Victory for direct-to-consumer orthodontic patient protection bill

Gov. Newsom also signs bill creating transparency in dental plan network leasing

Direct-to-consumer orthodontic patients will gain new protections when CDA-supported Assembly Bill 1519 becomes the law in January 2020. The first of its kind in the nation, the new law will protect patients from DTC orthodontic companies that are putting profits before patients by taking potentially unsafe shortcuts to the accepted standards of care.

AB 1519 by Assemblymember Evan Low (D-Campbell) extends the operation of the Dental Board of California and establishes greater transparency and fundamental consumer protections for patients who receive dental treatment via telehealth. Gov. Gavin Newsom signed the bill into law Oct. 13.

Significantly, the bill creates explicit parity in the standard of care, whether a dentist is treating a patient through telehealth or in a dental office. AB 1519 requires that dentists providing orthodontics meet the basic, accepted standard of care by reviewing the patient’s recent X-rays prior to the movement of teeth.

Telehealth companies and dentists who use telehealth will also be required to provide patients with basic information about their treating dentist, such as the dentist’s full name and state license number. Brick-and-mortar dental practices already provide that same information to patients.

Finally, the bill preserves a consumer’s ability to submit complaints about licensees to the dental board — even if the consumer has signed an arbitration clause or nondisclosure agreement.

Providing dental care to patients, especially moving teeth, without sufficient diagnostic information can potentially lead to serious patient harm, including loose or cracked teeth, gum recession and

Apply for CalHealthCares student loan repayment or a practice support grant

Eligible dentists and dental students in California can apply Jan. 13 to Feb. 7, 2020, for student loan repayment of up to $300,000 or a practice support grant — also up to $300,000 — through the Medi-Cal Physicians and Dentists Loan Repayment Program known as CalHealthCares.

The program is funded by state tobacco tax (Proposition 56) revenue and is intended to expand access to care for Medi-Cal patients. Recipients of the student loan repayment must be recent graduates and maintain a minimum patient caseload of at least 30% Medi-Cal beneficiaries for five years. Practice support grant recipients must submit a business plan demonstrating ability to relocate, expand or establish a practice in one of the specific counties determined to have the highest need for Medi-Cal dentists and be willing to commit to the program for 10 years.

In August, the program, which is overseen by the Department of Health Care Services and administered by Physicians for a Healthy California, announced awards worth $10.1 million in student loan repayments to 38 dentists. Loan repayments worth $57.3 million were awarded to 240 physicians. No practice support grants were awarded in this first year of the program.

To improve their application scores, individuals who wish to apply for an award in 2020 are encouraged to review materials, including eligibility requirements and application instructions, and

Two dental suppliers named in FTC complaint violated antitrust laws, judge finds

ABC test is now the law, but it’s not a free ticket for independent contractors

Four reasons for you to stock up on equipment sooner

Auto-adjudication can expedite claims processing, but it can also confuse dentists

Dental practice pays $10K to settle disclosures of patients’ PHI on social media

Not your father’s Medi-Cal. Program changes promote preventive dental care, tobacco cessation

Stay Connected | Visit cda.org | @cdadentists
Auto-adjudication can expedite claims processing, but it can also confuse dentists

Here’s how it affects three claims scenarios

Technology has changed how a dentist performs dentistry. It has also changed the way dental benefit plans process claims.

When dealing with technological changes, often there are two challenges to overcome. First, we must learn how the technology is being used. Second, we must adapt to the change rather than fight it.

The banking industry provides a great example of how technology has been employed to save us time and improve convenience. No longer do we need to drive to the bank, fill out a deposit slip and stand in line to make manual deposits. Today our funds can be deposited directly through electronic funds transfer, an ATM or an app on our cellphones.

Similarly, dental plans are employing technological advances to expedite claims processing and payment. In this article I’ll address how these efforts may affect the dental claims submitted by your practice.

CDA Practice Support receives frequent inquiries from members who are concerned about the way a dental benefit plan processed a claim. During these discussions, we commonly identify one of the following claim processing scenarios:

1. A service that is covered under the policy was not paid.
2. A service that is not covered under the policy was paid.
3. A service that was predeterminded and approved was denied.

Today many dental benefit plans use auto-adjudication to process a high number of their claims. Auto-adjudication is performed by a computer that has been programmed to pay or deny the service based on the processing policies of the plan and/or the patient’s policy. In these cases, the claim is not reviewed by a human. In addition to auto-adjudication, many major plans use optical character recognition technology to try to capture data from the paper claim to move it to their processing system. OCR is the identification of printed characters using photoelectric devices and computer software. While these readers speed up claims process-
Not your father’s Medi-Cal

Program changes promote preventive dental care, tobacco cessation

Improvements to the Medi-Cal Dental program continue with new options for dentists who treat Medi-Cal members, including the ability to provide fluoride treatment and fluoride varnish as a benefit once every four months for patients under age 6. The increase in the benefit periodicity underscores the state’s commitment to regular preventive oral health visits for young children in California.

