

# SENATE BILL No. 136

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-7.

**Synopsis:** Dental plans and access to dental networks. Prohibits a dental plan (an insurance policy, a health maintenance organization contract, or a preferred provider plan) from directly or indirectly requiring a dental provider to provide a dental service to a covered individual at a fee amount that is: (1) set by the dental plan; or (2) subject to the approval of the dental plan; unless the dental service is a covered service under the dental plan. Provides that a dental plan violates this prohibition by requiring a dental provider to provide a dental service to a covered individual at a fee amount set by the dental plan or subject to the dental plan's approval even if the dental service is a covered service if the coverage of the dental service is merely nominal or de minimis coverage. Prohibits a third party administrator or another person from arranging for a dental provider to provide dental services for a dental plan that sets the amount of the fee for any dental services unless the dental services are covered services under the dental plan. Provides that a contracting entity (a dental carrier, a third party administrator, or another person that enters into a provider network contract with providers of dental services) may not grant a third party access to the provider network contract or to dental services or contractual discounts provided pursuant to the provider network contract unless certain conditions are satisfied. Provides that when a provider network contract is entered into or renewed, or when there are material modifications to a provider network contract, any dental service provider that is a party to the provider network contract must be allowed to choose not to participate in the third party access. Prohibits a contracting entity from: (1) altering the rights or status under a provider network contract of a provider that chooses not to  
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**Effective:** July 1, 2022.

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January 4, 2022, read first time and referred to Committee on Insurance and Financial Institutions.

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Digest Continued

participate in third party access; or (2) rejecting a provider as a party to a provider network contract because the provider chose not to participate in third party access. Authorizes the insurance commissioner to issue a cease and desist order against a person that violates any of these prohibitions and, if the person violates the cease and desist order, to impose a civil penalty upon the person and suspend or revoke the person's certificate of authority.



Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

# SENATE BILL No. 136

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 27-7-17 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2022]:  
4 **Chapter 17. Dental Plans Setting Fees for Dental Services**  
5 **Sec. 1. As used in this chapter, "covered individual" means an**  
6 **individual who is entitled to:**  
7 (1) dental services; or  
8 (2) coverage of dental services.  
9 **Sec. 2. As used in this chapter, "covered service" means a dental**  
10 **service for which a reimbursement:**  
11 (1) is available under a dental plan; or  
12 (2) would be available under a dental plan but for the  
13 application of contractual limitations such as:  
14 (A) deductibles;  
15 (B) copayments;  
16 (C) coinsurance;  
17 (D) waiting periods;



- 1                   (E) annual or lifetime maximums;  
 2                   (F) frequency limitations;  
 3                   (G) alternative benefit payments; or  
 4                   (H) any other limitation;  
 5                   under the dental plan.
- 6                   **Sec. 3. (a) As used in this chapter, "dental plan" means any of**  
 7 **the following:**
- 8                   (1) A policy issued by an insurer (as defined in IC 27-1-2-3(x))  
 9                   that provides coverage for dental services.  
 10                   (2) A contract under which a health maintenance organization  
 11                   (as defined in IC 27-13-1-19) provides or covers dental  
 12                   services.  
 13                   (3) A preferred provider plan (as defined in IC 27-8-11-1(g))  
 14                   that provides or covers dental services.
- 15                   **(b) The term does not include the following:**
- 16                   (1) A policy providing comprehensive coverage described in  
 17                   Class 1(b) and Class 2(a) of IC 27-1-5-1.  
 18                   (2) Accident only, Medicare supplement, long term care, or  
 19                   disability income insurance.  
 20                   (3) Coverage issued as a supplement to liability insurance.  
 21                   (4) Automobile medical payment insurance.  
 22                   (5) A specified disease policy.  
 23                   (6) Worker's compensation or similar insurance.  
 24                   (7) A student health plan.  
 25                   (8) A supplemental plan that always pays in addition to other  
 26                   coverage.
- 27                   **Sec. 4. As used in this chapter, "dental service" means any**  
 28 **service provided by a dentist within the scope of the dentist's**  
 29 **licensure under IC 25-14.**
- 30                   **Sec. 5. As used in this chapter, "person" means an individual, a**  
 31 **corporation, a limited liability company, a partnership, or any**  
 32 **other legal entity.**
- 33                   **Sec. 6. As used in this chapter, "provider" means:**
- 34                   (1) a dentist licensed under IC 25-14; or  
 35                   (2) a dental office through which one (1) or more dentists  
 36                   licensed under IC 25-14 provide dental services.
- 37                   **Sec. 7. (a) A dental plan may not directly or indirectly require**  
 38 **a provider to provide a dental service to a covered individual at a**  
 39 **fee amount that is:**
- 40                   (1) set by the dental plan; or  
 41                   (2) subject to the approval of the dental plan;  
 42                   unless the dental service is a covered service.



