OHIO DENTAL ASSOCIATION
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Executive Director – Ohio Dental Association

Proponent Testimony in Support of Senate Bill 115
Ohio Senate Insurance Committee
May 17, 2023

Chairman Hackett, Vice Chair Lang, Ranking Member Craig, and members of the Senate Insurance 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 5,000 member dentists across the state. Thank you for this opportunity to testify in support of Senate Bill 115.

There are approximately 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, the vast majority of dental offices in Ohio are sole proprietorships or small group practices.

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 115 because this legislation seeks to remedy an inequity in the dental insurance system. In the last several 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, 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.

Many of these contracts are “evergreen” 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 115.

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 the 132nd General Assembly, which addressed these same non-covered services issues in the context of vision insurance. House Bill 156 passed the Ohio House of Representatives by a 92-2 vote in 2018 and unanimously passed the Ohio Senate. There is no reason not to extend these protections to the dental settings just as you have already done in the vision care setting.

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 115 just addresses the issue of dental insurance companies dictating fees for non-covered services. It is that simple.

Forty-three states have now passed this reform legislation, including our neighboring states of Kentucky, Pennsylvania, West Virginia, and Indiana, 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 these reforms on limiting dental insurers from setting prices for non-covered services and none of these states have had any disruptions in their dental benefit marketplaces 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.

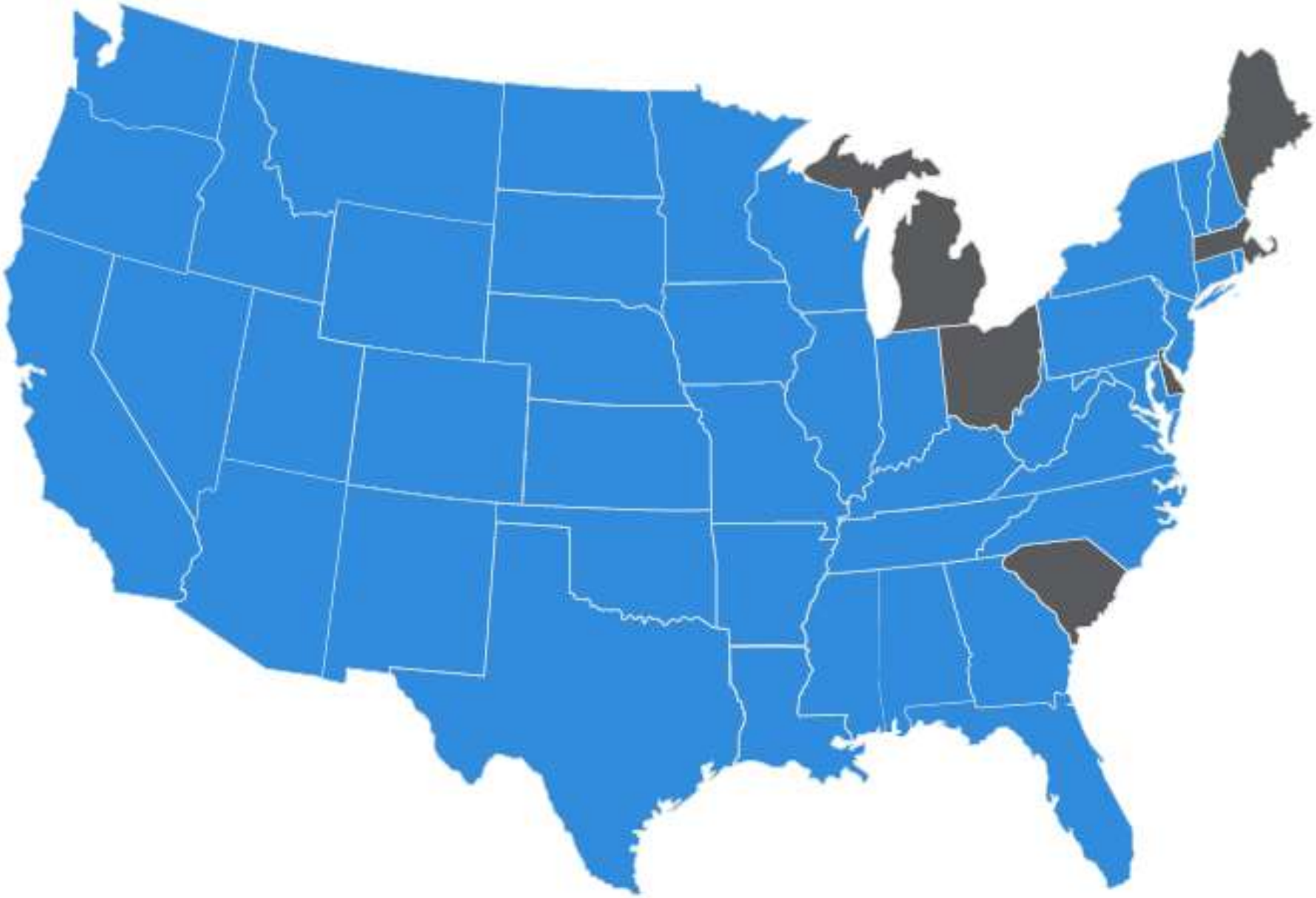
In the end, Senate Bill 115 is a very limited remedy targeted to a specific problem in the dental insurance marketplace. This reform will protect small business dental offices from these unfair practices and ensures that dental insurance companies are not interfering with dentists and their patients on services that the insurers do not even cover.

