

2013 SENATE HUMAN SERVICES

SB 2192

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2192
1/23/13

Recording Job Number: 17567

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to assignment of dental insurance benefits.

Minutes:

You may make reference to "attached testimony."

Chairman Lee opens hearing on SB 2192.

Senator Wanzek from District 29 introduces SB 2192 to the committee. He explains that it assigns insurance benefits to the provider and relates the need for it to one of his personal businesses.

(0:6:00) Senator Anderson asks if dental offices have similar paperwork to medical clinics where the assignment of benefits can be checked off.

Senator Wanzek is under the impression that they can't do this but others testifying would be able to answer that questions better.

No further questions from the committee for Senator Wanzek.

Alison Fallgatter, an orthodontist and the President of the North Dakota Dental Association (NDDA), testifies in favor of SB 2192. See attached testimony #1.

(0:13:16) Senator Anderson understands that most dental insurance plans cover about 50% of cost of dental care. Are you suggesting that the dentist would accept assignment for the full payment of that cost, or are you saying that you are going to bill the insurance for what they would pay and then the patient pays the balance?

Dr. Fallgatter explains that the provider would bill the insurance company for their fee and the patient would pay the difference. It's a matter of the insurance company writing the check out to the dentist or writing the check out to the patient.

(0:14:24) Senator Dever asks if this bill has any implication to discount plans that are offered for services provided for only certain dentists that sign up for the plan.

Dr. Fallgatter states that the fees will not be reduced if they are non-participants in the plan.

(0:16:00) Senator Larsen asks if they work with supplemental programs that pay the person.

Dr. Fallgatter states that they do and that the idea is that those benefits would be assigned to the provider. Even with coordination of benefits, there has never been a situation that she is aware of where those two plans would pay more than 100% of the fee.

(0:18:56) Senator Larsen asks a question in regards to who receives the checks and how it gets paid for.

Dr. Fallgatter explains that the problem is the check is going to the patient and the provider never receives payment. Some patients don't have formal addresses and it is difficult for the dentists to bill them.

(0:20:40) Chairman Lee states the assumption is that that dentist is going to get 100% of whatever the rack rate is that they are charging; whereas, in a lot of medical situations there's an agreement that the provider will accept a lower reimbursement. Where are you in that picture?

Dr. Fallgatter explains that one of the difficulties that dentists are having in the western part of the state is the incredible number of insurance plans and how hard it is to be a provider of all of them. This becomes a matter of choice for the patients and she provides examples.

Chairman Lee explains that she is just trying to compare this with other medical plans when it comes to patient choice.

No further questions from the committee for Dr. Fallgatter and no further testimony favoring.

Dan Ulmer, BCBSND, testifies in opposition of SB 2192. See attached testimony #2.

(0:32:58) Senator Anderson asks if BCBS accepts assignment of benefits for anyone who participates in their plans.

Mr. Ulmer responds yes.

Senator Anderson then discusses negotiating costs and how it works in the marketplace and states that he's not sure that he's in favor of changing this for just dentists so that they can bill for insurance companies that they don't participate with, but just wants the committee to understand how it works.

(0:35:10) Senator Dever asks if any dentist is able to become one of their participating providers.

Mr. Ulmer - Yes, they are considered a health service corp. which is similar to what BCBS was before they mutualized. Under that, there is an any willing provider statute. There are no limitations on who gets in.

(0:35:48) Senator Larsen asks what stops dentists from accepting certain insurances. Is there a fee associated?

Mr. Ulmer states that the dentists could better answer that question. Dr. Fallgatter steps back up and responds that there is a reimbursement issue in terms of discounting fees if you don't sign up to be a participant.

(0:38:14) Chairman Lee asks that if she was paying cash, unless she has negotiated a deal in cash, she is likely to pay more than if she was going to a provider that you have a contractual agreement with.

Mr. Ulmer - Yes, you would pay the bill charge. Also, in terms of the ACA, they will have to provide pediatric dental insurance at some point where cost is a huge issue.

Chairman Lee follows by discussing cost shifting.

(0:42:14) Senator Anderson discusses balance billing.

(0:43:05) Senator Dever asks Mr. Ulmer how this bill is similar/different to the bill last session regarding other providers not associated with the hospitals or networks in town asking for something similar to this.

Mr. Ulmer recalls that they could contract with them.

Chairman Lee follows with a discussion and recognizes the concerns.

No further questions from the committee for Mr. Ulmer and no further testimony in opposition.

Chairman Lee closes hearing on SB 2192.

Further information from Dan Ulmer was provided in an email after hearing was closed (see attached copy of email).

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

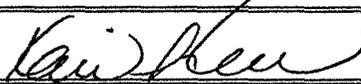
SB 2192

1/23/13

Recording Job Number: 17569

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to assignment of dental insurance benefits.

