

ASSEMBLY, No. 2827

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

SYNOPSIS

The “Health Care Provider Network Transparency Act”; establishes requirements for granting access to certain health care provider discounts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain health care provider networks, and
2 supplementing chapter 30 of Title 17B of the New Jersey
3 Statutes.

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

7
8 1. This act shall be known and may be cited as the “Health
9 Care Provider Network Transparency Act.”

10
11 2. As used in this act:

12 “Contracting entity” means any person or entity that enters into
13 direct contracts with providers for the delivery of health care
14 services in the ordinary course of business.

15 “Covered person” means an individual who is covered under a
16 health insurance plan.

17 “Discount medical plan organization” means an entity that, in
18 exchange for fees, dues, charges or other consideration, provides to
19 its members access to providers of medical services and the right to
20 receive medical services from those providers at a discount.

21 “Electronic claims transport” means accepting and digitizing
22 claims already digitized, placing those claims into a format that
23 complies with the electronic transaction standards issued by the
24 United States Department of Health and Human Services under
25 subtitle F of title II of the federal “Health Insurance Portability and
26 Accountability Act of 1996,” Pub.L.104-191 (42 U.S.C. s.1320d et
27 seq.) as those electronic standards are applicable to the parties, and
28 electronically transmitting those claims to the appropriate
29 contracting entity, payer, or third party administrator.

30 “Health care services” means services for the diagnosis,
31 prevention, treatment, or cure of a health condition, illness, injury,
32 or disease.

33 “Health insurance plan” means any hospital and medical expense
34 incurred policy, health maintenance organization subscriber
35 contract, or any other health care plan or arrangement that pays for
36 or furnishes medical or health care services, whether by insurance
37 or otherwise. “Health insurance plan” shall not include one or
38 more, or any combination of, the following: coverage only for
39 accident, or disability income insurance; coverage issued as a
40 supplement to liability insurance; liability insurance, including
41 general liability insurance and private passenger automobile
42 insurance; workers’ compensation or similar insurance; automobile
43 medical payment insurance; credit-only insurance; coverage for on-
44 site medical clinics; coverage similar to the foregoing as specified
45 in federal regulations issued pursuant to the federal “Health
46 Insurance Portability and Accountability Act of 1996,” P.L.104-191
47 (29 U.S.C. s.1181 et al.), under which benefits for medical care are
48 secondary or incidental to other insurance benefits; dental or vision

1 benefits; benefits for long-term care, nursing home care, home
2 health care, or community-based care; specified disease or illness
3 coverage, hospital indemnity or other fixed indemnity insurance, or
4 such other similar, limited benefits as are specified in regulations;
5 Medicare supplemental health insurance as defined under section
6 1882(g)(1) of the federal Social Security Act Pub.L.74-271 (42
7 U.S.C. s.1395ss(g)(1)); coverage supplemental to the coverage
8 provided under chapter 55 of title 10, United States Code (10
9 U.S.C. s.1071 et seq.); or other similar limited benefit supplemental
10 coverages.

11 “Payer” means a carrier, organized delivery system, or any other
12 person who undertakes to provide and assumes financial risk for the
13 payment of health benefits, and is obligated to pay claims for health
14 benefits on behalf of a covered person to a provider or other
15 claimant.

16 “Provider” means a physician licensed pursuant to Title 45 of the
17 Revised Statutes, a general acute care facility licensed by the
18 Commissioner of Health and Senior Services pursuant to P.L.1971,
19 c.136 (C.26:2H-1 et seq.), including rehabilitation, psychiatric and
20 long-term acute facilities, a physician organization, a physician
21 hospital organization that is acting exclusively as an administrator
22 on behalf of a provider to facilitate the provider’s participation in
23 health care contracts. “Provider” shall not include a physician
24 organization or physician hospital organization that leases or rents
25 the physician organization’s or physician hospital organization’s
26 network to a third party.

27 “Provider network contract” means a contract between a
28 contracting entity and a provider specifying the rights and
29 responsibilities of the contracting entity and providing for the
30 delivery of and payment for health care services to covered persons.

31 “Third party” means a person or entity that enters into a contract
32 with a contracting entity or with another third party to gain access
33 to a provider network contract.

34 “Third party administrator” means “third party administrator” as
35 defined by section 1 of P.L.2001, c.267 (C.17B:27B-1).