Dentists can also now receive reimbursement for tobacco cessation counseling and can initiate referrals for case management for their patients’ complex health care needs. Both options will help dentists better serve their Medi-Cal patients and receive reimbursements that support the provision of care.

The improvements add to those the state has made over the past five years, including fully restored adult benefits, increased provider rates for children and adult services and reduced administrative burdens.

Dentists have noticed the changes. Rick Nichols, DDS, has been providing care to children in the Denti-Cal program for 25 years. The pediatric dentist said the program is “very different today” than it was in the past.

“I am as busy as I wish to be, and with the changes in the fee schedules and the implementation of the incentive plan the state created, I feel I am adequately reimbursed for the care I provide,” said Dr. Nichols, who practices in Redlands.

“If you dropped out or have stayed away, now is the time to reconsider being a provider,” he said. “The kids need us.”

Read on for details about the latest program improvements.

Dental practice pays $10K to settle disclosures of patients’ PHI on social media

A private dental practice in Dallas, Texas, has agreed to pay $10,000 to the U.S. Department of Health and Human Services’ Office for Civil Rights to settle potential violations of the HIPAA privacy rule.

The HHS reported in October that the OCR completed its investigation of a complaint by a patient who alleged that Elite Dental Associates, Dallas, disclosed on social media the patient’s last name and the details of the patient’s health condition.

“OCR’s investigation found that Elite had impermissibly disclosed the protected health information (PHI) of multiple patients in response to patient reviews on the Elite Yelp review page,” the HHS stated in the news release.

In addition to paying the $10,000 settlement, Elite agreed to two years of monitoring by OCR for compliance with HIPAA as part of a corrective action plan.

“Doctors and dentists must think carefully about patient privacy before responding to online reviews,” OCR Director Roger Severino said.

The HIPAA privacy rule defines and limits the situations in which a HIPAA-covered entity may use or disclose patients’ protected health information. Written patient authorization is required for any use or disclosure that is not permitted or required by HIPAA or state law.

The CDA Practice Support resource “Uses and Disclosures of Patient Health Information” reviews the HIPAA privacy rule and other federal and state laws that protect PHI.

Find HIPAA-related resources in the CDA Practice Support resource library at cda.org/resource-library.
Volunteer dentists provide nearly $1.5M in services at CDA Cares

“This is truly a blessing — it’s just amazing.” That is how one patient described her experience at the CDA Foundation’s 16th CDA Cares volunteer dental clinic. The event took place Sept. 27-28 in San Bernardino for the first time.

Thousands of patients and volunteers flocked to the National Orange Show Events Center during the two-day event to receive and provide dental care at no cost. Dentists and dental professionals performed 10,412 procedures, including fillings, extractions and cleanings, providing $1.46 million in care to 1,626 people.

“CDA Cares is a rewarding experience for everyone involved, from patients who receive much-needed dental care to volunteers who consider it a privilege to serve,” said CDA President Del Brunner, DDS. “It’s not only the charitable dental services that are provided, but how each patient is treated with dignity and respect that makes each clinic special.”

In addition to restoring smiles and helping improve the quality of life of people in need, CDA Cares educates the public and policymakers about the importance of good oral health and the need for continued improvements to the state’s Medi-Cal Dental Program. More than 13 million Californians are enrolled in the program; however, many patients still face barriers to necessary care.

Laurie, a Medi-Cal recipient and patient at CDA Cares, had gone six months without lower teeth after losing her dentures. She made the trip from Pleasanton to receive a lower denture and upper extractions.

“I found out that Denti-Cal only covers dentures every five years,” she said. “Six months with no bottom teeth — I have not been able to process my food correctly and it’s beginning to affect my health.”

After receiving care, Laurie decided to pay it forward and joined more than 1,400 volunteers who played a vital role in making the clinic a success. Health professionals, including dentists, dental hygienists, dental assistants, dental students, nurses and lab technicians, donated their time and skills. Additionally, hundreds of community volunteers assisted with registration, language translation, data entry and guiding patients to the different areas of the clinic.

For Craig Yarborough, DDS, a lead volunteer dentist, each clinic is special. He has volunteered at every CDA Cares since the inaugural clinic in 2012. He spoke with TV station KTLA 5 about why he enjoys participating each year.

“People are going to sleep well tonight knowing that their needs have been taken care of,” Dr. Yarborough said. “Hopefully we can get them out of pain or put their smiles back together.”

