

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Medical Fee Schedules: Automobile Insurance Personal Injury Protection and Motor
Bus Medical Expense Insurance Coverage
Dental Fee Schedule

Adopted Repeal and New Rule: N.J.A.C. 11:3-29 Appendix, Exhibit 2

Proposed: June 2, 2008 at 40 N.J.R. 2653(a)

Adopted: May 28, 2009 by Steven M. Goldman, Commissioner, Department of
Banking and Insurance

Filed: May 29, 2009 as R. 2009 d. 209, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 39:6A-4.6

Effective Date: July 6, 2009

Expiration Date: June 7, 2011.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received a timely written comment from Joan Van Raalte, DMD.

COMMENT: The commenter urged the Department to raise the fee for one code on the Dental Fee schedule, D7880, occlusal orthothic device. The commenter stated that the fee for this service on the proposed new Dental Fee Schedule does not meet the 75th percentile standard. In support of this, the commenter provided data from the Ingenix Customized Dental Fee Analyzer, which shows that the 75th percentile of fees for this service in the zip codes that comprise Region 3 range between \$823.00 and \$944.00. The commenter also provided data from the National Dental Advisory Service

Comprehensive report which indicated that the 75th percentile of fees for this service in the zip codes that comprise Region 3 range between \$1,104 and \$1,185. The amount on the Department's fee schedule for Region 3 is \$848.00. The commenter stated that while the other fees on the Department's Dental Fee Schedule were in line with the fees reported by Ingenix and the National Dental Advisory Service, the fees for code D7880 were far below the 75th percentile.

The commenter also noted that the services that are reported under code D7880 are very broad and make no distinction between minor procedures and more complex ones arising from traumatically-induced injuries. The commenter stated that this resulted in the fees being reported by Ingenix to be lower than those pertaining to claims from auto insurance.

Finally, the commenter noted that the Department's Physicians' Fee Schedule, adopted in August, 2007 and currently stayed by the Appellate Division, includes two Current Procedural Terminology (CPT) codes, CPT 21085 and 21110, that are for services similar to those found in Code D7880 on the Dental Fee Schedule. The fees for services reported under these codes are higher than those found on the Dental Fee Schedule for Code D7880. The commenter stated that most dentists bill for their services under the Physicians' Fee Schedule but some insurers consider CPT 21085, 21110 and D7880 to be equivalent. The commenter stated that as result, D7880 should be reimbursed at the higher price. The commenter also stated that adoption of the fee schedule as proposed with the payment for code D7880 would result in patients having more difficulty finding treatment for traumatically induced Temporomandibular Joint Dysfunction.

RESPONSE: The Department does not agree that the fee for code D7880 is “far below” the 75th percentile as claimed by the commenter. The Dental Fee Schedule was compiled in 2001 based on Ingenix’s billed fee database. It was adjusted for inflation in 2004 and again in the current proposal. As reported by the commenter, the fees on the Ingenix Fee Analyzer for code D7880 at the 75th percentile in the zip codes that comprise Region 3 range between 90 percent and 111 percent of the amount on the Department’s fee schedule. The Department believes that the fee for code D7880 is at the 75th percentile.

The commenter also provided data from the National Dental Advisory Service Comprehensive report, which indicated that the 75th percentile of fees for this service in the zip codes that comprise Region 3 ranged between 130 and 140 percent of the amount on the Department’s fee schedule. The Department has no experience with this provider of fees and is unable to make a determination as to the validity of those fees.

The Department does not understand the commenter’s statement that the fees on the Ingenix Dental Fee Analyzer are lower than those on the National Dental Advisory Service report because code D7880 covers services for minor as well as complex trauma-induced injuries. It is unclear why this would not also be the case for fees in the National Dental Advisory Service report. The commenter has not provided any information that indicates that fees on the National Dental Advisory Report include more traumatically-induced injuries. In any case, as the Department has noted in the recent adoption of the Physicians’ Fee Schedule, each CPT and Dental code describes a distinct procedure. There are modifiers for the procedures that recognize various circumstances that change the level of service provided and may therefore be reflected

in billing. None of these modifiers relate to the cause of the injury. Therefore, except for services provided in trauma units, the Department does not accept the idea that an injury sustained in an auto accident that does not require care at a trauma unit requires some higher level of care than the same injury sustained in some other manner.

The Department will look into the relationship between the services provided by D7880 in the Dental Fee Schedule and those represented by CPT codes 21085 and 21110. The Department will address the issue in future rulemaking.

Federal Standards Statement

A Federal standards analysis is not required because the dental fee schedule is not subject to any Federal requirements or standards.

Full text of the adopted new rule follows:

DHT09-05/INOREGS