1           **(b) A dental plan that requires a provider to provide a dental**  
 2 **service to a covered individual at a fee amount that is:**

3           **(1) set by the dental plan; or**

4           **(2) subject to the approval of the dental plan;**

5 **violates subsection (a) even if the dental service is a covered service**  
 6 **if the coverage of the dental service under the dental plan is merely**  
 7 **nominal or de minimis coverage. The coverage of a dental service**  
 8 **under a dental plan is merely nominal or de minimis for the**  
 9 **purposes of this subsection unless the coverage compensates the**  
 10 **provider for the dental service in an amount of at least fifty percent**  
 11 **(50%) of the provider's prevailing fee for the dental service.**

12           **Sec. 8. A third party administrator or other person that:**

13           **(1) is not a dental plan; but**

14           **(2) arranges for providers to provide dental services through**  
 15 **dental plans or through another sort of network**  
 16 **arrangement;**

17 **shall not arrange for a provider to provide dental services for a**  
 18 **dental plan that sets the amount of the fee for the dental services**  
 19 **unless the dental services are covered services under the dental**  
 20 **plan.**

21           **Sec. 9. (a) If:**

22           **(1) an insurer (as defined in IC 27-1-2-3(x));**

23           **(2) a health maintenance organization (as defined in**  
 24 **IC 27-13-1-19);**

25           **(3) a preferred provider plan (as defined in IC 27-8-11-1(g));**  
 26 **or**

27           **(4) any other person;**

28 **violates this chapter, the insurance commissioner may enter an**  
 29 **order requiring the person to cease and desist from violating this**  
 30 **chapter.**

31           **(b) If a person violates a cease and desist order issued under**  
 32 **subsection (a), the insurance commissioner, after notice and**  
 33 **hearing under IC 4-21.5, may:**

34           **(1) impose a civil penalty upon the person of not more than**  
 35 **ten thousand dollars (\$10,000) for each day of violation;**

36           **(2) suspend or revoke the person's certificate of authority, if**  
 37 **the person holds a certificate of authority under this title; or**

38           **(3) both impose a civil penalty upon the person under**  
 39 **subdivision (1) and suspend or revoke the person's certificate**  
 40 **of authority under subdivision (2).**

41           **SECTION 2. IC 27-7-18 IS ADDED TO THE INDIANA CODE AS**  
 42 **A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY**



1, 2022]:

**Chapter 18. Third Party Access to Dental Provider Networks**

**Sec. 1. As used in this chapter, "contracting entity" means a dental carrier, a third party administrator, or another person that enters into a provider network contract with providers for the delivery of dental services in the ordinary course of business.**

**Sec. 2. As used in this chapter, "covered individual" means an individual who is entitled to:**

- (1) dental services; or
- (2) coverage of dental services;

**through a provider network contract.**

**Sec. 3. As used in this chapter, "dental carrier" means any of the following:**

- (1) An insurer that issues a policy of accident and sickness insurance that covers dental services.
- (2) A health maintenance organization that provides, or provides coverage for, dental services.
- (3) An entity that:
  - (A) provides dental services; or
  - (B) arranges for dental services to be provided; but is not itself a provider.

**Sec. 4. (a) As used in this chapter, "dental service" means any service provided by a dentist within the scope of the dentist's licensure under IC 25-14.**

**(b) The term does not include a service delivered by a provider that is billed as a medical expense.**

**Sec. 5. As used in this chapter, "health insurer" means:**

- (1) an insurer that issues policies of accident and sickness insurance (as defined in IC 27-8-5-1); or
- (2) a health maintenance organization (as defined in IC 27-13-1-19).

