

Representative James A. Dunnigan proposes the following substitute bill:

DENTAL BILLING AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill regulates dental claims and dental leasing contracts.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes when an insurer may use bundling and downcoding;
- ▶ describes when a third party may lease a dental plan network;
- ▶ describes requirements for a dental lease contract; and
- ▶ allows a dental provider to opt out of a lease if leased by an insurer.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

31A-22-646.1, Utah Code Annotated 1953

31A-26-301.7, Utah Code Annotated 1953



26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **31A-22-646.1** is enacted to read:

28 **31A-22-646.1. Leasing requirements for dental plans.**

29 (1) As used in this section:

30 (a) "Contracting entity" means a person that enters into a direct contract with a provider
31 for the delivery of dental services in the ordinary course of business, including a third party
32 administrator or a dental carrier.

33 (b) "Dental carrier" means a dental insurance company, dental service corporation, or
34 dental plan organization authorized to provide a dental plan.

35 (c) "Dental plan" means the same as that term is defined in Section [31A-22-646](#).

36 (d) (i) "Dental services" means services for the diagnosis, prevention, treatment, or
37 cure of a dental condition, illness, injury, or disease.

38 (ii) "Dental services" does not include services that a provider delivers and bills as
39 medical expenses under a health benefit plan.

40 (e) (i) "Dental service contractor" means an individual who:

41 (A) accepts prepayment for dental services; or

42 (B) for the benefit of another individual, accepts payment for providing to the
43 individual the opportunity to receive dental services in the future.

44 (ii) "Dental service contractor" does not include a provider or professional dental
45 corporation that accepts prepayment on a fee-for-service basis for providing specific dental
46 services to individual patients for whom the services have been pre-diagnosed.

47 (f) (i) "Provider" means a person who, acting within the scope of licensure or
48 certification, provides dental services or supplies defined by the dental plan.

49 (ii) "Provider" does not include a physician organization or physician hospital
50 organization that leases or rents the physician organization's or physician hospital
51 organization's network to a third party.

52 (g) "Provider network contract" means a contract between a contracting entity and a
53 provider that:

54 (i) specifies the rights and responsibilities of the contracting entity; and

55 (ii) provides for the delivery and payment of dental services to an enrollee.

56 (h) (i) "Third party" means a person that enters into a contract with a contracting entity

57 or with another third party to gain access to the dental services or contractual discounts of a
58 provider network contract.

59 (ii) "Third party" does not include an employer or other group for whom the dental
60 carrier or contracting entity provides administrative services.

61 (2) A contracting entity may grant a third party access to a provider network contract
62 regarding dental services, including a provider's dental services, or a contractual discount
63 provided under a provider network contract for dental services if:

64 (a) if the contracting entity is an insurer, the insurer complies with Subsection (3);

65 (b) the contract between the contracting entity and a person subject to the third-party
66 access complies with Subsection (4); and

67 (c) the contracting entity complies with Subsection (5).

68 (3) An insurer shall:

69 (a) at the time a contract is entered into or renewed, or when there is a material
70 modification to a contract that is relevant to third-party access to a provider network contract,
71 allow a provider which is part of the insurer's provider network to:

72 (i) choose to not participate in third-party access; or

73 (ii) enter into a contract directly with the third party that acquired the provider network;

74 (b) allow a provider to opt out of lease arrangements without canceling or ending a
75 contractual relationship with the insurer; and

76 (c) when initially contracting with a provider, accept a qualified provider even if a
77 provider rejects a network lease provision.

78 (4) A contracting entity described in Subsection (2) shall ensure that the contract
79 described in Subsection (2)(b) includes the following:

80 (a) a provision indicating the contracting entity may enter into an agreement with a
81 third party to allow the third party to obtain the contracting entity's rights and responsibilities as
82 if the third party were the contracting entity;

83 (b) if the contracting entity is a dental carrier, a provision indicating that the provider
84 chose to participate in third-party access at the time the provider network contract was entered
85 into or renewed; and

86 (c) if the contracting entity is an insurer, a provision indicating:

87 (i) that the contract grants a third party access to the provider network; and

88 (ii) for a contract with a dental carrier, the dentist has the right to choose not to
 89 participate in third-party access.