I would like to thank Senator Kirk Schuring for introducing this important legislation, and I urge you to vote for Senate Bill 115 and add these common sense reforms for Ohio.

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

43 States have Non-Covered Services Laws

Blue Shaded States



DELTA DENTAL

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April 30, 2013

Assemblyman David P. Bobzien, Chairman
Assembly Commerce and Labor Committee
Nevada State Legislature
401 South Carson Street
Carson City, NV 89701

RE: Nevada SB 497 – Non-Covered Services

Dear Assemblyman Bobzien:

I am writing on behalf of Delta Dental Insurance Company in support of SB 497, regarding non-covered services relating to plans for dental care. The proposed bill fits into conformity with the direction taken by almost every state with similar requirements, and with the Model Act on non-covered service legislation developed by the National Conference of Insurance Legislators (NCOIL).

In these provisions, non-covered services are legislatively defined as only those dental services that are never covered for any reason under a group or individual dental benefits contract. By contrast, procedures that are contractually limited by an annual maximum, frequency limitation, waiting period, and/or which provide an allowance toward an alternative benefit are still "covered" services, and therefore dentists can and will be held to their contracted fee for these categories of services.

Holding our Delta Dental Premier and Delta Dental PPO dentists to their contracted fees is of primary benefit to our enrollees when they obtain covered services specifically referenced in their group contract or policy of coverage; they are the procedures most frequently prescribed to prevent and treat the most common and prevalent forms of dental disease. Non-covered services, by contrast, tend to be cosmetic or optional, and are therefore rendered far less frequently. In short, the cost and complexity of designing systems that can vary from state by state would greatly exceed the relatively small amount of savings generated by holding dentists to contracted rates for these relatively infrequent services.

If you have any questions, please do not hesitate to call me at (415) 972-8418, or our legislative advocate Helen Foley at 702-234-6500.

Sincerely,

Jeff Album

Jeffrey M. Album
Vice President, Public & Government Affairs

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Delta Dental already compliant with new PA non-covered services law

Current claims processing guidelines aligned with SB 1144 since 2011

November 20, 2012

New dental-related legislation passed by the Pennsylvania state legislature and signed last month by Governor Corbett has no practical impact on Delta Dental of Pennsylvania claims payment policies or dentist contracts.

The legislation, SB 1144, was championed by the Pennsylvania Dental Association and carried by State Senator Kim Ward (District 39-Westmoreland County). Delta Dental supported the bill after working with Senator Ward to ensure the bill followed a model for such legislation endorsed by the National Conference of Insurance Legislators (NCOIL).

In brief, SB 1144 prohibits an insurer's contract with a dentist from requiring that the dentist provide services to covered patients at a fee set by the insurer, unless those services are "covered dentist services." The definition of "covered dentist services" is key to interpreting how this bill might affect some Pennsylvania dentists under various contracts with some dental insurance companies. Covered dentist services are defined in the legislation as those services for which reimbursement is available under an insured's policy, "regardless of whether the reimbursement is contractually limited by a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation or alternative benefit payment."

Delta Dental of Pennsylvania first implemented payment policies that adhere to the provisions of SB 1144 nearly two years ago, allowing dentists' submitted claims to be paid in full by the patient whenever the service is one that is never covered, even in part, under the patient's policy in effect. The company made this change in order to comply with similar policies already in effect (or soon to be) across the entire 15-state holding company system to which it belongs.

"Delta Dental has actively participated in helping state dental societies win similar legislation in California, Louisiana, Georgia, Maryland and Texas," said Jeff Album, vice president of Public and Government Affairs. "So long as the definition of covered services closely hues to the NCOIL model, we think a level playing field across all dental insurers is a good thing, one that benefits both dentists and the competitive markets for dental insurance."

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