Minutes:

You may make reference to "attached testimony."

Committee discussion on SB 2192:

Senator Axness asks if it would be helpful to find out how big of an issue this is out west.

Joe Cichy, Executive Director of the North Dakota Dental Association, steps up to the microphone, per the request of Chairman Lee, to address this question. He thinks it's a fairly big problem in Williston and Dickenson but he doesn't have any specific numbers and isn't sure how to even get them.

(0:1:52) Senator Dever refers to the only two sentences in the bill and asks if they contradict each other.

Mr. Cichy doesn't believe it is contradictory.

Senator Anderson follows up with stating that if there was a contract, presumably the dentist had signed it and then assignment would be allowed. If there is no contract between the two, this where the problem lies, correct?

Mr. Cichy - Yes, that's correct.

Senator Anderson states that when there is no contract he's not sure that you can refer to notwithstanding the contract because there is none yet.

(0:03:56) Chairman Lee asks Courtney Koebele, Director for the North Dakota Medical Association, to join Mr. Cichy at the podium and asks if they would anticipate that next session the physicians and Medical Association will be coming in to say that they want the same thing.

Ms. Koebele does not believe physicians will come forward with this in the future. Physicians are mostly employed and dentists are self-employed. The balance bill issue is a

problem nationwide and she feels the system works fairly well now, however she was not present during previous testimony.

(0:06:16) Senator Anderson states that he understands the position of BCBS. If this becomes available, others may come forward wanting it because it means you can bill whatever you want. Limiting this to just dentists might be hard to do.

Chairman Lee follows with stating that she has a problem with having the benefits of being a participant without being a participant.

Mr. Cichy explains that the only benefit is to the patient and that it's a question of choice.

Chairman Lee feels that it is also the responsibility of insurance agents who are selling dental insurance to inform people of this, as well as the consumer to investigate if the cheap rate is too good to be true. Chairman Lee, Mr. Cichy, and Senator Anderson then go on to discuss the issues involving who gets the check from the insurance provider.

No further questions from the committee for Mr. Cichy.

(0:13:47) Chairman Lee states that she has a problem when balance billing comes into the picture.

Senator Larsen provides information on supplemental plans and where problems could persist.

Senator Anderson follows by giving an example relating to provider coverage.

Mr. Cichy steps up to the podium to address the ACA. One of the huge pieces of the new dental insurance will be that you will have to have an adequate network and the department will have to approve it.

Chairman Lee follows by providing information on the high risk pool.

Senator Anderson thinks that they need to get an answer to Senator Dever's question about the language in the bill. Chairman Lee agrees and asks the law intern to check with Legislative Council to make sure that there isn't a conflict between the two.

Senator Dever suggests that, if it is discovered that there is a problem, they should be trying to think about a different approach. Chairman Lee agrees.

This will be re-addressed next week. The discussion is closed with no action taken.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2192
1/28/13

Recording Job Number: 17860

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to assignment of dental insurance benefits.

Minutes:

You may make reference to "attached testimony."

Committee discussion #2 on SB 2192:

Senator Anderson offers his personal opinion. He understands where the dentists are coming from but feels that it will entice others to come forward to want the same thing because it's a big advantage.

Senator Larsen approaches this on the supplemental side of policies. This bill would take away that person's choice of what they do with their supplemental.

Committee agrees that they want the dentists to get paid and proceed with a discussion.

Courtney Koebele is present during discussion and Chairman Lee asks her that if a physician is a Medicaid provider, can they deny services to any Medicaid patient?

Ms. Koebele thinks that they will provide the service if the person has Medicaid.

Discussion on reimbursement and Medicaid follows.

Senator Anderson moves Do Not Pass.

Senator Larsen seconds.

No further committee discussion.

Roll call vote: 5-0-0, Do Not Pass

Senator Dever is the carrier.

REPORT OF STANDING COMMITTEE

SB 2192: Human Services Committee (Sen. J. Lee, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2192 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SB 2192

SB 2192

Senate Human Service Committee

Chair: Senator Judy Lee

RE: Testimony in Support of SB 2192

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Alison Fallgatter. I am an orthodontist and am also the President of the North Dakota Dental Association (NDDA). I live outside of Steele on my family's farm and my practice is in Jamestown.

I appear here on behalf of 323 members of the NDDA in support of SB 2192. This bill is straight forward: If enacted it would give patients having dental insurance the choice to assign their dental benefits to their dentist. There are a number of reasons why this would benefit dental patients:

1. They would not have to prepay for dental treatment.
2. They would not need to forgo treatment because they do not have adequate finances.
3. They may avoid the potential of an emergency room visit for pain management.
4. It reduces the likelihood of developing a more serious health issue if left untreated.

