



## **FREEDOM OF CHOICE: THE LAW IS ON YOUR SIDE**

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**DID YOU KNOW...** that your right to select the dentist of your choice is protected by a Louisiana law?

In 1985, the Louisiana Dental Association sponsored legislation, which became Act 441. We know that the choice of a dentist, or any other health care provider, is a sensitive one because of the nature of the doctor-patient relationship. Choices are often made because of convenient location and patient confidence in the dental practitioner that is selected. Whatever the reason, the law recognizes that it should be the patient receiving the dental care who should make the decision as to which dentist to see. This concept is consistent with the patient's long established right to determine what treatment will or will not be administered to his or her own body.

Specifically, Louisiana Revised Statute 22:1513 says that "no health insurance policy or employee benefit plan which is delivered, renewed, issued for delivery, or otherwise contracted for in this state shall prevent any person who is party to or beneficiary of any such health insurance policy or employee benefit plan from selecting the dentist of his choice to furnish the dental care services offered by the policy or plan, or interfere with such selection."

Furthermore, if you choose to continue your doctor-patient relationship with a dentist who is not on your plan's "approved" list of providers, Act 441 states, "The payment or reimbursement for a noncontracting provider dentist shall be the same as or greater than the payment or reimbursement for a contracting provider dentist; however, the health insurance policy or the employee benefit plan shall not be required to make payment or

Continued...

reimbursement in an amount that is greater than the amount so specified in the policy or plan or that is greater than the fee charged by the providing dentist for the dental care services rendered.”

However, there is an exception to the state law for certain self-funded health benefit plans. If an employer-sponsored or union-sponsored plan is exempt under ERISA (Employee Retirement Income Security Act) this federal act preempts Louisiana’s “Any-Willing-Provider Law”. Please see the attached *Washington Briefing* report for more information.

If you or your patients experience a problem relative to the freedom of choice, we suggest contacting the Louisiana Department of Insurance:

Mail to: Scott Kipper, Deputy Commissioner  
Office of Health Insurance  
P.O. Box 94214  
Baton Rouge, LA 70804-9214  
(225) 342-1355, skipper@ldi.state.la.us

If you need more information about Act 441 or have specific questions relative to the practice of dentistry, please contact the Louisiana Dental Association at 7833 Office Park Boulevard, Baton Rouge, LA 70809, telephone number (225) 926-1986.

You can also find the exact law by going to <http://www.legis.state.la.us> and clicking on the section entitled Louisiana Laws.

*(Revised May 3, 2006)*

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*The foregoing message is offered by the Louisiana Dental Association as a service to members of the Louisiana dental profession and the general public. This message is presented for information purposes only. Information herein is not offered as legal advice, nor is it intended to be a substitute for legal advice. If you have specific legal questions concerning your own circumstances, LDA recommends that you consult your own legal counsel. Although reasonable and diligent efforts have been made to ensure the accuracy of the content provided, LDA makes no warranties thereof and is not responsible for any loss, actual or potential, resulting from reliance on the content of this message.*

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# WASHINGTON BRIEFING



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## **Appeals Court Rules ERISA Preempts Louisiana Any-Willing-Provider Law**

State any-willing-provider laws suffered a defeat April 30 when the U.S. Court of Appeals for the Fifth Circuit ruled that Louisiana's any-willing-provider law is preempted by the Employee Retirement Income Security Act (ERISA), a federal statute governing employee benefit plans.

The appeals court ruling affirmed a decision by a lower court which found that ERISA preempts the state preferred provider statute that requires health plans to accept any provider that can meet the terms and conditions of participation. The decision affects any third-party administrator and health care plans that provide services to ERISA-qualified benefit plans in the state.

The challenge to Louisiana's any-willing-provider law was filed by Cigna HealthPlan of Louisiana Inc. and Connecticut General Life Insurance Co., both of which offer managed care plans, after the state attorney general said in a 1993 advisory opinion that the arbitrary exclusion from a preferred provider organization of any provider willing to meet the PPO's terms was a violation of the law and an unfair trade practice under state law, according to the Fifth Circuit's summary of the facts.