**Sec. 6. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or any other legal entity.**

**Sec. 7. (a) As used in this chapter, "provider" means:**

- (1) a dentist licensed under IC 25-14; or
- (2) a dental office through which one (1) or more dentists licensed under IC 25-14 provide dental services.

**(b) The term does not include a physician organization or physician hospital organization that leases or rents the network of the physician organization or physician hospital organization network to a third party.**



1           **Sec. 8. As used in this chapter, "provider network contract"**  
2 **means a contract between a contracting entity and one (1) or more**  
3 **providers:**

- 4           **(1) that establishes a network through which the providers:**  
5               **(A) provide dental services to covered individuals; and**  
6               **(B) are compensated for providing the dental services; and**  
7           **(2) that specifies the rights and responsibilities of the**  
8 **contracting entity and the providers concerning the network.**

9           **Sec. 9. (a) As used in this chapter, "third party" means a person**  
10 **that enters into a contract with a contracting entity or another**  
11 **third party to gain access to:**

- 12           **(1) a provider network contract;**  
13           **(2) dental services provided pursuant to a provider network**  
14 **contract; or**  
15           **(3) contractual discounts provided pursuant to a provider**  
16 **network contract.**

17           **(b) The term does not include an employer or another group or**  
18 **entity for which the contracting entity provides administrative**  
19 **services.**

20           **Sec. 10. (a) This section applies if a contracting entity seeks to**  
21 **grant a third party access to:**

- 22           **(1) a provider network contract;**  
23           **(2) dental services provided pursuant to a provider network**  
24 **contract; or**  
25           **(3) contractual discounts provided pursuant to a provider**  
26 **network contract.**

27           **(b) Except as provided in subsection (c) and section 16 of this**  
28 **chapter, in order for a contracting entity to grant a third party**  
29 **access as described in subsection (a), the following conditions must**  
30 **be satisfied:**

- 31           **(1) When a provider network contract is entered into or**  
32 **renewed, or when there are material modifications to a**  
33 **provider network contract relevant to granting access to a**  
34 **third party as described in subsection (a):**

35               **(A) any provider that is a party to the provider network**  
36 **contract must be allowed to choose not to participate in the**  
37 **third party access as described in subsection (a); or**

38               **(B) if third party access is to be provided through the**  
39 **acquisition of the provider network by a health insurer,**  
40 **any provider that is a party to the provider network**  
41 **contract must be allowed to enter into a contract directly**  
42 **with the health insurer that acquired the provider**



- 1 network.
- 2 (2) The provider network contract must specifically authorize
- 3 the contracting entity to enter into an agreement with third
- 4 parties allowing the third parties to obtain the contracting
- 5 entity's rights and responsibilities as if the third party were
- 6 the contracting entity.
- 7 (3) If the contracting entity seeking to grant a third party
- 8 access as described in subsection (a) is a dental carrier, a
- 9 provider that is a party to the provider network contract must
- 10 have chosen to participate in third party access at the time the
- 11 provider network contract was entered into or renewed.
- 12 (4) If the contracting entity seeking to grant a third party
- 13 access as described in subsection (a) is a health insurer, the
- 14 provider network contract must contain a third party access
- 15 provision specifically granting third party access to the
- 16 provider network.
- 17 (5) If the contracting entity seeking to grant a third party
- 18 access as described in subsection (a) is a dental carrier, the
- 19 provider network contract must state that the provider has a
- 20 right to choose not to participate in the third party access.
- 21 (6) The third party being granted access as described in
- 22 subsection (a) must agree to comply with all of the terms of
- 23 the provider network contract.
- 24 (7) The contracting entity seeking to grant third party access
- 25 as described in subsection (a) must identify to each provider
- 26 that is a party to the provider network contract, in writing or
- 27 electronic form, all third parties in existence as of the date on
- 28 which the provider network contract is entered into or
- 29 renewed.
- 30 (8) The contracting entity granting third party access as
- 31 described in subsection (a) must identify, in a list on its
- 32 Internet web site that is updated at least once every ninety
- 33 (90) days, all third parties to which third party access has
- 34 been granted.
- 35 (9) If third party access as described in subsection (a) is to be
- 36 granted through the sale or leasing of the network established
- 37 by the provider network contract, the contracting entity must
- 38 notify all providers that are parties to the provider network
- 39 contract of the leasing or sale of the network at least thirty
- 40 (30) days before the sale or lease of the network takes effect.
- 41 (10) The contracting entity seeking to grant third party access
- 42 to contractual discounts as described in subsection (a)(3) must