CDA Cares is made possible by new and continued support from community members and key sponsors such as GES, Henry Schein, Planmeca USA, Western Dental, Delta Dental, San Manuel Band of Mission Indians, San Bernardino County Department of Public Health, Tokuyama Dental, Stater Bros. Charities, Tri-County Dental Society, Larell One Step Denture, United Concordia Dental, The Dentists Insurance Company and The Dentists Supply Company.

The CDA Foundation is planning another CDA Cares event to be held July 17-18 at the Long Beach Convention and Entertainment Center.

For more information, visit the CDA Cares page on the Foundation website. You can also stay up to date on Foundation news by texting CARE4HEALTH to 51555.

FEATURING ENDORSED PROGRAM

CareCredit: Making care possible...today.

Increase case acceptance by offering friendly financing options and connect to new patients who are looking for more flexibility to budget their treatment. As a CDA member, you have a special rate to start offering healthcare credit cards from CareCredit.

CareCredit is accepted by more than 100,000 dental teams, making it easier for patients to manage out-of-pocket investments and say yes to treatment. Explore free resources to address financial conversations with patients and see how you can get started for only $30.

For more information visit the CDA Cares page on the Foundation website.
Claims processing
From PAGE 2

The following examples illustrate how a plan may use auto-adjudication and how that process might affect dental reimbursement in each of the three scenarios described above.

Plan doesn’t pay for “covered service”
The plan configures its claims processing system to automatically process and allow payment of a crown, but it denies the related buildup when the two services are billed on the same date of service. While auto-adjudication produces a quick turnaround time for claims processing, it can cause confusion.

If the dentist is not familiar with the dental plan’s processing guidelines (as outlined in the provider handbook), the dentist will be left wondering why the buildup was denied when it was clinically necessary and when the claim and accompanying documentation (X-ray and narrative) supported the provision of the service. In a case like this, a dentist could become frustrated believing that a clinical review was completed by a dentist and denied. In reality, the claim was auto-adjudicated and denied in accordance with the plan’s processing guidelines, which stated that related procedures billed on the same date of service as the crown are not payable.

Plan pays for noncovered service
When a dentist submits a claim for a service that is not covered under the patient’s policy, such as a veneer placed for esthetic purposes, the dentist will sometimes find that the service was paid by the plan. This is another example of auto-adjudication, and a case like this could cause both the dentist and patient confusion when the explanation of benefits shows that the plan paid for a service that the dentist and patient were previously told would not be a covered benefit.

Dental policies are designed to offer benefits for treatment only when certain plan or policy clinical criteria are met. Due to auto-adjudication, if the submitted claim fails to include a remark stating that the service does not meet the plan’s clinical criteria, there is a chance that the computer would process and pay for the service. While you may be thinking this is great for the patient, accepting payment from a plan for a service that does not meet the plan’s clinical criteria can put a contracted dentist at risk.

If a plan were to discover during an audit that payment was issued incorrectly for treatment that didn’t meet plan criteria, the plan can demand a refund. If the dental office has already reimbursed the patient, the office may have a hard time collecting from the patient at this later date, and the plan demand funds.

Plan denies payment for predetermination treatment
Many plans today offer an online portal for dentists to submit a predetermination to verify patient eligibility, covered services, copayments, deductibles and plan maximums. A common misconception is that if a predetermination is submitted through a plan’s portal, a dental consultant will review this predetermination to ensure the treatment meets the plan’s clinical criteria as a payable service. In reality, the predetermination could be nothing more than a nonclinical review that provides a breakdown of the patient’s policy coverage. If a dental office is unaware of this practice, both the dental team and the patient can become confused when the services are claimed and denied for payment due to failure to meet the plan’s clinical criteria for the service.

CDA encourages the use of dental plan portals because they offer valuable policy information for a dentist and their patient. To fully understand the processing guidelines of a plan, a contracted dentist should review the plan’s provider handbook to validate if the proposed dental treatment does meet the plan’s clinical criteria for a benefit. Additionally, to ensure accurate processing and timely payment of claims, CDA encourages members to submit dental claims electronically utilizing either the dental plan’s portals or a claims service.

CDA Practice Support is here to answer your dental benefit questions and offer individual member assistance. Simply submit your questions online using the dental benefit submission form accessible through your cda.org account. Once received, Practice Support will analyze the issue, evaluate it for possible resolution and communicate clear next steps. To get started, visit My Account, click the link for Dental Benefits Issue Submission and follow the prompts.

Cyber hacks and attacks?
We’ve got you covered.

Comprehensive protection with Cyber Suite Liability insurance.
As cyber incidents become more pervasive and complex, practice owners need coverage beyond data compromise. TDIC Commercial Property policyholders with Business Owner’s coverage can now add Cyber Suite Liability and access better tools to respond and recover.

- Data compromise expense
- Computer attack and cyber extortion
- Liability coverage for data compromise, including regulatory proceedings, network security and electronic media

Contact our experts today to learn more, get a quote or apply.

