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By Dan Schulte, JD
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How Does an 'Assignment of Benefits' Work?

Question: I read an article the other day describing the use of an assignment of benefits form. The article said that having patients sign this

form is beneficial. It would result in their dental plan paying me the benefit amount available for my service. It also said that I would not have to contract with the dental plan, and I would be free to establish my own fee. The article said that if my fee is higher than a patient's available benefit, I would be free to bill and collect the difference from the patient. Is this true? Why are we not all doing this?

AnsWER: An "assignment of benefits" is a form signed by a patient stating that the patient has agreed to assign his or her dental plan benefits to you in consideration for your services. This form is submitted to the dental plan along with the claim form and any other required documentation when seeking payment. If the assignment of benefits is accepted by the dental plan, it pays you the available benefit directly. If you do not contract with the dental plan, you would not be subject to its restrictions.

What the article you mention describes would be possible if the assignment of benefits form was accepted by the dental plan. Assignment of benefit forms are usually not accepted by dental plans unless there is law requiring them to. This is because dental plans would rather you sign a contract enabling them to set fees for dental services and giving them the ability to participate in how and when services are delivered (via focused review, audits, fee repayment, etc.).

Several states have enacted laws requiring dental plans to accept assignment of benefits. Michigan's auto no-fault law contains a general provision requiring no-fault auto insurers to accept an assignment of benefits in some cases. Unfortunately, there is no Michigan statute generally applicable to Michigan health care providers requiring insurers and plans paying benefits to accept assignment of benefits forms they receive.

In addition to a new Michigan statute, new federal legislation may also be required to enable the use of assignment of benefits. The Employee Retirement Income Security Act ("ERISA") is federal law that, among other things, regulates "employee benefit plans." ERISA controls whenever a patient's dental benefits are provided by an employee benefit plan. ERISA contains a preemption provision that prohibits the enforcement of state laws that regulate employee benefit plans. Whether a Michigan statute requiring a dental plan to accept an assignment of benefits would be preempted by ERISA, and therefore be unenforceable, is an open question.

This question has been addressed by some federal appellate courts. Conflicting decisions have been made. Therefore, whether ERISA would preempt a Michigan law requiring acceptance of an assignment of benefits is uncertain. To eliminate this uncertainty (assuming no case raising this issue is decided by the 6th Circuit Court of Appeals or the U. S. Supreme Court), federal legislation adding a provision to ERISA providing that it does not preempt state law requiring acceptance of assignment of benefits would be necessary.

To summarize, the use of assignment of benefits is a way to obtain direct payment for services without contracting with a dental plan. However, either the cooperation of the dental plan or the legislation described above would be necessary to make it a reality. ●

For more legal resources, visit michigandental.org/Legal-Services. For additional information on dental benefits, visit michigandental.org/Dental-Benefits.

*Send questions for publication to *Dentistry and the Law*, Journal of the Michigan Dental Association, 3657 Okemos Road, Okemos, MI 48864-3927, or email Journal Managing Editor Dave Foe at dfoe@michigandental.org.*