To forestall litigation by excluded providers, Cigna brought this suit seeking a ruling that ERISA preempts the law, and an injunction prohibiting the state from enforcing the law against it. The Fifth Circuit granted both motions

The Consumer Affairs Division of the Louisiana Department of Insurance has as its purpose to respond promptly, clearly and courteously to questions from the public concerning insurance and to acquaint consumers with alternatives and courses of action to which a citizen can pursue to solve a particular insurance problem.

**WHAT WE CAN DO TO HELP YOU**

- (1) Obtain information or explanations on your behalf from insurance companies or their representatives. This may involve written and oral contact with such companies or persons and, if necessary, meetings with such companies or persons.
- (2) We may investigate your matter in detail, if it appears there might be unlawful or illegal activity involved in your complaint.
- (3) After the investigation, we may serve as your advocate if we determine that the position of the insurance company or their representative is unlawful.
- (4) Suggest to you actions or procedures that you may take which could aid in resolving your problem.

**WHAT WE CANNOT DO**

- (1) Assume the role as your legal representative; in or out of court.
- (2) Interfere in a pending lawsuit on your behalf.
- (3) Consult with you, if you are represented by an attorney, unless it is with written permission of that attorney.
- (4) Make a decision as to disputes between you and insurance companies or their representatives which involve deciding matters as to:
  - (a) who is negligent or at fault;
  - (b) the facts surrounding the claim (that is who might be telling the truth in the matter when accounts of that matter differ): or,
  - (c) any other disagreements between you and another party on what the facts might be.
- (5) Deal with situations or companies which are not subject to the insurance laws of Louisiana (such as self-funded health plans) or with matters governed by other state agencies (such as worker's compensation claims).

**The Louisiana Department of Insurance pledges to seek fair treatment of all parties in insurance transactions. We are here to serve.**

LOUISIANA DEPARTMENT OF INSURANCE (CONSUMER AFFAIRS DIVISION)

PO Box 94214 Baton Rouge, Louisiana 70804-9214

Telephone Number 1-800-259-5300 Or -5301/Local 342-0895 or -0896

PLEASE TYPE OR PRINT CLEARLY

I.

Your Name: \_\_\_\_\_

Daytime Telephone \_\_\_\_\_

Address: \_\_\_\_\_

Home: ( ) \_\_\_\_\_

\_\_\_\_\_

Work: ( ) \_\_\_\_\_

Insured: \_\_\_\_\_

Claimant: \_\_\_\_\_

(If same indicate "same")

Social Security #: \_\_\_\_\_

Age Group: Under 25 \_\_\_\_\_ 25-49 \_\_\_\_\_ 50-64 \_\_\_\_\_ 65+ \_\_\_\_\_

II.

1. What type of coverage does this involve?

(A) Auto \_\_\_\_\_ Fire/Homeowners \_\_\_\_\_ Worker's Compensation \_\_\_\_\_

Life \_\_\_\_\_ Health \_\_\_\_\_ Medicare Supplement \_\_\_\_\_

Other: \_\_\_\_\_

(B) If involving group insurance, please provide the name of the employer:

\_\_\_\_\_

2. Who is the complaint against? (Full and exact name of the company, broker and/or agent.)

\_\_\_\_\_

Address (If known) \_\_\_\_\_

3. (A) Policy# \_\_\_\_\_

(B) Group# \_\_\_\_\_

(C) Claim# \_\_\_\_\_

4 Date of Loss \_\_\_\_\_



6. What do you consider to be a fair resolution to your problem?

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Please read and sign the following:

To the best of my knowledge, the information contained herein is true and accurate. I understand that a copy of this form and any or all of the information attached may be sent to the party complained against.

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(Signature)

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(Date)

Life and health or injury claimants, please complete the following:

I hereby authorize release to the Louisiana Department of Insurance medical information pertaining to \_\_\_\_\_ . It is understood that this information is for evaluation purposes relative to my complaint.

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(Signature)

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(Date)