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BILL ANALYSIS

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Senate Bill 281 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Sam Singh
Committee: Health Policy

Date Completed: 7-6-23

INTRODUCTION

The bill would amend the Insurance Code to allow 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 specified requirements were met and certain exclusions did not apply. Among other requirements that would have to be met, the contracting entity would have to allow a provider in its network to choose to not participate in third-party access to the provider network contract. Among other exclusions, a provider network contract for dental services provided to beneficiaries under health care coverages established by a local, state, or Federal government (e.g., the State Children's Health Insurance Program) could not grant third party access as allowed by the bill.

BRIEF RATIONALE

According to testimony, some dental benefits companies lease their network of dental providers to third parties, and many dentists in those networks may not know their services have been leased. Reportedly, this causes confusion for patients and dentists because in-network status and fees may be unknown until after care is administered, among other problems. Some people believe that there should be better transparency in the network leasing space, and so it has been recommended that requirements for dental network leasing be enacted.

FISCAL IMPACT

As the bill would exclude dental services provided to beneficiaries under health care coverage that was established or maintained by State or local government, the bill would have no fiscal impact on State or local government.

Proposed MCL 500.3406aa

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CONTENT

The bill would amend 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 were met and certain exclusions did not apply.**
- **Require a contracting entity to allow a provider that was part of the entity's provider network to choose to not participate in third-party access to the provider network contract or to enter a contract directly with the health insurer that acquired the provider network.**
- **Prohibit a contracting entity from cancelling or otherwise ending a contractual relationship with a provider if the provider opted out of lease arrangements.**
- **Require a contracting entity to accept a qualified provider if the provider rejected a network lease provision when initially contracting with a provider.**
- **Prescribe other requirements that would have to 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 was granted by a dental carrier that was responsible for administering the dental benefit plan in accordance with its provider network contracts.**

Definitions

Under the bill, "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. "Dental carrier" would mean a nonprofit dental care corporation, dental insurance company, dental service corporation, dental plan organization authorized to provide dental benefits, or 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. "Dental services" would mean services for the diagnosis, prevention, treatment, or cure of a dental condition, illness, injury, or disease. The term would not include services delivered by a provider that were billed as medical expenses under a health benefits plan.

"Dentist" would mean 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" 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. The term would not include a physician organization or physician hospital organization that leased or rented the physician organization's or physician hospital organization's network to a third party.

"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. The term would not include an employer or other group for whom the dental carrier or contracting entity provided administrative services.

Under the bill, "qualified provider" would mean a provider who met the subcontracting entity's criteria to enter into the provider network.

Access to a Provider Network Contract

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, if the requirements described below were met.

At the time the provider network contract was entered into or renewed, or when there were material modifications to a contract relevant to granting access to a provider network contract to a third party, the contracting entity would have to allow a provider that was 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. If a provider chose to not participate in third-party access, the contracting entity could not cancel or otherwise end a contractual relationship with the provider. When initially contracting with a provider, a contracting entity would have to accept a qualified provider if a provider rejected participation in third-party access. The bill specifies that these requirements would not apply to a contracting entity that was not a health insurer or dental carrier.

In addition, the following requirements would have to be met:

-- The provider network contract would have to specifically state that the contracting entity could 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, and if the contracting entity were a dental carrier, the provider chose to participate in third-party access at the time the provider network contract was entered into or renewed; if the contracting entity were an insurer, the third-party access provision of a provider network contract would have to specifically state that the provider network contract granted third-party access to the provider network and, for provider network contracts with dental carriers, that the dentist would have the right to choose not to participate in third-party access.
-- The third party accessing the contract agreed to comply with all the provider network contract's terms.
-- The contracting entity identified, in writing or in electronic form to the provider, all third parties in existence as of the date the contract was entered into or renewed.
-- The contracting entity identified all third parties in existence in a list on its website that was updated at least once every 30 days and displayed the date the list was last updated.
-- The contracting entity required a third party to identify the source of the discount on all remittance advices or explanations of payment under which a discount was taken; this would not apply to electronic transactions mandated by the Health Insurance Portability and Accountability Act.
-- The contracting entity notified 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 ceased as of the termination date of the provider network contract.
-- The contracting entity made 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 would not be bound by or required to perform dental treatment or services under a provider network contract that had been granted by a

contracting entity to a third party if the contracting entity did not meet the requirements described above.

Exclusions

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

-- Access to a provider network contract was 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 was an affiliate of the contracting entity, in which case a list of the contracting entity's affiliates would have to be made available to a provider on the contracting entity's website.
-- Access to a provider network contract was granted by a dental carrier that retained 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 was 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.

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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.