Protecting dentists. It’s all we do.
800.733.0633 | tdicinsurance.com | CA Insurance Lic. #0652783

Coverage specifically underwritten by The Dentists Insurance Company includes Professional Liability, Commercial Property and Employment Practices Liability. TDIC also underwrites Workers’ Compensation in California. TDIC Insurance Solutions offers other coverages as an agent or broker by agreements with our partner insurance carriers. Available coverage limits and discounts vary by carrier and are subject to carrier underwriting. Special Features and Optional Riders offered in policies may vary by carrier. The information provided here is an overview of the referenced product and is not intended to be a complete description of all terms, conditions and exclusions.

Find resources on dental benefit plans in the CDA Practice Support resource library. Go to cda.org/resource-library.
Four reasons for you to stock up on equipment sooner

When managing your day-to-day overhead, it can seem challenging to allocate spending to upgrade, enhance or expand your dental equipment. However, being strategic about when to purchase higher-dollar items can help you realize the most value. By filling your supply and equipment needs before the end of this year, you can categorize to your advantage before next year’s tax time and get your practice running at peak efficiency.

Alleviate pain points
Perform an equipment performance audit by asking yourself and your team:
- How often are we having poor-performing equipment serviced or repaired? At what cost?
- What has been the cost of not being able to treat patients during equipment downtime?
- How much have we lost due to ineffective tools or a lack of tools?
- Do any of our current tools compromise our patients’ comfort?

Improve productivity
To evaluate your return on investment in new equipment, it takes the full view of what your practice needs to achieve peak production. Ask these questions:
- What steps can we take to increase confidence in our equipment and decrease stress?
- Where would digital equipment streamline processes and save money over time?
- Have we missed potential revenue streams by not investing in new technology?
- Acknowledge that value doesn’t always mean the lowest price. Securing durable equipment from authorized vendors means that it will likely have a longer lifetime. Trusted products that are well-designed and properly maintained generally have a lower cost per use.

Leverage depreciation
Professional equipment that has a “useful life” of one year or more may be tax-deductible. Dental equipment and technology are usually depreciated over a period of five years; furniture and fixtures (including dental cabinets) over seven years — reducing taxable income each year. A dental practice can deduct up to $1 million in equipment purchases during 2019 as long as the total purchase of equipment during 2019 does not exceed $2.5 million.

Accelerate deductions
The Tax Cuts and Jobs Act of 2017 provides an opportunity to maximize savings and tap into tax deductions sooner. Section 179 of the IRS tax code allows businesses to now deduct the full price of qualifying equipment and/or off-the-shelf software purchased during the tax year. That means that if you buy dental equipment and put it into service in 2019, you can deduct 100% of the purchase price from your reported 2019 gross income.

If you buy dental equipment and put it into service in 2019, you can deduct 100% of the purchase price from your reported 2019 gross income.

create a loss. This can prove to be a “trap” for dentists using S Corporations who do not have sufficient owner’s equity (basis) to realize the benefits of expensing equipment.

Through the year 2026, Section 168(k) also allows business owners to take an additional first-year depreciation deduction in the placed-in-service year of qualified property. There are no dollar limits, and you can create losses if you desire. But, S Corporations do have the same basis limitations related to losses.

There are, of course, complexities and limitations to claiming deductions. And different practices and different dentists’ spending habits will yield different results. A dentistry-specific CPA can provide in-depth expertise on the many important tax considerations associated with purchasing large equipment or renovating your office.

Stock up for success in 2020
When it is time to buy, know that there are resources to help members of organized dentistry secure the best deals. Through The Dentists Supply Company, association members benefit from negotiated discounts and free shipping on an expansive online catalog from authorized vendors.

Don’t delay in purchasing items that can improve your practice’s total productivity. Explore, compare and save at TDSC.com. For assistance getting your practice set up to shop, call 888.253.1223 or email support@tdsc.com.

TDSC and its affiliates do not provide legal, accounting or tax advice. This material is for general informational purposes only and is not intended to provide, and should not be relied on for, legal, accounting or tax advice. Please consult your own legal, accounting and tax advisors if you have questions specific to your situation.
ABC test is now the law, but it’s not a free ticket for independent contractors

After much public debate and controversy, Gov. Gavin Newsom in September signed Assembly Bill 5 into law. Beginning Jan. 1, 2020, it will be more difficult for most employers in California to classify workers as independent contractors, rather than employees, and in some cases will make employees out of independent contractors. And although CDA secured an exemption for dentists, employee classification still isn’t clear-cut, and dentists will need to err on the side of caution when classifying their workers.

AB 5 codifies and expands the “ABC test” set forth by the California Supreme Court decision in the Dynamex Operations v. Superior Court case setting a new standard for determining whether workers in California should be classified as employees or independent contractors.