36

37 3. This act shall not apply to:

38 a. A provider network contract for services provided to
39 beneficiaries of the Medicaid program established pursuant to
40 P.L.1968, c.413 (C.30:4D-1 et seq.), the Medicare program
41 established pursuant to the federal Social Security Act, Pub.L.74-
42 271 (42 U.S.C. s.1395 et seq.), or the NJ FamilyCare Program
43 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.);

44 b. Situations in which access to a provider network contract is
45 granted to an entity operating under the same brand licensee
46 program as the contracting entity; and

47 c. A contract between a contracting entity and a discount
48 medical plan organization.

- 1 4. a. Any person conducting business as a contracting entity in
2 this State on the effective date of this act shall register with the
3 Department of Banking and Insurance within 90 days of the
4 effective date of this act unless the person is licensed by the
5 department as an insurer. Any person that commences business as a
6 contracting entity in this State on or after the effective date of the
7 act shall register with the department within 30 days of
8 commencing business unless the person is licensed by the
9 department as an insurer.
- 10 b. Registration shall consist of the submission to the
11 department of the following information:
- 12 (1) the official name of the contracting entity and any other
13 names under which the contracting entity does business or was
14 formerly known;
- 15 (2) the mailing address and main telephone number for the
16 contracting entity's main headquarters;
- 17 (3) the name and telephone number of the contracting entity's
18 representative who serves as the primary contact with the
19 department; and
- 20 (4) any other information deemed to be necessary by the
21 department.
- 22 c. The information required by this section shall be submitted
23 in written or electronic format, as prescribed by the department
24 through regulation.
- 25 d. The department may collect a reasonable fee for the purpose
26 of administering the registration process, as prescribed by the
27 department through regulation.
- 28
- 29 5. A contracting entity shall not grant to a third party access to
30 a provider network contract unless the third party accessing the
31 provider network contract is:
- 32 a. A payer or third party administrator or other entity that
33 administers or processes claims on behalf of the payer;
- 34 b. A preferred provider organization or preferred provider
35 network, including a physician organization or physician-hospital
36 organization; or
- 37 c. An entity engaged in the business of providing electronic
38 claims transport between the contracting entity and the payer, that
39 does not provide access to the provider's health care services and
40 contractual discounts to any other third party.
- 41
- 42 6. A contracting entity shall not grant to a third party access to
43 a provider's health care services and contractual discounts pursuant
44 to a provider network contract unless:
- 45 a. The provider network contract specifically states that the
46 contracting entity may enter into an agreement with a third party
47 allowing the third party to obtain the contracting entity's rights and

1 responsibilities under the provider network contract as if the third
2 party were the contracting entity; and

3 b. The third party accessing the provider network contract is
4 contractually obligated to comply with all applicable terms,
5 limitations, and conditions of the provider network contract.

6
7 7. a. A contracting entity that grants to a third party access to a
8 provider's health care services and contractual discounts pursuant to
9 a provider network contract shall, at the time a provider network
10 contract is entered into with a provider:

11 (1) identify and provide to the provider upon request, a written
12 or electronic list of all third parties known at the time of
13 contracting, to which the contracting entity has or will grant access
14 to the provider's health care services and contractual discounts
15 pursuant to a provider network contract; and

16 (2) maintain an Internet website or other readily available
17 mechanism, such as a toll-free telephone number, through which a
18 provider may obtain a listing, updated at least every 90 days, of the
19 third parties with which the contracting entity or another third party
20 has executed contracts to grant access to the provider's health care
21 services and contractual discounts pursuant to a provider network
22 contract.

23 b. A contracting entity that grants to a third party access to a
24 provider's health care services and contractual discounts pursuant to
25 a provider network contract shall, at the time that access is provided
26 to the third party:

27 (1) provide the third party with sufficient information regarding
28 the provider network contract to enable the third party to comply
29 with all relevant terms, limitations, and conditions of the provider
30 network contract; and

31 (2) require that the third party identify the contracting entity that
32 is the source of the contractual discount taken by the third party on
33 each remittance advice or explanation of payment furnished to a
34 provider when the discount is pursuant to the contracting entity's
35 provider network contract.

