

Discussion DRAFT

Dental Leasing Model Act

Section I. Definitions

For the purposes of this Act, the following definitions shall apply:

- A. “Contracting entity” means a person or entity that enters into direct contracts with providers for the delivery of dental services in the ordinary course of business, including a dental carrier or third-party administrator.
- B. “Dental carrier” means an insurer that offers coverage for dental services.
- C. “Dental services” means services for the diagnosis, prevention, treatment, or cure of a dental condition, illness, injury, or disease. “Dental services” does not include services delivered by a provider that are billed as medical expenses under a health benefits plan.
- D. “Provider” means an individual or entity that provides dental services or supplies, as defined by the health benefits plan or dental benefits plan, including a dentist or physician, but not a physician organization that leases or rents its network to a third party.
- E. “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.
- F. “Third party” means a person or entity 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. “Third party” does not include an employer or other group for whom the dental carrier or contracting entity provides administrative services..

Section II. Dental Network Leasing

- A. A contracting entity may grant a third party access to a provider network contract, or a provider’s dental services or contractual discounts provided pursuant to a provider network contract if the requirements of subdivisions (B) and (C) are met.
- B. A dental carrier may grant a third party access to a provider network contract if, at the time the provider network contract is entered into, the dental carrier allows a provider who is part of a dental carrier’s provider network to choose not to participate in third-party access to the provider network contract. The third-party access provision of the provider network contract shall be clearly identified. A dental carrier shall not grant third-party access to the provider network contract of a provider that does not participate in third-party access to the provider network contract.

DRAFTING NOTE: Subsection IIB is intended to apply to insurers only, and not to leasing companies. Leasing companies are not carriers and do not write insurance. These companies recruit and develop dental networks, which are leased to third parties such as insurance companies, third-party administrators and self-funded groups. Providers contract with leasing companies with the explicit understanding and expectation that they will be leased. Because applying opt out requirements to these entities would impair their central purpose as understood

by all parties, they should be specifically excluded from such provisions in legislation. However, the transparency provisions outlined in Subsection IIC are intended to apply to all contracting entities, including leasing companies.

- C. A contracting entity may grant a third party access to a provider network contract, or a provider's dental services or contractual discounts provided pursuant to a provider network contract, if all of the following are met:
1. The provider network contract specifically states that the contracting entity may enter into an agreement with a third party that would allow the third party to obtain the contracting entity's rights and responsibilities as if the third party were the contracting entity, and when the contracting entity is a dental carrier, the provider chose to participate in third-party access at the time the provider network contract was entered into.
 2. If the contracting entity is a dental carrier, the third-party access provision of the provider network contract shall be clearly identified.
 3. The contracting entity identifies prior to signing the contract, in writing or electronic form to the provider, all third parties in existence as of the date the provider network contract is entered into.
 4. The contracting entity identifies all third parties in existence in a list on its internet website that is updated at least once every 90 days.
 5. The contracting entity requires a third party to identify the source of the discount on all written or electronic remittance advices or explanations of payment under which a discount is taken. This paragraph does not apply to electronic transactions mandated by the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).
 6. A third party's right to a provider's discounted rate ceases as of the termination date of the provider network contract.
 7. The contracting entity makes available a copy of the provider network contract relied on in the adjudication of a claim to a participating provider within 30 days of a request from the provider.
- D. A provider is not bound by or required to perform dental treatment or services under a provider network contract granted to a third party in violation of this section.

Section III. Exceptions

The provisions of this Act shall not apply if any of the following is true:

- A. The provider network contract is for dental services provided to a beneficiary of the federal Medicare Program pursuant to Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.) or the federal Medicaid program pursuant to Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

- B. 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 of the contracting entity's affiliates shall be made available to a provider on the contracting entity's website.

Section IV. Implementation and Applicability

- A. The Department of Insurance shall adopt regulations as necessary to implement and enforce this section.
- B. This act shall take effect on [DATE] and shall apply to all provider network contracts that are delivered, issued, or executed in this State on or after the effective date.
- C. In the event that any existing statute pertaining to the leasing of dental networks conflicts with any provision of this Act, the provisions of this Act shall supersede and control.