Dentists who are not providers under a given dental plan will at times require payment in full from patients prior to providing routine care. The reason dentists require prepayment is that many have learned if they wait for patients to settle their accounts after receiving insurance reimbursement, this does not always happen. There is a growing problem with patients who receive insurance reimbursement, but do not forward payment to their provider. Due to the influx of new residents in our state, many of whom have housing arrangements that are transient or change frequently, it is hard to always establish reliable contact information for patients. As one of my colleagues put it, you cannot bill someone living in the Wal-Mart parking lot. Unfortunately, when patients are required to prepay, they must then submit their bill to their insurance company and wait for reimbursement. Providing the option to assign their insurance benefit to their dentist through this bill, patients will pay only the difference between the service received and their benefit thereby relieving them of the burden of becoming the financial "go between" for the insurance company while also expediting care.

Also, if the patient goes without treatment too long they end up presenting themselves at emergency rooms for pain management and antibiotics, verses being treated by a dentist

when the need first arose. We all know dental related emergency room visits increase medical costs and rarely provide lasting remedies.

SB 2192 also enables freedom of choice for patients to select their dentists. When a patient's employer selects a dental insurance plan that offers a "closed panel" of participating dentists (and which employees sometimes pay for themselves through payroll deductions), patients should have the right to choose if they wish to accept any applicable reduction of benefit by choosing an "out of network" provider AND assign such benefit directly to that provider if they choose to do so. This concept is not dissimilar to what we are familiar with when seeking medical care.

In the absence of an assignment of benefits law, many patients are economically compelled to leave a dentist with whom they have an established relationship. They must find a new dentist, sometimes in a different town, because of their inability to assign the payment from the insurance company to the dentist whom they trust. As it might be for you, and certainly is for many patients, changing dentists is not easy.

This bill was introduced and came before this committee in 2009. The objection of the insurance industry at that time was that it would drive up costs for care and was, therefore, not consumer friendly. Insurance carriers contended that complying with a patient's request for assignment of reduced benefits to his or her dentist would create difficulty for carriers to solicit dentists to participate in their plans. We have been unable to find any data to support this claim. If insurance industry opposition continues, we would expect them to provide valid evidence supporting such claims. This bill should not be rejected based upon speculative conjecture from the insurance industry. Twenty-five states have assignment of benefits laws of one sort or another currently in place. Interestingly, ND has an assignment of benefits provision for medical plans which may void any contract, policy or plan that prohibits the assignment of benefits. This bill parallels the medical provision and protects relationships between dental patients and their providers without infringing on the competitive abilities of insurance carriers to conduct business.

For these reasons The North Dakota Dental Association respectfully encourages the Committee's do pass recommendation for SB 2192. I would be happy to answer any questions.

Dan Ulmer (BCBS)

Senate Bill 2192

The Assignment of Benefits is very troubling to not only our company but other insurers as well.

This bill creates a slippery slope that will most likely bleed into other types of health insurance. What this bill would do is allow providers (dentists in this case) to elect to NOT sign a participating agreement with the insurer, but still get paid directly by the insurer, and have the ability to balance bill the consumer.

When a provider contracts with an insurer, they accept the terms of that contract and also accept the insurers "allowed charges" as payment in full. In addition, the provider then is assured of the typically larger part of payment directly from the insurer, thus reducing their accounts receivable.

Example:

Let's use the following assumptions.

Provider's billed charge for Service A	-	\$120
Insurer's "Allowed Charge" for Service A	-	\$100
Health Plan cost share contract		80/20 (Insure 80% and member pays 20%)

If the provider **DID NOT** participate with an insurer, he would provide the service and bill the consumer his billed charge, \$120. The consumer would be totally responsible for the full charge - \$120.

If that consumer has insurance for the covered benefit, the consumer would have to file a claim to their insurer directly. The insurer may have a clause saying that they will only pay 70% of the allowed charge if the consumer goes to a non-participating provider. In this example, the insurer would pay 70% of the \$100 allowed charge, or \$70.00. Because there is no contractual arrangement with the provider, the \$70 check is mailed directly to the insured member. Technically that leaves the consumer with an additional \$50 balance (\$120 billed charge less the \$70 insurer payment). It is up to that consumer to pay the full amount to the provider.

If the provider **DOES** participate with the insurer, he would provide the service and bill the insurer for the allowed charge, \$100. So right away the consumer saves money having insurance because the provider is providing services for a discounted rate. The insurer would pay 80% of the \$100 allowed charge, or \$80.00. The consumer member is then liable to the provider for the remaining \$20 of the allowed charge. The remaining amount from the Provider's Billed Charge (\$20 in this example) is written off by the provider. The insurer's payment of \$80 is paid directly to the provider since the insurer and the provider have a contract. This reduces the provider's accounts receivable liability.