36
37 8. a. A contracting entity that grants to a third party access to a
38 provider's health care services and contractual discounts pursuant to
39 a provider network contract shall, in situations in which the
40 provider network contract is terminated:

41 (1) provide notice to the third party of the termination of the
42 provider network contract no later than 60 days prior to the
43 effective date of the termination of the provider network contract,
44 which notice may be provided through any reasonable means,
45 including but not limited to, written notice, electronic
46 communication, or an update to an electronic database or other
47 provider listing; and

1 (2) require all persons that are by contract eligible to claim the
2 right to access a provider's discounted rates to cease claiming
3 entitlement to those rates or other contracted rights or obligations
4 for services rendered after termination of the provider network
5 contract.

6 b. In situations in which a provider network contract is
7 terminated, subject to any applicable continuity of care
8 requirements, agreements, or contractual provisions:

9 (1) the right of a third party to access a provider's health care
10 services and contractual discounts pursuant to a provider network
11 contract shall terminate on the termination date of the provider
12 network contract;

13 (2) claims for health care services performed after the
14 termination date of the provider network contract shall not be
15 eligible for processing and payment in accordance with the terms of
16 the provider network contract; and

17 (3) claims for health care services performed before the
18 termination date of the provider network contract, but processed
19 after the termination date, shall be eligible for processing and
20 payment in accordance with the terms of the provider network
21 contract.

22

23 9. a. All information made available by a contracting entity to
24 a provider in accordance with the requirements of this act shall be
25 confidential and the provider shall not disclose the information to
26 any person or entity not involved in the provider's practice or the
27 administration thereof without the prior written consent of the
28 contracting entity.

29 b. Nothing contained in this act shall be construed to prohibit a
30 contracting entity from requiring a provider to execute a reasonable
31 confidentiality agreement to ensure that confidential or proprietary
32 information disclosed by the contracting entity is not used for any
33 purpose other than the provider's practice or the administration
34 thereof.

35

36 10. A third party that has been granted access to a provider's
37 health care services and contractual discounts pursuant to a provider
38 network contract and that grants access to a subsequent third party
39 shall comply with the requirements imposed on a contracting entity
40 pursuant to sections 5, 6, 7, 8, and 9 of this act, as if the third party
41 were the contracting entity.

42

43 11. a. In situations in which a third party has been granted
44 access to a provider's health care services and contractual discounts
45 pursuant to a provider network contract, the contracting entity and
46 third party shall disclose, on each remittance advice or explanation
47 of payment furnished to a provider, the entity that is the source of
48 the contractual discount.

1 b. Except as provided in subsection c. of this section, a
2 provider shall have the right to refuse to accept a discounted
3 amount as the appropriate reimbursement amount under a provider
4 network contract, and the provider shall have the right to require
5 payment of the charge with no discount applied, if:

6 (1) a remittance advice or explanation of payment furnished by
7 a contractual entity or third party fails to comply with subsection a.
8 of this section; or

9 (2) the contractual discount is not exercised pursuant to a
10 network provider contract that is in compliance with the provisions
11 of this act.

12 c. In situations in which a provider refuses to accept a
13 discounted amount pursuant to paragraph (1) of subsection b. of this
14 section, a provider shall notify the contracting entity or third party
15 of the apparent violation in writing. If the contracting entity or third
16 party, within 30 days of receipt of notice of the apparent violation,
17 notifies the provider that the apparent violation resulted from an
18 administrative oversight or other unintentional error and submits to
19 the provider a corrected remittance advice or explanation of benefits
20 with documentation demonstrating eligibility for the discount
21 applied, the discount shall be applied and the provider shall not
22 have a right to refuse to accept the discounted amount.

23

24 12. a. Any person who violates any provision of this act shall be
25 liable to a civil penalty in an amount of not less than \$500, or more
26 than \$10,000, for each violation. A penalty shall be collected and
27 enforced by a summary proceeding brought by the Commissioner of
28 Banking and Insurance pursuant to the provisions of the "Penalty
29 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

30 b. In addition to any penalty pursuant to subsection a. of this
31 section, it shall be an unfair trade practice pursuant to the
32 provisions of N.J.S.17B:30-1 et seq. and a violation of that act for
33 any person to knowingly access or utilize a provider's contractual
34 discount pursuant to a provider network contract without a
35 contractual relationship with the provider, contracting entity, or
36 third party.

37

38 13. The Commissioner of Banking and Insurance shall, pursuant
39 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
40 1 et seq.), adopt rules and regulations necessary to effectuate the
41 purpose of this act.

