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41ST ASSEMBLY DISTRICT

AB 109: Fees for Dental Services
Testimony of State Representative Joan Ballweg
Assembly Committee on Insurance
April 4, 2013

Thank you, Chair Petersen and members of the Insurance Committee for scheduling this hearing on Assembly Bill 109. The intent of this bill is quite simple; it prohibits an insurance company from controlling what a dentist may charge for services the dental benefit plan does not cover.

A national trend has emerged over the past five years where insurance companies as part of their marketing strategy for selling their policies were touting the benefit of discounted prices for services that are not covered or paid for by the plan. That means dentists could only charge fees up to a certain amount for services not covered under a patient's insurance plan. In addition to the basic unfairness of this practice, it may—and probably will—mean that dentists will lose money when they provide some of the noncovered services subject to the fee cap.

Taking one look at the medical model should provide us with a clear warning on the type of "hidden taxation" that we can expect to take place in the dental care delivery system if this practice is allowed to continue. Dentistry has

thus far been able to avoid the extreme cases of cost-shifting that we have seen develop in the medical model and we believe society is best served when the prices are directly related to the costs of provided services and not set by a third-party who doesn't pay for it.

Individual dentists do not have the power to effect changes to insurance company contracts and are restricted by anti-trust laws on the federal level. Therefore, the dentists must advocate for legislative changes related to insurance coverage through the Wisconsin Dental Association (WDA). Over the past several months, the WDA has met with the Alliance of Health Insurers (AHI) to negotiate a number of provisions in this bill. AB 109 represents a compromise between the two groups, and it incorporates eight items that are included in the National Conference of Insurance Legislators (NCOIL) model legislation on this topic. 29 other states have passed a version of this bill, and Wisconsin will join only 11 states that have adopted all eight NCOIL provisions.

Having standard contracts with a provider network is a benefit to the insurance companies as well as the dentists. It would be cost prohibitive for insurance companies to administer coverage differences on a practice by practice basis. Some have suggested that the dentist should just not accept the insurance company contracts, if they do not agree with the terms of the deal. That is easy to

say, but in reality the average Wisconsin dental practice has 55% of its patients covered by a dental plan. That is too large of a portion of their client base to write-off, and walk away from the contract.

Where you are located is another important factor. A dentist in Madison or Milwaukee may have options to tap into another network or plan, but for the more rural areas of our state, where providers are sparser, eliminating potential patients is not a good practice, nor is it beneficial to good patient care or access. The U.S. Surgeon General reports on oral health and the great progress that has been made in the past 60 years. The report also elaborates on the meaning of oral health and why it is essential to general health and well-being.

I wish to express my appreciation for the work of WDA, AHI and the Chair of the committee for their efforts to broker this compromise. The bill before you provides certainty and fairness to the insurance companies, dental professionals, and the patients they care for and service. If committee members have questions, I would be happy to answer them at this time.

THE ALLIANCE
Employers moving health care forward

Testimony in Opposition to Assembly Bill 109
Assembly Insurance Committee

Cheryl DeMars, CEO
The Alliance
April 4, 2012

Thank you Chairman Peterson and members of the committee for the opportunity to share the concerns employers have about Assembly Bill 109. The Alliance is a cooperative owned and governed by 190 companies providing health and dental benefits to 83,000 enrollees in three states. Our members are by and large self-funded plans that, through The Alliance, collectively negotiate prices directly with health care providers.

Our Provider Contracting Philosophy

We have both philosophical and practical concerns about Assembly Bill 109. When nine employers came together twenty years ago to create our cooperative, they adopted the philosophy that The Alliance should be contracting with health care providers on behalf of both employers and employees. Today, our provider contracts still reflect that philosophy, whether the contract is with a medical or dental provider.

We also firmly believe in fair negotiation with providers on a level playing field. Our relationships with providers are respectful and supportive, understanding that a collaborative relationship is the quickest way to achieve a mutual benefit for providers and employers. Unfortunately, legislative efforts like AB 109 disrupt these efforts by disadvantaging employers. And this comes at a time employers are getting bolder in their benefit strategy as a result of the passage of the Affordable Care Act, and when significant changes are underfoot in the way that we pay for and provide health care. The dental plans this bill will preclude may be exactly the types of plans that would be most beneficial for employees, employers and even dentists in the future. And if a dentist is willing to agree to an arrangement where dental services are offered on a non-covered but discounted arrangement, why would the legislature prohibit us from enforcing such an agreement?

