



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 281 (as enacted)  
Sponsor: Senator Sam Singh  
Senate Committee: Health Policy  
House Committee: Health Policy

**PUBLIC ACT 168 of 2023**

Date Completed: 11-28-23

**RATIONALE**

According to testimony before the Senate Committee on Health Policy, some dental benefits companies lease their network of dental providers to third parties, and many dentists in those networks may not have known their services had been leased. Reportedly, this caused confusion for patients and dentists because in-network status and fees may have been unknown until after care was administered. Additionally, when dentists incorrectly labelled a patient's network coverage 'out-of-network' because they were unaware of a lease agreement, it frustrated dentists and patients. Finally, this confusion could create significant cash flow issues for dentists because it could sometimes take weeks or months for dentists to receive the final payment for their services due to credits, clawbacks, and resubmitting claims for processing. Some people had concerns about this lack of transparency in the network leasing space, and so it was recommended that requirements for dental network leasing be enacted.

**CONTENT**

**The bill amended the Insurance Code to do the following:**

- **Authorize a contracting entity to grant a third party access to a provider network contract, a provider's dental services, or contractual discounts provided under a network contract, if certain requirements are met and certain exclusions do not apply.**
- **Require a contracting entity to allow a provider that is part of the entity's provider network to choose not to participate in third-party access to the provider network contract or to enter a contract directly with the health insurer that acquires the provider network.**
- **Prohibit a contracting entity from cancelling or otherwise ending a contractual relationship with a provider if the provider opts out of lease arrangements.**
- **Require a contracting entity to accept a qualified provider if the provider rejects a network lease provision when initially contracting with a provider.**
- **Prescribe other requirements that must be met for a contracting entity to grant a third party access to contracts, services, and discounts under the bill.**
- **Prescribe exemptions to the bill's authorization, including a circumstance in which access to a provider network contract is granted by a dental carrier that is responsible for administering the dental benefit plan in accordance with its provider network contracts.**

The bill took effect October 19, 2023.

**Definitions**

Under the bill, "contracting entity" means 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. "Dental carrier" means a nonprofit dental care corporation or other entity authorized to provide dental benefits, or health benefits plan that includes coverage for dental services.

"Dental benefit plan" means 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. "Dental services" means services for the diagnosis, prevention, treatment, or cure of a dental condition, illness, injury, or disease. The term does not include services delivered by a provider that are billed as medical expenses under a health benefits plan.

"Dentist" means that term as defined in Section 2701 of the Public Health Code: an individual who is licensed to engage in the practice of dentistry under Part 166 (Dentistry).

"Provider network contract" means 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" means 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. The term does 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.

"Third party" means 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. The term does not include an employer or other group for whom the dental carrier or contracting entity provides administrative services.

Under the bill, "qualified provider" means a provider who meets the subcontracting entity's criteria to enter into the provider network.

#### Access to a Provider Network Contract

Under the bill, a contracting entity may 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, if the requirements described below are met.

At the time the provider network contract is entered into or renewed, or when there are material modifications to a contract relevant to granting access to a provider network contract to a third party, the contracting entity must allow a provider that is part of the carrier's provider network to choose not to participate in third-party access to the provider network contract or to enter into a contract directly with the health insurer that acquires the provider network. If a provider chooses not to participate in third-party access, the contracting entity cannot cancel or otherwise end a contractual relationship with the provider. When initially contracting with a provider, a contracting entity must accept a qualified provider if a provider rejected participation in third-party access. The bill specifies that these requirements do not apply to a contracting entity that is not a health insurer or dental carrier.

In addition, the following requirements must be 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 is the contracting entity, and if the contracting entity is a dental carrier, the provider chooses to participate in third-party

access at the time the provider network contract is entered into or renewed; if the contracting entity is an insurer, the third-party access provision of a provider network contract must specifically state that the provider network 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.

- The third party accessing the contract must agree to comply with all the provider network contract's terms.
- The contracting entity must identify, in writing or in electronic form to the provider, all third parties that have access to the dental services or contractual discounts of the provider network as of the date the contract is entered into or renewed.
- The contracting entity must identify all third parties in existence in a list on its website that is updated at least once every 30 days and must display the date the list was last updated.
- 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; this does not apply to electronic transactions mandated by the Health Insurance Portability and Accountability Act.
- The contracting entity must notify the third party of the termination of a provider network contract not later than 30 days after the termination date with the contracting entity.
- A third party's right to a provider's discounted rate must cease as of the termination date of the provider network contract.
- The contracting entity must make available a copy of the provider network contract relied on in the adjudication of a claim to a participating provider within 30 days after a request from the provider.

The bill specifies that a provider is not bound by or required to perform dental treatment or services under a provider network contract that is granted by a contracting entity to a third party if the contracting entity does not meet the requirements described above.

### Exclusions

The bill specifies that its authorization of third-party access does not apply if any of the following apply:

- 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, in which case a list identifying each of the contracting entity's affiliates as affiliates must be made available to a provider on the contracting entity's website.
- 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.
- A provider network contract for dental services provided to beneficiaries under health care coverage that is established or maintained by a local, State, or Federal government such as Medicaid established under Title XIX of the Social Security Act, the State children's Health Insurance program established under Title XXI of the Social Security Act, or Medicare Advantage.

MCL 500.3406aa

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Implementing the bill's provisions brought Michigan's policies in line with 27 other states that already required transparency in the dental network leasing space. Reportedly, these states benefitted from updating their transparency laws. Benefits include less administrative burden caused by competing claims and a reduction in cash flow issues for dentists. Michigan will benefit from transparency in the dental network leasing space because of the bill's enactment.

### **Supporting Argument**

Many dentists operate small businesses. The former dental network leasing space created significant administrative burden for small dental businesses. This burden often fell on individuals with multiple jobs, such as receptionists and sometimes even dental hygienists, potentially leading to reduced quality of work, among other problems for small dental offices. The State should not have accommodated the undue administrative burden that the former dental network leasing space put on small businesses. Every hour an employee works matters more at a small business. Further transparency in the dental network leasing space will reduce administrative burdens for small businesses over time.

Legislative Analyst: Alex Krabill

### **FISCAL IMPACT**

As the bill excludes dental services provided to beneficiaries under health care coverage that is established or maintained by State or local government, the bill has no fiscal impact on State or local government.

Fiscal Analyst: John P. Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.