42

43 14. This act shall take effect on the 90th day following
44 enactment and shall apply to all provider network contracts that are
45 delivered, issued, executed or renewed in this State, on or after the
46 effective date.

STATEMENT

This bill establishes requirements for granting access to provider discounts under a provider network contract, in order to prevent the improper selling or leasing of these contractual discounts, under what is commonly known as a “silent PPO (preferred provider organization)” arrangement.

The bill imposes a registration requirement on contracting entities as defined in the bill, and allows them to grant to third parties access to the network discounts that they have negotiated with providers, which are defined to include physicians, hospitals, and certain other health care providers, only under certain circumstances and with certain disclosures.

The bill requires any person that is conducting business as a contracting entity in this State on the bill’s effective date to register with the Department of Banking and Insurance within 90 days of the effective date unless the person is licensed by the department as an insurer. Any person that commences business as a contracting entity in this State on or after the effective date shall register with the department within 30 days of commencing business unless the person is licensed by the department as an insurer. The bill provides certain specific registration requirements.

The bill allows contracting entities to grant access to a provider network contract only to certain types of third parties, and only in situations in which the provider network contract specifically allows such access and the third party accessing the provider network contract is contractually obligated to comply with all applicable terms, limitations, and conditions of the provider network contract.

A contracting entity that grants to a third party access to a provider’s health care services and contractual discounts pursuant to a network provider contract, shall, at the time a provider network contract is entered into with a provider, provide certain information as to the third parties that have or will have access to the services and discounts, and also maintain a website or other means to provide an updated listing of third parties with access.

A contracting entity that grants to a third party access to a provider’s health care services and contractual discounts pursuant to a provider network contract shall, at the time that access is provided to the third party: (1) provide the third party with sufficient information regarding the provider network contract to enable the third party to comply with all relevant terms, limitations, and conditions of the provider network contract; and (2) require that the third party identify the contracting entity that is the source of the contractual discount taken by the third party on each remittance advice or explanation of payment furnished to a provider.

The bill provides that a contracting entity that grants to a third party access to a provider’s health care services and contractual

1 discounts pursuant to a provider network contract shall, in situations
2 in which the provider network contract is terminated, provide
3 certain notices to the third party of the termination of the provider
4 network, and require all persons that are by contract eligible to
5 claim the right to access a provider's discounted rates to cease
6 claiming entitlement to those rates or other contracted rights or
7 obligations for services rendered after termination of the provider
8 network contract.

9 The bill also provides, in situations in which a provider network
10 contract is terminated, subject to any applicable continuity of care
11 requirements, agreements, or contractual provisions, that the right
12 of a third party to access a provider's health care services and
13 contractual discounts shall terminate on the termination date of the
14 provider network contract. The bill also addresses, with respect to
15 the date of termination, which claims remain eligible for processing
16 and payment in accordance with the terms of the contract.

17 The bill also provides certain confidentiality requirements as to
18 information made available, pursuant to the bill, by a contracting
19 entity to a provider. Certain of the bill's provisions also apply to
20 third parties that provide access to a provider's health care services
21 and contractual discounts to a subsequent third party.

22 In situations in which a third party has been granted access to a
23 provider's health care services and contractual discounts pursuant to
24 a provider network contract, the contracting entity and third party
25 shall disclose, on each remittance advice or explanation of payment
26 furnished to a provider, the entity that is the source of the
27 contractual discount. Under certain circumstances, the provider may
28 refuse to accept a discounted amount as the appropriate
29 reimbursement amount under a provider network contract, and the
30 provider shall have the right to require payment of the charge with
31 no discount applied.

32 Any person who violates any of the bill's provisions shall be
33 liable to a civil penalty in an amount of not less than \$500, or more
34 than \$10,000, for each violation, which may be collected by a
35 summary proceeding. In addition, it shall be an unfair trade practice
36 pursuant to the provisions of N.J.S.17B:30-1 et seq., and a violation
37 of that act for any person to knowingly access or utilize a provider's
38 contractual discount pursuant to a provider network contract
39 without a contractual relationship with the provider, contracting
40 entity, or third party.

41 The Commissioner of Banking and Insurance shall adopt,
42 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
43 (C.52:14B-1 et seq.), rules and regulations necessary to effectuate
44 the provisions of the bill.