

Recommendations for Auto-Renew of Membership Option

To help members conveniently pay dues, state dental associations on Aptify may wish to implement an automatic renewal option for members. Some recommendations are below; however, the below are recommendations only and may or may not be sufficient to achieve compliance with the requirements of all applicable federal and state laws.

On Oct. 28, 2021, the Federal Trade Commission (FTC) issued a new enforcement policy statement [https://www.ftc.gov/system/files/documents/public_statements/1598063/negative_option_policy_statement-10-22-2021-tobureau.pdf?utm_source=govdelivery] warning against deploying illegal dark patterns that trick or trap individuals into subscription services. The FTC stated that this statement “is intended to ... [provide] specific guidance on the Commission’s interpretation of existing law as it applies to negative option practices.” An auto renew is a form of negative option. Some states are developing and implementing laws governing “dark patterns.”

Whether or not you’re using the ADA Aptify dues payment webpage, you are strongly urged to check with legal counsel in your jurisdiction to make sure your auto renew process complies with applicable legal requirements. State law requirements may vary on the auto renewal process.

1. Disclosures.

- a. Before the individual enters payment information and completes the order, the individual should see a disclose that, in a clear, conspicuous and understandable way, provides at least the following items (many of which are noted in more detail in subsequent sections):
 - 1) the material terms and conditions of the transaction (at the very minimum, the disclosure must include key terms such as the existence of the auto renew offer, the offer’s total cost, and how to cancel the offer)
 - 2) the recurring nature of the transaction (i.e. that once the member authorizes the auto renew, charges will continue to be made per the terms until the member cancels the auto renew)
 - 3) the cancellation policy (including by when (date: month, day, year) the member must cancel to prevent a future charge from being made)
 - 4) the amount (or range of costs) the individual will be charged, and any service fee or processing fee that will apply, and the date (or dates) each charge will be submitted for payment
 - 5) a simple mechanism for the individual to stop the charges and all information necessary to cancel
 - 6) an explanation that stopping recurring payments does not cancel membership as long as dues are paid in full
 - 7) how to make and change decisions concerning any optional contributions, such as to political action committees (PACs) and donations to charitable foundations
- b. The above terms should be provided in visual or temporal proximity to the consent, and in a manner that is capable of being retained by the member, and must be made through the same means through which the communication is presented. The individual must not be required to take any action to see the disclosure, such as clicking on a hyperlink or hovering over an icon, to see it. The disclosure must stand out by its size, contrast, location, the length of time it appears, and other characteristics, so that it is difficult to miss. If in a written format, the disclosure must be immediately adjacent to the means of

recording the individual's consent, and must not contain any other information that interferes with, detracts from, contradicts, or otherwise undermines the individual's ability to read and understand the disclosure.

- c. In addition, before the individual enters payment information and completes the order, the individual must receive, in a clear, conspicuous and understandable way, at least the following:
 - 1) the dollar amounts and payment intervals (the fields for this functionality are on the ADA template)

2. Obtain Express and Informed Consent Authorizing Auto Renew

a. Affirmative Action Indicating Authorization.

- 1) Require an affirmative action (such as requiring the member to check "I agree", in a non-pre-checked check box) agreeing to the Terms and Conditions before requiring the member to divulge payment information (e.g. credit card or bank information). The FTC has stated that a pre-checked box does not constitute affirmative consent, and stated that the Electronic Fund Transfer Act (EFTA) prohibits imposing recurring charges on a debit card or bank account without written authorization.

b. Proximity of Terms and Conditions. The Terms and Conditions should be clearly and conspicuously displayed, preferably in close proximity, whether textually or by a hyperlink, to the affirmative action indicating consent (e.g. a non-pre-checked check box or "Pay Dues Now" button) and the consent checkbox authorizing the recurring transaction.

c. Provide a Copy of Payment Authorization for the Member. A printable copy confirming the member's authorization (along with the Terms and Conditions of the recurring payment program) acknowledging the member's authorization should be promptly provided to the authorizing member.

3. Advance Disclosure of Renewal, Including Amount to Be Charged and Timing.

a. Advance notice. At least 30 days but not more than 60 days before a membership auto renews, the state association should send the member a notice that the following year's dues charge will be made, and the specific amount of the charge. Even if the dues amount will remain unchanged, this annual renewal notice should be sent and should include the dues amount; including a hyperlink to the cancellation mechanism is recommended.

b. Precise Amount. The notice should specify the precise amount that they will be charged. This should include the entire, precise amount (i.e. national, state and local) to be charged. If the amount of any preauthorized payment will change (e.g., if local, state or national dues increase or if there is a special assessment), the state association should include specific reference to the change (including the amount) in the notice.

c. Sufficient Time to Allow Cancellation. The notice should be provided to the member sufficiently in advance to allow the member time to cancel the auto renew (i.e., cancellation policy timing should allow the member, after receipt of advance notice of charge, sufficient time to cancel the auto renew). The cancellation procedure should be included in the Terms and Conditions and/or through a link provided within the terms and conditions.

4. Subsequent Changes. If the terms of the offer are subsequently changed, members should be sent a clear and conspicuous notice of the specific change, and information regarding how to cancel, which notice should be:
 - i. Provided in a manner that is capable of being retained by the member; and
 - ii. Hyperlink to cancellation mechanism
 - iii. Best practice would be to obtain affirmative consent to the change.

5. Cancellation.

The state association should be properly prepared to handle and process cancellation requests and other member service issues. The member needs to be advised of, and provided with, a simple and clear cancellation procedure. The cancellation and refund procedures must not be overly burdensome, and there must not be unreasonable barriers to cancellation, nor must the effective operation of promised cancellation procedures be impeded. The cancellation procedure must be at least as easy as the method the individual used to initiate the auto renew. Cancellation must be available at least through the same medium (e.g., a website or app) that the individual used to consent. If telephone cancellation is provided for, the individual should be provided, at a minimum, a telephone number, and the state dental society must answer all calls during normal business hours, within a short time frame, and the calls must not be lengthier or more burdensome than the telephone call an individual used to consent to the auto renew. Cancellation requests that comply with the communicated procedures must be honored. If the member has accepted the auto renewal offer online, then the member should be afforded an option to terminate the auto renew online, as well.

6. Political Action Committee (PAC) Contributions

ADPAC contributions require a specific affirmative, non-pre-checked “opt in.” Do not pre-check contributions to ADPAC. Check the laws of your state regarding rules for other voluntary contributions. Laws vary for state PACs, which may have similar and/or additional requirements.

7. Check Other Contractual Obligations

Check your other contracts (e.g., with credit card brands). They may contain additional requirements regarding installment payments and autorenew.

8. Obtain Legal Guidance in Your Jurisdiction.

The state association should consult its own attorney regarding legal requirements and at all times keep abreast of the state’s laws, rules and regulations with respect to auto renew payments, and promptly notify ADA if any reconfiguration appears to be required to permit the state association to continue to comply with applicable law.

9. Telemarketing Sales Rule (TSR).

If an offer is made by phone, the TSR may require, among other things, disclosure of all material terms and conditions of the auto renew option, including the need for affirmative action to avoid the charges, the date (or dates) the charges will be submitted for payment, and the specific steps the individual must take to avoid the charges.