Practical Concerns for Self-funded Plans

As for near-term impacts of this legislation, Assembly Bill 109 will create practical hardships for employers with self-funded dental plans that may not meet the standards of this bill. An employer that works with a TPA or network will be forced to change their plan under this bill. That process includes learning about and understanding the changes, modifying their plan and rewriting their summary plan descriptions if necessary, while meeting employee notification requirements. All this at the same time employers are struggling to comply with Affordable Care Act requirements.

It is also important to note that self-funded plans have leeway to design their own benefit plans, including their self-funded dental benefit plans. Networks and TPAs adjust their

products to meet the requirements of many different benefit plan designs, some with standalone dental plans and some with integrated dental benefits. The language included in the bill appears to limit its applicability to "limited-scope dental benefits" on the insured side (see definition of "policy"), but not on the self-funded side. We believe this is an oversight that needs a remedy.

And finally, by applying this bill to Third Party Administrators and their networks, the legislature is effectively applying this bill to self-funded employer plans. We don't believe this was the intention, but it means that multistate employers will be forced to meet different regulations on this issue. The purpose of ERISA is to regulate these plans at the federal level so that there are not different requirements across state lines. In fact, the American Dental Association website indicates that the organization is pursuing legislation that would amend ERISA to address this issue at the federal level, which for our members would be preferable to a state-by-state patchwork of regulations.

A Potential Solution

We recognize the hard work that the authors of this bill, insurers and the WDA put into crafting a compromise to this legislation. We also understand through conversations with lawmakers that the target of this legislation is large insurers and not self-funded employers, and the burden for employers is probably unintentional. We believe our practical concerns can be addressed by clarifying that 632.837(2)(b) applies only to insurance carriers that are also networks and/or third party administrators.

Thank you for your consideration of these comments. I am happy to answer any questions you may have.

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Testimony in Support of 2013 AB 109

Relating to Prohibiting Dental Plans from Setting Fees for Services They Don't Cover

Testimony by Dr. Tim Durtsche, WDA President

April 4, 2013 – 415 Northwest Hearing Room

Good morning Chairperson Petersen and members of the Insurance Committee. Thank you for the opportunity to testify before you today and to share our reasons for introducing Assembly Bill 109 which, if passed, will prohibit dental benefit plans from setting fees that are not covered by the plan.

My name is Dr. Tim Durtsche and I am the current president of the Wisconsin Dental Association. I obtained an undergraduate Bachelor of Science degree from the University of Minnesota and then went on to get my doctorate degree in dentistry from the University of Minnesota Dental School graduating in 1974. I was in the private practice of dentistry in Minneapolis and then moved to Seattle Washington to complete a one year general Practice Residency. Following that, I returned to the University of Minnesota Hospitals to complete a specialty residency program in oral and maxillofacial surgery which took an additional 3 years of training, much of which was spent practicing in the hospital setting. After completing my residency program, my wife, Sue, and I settled in La Crosse where we raised 4 children while I continued in my own oral surgery practice; I am currently a solo practitioner in oral and maxillofacial surgery and am affiliated with the Mayo Clinic Health Systems Hospital and Gundersen Lutheran Hospital where I am an adjunct faculty with the Oral and Maxillofacial Surgery Residency, I employ 9 people to help run my office.

As president, I take seriously my role to serve as the chief spokesperson for the nearly 3,000 member dentists of our association. The WDA is proud that nearly 85% of all dentists in the state of Wisconsin voluntarily join the association; I believe that statistic shows that the overwhelming majority of the state's dentists clearly support our efforts, and it is as *their* representative that I come before you today.

I respectfully request your support for AB 109, which would prohibit dental benefit plans and any third-party administrator who covers dental services from setting fees for services they don't cover.

It further defines a "covered service" as one in which one of the following things occurs: (a) there is either a payment made for the service by that dental benefit plan or (b) there would have been payment made for that service if it were not for the application of specific contractual limitations - this includes the limitations of co-payments, co-insurance, deductibles, annual maximums, lifetime maximums within the same course of treatment, frequency limitations, waiting periods and alternative benefit payments.

This legislation only impacts those services that the plan never makes a payment for – which means this really boils down to such things as whitening, veneers, and other higher-end cosmetic services and other services like dental implants for which the plan makes no payment. The plans still get to dictate the fees for services that the plan makes a payment for or for which the plan would have made a payment if the patient had not already reached a contractual limitation such as frequency limitations or an annual maximum.

This legislation also mandates that if the service does not fall under the definition of a "covered service", dentists may not charge the enrollee more than the dentist's usual fee for the service provided. And finally, it states that the law only impacts contracts upon their modification or renewal so this does not impair any existing contracts in mid-stream.