The bill also enacts new Labor Code section 2750.3, which expands the considerations under the ABC test to determine who is an employee under the California wage orders and also applies those same considerations under all provisions of California’s Labor and Unemployment Insurance Codes. Any reference to “employee,” “employ,” “employer” and “employment” used in those codes will be subject to the ABC test. Meaning, employers and state labor officials will rely on the ABC test for determining if individuals are properly classified as independent contractors. This contrasts with the previous practice of using different tests developed by various state entities to determine eligibility for unemployment insurance, workers’ compensation, etc.

Under the ABC test, a person providing labor or services is considered an employee unless a company can meet three specific tests:

(A) The person works without control or direction of the hiring entity in connection with performance of the work, both under contract for the performance of the work and in fact;

(B) The person performs work outside the scope of the hiring entity’s usual business; and

(C) The person is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

Practically speaking, factor (B) will likely be the most difficult for an employer to establish. Without establishing all three of the factors, an individual would be considered an employee and not an independent contractor.
Connect your patients to your practice with 

**ADA.TV**

Use Promo Code CDA19 for Zero Down: 800.840.5383

Waiting room patient education and marketing.

ada.org/tv

---

**PBHS**

Increase online appointment requests **by over 125%** with a PBHS marketing package.

Drive practice growth, rank #1 on Google and promote the positive reputation of your practice.

"Since PBHS began managing our marketing campaign, we have seen our online referrals quadruple. You guys are simply AMAZING."

☆☆☆☆☆ - Brandi B.

ADA Member Advantage is a program brought to you by ADA Business Enterprises, Inc., a wholly owned subsidiary of the American Dental Association.
Include in their business plan a general forecast or financial plan.

To provide a well-researched business plan that documents their plans for establishing, expanding or relocating their practice to one of the highest-need counties listed on the application.

Include in their business plan a general company description and information on products and services, economics, patients and consumers, personnel, equipment and supplies and a revenue forecast or financial plan. The section on patient caseload is weighted the heaviest on both award applications (20 out of 45 possible points for the loan repayment grant and 20/50 for the practice support grant) followed by the personal statement (10 points) and, for the practice support grant only, the business plan (10 points).

When addressing patient caseload, PHC stresses that applicants need to fill out both the current and proposed patient caseload tables and answer all questions in the two narrative questions: 1) How will they calculate their existing Medi-Cal beneficiary caseload and 2) How will they and their employer meet their Medi-Cal patient caseload?

Applicants in the 2020 application cycle will be notified of awards on or around May 1, 2020.

CDA and other health care organizations sponsored Proposition 56 in 2016 and voters approved it by a strong margin at the polls. CalHealthCares is currently funded to award a total of $47.5 million to dentists through fiscal year 2023-24.

Find eligibility requirements, FAQs, recorded webinars and more information at www.calhealthcares.org. Email any questions to calhealthcares@phcdocs.org. Apply online through the website beginning Jan. 13, 2020.

November 2019 | 9

---

**CalHealthCares**

From PAGE 1

to attend a live webinar or watch a recorded webinar. All materials will be available on the CalHealthCares website (www.calhealthcares.org). Due to the narrow application window, applying early might also allow program staff to address any problem areas with the applicant well ahead of the Feb. 7 deadline.

Among other reasons, applicants were deemed ineligible for a grant in 2019 if they (1) were found by DHCS to be not in good standing (e.g., were not enrolled in Medi-Cal or had an active suspension), (2) submitted an incomplete employer verification form or a form that included information that was inconsistent with information provided within the application, (3) were already enrolled in another loan repayment program at the time of application and (4) did not meet the graduation date requirement (student loan repayment grant applicants must have graduated no more than five years prior to application).

PHC identified the most common omissions and mistakes on the 2019 applications that contributed to lower scores. These are covered in detail in the webinars. Guidance for each section of the application is also provided here for quick reference. Application sections are scored independently; therefore, to score highly, applicants must answer all questions in each section.

**Required business plan**

Individuals who apply for the practice support grant must:

- Provide a well-researched business plan that documents their plans for establishing, expanding or relocating their practice to one of the highest-need counties listed on the application.
- Include in their business plan a general company description and information on products and services, economics, patients and consumers, personnel, equipment and supplies and a revenue forecast or financial plan. The section on patient caseload is weighted the heaviest on both award applications (20 out of 45 possible points for the loan repayment grant and 20/50 for the practice support grant) followed by the personal statement (10 points) and, for the practice support grant only, the business plan (10 points).
- When addressing patient caseload, PHC stresses that applicants need to fill out both the current and proposed patient caseload tables and answer all questions in the two narrative questions: 1) How will they calculate their existing Medi-Cal beneficiary caseload and 2) How will they and their employer meet their Medi-Cal patient caseload?
- Applicants in the 2020 application cycle will be notified of awards on or around May 1, 2020.
- CDA and other health care organizations sponsored Proposition 56 in 2016 and voters approved it by a strong margin at the polls. CalHealthCares is currently funded to award a total of $47.5 million to dentists through fiscal year 2023-24.
- FAQs, recorded webinars and more information at www.calhealthcares.org. Email any questions to calhealthcares@phcdocs.org. Apply online through the website beginning Jan. 13, 2020.
tooth loss. With emerging business models offering various dental services outside of a dental office’s four walls, including companies that provide direct-to-consumer orthodontic services, it is imperative that dental treatment continues to meet the standards of care.

