care to millions of Ohioans. According to a recent independent survey of Ohio dentists, conducted by the Saperstein and Associates survey research firm, nearly 65% of dental offices in Ohio are sole proprietorships.

While these dental offices provide valuable oral health services, they also operate as small businesses and serve as important sources of employment for Ohioans. The typical dental office has six employees, including dental hygienists, dental assistants, and front desk staff. That means that more than 24,000 Ohioans work in dental offices statewide. And Ohio's dental offices generate significant economic activity in their communities – including the purchase of services and supplies and the payment of staff salaries and taxes. So, the impact of Ohio's dental practices is significant not just in terms of providing quality oral health care services but also as small businesses and employers.

Today, I testify in support of Senate Bill 148 because this legislation seeks to remedy an inequity in the dental insurance system. In the last few years, dental insurers began telling dentists what they can charge for services the insurers don't even cover. This scheme is inconsistent with the fundamental premise of dental benefits, which is to provide coverage for certain dental services for the enrollees. This practice of insurance companies dictating fees for services they don't even cover is creating significant hardships for dental offices and interferes in the dentist-patient relationship. Dental practices operate at narrow margins because of the nature of providing dental care including high overhead costs related to dental technology, equipment, and supplies.

The insurers suggest that this practice of interfering with the dentist-patient relationship by setting fees for non-covered services is beneficial because it "saves" the enrollees money. In reality, as Dr. Moore's testimony demonstrates, this tactic by the insurance

companies often acts to limit patient choices, forcing some patients to forgo preferred treatment options or disrupting continuity of care by forcing patients to go to other dentists for certain procedures.

It has been suggested that the dentists should just negotiate these non-covered services provisions out of the contracts. The problem is that these provider contracts are what the lawyers call “contracts of adhesion.” *Black’s Law Dictionary* defines contracts of adhesion as “standardized contracts” that are offered on essentially a “take it or leave it” basis without affording the other party any realistic opportunity to bargain or otherwise negotiate.

These dental insurance companies are big businesses, some of them with hundreds of millions of dollars of annual revenue doing business in many different states. The small dental office is not provided any opportunity to negotiate related to the non-covered services issue. Each individual dentist that is presented with a provider contract from a dental insurance company is essentially faced with a “take it or leave it” proposition. There is no negotiation.

It has been suggested that the ODA should get dentists to join together to act collusively to gain bargaining power in order to negotiate these unfair non-covered services provisions out of the contracts. However, it would violate antitrust laws for dentists to engage in such activity. In fact, the FTC has taken action against dentists in other states when they have tried to act collusively to gain leverage against the enormous market power controlled by the dental insurance companies.

As was the case with Dr. Moore, many of these contracts are “ever-green” contracts that are regularly renewed. So in many instances, dentists signed the initial contracts long before the insurance industry was setting fees for non-covered services. Now that the dentists have a significant portion of their patient bases – perhaps 20%, 30% or even 40% or more of their patients as enrollees of the insurance companies, the insurance companies have changed the rules midstream and are now dictating fees for services they do not cover. The dentists signed the contracts in good faith. The insurance companies have changed the rules. Most dentists aren’t able to just walk away from these contracts and lose a significant portion of their patient base.

Because of this very situation unfolding in state after state, policymakers began to take notice and decided reforms needed to be put in place. The National Conference of Insurance Legislators passed a model act in 2010 prohibiting dental insurers from dictating fees for non-covered services. The NCOIL Act serves as a model for Senate Bill 148.

Moreover, this bill also incorporates specific disclosure requirements that dentists would have to make if they choose not to follow a dental insurer’s non covered services fee limitations. With these disclosure requirements, this bill is also modelled after House Bill 156 from last session, which addressed these same issues in the context of vision insurance. House Bill 156 passed the Ohio Senate by a 31 – 0 vote.

This bill is very limited. It does not mandate coverage of any services or mandate that dental insurance companies pay a certain amount for any services. Senate Bill 148 just addresses the issue of dental insurance companies dictating fees for non-covered services. It is that simple.

Forty states have now passed this reform legislation including our neighboring states, Kentucky and Pennsylvania, and states of all different sizes and in every region of the country, including Illinois, Texas, California, Georgia, Washington, Virginia, North Carolina, and Wisconsin. The vast majority of American citizens live in states with these reforms in place. In all cases, despite dire predictions from the dental insurance companies, none of these states have experienced any difficulties in implementing the prohibition on dental insurers setting prices for non-covered services and none of these states have had any disruptions in their dental benefit marketplace and no state has experienced price spikes for dental services.

As many of you know, the organization I represent, the Ohio Dental Association, does not pursue legislative action related to the dental insurance industry very often, if ever. But this situation is a unique convergence of circumstances that makes legislative action necessary.

In the end, Senate Bill 148 is a very limited remedy targeted to a unique problem in the dental insurance marketplace. This reform will protect small business dental offices from these unfair practices and ensures that dental insurance companies are not interfering with dentists and their patients on services that the insurers do not even cover. I urge you to vote for Senate Bill 148 and add these common sense reforms for Ohio.

Thank you and I would be happy to answer any questions you might have.



Please Help Stop Unfair Dental Insurance Practices

Legislation is needed to remedy an inequity in the dental insurance system. **Dental insurance plans are now dictating fees for dental services that the insurance company does not even cover for enrollees.** This practice is fundamentally unfair and unnecessarily interferes with the patient-dentist relationship.

The Ohio Dental Association supports the effort to stop this unfair practice and now asks policymakers to support Ohio's small business dental practices by passing this critical legislation. **Please support Senate Bill 148.**

Action is Necessary to Preserve Patients' Relationships with their Dentists of Choice

These unfair contract provisions can unnecessarily interfere with a patient's relationship with his or her dentist. In some cases, the imposed reimbursement level is too low to meet actual costs leaving the dentist unable to perform the procedure. Even if the patient wishes to remain with the practice and offers to pay the regular fee, accepting that offer could put the dentist in breach of his or her provider agreement. This forces the patient to either seek treatment from another dentist who is not under contract or forgo the procedure altogether.

Action is Necessary to Prevent Cost Shifting to the Uninsured

Dental insurers are dictating fees for non-covered dental services to make their plans appear more attractive in the marketplace. However, it will not produce any overall savings, but will instead result in a cost shifting from those covered under the plan to others, including those who do not have dental insurance and may be the least able to afford dental services. This scheme may be a money maker for dental insurers, but is not a cost savings for those who pay for and utilize dental services. Currently, over 36% of Ohio adults aged 18 to 64 and over 60% of elderly Ohioans do not have any type of dental insurance coverage.

Action is Necessary to Protect Dental Practices as Small Businesses

Dental fees reflect the extremely high overhead costs of operating a dental practice, including staffing, equipment and supplies. Without action, these unfair insurance practices could impact the viability of some practices – particularly those in low-income and underserved areas. Dental practices are an important part of Ohio's economy with the average dental office generating \$1.3 million annually in economic activity through the payment of wages and taxes and the purchase of services, supplies, and equipment. Additionally, it is estimated that over 20,000 Ohioans work in dental practices across the state.

40 States Have Already Acted with No Report of Increased Costs to Consumers

Forty states now have laws banning this practice by dental insurers with no reported increase in costs to consumers. Additionally, the National Conference of Insurance Legislators (NCOIL) thoroughly studied the issue and adopted a model act for addressing this concern. The NCOIL model act serves as the basis for Ohio's legislation.

40 States have Non-Covered Services Laws

Dark shaded states