As shown graphically in the attached US map, legislation of this nature has successfully passed in 29 states on margins of 10:1. As you'll see our neighboring states of Iowa, Illinois and Minnesota have enacted similar laws.

As our WDA lobbyists have informed most of you in the meetings they've had with you, most dental benefit contracts are "evergreen" contracts which means a dentist signs them once early on in the process (sometimes more than 15 or 20 years ago) and they stay in place (with modifications only relating to the fee schedule) until one of the parties opts out. Many dental benefit contracts have been in place for well over a decade. This is certainly the case with Delta Dental, which is, by far, the largest dental benefit plan in the state and the only one to which the majority of dentists subscribe. A few years ago Delta's national policymakers essentially reinterpreted its existing contracts to claim that the company had the right to set fees on all services provided by the dentist -- not just those services that are paid for by the plan. This reinterpretation of an existing contract has caused the need for this legislation, which has passed in 29 states in a time period of less than four years.

Many legislators have asked us why dentists don't just get together and negotiate with the insurance plans. As small individual businesses, dentists have no ability to join together or to collectively seek a change to these contracts because of federal anti-trust laws, which prohibit competing dentists from "colluding" on issues relating to fees. Ironically, insurance companies are one of very few entities that are exempt from federal anti-trust legislation so while dentists are prohibited from joining together and seeking reprieve from the dental benefit plans, those same insurance companies (many of whom are opposing this bill) are exempt from that same prohibition. The government has essentially become involved in this issue and has chosen to favor the larger corporate insurance plans against the small business dentists; we believe this legislation helps to level the playing field that is currently regulated by the government. For those who believe that this interferes with the "Free Market" we would argue that the market is not "Free" right now because the government has already prohibited us from joining together to have any clout in negotiating these contracts with the insurance plans.

If this bill fails to pass, dentists will be left with picking between two bad choices: (a) completely dropping the contract - which will anger many long-term patients and it will disturb a great deal of

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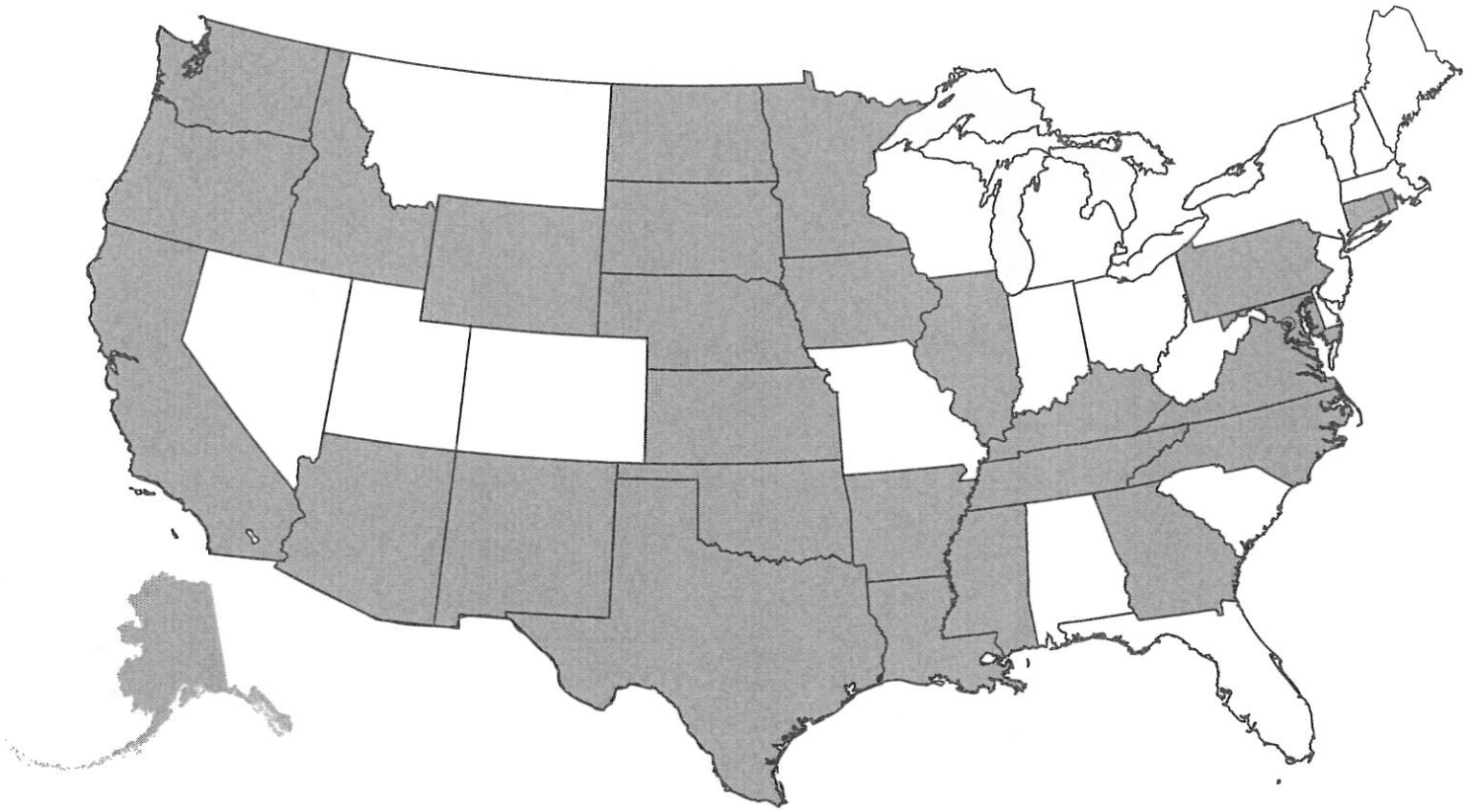
continuity of patient care and will also threaten the financial viability of the dental practice or (b) the second option dentists could employ is to cost-shift their losses for these services to patients who have no dental benefit coverage and pay completely out of pocket. About 50% of all dental services are paid "Out of Pocket." This is clearly not in the best interest of fairness, transparency or patient-driven health care decisions.