90 (5) A contracting entity shall:

91 (a) provide a provider, in writing or electronic form, each third party in existence as of
 92 the date the contract is entered into;

93 (b) maintain a list of each third party in existence on the contracting entity's website
 94 that is updated at least once every 90 days;

95 (c) require a third party to identify the source of the discount on all remittance advices
 96 or explanations of payment under which a discount is taken unless the transaction is an
 97 electronic transaction mandated by the Health Insurance Portability and Accountability Act;

98 (d) notify a third party of the termination of a provider network contract no later than
 99 30 days after the day on which the contract terminates with the contracting entity;

99a **Ĥ→ (e) at least 30 days before the day on which a third party begins leasing a network**
 99b **provider, notify each network provider subject to the lease; ←Ĥ**

100 **Ĥ→ [(e)] (f) ←Ĥ** make available to a participating provider, within 30 days after the day on
 100a which the
 101 provider makes a request, a copy of the provider network contract at issue in the adjudication
 102 of a claim; and

103 **Ĥ→ [(f)] (g) ←Ĥ** maintain a list of the contracting entity's affiliates on the contracting
 103a entity's
 104 website.

105 (6) A third party that gains access to a contract under this section:

106 (a) shall comply with each term of the contract to which the third party gains access;
 107 and

108 (b) loses all rights to a provider's discounted rate as of the termination date of the
 109 provider network contract.

110 (7) A contracting entity or third party may not require a provider to perform services
 111 under a provider network contract if a third party gains access to a contract in violation of this
 112 section.

113 (8) This section does not apply to:

114 (a) a contracting entity granting access to a provider network contract to:

115 (i) an entity that operates in accordance with the brand licensee program of the
 116 contracting entity; or

117 (ii) an entity that is an affiliate of the contracting entity; and

118 (b) a provider network contract for dental services provided to beneficiaries of a state

119 sponsored health program, including Medicaid and the Children's Health Insurance Program.

120 (9) A contract executed or renewed on or after January 1, 2022:

121 (a) may not waive the provisions of this section; and

122 (b) is null and void if the contract contains provisions that conflict with the provisions

123 of this section or that purports to waive a requirement of this section.

124 Section 2. Section **31A-26-301.7** is enacted to read:

125 **31A-26-301.7. Dental claim transparency.**

126 (1) As used in this section:

127 (a) "Bundling" means the practice of combining distinct dental procedures into one
128 procedure for billing purposes.

129 (b) "Dental plan" means the same as that term is defined in Section [31A-22-646](#).

130 (c) "Downcoding" means the adjustment of a claim submitted to a dental plan to a less
131 complex or lower cost procedure code.

132 (d) "Covered services" means the same as that term is defined in Section [31A-22-646](#).

133 (e) "Material change" means a change to:

134 (i) a dental plan's rules, guidelines, policies, or procedures concerning payment for
135 dental services;

136 (ii) the general policies of the dental plan that affect a reimbursement paid to providers;

137 or

138 (iii) the manner by which a dental plan adjudicates and pays a claim for services.

139 (2) An insurer that contracts or renews a contract with a dental provider shall:

140 (a) make a copy of the insurer's current dental plan policies available online; and

141 (b) if requested by a provider, send a copy of the policies to the provider through mail
142 or electronic mail.

143 (3) Dental policies described in Subsection (2) shall include:

144 (a) a summary of all material changes made to a dental plan since the policies were last
145 updated;

146 (b) the downcoding and bundling policies that the insurer reasonably expects to be
147 applied to the dental provider or provider's services as a matter of policy; and

148 (c) a description of the dental plan's utilization review procedures, including:

149 (i) a procedure for an enrollee of the dental plan to obtain review of an adverse

150 determination in accordance with ~~H~~→ Section ←~~H~~ [31A-22-629](#); and

151 (ii) a statement of a provider's rights and responsibilities regarding the procedures
152 described in Subsection (3)(c)(i).

153 (4) An insurer may not maintain a dental plan that:

154 (a) based on the provider's contracted fee for covered services, uses downcoding in a
155 manner that prevents a dental provider from collecting the fee for the actual service performed
156 from either the plan or the patient; or

157 (b) uses bundling in a manner where a procedure code is labeled as nonbillable to the
158 patient unless, under generally accepted practice standards, the procedure code is for a
159 procedure that may be provided in conjunction with another procedure.

160 (5) An insurer shall ensure that an explanation of benefits for a dental plan includes the
161 reason for any downcoding or bundling result.