

ASSEMBLY, No. 4455

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2018

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblywoman McKnight

SYNOPSIS

Requires health insurance carriers to adhere to certain practices to protect health information related to sensitive services.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/14/2019)

1 AN ACT concerning the protection of health information related to
2 sensitive services and supplementing P.L.1997, c.192 (C.26:2S-1
3 et al.).

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. As used in this act:

9 "Carrier" means a carrier as defined in section 2 of P.L.1997,
10 c.192 (C.26:2S-2), except that carrier shall also include the State
11 Health Benefits Program and the School Employees' Health
12 Benefits Program.

13 "Sensitive services" means health care services related to sexual
14 assault, pregnancy, family planning, sexually transmitted diseases,
15 domestic violence and substance or alcohol abuse, and any other
16 services that may be determined to be sensitive services by the
17 Commissioner of Banking and Insurance, in consultation with the
18 Commissioner of Health.

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20 2. a. The Commissioner of Banking and Insurance shall
21 prescribe by regulation a standardized explanation of benefits form
22 designed to be clearly understandable to covered persons in a
23 manner consistent with the "Life and Health Insurance Policy
24 Language Simplification Act," P.L.1979, c.167 (C.17B:17-17 et
25 seq.).

26 b. Except as provided in subsection d. of this section, the
27 standardized explanation of benefits form shall include, but not be
28 limited to, a summary of benefits for current services, including: the
29 cost of the health care service; the amount paid by the carrier; the
30 amount to be paid by the covered person; and an explanation of the
31 reason for benefit denial or limitation, if any.

32 c. A carrier issuing health benefits plans in this State shall
33 provide a written explanation of benefits which complies with the
34 standardized form prescribed pursuant to subsection a. of this
35 section to each covered person separately, but not to any other
36 covered person, whenever a claim under the health benefits plan is
37 generated by that covered person.

38 d. An explanation of benefits shall not contain information
39 about sensitive services unless:

40 (1) the parent or guardian of a minor under the age of 18 makes
41 a written request to the carrier that the explanation of benefits for
42 that dependent contain information about sensitive services that
43 were provided to that dependent; or

44 (2) a covered person who is 18 years of age or older makes a
45 written request to the carrier to have the explanation of benefits for
46 that covered person contain information about sensitive services
47 that were provided to that covered person.

1 3. a. A carrier shall provide an explanation of benefits which
2 relates to sensitive services, pursuant to the circumstances set forth
3 in subsection d. of section 2 of this act, by using an alternative
4 method of delivery, as designated by the parent or guardian of the
5 minor, or by the covered person, upon written request.

6 b. A carrier shall provide a covered person, who is 18 years of
7 age or older, with the option to elect not to receive an explanation
8 of benefits for a claim in a situation in which there is no remaining
9 balance related to the claim.

10 c. An explanation of benefits is related to sensitive services for
11 the purposes of this act if it discloses protected health information,
12 including information regarding treatment or diagnosis, or the name
13 or address of a provider of sensitive services, or if disclosure of all
14 or part of the protected health information could endanger the
15 covered person.

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17 4. Alternative methods for delivery of an explanation of
18 benefits related to sensitive services shall include, but not be limited
19 to, the following:

20 a. a paper form sent to the address of the covered person who
21 received the sensitive service;

22 b. a paper form sent to any alternate address designated by the
23 covered person who received the sensitive service; or

24 c. allowing only the covered person who received the sensitive
25 service to access the communication through electronic means, as
26 available, provided that such access is granted in compliance with
27 any applicable State and federal laws and regulations pertaining to
28 data security.

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30 5. A carrier shall communicate the right to request an
31 alternative method of delivery of an explanation of benefits related
32 to sensitive services, and the process to make a request, in plain
33 language and in a clear and conspicuous manner in coverage
34 documents and member privacy communications. The carrier shall
35 also conspicuously display the covered person's right to request that
36 alternative method of delivery on the carrier's website and online
37 portals for covered persons.

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39 6. a. A carrier shall not require an explanation as to the basis
40 for a covered person's request pursuant to this act, unless otherwise
41 required by law or court order.

42 b. A carrier shall not condition enrollment or coverage on the
43 waiver of rights provided in this act.