Assemblymember Low, who represents a swath of Silicon Valley, said in a statement about the signing:

“I am grateful to Governor Newsom for putting patients above profits. AB 1519, this year’s dental board sunset bill, helps ensure consumers are not recklessly injured by profit-hungry companies who engage in serious medical procedures without even the most basic examination.”

AB 1519 ensures that telehealth advancements continue to develop in a thoughtful way that puts patient safety first and is as effective as in-person treatment.

The new law will take effect Jan. 1, 2020.

**Dentists will see more transparency in network leasing**

Gov. Newsom also signed into law CDA-sponsored legislation that builds on CDA’s recent legislative efforts to increase dental plan transparency and value. AB 954, authored by Assemblymember Jim Wood (D-Santa Rosa), requires dental benefit plans to be more transparent about the common practice of “leasing” access to a network of contracted dentists from another dental benefit plan. The growing trend of network leasing is causing confusion and difficulties for California dentists and their patients.

While many dentists want the benefits that come with network leasing, such as increased visibility and patient retention, under current law there are disadvantages that negatively affect dentists and their patients. For example, dentists who signed contracts with one dental plan often are not aware that their contract has been sold to another plan that now counts them as a contracted in-network dentist. They may not know which plans they have been sold to. AB 954, which will go into effect for plan contracts signed or renewed as of Jan. 1, 2020, increases transparency for dentists and patients by requiring dental plans to maintain an up-to-date website list of all third parties that have access to a provider network contract and to clearly identify in specified language and font a contract clause that allows network leasing.

Currently, the purchasing plan is not required to comply with the terms that the provider and the original plan agreed to. Moreover, the dental plan that is leasing its network is not required to communicate with the purchasing plan to make sure that a dentist who opts out or cancels their contract is taken off the leased network.

Beginning in January, dentists will have the ability to opt out of being leased to third-party plans without having to drop their original plan contract.

The lack of transparency in network leasing has made it difficult for providers to educate patients about treatment options and the cost of care. Dentists need to know whether they are in network or out of network when working with patients in order to determine their share of the costs. Also, dentists must be able to easily locate the terms of a new contract to know copayments, important limitations on services and waiting periods, and how treatments are categorized.

The new law will provide clarity for both patients and providers, reduce confusion and help preserve trust in the dentist-patient relationship.

**RDH scope expansion bill fails**

Legislation that would have expanded the scope of registered dental hygienists and registered dental hygienists in alternative practice has stalled in the Legislature.

Introduced early this year by the California Dental Hygienists Association, the bill initially included several provisions that CDA opposed. Among them was a provision that would make it much easier for RDHAPs to operate a private practice by eliminating the requirement for an RDHAP to practice in a dental health provider shortage area. The bill also initially expanded authority for RDHAPs to provide local anesthesia, nitrous oxide and soft tissue curettage under general supervision of a dentist.

CDA successfully advocated for the removal or modification of these provisions to ensure appropriate dentist oversight of dental services. CDHA and CDA have agreed on several amendments to the bill, including a provision allowing for RDHs to provide fluoride varnish without supervision in public health programs and expanding the definition of public health programs to include specific nonprofit charities.

Although the bill did not pass this year, it may be heard again in 2020.

Watch the Advocacy page at cda.org for updates on current and upcoming major issues.
Two dental suppliers named in FTC complaint violated antitrust laws, judge finds

The Dentists Supply Company issues statement about ruling

An administrative law judge has partially ruled in favor of the Federal Trade Commission’s complaint that dental products distributors conspired not to provide discounts to buying groups. According to the FTC, the judge’s initial decision has held that two of three respondents named in the complaint violated U.S. antitrust laws by conspiring to refuse to provide discounts to, or otherwise serve, buying groups representing dental practitioners.

The judge held that Benco Dental Supply Company and Patterson Companies Inc. were part of the conspiracy, but Henry Schein Inc. was not. In addition to dismissing the complaint against Schein, the judge also dismissed another violation that alleged Benco invited a fourth competing distributor to join the conspiracy.

The Dentists Supply Company’s Chief Executive Officer Jim Wiggett issued this statement regarding today’s FTC announcement:

“Judy, did we run the spore test this week?”

