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DENTAL PROVIDER NETWORK LEASING ARRANGEMENTS

Senate Bill 281 (H-1) as reported from House committee
Sponsor: Sen. Sam Singh
House Committee: Health Policy
Senate Committee: Health Policy
Complete to 9-14-23

(Enacted as Public Act 168 of 2023)

SUMMARY:

Senate Bill 281 would amend the Insurance Code to allow a ***contracting entity*** to give a ***third party*** access to a ***provider network contract*** regarding dental services or supplies, or to services or discounts under the contract, as long as certain requirements are met. Among other things, those requirements would include notifying providers that the network contract allows the entity to provide third-party access to the contract, allowing providers to choose not to participate in that third-party access, and identifying for providers which third parties have been given that access. The bill also would provide exceptions to these provisions, notably for dental services provided under a federal, state, or local government program.

Contracting entity would mean a person that enters into direct contracts with ***providers*** for the delivery of ***dental services*** in the ordinary course of business, including a third-party administrator and a ***dental carrier***.

Third party would mean a person that enters into a contract with a contracting entity or with another third party to gain access to the dental services or contractual discounts of a provider network contract, but would not include an employer or other group for whom the dental carrier or contracting entity provides administrative services.

Provider network contract would mean a contract between a contracting entity and a provider that specifies the rights and responsibilities of the contracting entity and provides for the delivery and payment of dental services to an enrollee.

Provider would mean a person that, acting within the scope of licensure or certification, provides dental services or supplies defined by the health benefits or ***dental benefit plan***, but would not include a physician organization or physician hospital organization that leases or rents the physician organization's or physician hospital organization's network to a third party.

Dental services would mean services for the diagnosis, prevention, treatment, or cure of a dental condition, illness, injury, or disease, but would not include services delivered by a provider that are billed as medical expenses under a health benefits plan.

Dental carrier would mean either a nonprofit dental care corporation or other entity authorized to provide dental benefits or a health benefits plan that includes coverage for dental services.

Dental benefit plan would mean a benefits plan that pays or provides dental expense benefits for covered dental services and is delivered or issued for delivery by or through a dental carrier on a stand-alone basis.

Under the bill, a contracting entity could grant a third party access to a provider network contract, or a provider's dental services or contractual discounts provided under a provider network contract, as long as all of the following requirements are met:

- The provider network contract must specifically state that the contracting entity may enter into an agreement with third parties allowing the third parties to obtain the contracting entity's rights and responsibilities as if the third party were the contracting entity.
- If the contracting entity is a health insurer or dental carrier, when the provider network contract is entered into or renewed or there are material modifications relevant to granting access to the contract to a third party, the contracting entity must allow a provider that is part of the carrier's provider network to choose to not participate in third-party access to the provider network contract or to enter into a contract directly with the health insurer that acquired the provider network. The contracting entity could not cancel or otherwise end a contractual relationship with a provider that chooses to not participate in third-party access. When initially contracting with a provider, a contracting entity would have to accept a provider that meets the contracting entity's criteria to enter into the provider network even if the provider rejects participation in third-party access.
- If the contracting entity is an insurer, the third-party access provision of a provider network contract must specifically state that the contract grants third-party access to the provider network and, for provider network contracts with dental carriers, that the dentist has the right to choose not to participate in third-party access.
- If the contracting entity is a dental carrier, the provider must have chosen to participate in third-party access at the time the provider network contract was entered into or renewed.
- The third party accessing the contract must agree to comply with all of the provider network contract's terms.
- The contracting entity must identify to the provider all third parties that would have access to the dental services or contractual discounts of the provider network as of the date the contract is entered into or renewed. This identification could be in writing or in electronic form.
- The contracting entity must identify all third parties in existence in a list on its website. The list would have to be updated at least once every 30 days and indicate the date of the most recent update.
- The contracting entity must require a third party to identify the source of the discount on all remittance advices or explanations of payment under which a discount is taken. However, this provision would not apply to electronic

transactions mandated by the federal Health Insurance Portability and Accountability Act (HIPAA).

- Within 30 days after the date a provider network contract is terminated, the contracting entity must notify the third party of the termination.
- A third party's right to a provider's discounted rate must cease on the date the provider network contract is terminated.
- Within 30 days after a request from the provider, the contracting entity must make available to a participating provider a copy of the provider network contract relied on in the adjudication of a claim.

A provider would not be bound by, or required to perform dental treatment or services under, a provider network contract that has been granted by a contracting entity to a third party if the contracting entity does not meet the above requirements.

The provisions described above would not apply to a provider network contract for dental services provided to beneficiaries under health care coverage established or maintained by a local or state government, or the federal government, such as Medicaid, the federal State Children's Health Insurance Program, or Medicare Advantage.

The provisions described above also would not apply in either of the following circumstances:

- If access to a provider network contract is granted to a dental carrier or an entity operating in accordance with the same brand licensee program as the contracting entity or to an entity that is an affiliate of the contracting entity. A list identifying each of the contracting entity's affiliates as affiliates would have to be made available to a provider on the contracting entity's website.
- If access to a provider network contract is granted by a dental carrier that retains the responsibility for administering the dental benefit plan in accordance with its applicable provider network contracts, including all fee schedules and processing policies.

Proposed MCL 500.2094

BRIEF DISCUSSION:

Companies providing dental benefits sometimes lease their network of providers (e.g., dentists) to third parties. According to Senate committee testimony on the bill, providers are not always aware of those arrangements. This can lead to situations where a patient who is in-network through a leasing arrangement is charged out-of-network fees on an out-of-pocket basis because the dental office does not know about the arrangement through which the patient is in-network. When the insurance company then pays the dental office directly, processing the claim in-network, the office (once it works out what is going on) must reimburse the patient the out-of-network amount they were charged. This situation creates issues and frustrations for both providers and patients. Among other things, the bill would require contracts to clearly state that the network may be leased, require that providers be allowed to opt out of network leasing arrangements, and require that

notifications be given to providers of third parties that have access to the network under such an arrangement.

HOUSE COMMITTEE ACTION:

The House Health Policy committee reported an H-1 substitute that made technical and clarifying, rather than substantive, changes to bill as it was passed by the Senate.

FISCAL IMPACT:

This bill would have no fiscal impact on the state or local units of government.

POSITIONS:

A representative of the Michigan Dental Association testified in support of the bill. (9-6-23)

The following entities indicated support for the bill (9-6-23):

- Department of Insurance and Financial Services
- Michigan Council for Maternal and Child Health

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