So by going to a Non-participating provider, it will cost the consumer more - \$50 instead of \$20.

This legislation **will require** the insurer to accept claims from a non-participating provider and pay the insurer's liability to a Non-Participating Provider directly (a benefit for being a participating provider), but yet allow the provider to continue to "balance bill" the consumer for the difference between the billed charge and the insurers payment. So the consumer would still be liable for the higher amount of \$50.

Though this legislation is limited to only dentists, it is really anti-consumer and will surely be pushed to be expanded to all medical providers. The result will be higher costs to the consumers. If this bill were to pass, exactly what benefit is there to contract with an insurer to participate in their plans? Providers would simply not contract with anyone, because they get the advantages of contracting with insurers (direct payments from insurers) with the additional benefit of being able to balance bill the consumers. Dentists can avoid chasing the consumer for a large part of their bills by simply contracting with dental insurers. However, under this bill they seem to not want to be limited in their reimbursements nor have to put up with the contractual restrictions that may be part of the agreement. In the end, if this bill passes it is the consumer that will lose, it will increase dental health care costs, and will ultimately lead to other health care providers wanting the same advantage. **BCBSND opposes this type of legislation as it is a private contracting issue that eviscerates our participating provider agreements.**

Here is a position statement that DSC recently shared with the North Dakota Dental Association:

"Assignment of benefit clauses undermine the participating provider philosophy that is generally pursued by DSC in that it mitigates against the need for dental providers to enter into participating contracts because it eliminates one of the advantages to participation, direct payment from DSC to the dental provider. Including such a provision in the DSC benefit plans would result in undermining the viability and extent of the dental network available to DSC members. As such, it would not be keeping with the fiduciary obligations of DSC to include such a provision in its benefit plan documents. Moreover, subscriber policies, or benefit plans, currently offered by DSC are being phased out through the anticipated dissolution and such a significant change to the agreements does not appear prudent at this point in time. To the extent that this inquiry assumes that BCBSND would include assignment clauses in its benefit plans, such a matter is a business determination and market factor that is between BCBSND and its employer group customers and members, and not properly a subject of negotiation by DSC."

In conclusion this bill intrudes into a fundamental right to contract between two arms-length business entities (BCBSND and the providers) and it seems quite inappropriate in a free market economy for medical providers to seek statutory protection from the legislature that will serve only to drive up the costs of health care to the consumer by eliminating one of the underlying advantages available to BCBSND through negotiating participating status with the providers securing lower costs for coverage.

NDLA, S HMS - Herrick, Kari

From: Lee, Judy E.
Sent: Thursday, January 24, 2013 12:43 PM
To: NDLA, S HMS - Herrick, Kari; NDLA, Intern 02 - Myles, Bethany
Subject: FW: more info on dental assignment bill

Please make copies of this message and place in our books.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Dan Ulmer [<mailto:Dan.Ulmer@bcbsnd.com>]
Sent: Thursday, January 24, 2013 11:15 AM
To: Lee, Judy E.; Dever, Dick D.; Axness, Tyler; Anderson, Jr., Howard C.; Larsen, Oley L.
Subject: more info on dental assignment bill

Committee members...

As I mulled over our conversation regarding SB 2192 yesterday I recalled a short conversation about dentists being independent providers and thus having little negotiating power when compared to an insurance company.

I went back to our legal department and they gave me the history of the North Dakota Dental Service Corp (DSC). I was told that DSC was formed by the dentists themselves and the board was/is composed totally of dentists. In the beginning the dentists didn't have much success getting their product to market so they came to Blue Cross and asked us to help them administer their company. Thus we became their third party administrator and not only processed their claims but also did their actuarial work, and marketed their products for them.

However the board continued to set the benefits as well as the reimbursement rates for each covered benefit. Thus what and how much DSC paid for each covered service has always been set by the dentists themselves. Our task has been to actuarially set the premiums and implement their plans etc.

At this writing I'm told that only one or two dentists in the state do not participate in DSC so they have close to 100% participation. In addition there are 97,764 contracts covering 204,613 lives.

As I said in my testimony SB2192 would eviscerate our par agreements by allowing any dentist to get paid directly (assignment) and balance bill our members...thus significantly increasing our members costs...in addition the likelihood of other providers wanting to follow the dentists lead is quite high.

Finally we see this as fully intruding into our right to privately contract with providers which has allowed us to play a fairly significant role in making ND's health system a high quality low cost state. Thus we hope you will put a DO NOT PASS on 2192.

Thanks for your consideration and as always I'm available if you have any questions etc...

Dan

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