

SENATE, No. 2150

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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:*

7
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 Benefits
12 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.

19
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 manner
23 consistent with the "Life and Health Insurance Policy Language
24 Simplification Act," P.L.1979, c.167 (C.17B:17-17 et seq.).

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

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

37 d. An explanation of benefits shall not contain information about
38 sensitive services unless requested by a covered person who is legally
39 authorized to consent to medical care.

40
41 3. a. A carrier shall provide an explanation of benefits which
42 relates to sensitive services if requested in writing by a covered
43 person pursuant to subsection d. of section 2 of this act, by using an
44 alternative method of delivery.

45 b. A carrier shall provide a covered person, who is legally
46 authorized to consent to medical care, with the option to elect not to
47 receive an explanation of benefits for a claim in a situation in which
48 there is no remaining balance related to the claim.

1 c. An explanation of benefits is related to sensitive services for
2 the purposes of this act if it discloses protected health information,
3 including information regarding treatment or diagnosis, or the name
4 or address of a provider of sensitive services, or if disclosure of all
5 or part of the protected health information could endanger the
6 covered person.

7
8 4. Alternative methods for delivery of an explanation of benefits
9 related to sensitive services shall include, but not be limited to, the
10 following:

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

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

15 c. allowing only the covered person who received the sensitive
16 service to access the communication through electronic means, as
17 available, provided that such access is granted in compliance with
18 any applicable State and federal laws and regulations pertaining to
19 data security.

20
21 5. A carrier shall communicate the right to request an alternative
22 method of delivery of an explanation of benefits related to sensitive
23 services, and the process to make a request, in plain language and in
24 a clear and conspicuous manner in coverage documents and member
25 privacy communications. The carrier shall also conspicuously
26 display the covered person's right to request that alternative method
27 of delivery on the carrier's website and online portals for covered
28 persons.

29
30 6. a. A carrier shall not require an explanation as to the basis for
31 a covered person's request pursuant to this act, unless otherwise
32 required by law or court order.

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

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36 7. This act shall take effect on the 120th day next following
37 enactment.

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40 STATEMENT

41
42 This bill supplements the "Health Care Quality Act," P.L.1997,
43 c.192 (C.26:2S-1 et al.) by requiring health insurance carriers, and
44 the State Health Benefits and School Employees' Health Benefits
45 programs, to use a standardized explanation of benefits form and to
46 adhere to certain practices to protect the health information of
47 covered persons related to sensitive services. "Sensitive services" are
48 defined as health care services related to sexual assault, pregnancy,

1 family planning, sexually transmitted diseases, domestic violence
2 and substance or alcohol abuse, and any other services that may be
3 determined to be sensitive services by the Commissioner of Banking
4 and Insurance, in consultation with the Commissioner of Health.

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

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

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

35 The bill also requires a carrier issuing health benefits plans in this
36 State to provide a written explanation of benefits which complies
37 with the standardized form to each covered person separately, but not
38 to any other covered person, whenever a claim under the health
39 benefits plan is generated by that covered person.

40 The bill provides that an explanation of benefits shall not contain
41 information about sensitive services unless requested by a covered
42 person who is legally authorized to consent to medical care.

43 The bill also provides that a carrier is required, upon written
44 request, to provide an explanation of benefits which relates to
45 sensitive services if requested in writing by a covered person who is
46 legally authorized to consent to medical care by using an alternative
47 method of delivery. The bill provides several alternative methods for

1 a carrier to use for delivery of an explanation of benefits related to
2 sensitive services.

3 A carrier shall also provide a covered person, who is legally
4 authorized to consent to medical care, with the option to elect not to
5 receive an explanation of benefits for a claim in a situation in which
6 there is no remaining balance related to the claim.

7 The bill specifies that an explanation of benefits is related to
8 sensitive services for the purposes of the bill if it discloses protected
9 health information, including information regarding treatment or
10 diagnosis, or the name or address of a provider of sensitive services,
11 or if disclosure of all or part of the protected health information could
12 endanger the covered person.

13 The bill requires a carrier to communicate the rights established
14 by this bill and the procedure to have these rights recognized in plain
15 language and in a clear and conspicuous manner in coverage
16 documents and member privacy communications, and to
17 conspicuously display this information on the carrier's website and
18 online portals for covered persons.

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