1           **require each third party to identify the source of the discount**  
 2           **on all remittance advices or explanations of payment under**  
 3           **which a discount is taken. However, this subdivision does not**  
 4           **apply to electronic transactions mandated by the federal**  
 5           **Health Insurance Portability and Accountability Act of 1996**  
 6           **(Public Law 104-191).**

7           **(c) A contracting entity may grant a third party access as**  
 8           **described in subsection (a) even if the conditions set forth in**  
 9           **subsection (b)(1) are not satisfied if the contracting entity is not a**  
 10          **health insurer or a dental carrier.**

11          **(d) Except as provided in subsection (c) and section 16 of this**  
 12          **chapter, a provider that is a party to a provider network contract**  
 13          **is not required to provide dental services pursuant to third party**  
 14          **access granted as described in subsection (a) unless all of the**  
 15          **applicable conditions set forth in subsection (b) are satisfied.**

16          **Sec. 11. A contracting entity that is a party to a provider**  
 17          **network contract with a provider that chooses under section**  
 18          **10(b)(1)(A) of this chapter not to participate in third party access**  
 19          **shall not alter the provider's rights or status under the provider**  
 20          **network contract because of the provider's choice not to**  
 21          **participate in third party access.**

22          **Sec. 12. A contracting entity that is a party to a provider**  
 23          **network contract shall notify a third party granted third party**  
 24          **access as described in section 10(a) of this chapter of the**  
 25          **termination of the provider network contract not more than thirty**  
 26          **(30) days after the date of the termination.**

27          **Sec. 13. The right of a third party to contractual discounts**  
 28          **described in section 10(a)(3) of this chapter ceases as of the**  
 29          **termination date of the provider network contract.**

30          **Sec. 14. A contracting entity that is a party to a provider**  
 31          **network contract shall make a copy of the provider network**  
 32          **contract relied on in the adjudication of a claim available to a**  
 33          **participating provider not more than thirty (30) days after the date**  
 34          **of the participating provider's request.**

35          **Sec. 15. When entering into a provider network contract with**  
 36          **providers, a contracting entity shall not reject a provider as a**  
 37          **party to the provider network contract because the provider**  
 38          **chooses or has chosen under section 10(b)(1)(A) of this chapter not**  
 39          **to participate in third party access.**

40          **Sec. 16. (a) Section 10 of this chapter does not apply to access as**  
 41          **described in section 10(a) of this chapter if granted by a**  
 42          **contracting entity to:**



1           (1) a dental carrier or other entity operating in accordance  
2           with the same brand licensee program as the contracting  
3           entity; or  
4           (2) an entity that is an affiliate of the contracting entity.  
5           (b) For the purposes of this section, a contracting entity shall  
6           make a list of the contracting entity's affiliates available to  
7           providers on the contracting entity's Internet web site.  
8           (c) Section 10 of this chapter does not apply to a provider  
9           network contract established for the purpose of providing dental  
10          services to beneficiaries of health programs sponsored by the state,  
11          including Medicaid (IC 12-15) and the children's health insurance  
12          program (IC 12-17.6).  
13          Sec. 17. The provisions of this chapter cannot be waived by  
14          contract. A contract provision that:  
15               (1) conflicts with this chapter; or  
16               (2) purports to waive any requirements of this chapter;  
17          is null and void.  
18          Sec. 18. (a) If a person violates this chapter, the insurance  
19          commissioner may enter an order requiring the person to cease  
20          and desist from violating this chapter.  
21          (b) If a person violates a cease and desist order issued under  
22          subsection (a), the insurance commissioner, after notice and  
23          hearing under IC 4-21.5, may:  
24               (1) impose a civil penalty upon the person of not more than  
25               ten thousand dollars (\$10,000) for each day of violation;  
26               (2) suspend or revoke the person's certificate of authority, if  
27               the person holds a certificate of authority under this title; or  
28               (3) both impose a civil penalty upon the person under  
29               subdivision (1) and suspend or revoke the person's certificate  
30               of authority under subdivision (2).

