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AB-954 Dental services: third-party network access. (2019-2020)

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Assembly Bill No. 954

CHAPTER 540

An act to add Section 1374.193 to the Health and Safety Code, and to add Section 10120.4 to the Insurance Code, relating to dental services.

[Approved by Governor October 07, 2019. Filed with Secretary of State October 07, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 954, Wood. Dental services: third-party network access.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care, and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law authorizes a health care service plan or health insurer to contract with a provider for alternative rates of payment, and requires a plan or insurer to continuously review the quality of care and performance of providers contracting for alternative rates of payment. Existing law requires a health care service plan or health insurer to publish and maintain a directory of contracting providers.

This bill would authorize a health care service plan or health insurer that issues, sells, renews, or offers a plan contract or policy covering dental services, including a specialized health care service plan contract or specialized policy of health insurance, or a contracting entity, as defined, to grant a third party access to a provider network contract entered into on or after January 1, 2020, or access to services or discounts provided pursuant to that provider network contract if certain criteria are met, including if a health care services plan's or health insurer's provider network contract clearly identifies the third-party access provision and the provider network contract allows a provider to opt out of third-party access. The bill would specify that 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 these provisions. Because a willful violation of the bill's requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1374.193 is added to the Health and Safety Code, to read:

1374.193. (a) A health care service plan that issues, sells, renews, or offers a plan contract covering dental services, including a specialized health care service plan contract covering dental services, or 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 health care service plan that issues, sells, renews, or offers a plan contract covering dental services may grant a third party access to a provider network contract if, at the time the provider network contract is entered into, and at any time a notice is sent to a health care provider as required under Section 1375.7, the provider network contract allows a provider 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 plan 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.

(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 health care service plan, 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 health care service plan, the third-party access provision of the provider network contract shall clearly identify in the plan contract and notice to the provider, as required pursuant to Section 1375.7, the following language conspicuously placed on the first page of the document in 12-point underlined type:

This contract grants third-party access to the provider network. The provider network contracting entity has entered into an agreement with other dental plans or third parties that allows the third party to obtain the contracting entity's rights and responsibilities as if the third party were the contracting entity. The list of all third parties with access to this provider network can be found at (insert internet website as identified in paragraph (4)). You have the right to choose not to participate in third-party access. To exercise your right to not participate in the third-party access, submit your written or electronic request to the health care service plan.

(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) (A) 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.

(B) 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.

(e) This section does not apply if any of the following criteria are met:

(1) 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.).

(2) Access to a provider network contract is granted to a health care service plan that issues, sells, renews, or offers a plan contract covering dental services, including a specialized health care service plan contract covering dental services, or a contracting entity operating under the same brand licensee program as the contracting entity.

(3) Access to a provider network contract is granted to an affiliate of a contracting entity. A list of the contracting entity's affiliates shall be made available to a provider in writing or electronic form before access is granted to a third party pursuant to subdivision (b).

(f) The director shall adopt regulations as are necessary to implement and enforce this section in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(g) As used in this section:

(1) "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 health care service plan or third-party administrator.

(2) "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 care service plan contract or specialized health care service plan contract.

(3) "Provider" means an individual or entity that provides dental services or supplies, as defined by the health care service plan contract or specialized health care service plan contract, including a dentist or physician, but not a physician organization that leases or rents its network to a third party.

(4) "Provider network contract" means a contract between a contracting entity and a provider entered into on or after January 1, 2020, that specifies the rights and responsibilities of the contracting entity and provides for the delivery and payment of dental services to an enrollee.

(5) "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 health care service plan, specialized health care service plan, or contracting entity provides administrative services, including the payment of claims.

SEC. 2. Section 10120.4 is added to the Insurance Code, to read:

10120.4. (a) A health insurer that issues, sells, renews, or offers a policy covering dental services, including a specialized policy of health insurance covering dental services, or 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 health insurer that issues, sells, renews, or offers a policy covering dental services may grant a third party access to a provider network contract if, at the time the provider network contract is entered into, and at any time a notice is sent to a health care provider as required pursuant to Section 10133.65, the provider network contract allows a provider 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. An insurer 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.

(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 health insurer, 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 health insurer, the third-party access provision of the provider network contract shall clearly identify in the contract and notice to the provider, as required pursuant to Section 10133.65, the following language conspicuously placed on the first page of the document in 12-point underlined type:

This contract grants third-party access to the provider network. The provider network contracting entity has entered into an agreement with other dental insurers or third parties that allows the third party to obtain the contracting entity's rights and responsibilities as if the third party were the contracting entity. The list of all third parties with access to this provider network can be found at (insert internet website as identified in paragraph (4)). You have the right to choose not to participate in third-party access. To exercise your right to not participate in the third-party access, submit your written or electronic request to the health insurer.

(3) The contracting entity identifies prior to signing the contract, in writing or electronic format 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) (A) 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.

(B) 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.

(e) This section does not apply if any of the following criteria are met:

(1) 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.).

(2) Access to a provider network contract is granted to a health insurer that issues, sells, renews, or offers a policy covering dental services or a contracting entity operating under the same brand licensee program as the contracting entity.

(3) Access to a provider network contract is granted to an affiliate of a contracting entity. A list of the contracting entity's affiliates shall be made available to a provider in writing or electronic form before access is granted to a third party pursuant to subdivision (b).

(f) The commissioner shall adopt regulations as are necessary to implement and enforce this section in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(g) As used in this section:

(1) "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 health insurer or third-party administrator.

(2) "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 policy of health insurance.

(3) "Provider" means an individual or entity that provides dental services or supplies, as defined by the policy of health insurance or specialized policy of health insurance, including a dentist or physician, but not a physician organization that leases or rents its network to a third party.

(4) "Provider network contract" means a contract between a contracting entity and a provider entered into on or after January 1, 2020, that specifies the rights and responsibilities of the contracting entity and provides for the delivery and payment of dental services to an insured.

(5) "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 health insurer or contracting entity provides administrative services, including the payment of claims.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.