New law requires dentists to use updated informed consent form

Gov. Gavin Newsom in October signed Assembly Bill 1622, which revises language in the written informed consent form that dentists must provide to patients prior to administering general anesthesia and deep or moderate sedation. Although the new law does not impact the practice of dentistry, dentists should ensure that beginning Jan. 1, 2020, they are using a consent form that is compliant with the new law. The specific language changes are shown here:

“In the wake of the judge’s initial decision, members of organized dentistry across the country, particularly solo practitioners, can rest assured that The Dentists Supply Company has their best interests at heart — for their practices and patients. Association member dentists created TDSC to help them stay competitive by offering negotiated savings and direct access to dental supplies from authorized vendors through TDSC.com.

TDSC looks forward to continuing our partnerships with dental suppliers in the supply and equipment industry. Our relationships are built on trust, service and value to ensure we deliver consistent, competitive supply prices to our customers nationwide.”

The judge’s interim decision will become final in 30 days, during which time any of the parties involved may appeal.

CDA will update readers on any developments on cda.org.
in a 12-month period to compensate the dental provider for additional time needed for providing services to special-needs patients and only in conjunction with procedures that are payable.

DHCS notes that when submitting claims for procedure D9920, the documentation should include the medical diagnosis and reason why extra time is needed if the medical condition alone does not justify the need (e.g., quadriplegia). Providers should indicate the reason they are unable to render the procedure(s) to the patient within a reasonable amount of time. D9920 is intended for situations that require extra time due to a particular medical condition and not for extra minutes to calm a patient down or to review an extensive medical history, etc. D9920 will not be paid to providers if the behavior modification modality is sedation.

**Lab-processed crowns for children**
Both anterior and posterior endodontically treated teeth for children under age 21 are eligible for laboratory-processed crowns, as a June 2019 Provider Bulletin clarified. The benefit criteria for crowns for adults 21 and over has not changed.

**Case management for complex health care needs**
The Medi-Cal Dental Program recently launched a case management option to assist Medi-Cal members with special health care needs who are unable to schedule and coordinate complex treatment plans among multiple practitioners. Examples of special health care needs include physical, developmental, mental, sensory, behavioral, cognitive or emotional impairment or a limiting condition that requires medical management, health care intervention or the use of specialized services or programs.

The member’s Medi-Cal Dental provider will initiate the referrals for case management services to be based on a current, comprehensive evaluation and treatment plan. All referrals will be evaluated to determine eligibility for case management.

---

**Medi-Cal**
*From PAGE 3*

**Fluoride periodicity increase for young children**
In a May Provider Bulletin, the Department of Health Care Services announced a change in the benefit periodicity for fluoride treatment (D1260) and fluoride varnish (D1288) for children under age 6. It was increased from once every six months to once every four months to be consistent with clinical guidelines for prevention in this age group and to align the program policies with the American Academy of Pediatric Dentistry’s guidelines.

**Tobacco cessation counseling**
Similarly, dentists can now receive reimbursement for tobacco counseling (D1320), which highlights the important role dental professionals play in identifying nicotine use and promoting smoking cessation. CDA has a long history of supporting efforts to reduce tobacco use in California, most recently through successful advocacy to increase the state’s tobacco tax through Proposition 56 in 2016. Documentation in the patient record of a face-to-face encounter must include the following five A’s of tobacco dependence counseling:

1. Ask the patient about tobacco use at every visit and document the response.
2. Advise the patient to quit in a clear and personalized manner.
3. Assess the patient’s willingness to make a quit attempt at this time.
4. Assist the patient to set a quit date and make a quit plan.
5. Arrange to follow up with the patient within the first week, either in person or by phone, and take appropriate action to assist them.

If the patient is unwilling to quit, the provider should document the patient’s expressed barriers.

For procedure code D1320, a new schedule of maximum allowances not to exceed $10/billable visit will be added, effective for dates of service on and after June 1, 2019. See Provider Bulletin volume 35, number 15 for more information.

**Behavior management for patients**
As part of Proposition 56, a criteria change to procedure code D9920 is now in effect and exclusively provides extended time to render dental services to special-needs patients. Special-needs patients are those patients who have a physical, behavioral, developmental or emotional condition that prohibits them from adequately responding to a provider’s attempts to perform a dental visit. D9920 is a benefit for up to four visits.
management and, if criteria are met, a case management representative will initiate contact with the member or member representative. Medi-Cal Dental providers can refer patients to case management by completing the referral form and submitting it in a manner that is compliant with HIPAA.

To download and submit a case management referral form, go to the provider forms page in the publications section at www.denti-cal.ca.gov/Dental_Providers/Denti-Cal.