As many of you know, dentistry has been able to remain transparent in our cost model. This push into cost-shifting at the benefit of the corporate insurance plan (who is able to use this to "sell" the "benefit" to employers while not paying a dime for the procedure) is not in the public's best interest and starts pushing dentistry down the "hidden tax" route that has been a huge problem in the medical model. This bill enables dentistry to retain cost transparency and patient-driven health care in the dental delivery model which we believe will help dentistry avoid the dysfunctional cost-shifting model that has not been successful in either controlling costs or keeping patients involved in the purchase of their own medical care. We urge you to help us balance the involvement of the government by helping level the playing field between the currently favored corporate insurance plans and the small business world of dentistry. In so doing, we believe we can continue to provide quality patient care to long-term patients while also avoiding the unfair practices of cost-shifting to those who have no benefit at all.

Thank you for your time and attention to this issue, we hope you support its movement through the legislature. We appreciate, Chairman Petersen, your willingness to hold a hearing on this bill and we are anxious to hear if you will vote on this proposal in the near future. We also greatly appreciate the support of the eleven members of this committee who are already co-sponsors of this proposal – thank you! Finally, we know the remaining members have been seriously weighing the pros and cons on this legislation and that some of you are generally supporting our position and a couple of you have been leaning toward supporting the opposition – we would now welcome the opportunity to answer any questions you may have that will hopefully help persuade you of the merits of this bill.

Non-covered services legislation has passed on margins of 10-to-1 in 29 states.



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WMC

WISCONSIN'S BUSINESS VOICE SINCE 1911

To: Members of the Assembly Committee on Insurance

From: Chris Reader, Director of Health and Human Resources Policy

Date: April 4, 2013

Subject: **Opposition to Assembly Bill 109,** Fees for Dental Services

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Wisconsin Manufacturers & Commerce (WMC) is opposed to Assembly Bill (AB) 109, which relates to fees paid by insurers for non-covered dental services. WMC is dedicated to making Wisconsin the most competitive state in the nation to do business, and that effort is hindered by the type of government intervention into private-party contracts that AB 109 proposes.

In recent years, Wisconsin has made great progress toward improving our overall business climate. Proposals like this, however, move Wisconsin in the wrong direction. Regardless of the subject matter, the wrong message is sent to the business community when the state government starts picking winners and losers in private-party contract disputes.

The concept of "freedom of contract" stands for the proposition that individuals or businesses have the freedom to decide when to contract, with whom to contract, and on what terms to contract – without interference from government. This legislation would erode the freedom of contract in our state by proposing to legislatively define the terms under which businesses must contract with one another. It sets a poor precedent for the expanded intrusion of government into the day-to-day transactions of businesses, and undermines economic liberty in our state.

Wisconsin businesses should be free to make contractual decision without government stepping in to mandate the terms of the agreement. We therefore urge you to please oppose this legislation.

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