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45 7. This act shall take effect on the 120th day next following
46 enactment.

STATEMENT

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This bill supplements the “Health Care Quality Act,” P.L.1997, c.192 (C.26:2S-1 et al.) by requiring health insurance carriers, and the State Health Benefits and School Employees’ Health Benefits programs, to use a standardized explanation of benefits form and to adhere to certain practices to protect the health information of covered persons related to sensitive services. “Sensitive services” are defined as health care services related to sexual assault, pregnancy, family planning, sexually transmitted diseases, domestic violence and substance or alcohol abuse, and any other services that may be determined to be sensitive services by the Commissioner of Banking and Insurance, in consultation with the Commissioner of Health.

The enactment of the federal “Patient Protection and Affordable Care Act,” (ACA) expanded the opportunity for many individuals to maintain health insurance as dependents on a policy held in someone else’s name. Under the ACA, children of policyholders may remain on the policy as dependents until they reach the age of 26. In certain cases, coverage for dependents may be extended even further by New Jersey law. As coverage for dependents increases, so too do concerns for the privacy of these dependents.

Carriers typically provide policyholders with documentation of the benefits rendered for all persons covered under the policy. As a result, many dependents find themselves having to make a difficult choice between getting the medical treatment they need, and keeping their health information private. This is especially problematic when a dependent has been victimized in some manner by a policyholder, as the dependent may fear for their safety if the policyholder discovers that the dependent sought medical treatment after the fact. This bill protects all covered dependents’ confidential health information related to sensitive services from being released to policyholders against the wishes of the dependent.

The bill provides that the Commissioner of Banking and Insurance shall prescribe by regulation a standardized explanation of benefits form designed to be clearly understandable to covered persons in a manner consistent with the "Life and Health Insurance Policy Language Simplification Act," P.L.1979, c.167 (C.17B:17-17 et seq.). Except for certain protections related to sensitive services as provided in section 3 of the bill, the standardized explanation of benefits form shall include, but not be limited to, a summary of benefits for current services, including: the cost of the health care service; the amount paid by the carrier; the amount to be paid by the covered person; and an explanation of the reason for benefit denial, if any.

The bill also requires a carrier issuing health benefits plans in this State to provide a written explanation of benefits which complies with the standardized form to each covered person separately, but not to any other covered person, whenever a claim

1 under the health benefits plan is generated by that covered person.

2 The bill provides that an explanation of benefits shall not contain
3 information about sensitive services unless:

4 (1) the parent or guardian of a minor under the age of 18 makes
5 a written request to the carrier that the explanation of benefits for
6 that dependent contain information about sensitive services that
7 were provided to that dependent; or

8 (2) a covered person who is 18 years of age or older makes a
9 written request to the carrier to have the explanation of benefits for
10 that covered person contain information about sensitive services
11 that were provided to that covered person.

12 The bill also provides that a carrier is required, upon written
13 request, to provide an explanation of benefits which relates to
14 sensitive services to a covered person, who is 18 years of age or
15 older, or to the parent or guardian of the minor, by using an
16 alternative method of delivery. The bill provides several alternative
17 methods for a carrier to use for delivery of an explanation of
18 benefits related to sensitive services.

19 A carrier shall also provide a covered person, who is 18 years of
20 age or older, with the option to elect not to receive an explanation
21 of benefits for a claim in a situation in which there is no remaining
22 balance related to the claim.

23 The bill specifies that an explanation of benefits is related to
24 sensitive services for the purposes of the bill if it discloses
25 protected health information, including information regarding
26 treatment or diagnosis, or the name or address of a provider of
27 sensitive services, or if disclosure of all or part of the protected
28 health information could endanger the covered person.

29 The bill requires a carrier to communicate the rights established
30 by this bill and the procedure to have these rights recognized in
31 plain language and in a clear and conspicuous manner in coverage
32 documents and member privacy communications, and to
33 conspicuously display this information on the carrier's website and
34 online portals for covered persons.

35 Finally, the bill also protects covered persons by prohibiting a
36 carrier from demanding an explanation for the covered person's
37 request pursuant to this bill, and from conditioning enrollment or
38 coverage on the waiver of rights granted by this bill.