**Update to CDT-19 code set coming spring 2020**
DHCS announced in a September Bulletin that the Medi-Cal Dental Program has been working diligently to update the program from the American Dental Association’s Current Dental Terminology code set (CDT-13) to CDT-19. The update is scheduled to implement in spring 2020, and more information will be available as the release date nears.

**Building on five years of improvements**
Over the past five years, the state fully restored adult dental benefits and significantly increased provider rates for both children and adult services through incentives, pilot projects and supplemental rates — in some cases approaching 75% or more of usual and customary rates. Administrative burdens were reduced and a streamlined provider enrollment process was implemented. CDA has been at the center of the push to improve access to quality care within the Medi-Cal Dental Program and is pleased to see the state working to make Medi-Cal Dental a better program for patients and for dentists.

Learn more about Medi-Cal Dental at www.denti-cal.ca.gov/Dental_Providers or read extensive coverage about the program at cda.org. To automatically receive the monthly Denti-Cal Bulletin and related communications by email, sign up at www.dhcs.ca.gov/Pages/DHCSListServ.aspx.

---

**Learn Clear Aligners FAST!**

**Step-By-Step Clinical Orthodontics Education**

Learn Diagnosis & Treatment Planning!  
Clinical Step-By-Step & How-To Videos!

Troubleshooting and Finishing Aligner Cases!

www.LearnAligners.com

$25 OFF Coupon Code: FASTTRACKCDA19

---

**MEDICAID MASTERCLASS**

Upcoming Webinar

MEDICAID MASTERCLASS / PEDO FOR THE GP

Webinar for Dentists: 4 hours of California CE Credits while still in your pajamas.

**NOVEMBER 17, 2019 AT 9AM-1PM PST**

- Learn how you can qualify for up to $300,000 for educational loan repayment or for a Practice Support Grant treating Medi-Cal patients by DHCS administered through PHC.
- Learn how and why GP dentists are such a vital link in rendering care through the Medi-Cal Dental program to half of all the children in California.
- Learn how to do well, while doing good.
- Learn “Simple 7” clinical procedures forPedo.

Let’s start some conversations and discuss your opportunities to live and give a life of abundance!

Dr. Jerry Lanier  
Guest Panelist, Author and Mentor  

SIGN UP TODAY  
MedicaidMasterclass.com
What does this mean for dental practices?

In the weeks and hours before the passage of AB 5, dozens of groups lobbied for exemptions from the ABC test. Under the provisions of the bill, all employers in California would be subject to the requirements of the ABC test unless an exemption was included in the bill language.

Notably, CDA was able to secure an exemption for dentists. Other professions and industries also were granted exemptions from the final version of the statute. These exempted positions are not subject to the ABC test, but instead will be subject to the original Borello test. The common law test for identifying an employee relationship has long been resolved by examining who has the right to control the manner and means of accomplishing the work at issue.

Although the Borello test offers more flexibility for employers when considering whether to classify a dentist as an independent contractor, the definition of independent contractor is not black and white. The Labor Commissioner starts with the presumption that any worker is an employee. Furthermore, even with greater flexibility with the considerations under Borello, the more integrated the individual’s work is with the business’ bottom line and the longer the relationship with the individual, the harder it is to defend that it is not an employment relationship.

For practice owners who have associates working in their practices, the exemption from AB 5 is cautiously good news, but it is not a free ticket to classify or reclassify an associate dentist as an independent contractor. With the recent spotlight on the classification relationship, it’s likely that many agencies will be scrutinizing employment relationships.
The employer holds the greatest liability. Misclassification of an employee creates a potential liability for employment taxes and penalties and liability for failure to fulfill the many legal obligations owed to an employee, such as unpaid paid sick leave and overtime or meal- and rest-break violations.

**Classifying hygienists and temporary employees**

Employers should review relationships with current and future non-dentist office staff relationships under the new three-prong ABC test. Dental practice owners commonly classify hygienists or temporary employees as “1099” workers, but dentists should err on the side of caution and always classify the individuals as employees. More information about hiring and paying temporary employees can be found in the article “Compliance Essentials: Hiring and paying temporary employees” on cda.org.

**Next steps**

Before AB 5 takes effect Jan. 1, employers in California should understand the requirements of the new law and take steps to evaluate their contracts and relationships if they wish to avoid possible misclassification liability. For employers who are still uncertain about how to classify an employee, CDA Practice Support recommends speaking with legal counsel.

Find resources on hiring in the CDA Practice Support resource library. Go to cda.org/resource-library.
SAVE MORE 
ON DENTAL SUPPLIES 
THAN YOU PAY IN DUES

There’s no better time to be an association member! Your benefits now include negotiated discounts and free shipping through The Dentists Supply Company.

See how tdsc.com can help you save more on dental supplies than you pay in annual association dues.

SHOP ONLINE AND START SAVING TODAY