BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF THE PETITION OF IOWA DENTAL ASSOCIATION FOR A DECLARATORY ORDER REGARDING SECTION 514C.3B, CODE OF IOWA (2011)	))))	DECLARATORY ORDER DIVISION DOCKET NO.: 72585

On August 19, 2011, the Petitioner, the Iowa Dental Association ("IDA"), filed a petition for declaratory order with the Iowa Insurance Division ("Division") pursuant to Iowa Code § 17A.9 (2011) and IAC 191 – 2.1 et seq. Notice of the petition was provided to Delta Dental Plan of Iowa ("Delta Dental"), Metropolitan Life Insurance Company ("Metropolitan"), Principal Life Insurance Company ("Principal") and Wellmark Health Plan of Iowa, Inc. (a/k/a Wellmark Blue Cross and Blue Shield of Iowa) ("Wellmark"). The Iowa Federation of Insurers filed to intervene on behalf of Delta Dental, Principal, and Wellmark, who are all members of the Federation, to represent their interests in this matter. Metropolitan did not file a response to the Notice.

An informal meeting was held pursuant to IAC 191 - 2.7 on October 5, 2011, which was attended by representatives of the Petitioner, the Federation and Principal. Notice of this meeting was provided to the same entities who responded to Notice of the filing of the petition herein.

The Petitioner requests an interpretation of certain provisions in Iowa Code § 514C.3B titled "Dental coverage – fee schedules." Iowa Code § 514C.3B states that:

> 1. A contract between a dental plan and a dentist for the provision of services to covered individuals under the plan shall not require that a dentist provide services to those covered individuals at a fee set by the dental plan unless such services are covered services under the dental plan.
> 2. A person or entity providing third-party administrator services shall not make available any dentists in its dentist network to a dental plan that sets fees for dental services that are not covered services.
> 3. For the purposes of this section:
> a. "Covered services" means services reimbursed under the dental plan.

b. "Dental plan" means any policy or contract of insurance which provides for coverage of dental services not in connection with a medical plan that provides for the coverage of medical services.
4. Nothing in this section shall be construed as limiting the ability of an insurer or a third-party administrator to restrict any of the following as they relate to covered services:
a. Balance billing.
b. Waiting periods.
c. Frequency limitations.
d. Deductibles.
e. Maximum annual benefits.

This petition arises in the wake of new legislation that was signed into law by the Governor on April 29, 2010 which was codified as Iowa Code section 514C.3B. According to the IDA, the question at issue has not been decided by, is not pending a determination by, and is not under investigation by, any governmental entity.

I. Background

Dentists have for many years entered into contracts with insurers that limit the maximum fee that can be charged for a covered service. A participating dentist is normally paid a fee which does not exceed the usual, customary and reasonable fee for dentist in a particular area for a given service. In exchange for accepting limitations on maximum fees for covered services, dentists are able to participate in an insurer's dental plan network. The dentist benefits by being able attract patients who have an insurer's dental coverage as fee paying customers. Patients also benefit because dental insurance directly pays for many dental services they receive. The negotiated prices between the dentist and the insurer are often less than the standard fee that a dentist might charge to perform a service if there was no dental insurance coverage.

Employers and insurers hold down the cost of dental insurance by imposing certain plan limitations such as deductibles, co-payments, limits on the frequency certain procedures can be performed in a year, and the total amount the dental plan will pay per year. These limitations on payment for dental services help to counter the moral

hazard of over-utilization of services which might occur when neither the patient nor the dentist has any financial incentive to avoid marginal or unnecessary services.

Many Iowans have dental insurance through Delta Dental and other companies to cover routine cleanings, fillings, and X-rays. Most dental coverage is designed to ensure that a patient receives regular preventive care. A number of other procedures, such as crowns and implants, may only be partially covered or not covered. Negotiated prices for non-covered services between the dentist and insurer benefit Iowa consumers who are not required to negotiate prices themselves or accept a higher standard fee charged by the dentist for needed services not covered by their dental insurance.

The IDA contends that the legislation passed in 2010 and codified as 514C.3B prohibits dental insurance companies from asking for discounts for procedures not covered by a patient's policy. Dentists would then be free to charge higher dental fees for non-covered services. The IDA states that dentists have received correspondence from one or more insurers who have imposed their fee schedules when one of the exceptions contained in subsection 4 of Iowa Code § 514C.3B applies, regardless of whether the dental plan actually reimburses the dentist or patient for the procedures performed. This has resulted in uncertainty for dentists in how to bill for services provided to patients.

The Federation contends the provision put into dentists' contracts with the insurer to limit maximum fees was intended to limit what dentists could charge for services that are never covered by dental insurance such as cosmetic procedures. The insurer's intent was to bring additional value to consumers by controlling the price of dental services that consumers might want, but that are not covered by dental insurance.

The Federation also contends that Iowa Code § 514C.3B conflicts with the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA") and is thus preempted by federal law. The parties have briefed this issue and the Division

acknowledges that this issue was preserved for appeal. The Division, as an administrative agency of the state of Iowa, lacks the authority to consider whether a state statute is preempted by federal law. *Soo Line Railroad Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688 (Iowa 1994). This issue will not be addressed further in the order.

II. Question Presented by IDA

The IDA requests a determination regarding the meaning and application of the statute by answering the following question:

> Is an insurer permitted to impose and enforce a maximum fee for services that are not reimbursed under the dental plan (except for standard co-payments or deductibles paid by the patient) due to limitations related to balance billing, waiting periods, frequency limitations, deductibles, and maximum annual benefits?

Yes. The parties both agree the issue before the Division revolves around the meaning and application of "covered services" under the statute. Iowa Code § 514C.3B(3)(a) defines "covered services" as "services reimbursed under the dental plan." Subsection 3 must be read in conjunction with subsection 4, to give meaning to the entire statute, which places several limitations on covered services related to balance billing, waiting periods, frequency limitations, deductibles, and maximum annual benefits. Subsection 4 indicates that the "covered service" does not lose its status as a covered service because of limitations placed on reimbursement to the dentist. Thus, the statute does not require that a service to actually be reimbursed under the dental plan. Stated another way, non-covered benefits are dental procedures that a dental plan does not cover and never pays for.

This determination fits well within the context of the consumer's dental insurance contract. If a service is covered in the contract, then it is eligible for reimbursement by the dental plan and as such is a "covered service" under section 514C.3B. An example used by both parties is a teeth cleaning which is normally covered under a dental plan for twice a year. If a patient elects to have their teeth cleaned a third time, it does not lose its status as a covered service even though it is subject to a plan limitation. A patient who requires or elects to have more than two teeth cleanings per year would pay the same maximum fee for each cleaning.

Adopting the IDA's view of Iowa Code § 514C.3B would result in patients paying more for dental services in Iowa. Patients benefit when there is certainty in the amount that will be paid for a given service. They lack the expertise to discuss and/or negotiate dental fees with the dentists that do not fall within the definition of covered services. A patient could end up paying significantly more than the negotiated fee between the insurer and dentist without the benefit of the insurer's contract with the dentist.

This declaratory order has the same status and binding effect as a final order issued in a contested case proceeding.

Dated this 8th day of November, 2011.

JAMES R. MUMFORD
First Deputy Iowa Insurance Commissioner

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ATTORNEYS FOR INTERVENOR
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INSURERS

CERTIFICATE OF SERVICE

I certify under penalty of perjury and pursuant to the laws of Iowa that copies of the foregoing instrument(s) were served to the names and addresses of the parties by the methods listed, with proper posted affixed thereto as required on this 8th day of November, 2011.

Christina Hazelbaker