

**Effective 5/5/2021**

**31A-22-646.1 Leasing requirements for dental plans.**

(1) As used in this section:

- (a) "Contracting entity" means a person that enters into a direct contract with a provider for the delivery of dental services in the ordinary course of business, including a third party administrator or a dental carrier.
- (b) "Dental carrier" means a dental insurance company, dental service corporation, or dental plan organization authorized to provide a dental plan.
- (c) "Dental plan" means the same as that term is defined in Section 31A-22-646.
- (d)
  - (i) "Dental services" means services for the diagnosis, prevention, treatment, or cure of a dental condition, illness, injury, or disease.
  - (ii) "Dental services" does not include services that a provider delivers and bills as medical expenses under a health benefit plan.

(e)

- (i) "Dental service contractor" means an individual who:
  - (A) accepts prepayment for dental services; or
  - (B) for the benefit of another individual, accepts payment for providing to the individual the opportunity to receive dental services in the future.
- (ii) "Dental service contractor" does not include a provider or professional dental corporation that accepts prepayment on a fee-for-service basis for providing specific dental services to individual patients for whom the services have been pre-diagnosed.

(f)

- (i) "Provider" means a person who, acting within the scope of licensure or certification, provides dental services or supplies defined by the dental plan.
- (ii) "Provider" 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.

(g) "Provider network contract" means a contract between a contracting entity and a provider that:

- (i) specifies the rights and responsibilities of the contracting entity; and
- (ii) provides for the delivery and payment of dental services to an enrollee.

(h)

- (i) "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.
- (ii) "Third party" does not include an employer or other group for whom the dental carrier or contracting entity provides administrative services.

(2) A contracting entity may grant a third party access to a provider network contract regarding dental services, including a provider's dental services, or a contractual discount provided under a provider network contract for dental services if:

- (a) if the contracting entity is an insurer, the insurer complies with Subsection (3);
- (b) the contract between the contracting entity and a person subject to the third-party access complies with Subsection (4); and
- (c) the contracting entity complies with Subsection (5).

(3) An insurer shall:

- (a) at the time a contract is entered into or renewed, or when there is a material modification to a contract that is relevant to third-party access to a provider network contract, allow a provider which is part of the insurer's provider network to:
    - (i) choose to not participate in third-party access; or
    - (ii) enter into a contract directly with the third party that acquired the provider network;
  - (b) allow a provider to opt out of lease arrangements without canceling or ending a contractual relationship with the insurer; and
  - (c) when initially contracting with a provider, accept a qualified provider even if a provider rejects a network lease provision.
- (4) A contracting entity described in Subsection (2) shall ensure that the contract described in Subsection (2)(b) includes the following:
- (a) a provision indicating the contracting entity may enter into an agreement with a third party to allow the third party to obtain the contracting entity's rights and responsibilities as if the third party were the contracting entity;
  - (b) if the contracting entity is a dental carrier, a provision indicating that the provider chose to participate in third-party access at the time the provider network contract was entered into or renewed; and
  - (c) if the contracting entity is an insurer, a provision indicating:
    - (i) that the contract grants a third party access to the provider network; and
    - (ii) for a contract with a dental carrier, the dentist has the right to choose not to participate in third-party access.
- (5) A contracting entity shall:
- (a) provide a provider, in writing or electronic form, each third party in existence as of the date the contract is entered into;
  - (b) maintain a list of each third party in existence on the contracting entity's website that is updated at least once every 90 days;
  - (c) 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 unless the transaction is an electronic transaction mandated by the Health Insurance Portability and Accountability Act;
  - (d) notify a third party of the termination of a provider network contract no later than 30 days after the day on which the contract terminates with the contracting entity;
  - (e) at least 30 days before the day on which a third party begins leasing a network provider, notify each network provider subject to the lease;
  - (f) make available to a participating provider, within 30 days after the day on which the provider makes a request, a copy of the provider network contract at issue in the adjudication of a claim; and
  - (g) maintain a list of the contracting entity's affiliates on the contracting entity's website.
- (6) A third party that gains access to a contract under this section:
- (a) shall comply with each term of the contract to which the third party gains access; and
  - (b) loses all rights to a provider's discounted rate as of the termination date of the provider network contract.
- (7) A contracting entity or third party may not require a provider to perform services under a provider network contract if a third party gains access to a contract in violation of this section.
- (8) This section does not apply to:
- (a) a contracting entity granting access to a provider network contract to:
    - (i) an entity that operates in accordance with the brand licensee program of the contracting entity; or
    - (ii) an entity that is an affiliate of the contracting entity; and

- (b) a provider network contract for dental services provided to beneficiaries of a state sponsored health program, including Medicaid and the Children's Health Insurance Program.
- (9) A contract executed or renewed on or after January 1, 2022:
  - (a) may not waive the provisions of this section; and
  - (b) is null and void if the contract contains provisions that conflict with the provisions of this section or that purports to waive a requirement of this section.

Enacted by Chapter 288, 2021 General Session