

# ASSEMBLY, No. 1050

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen and Passaic)**

**SYNOPSIS**

The “Health Care Provider Network Transparency Act”; establishes requirements for granting access to certain health care provider discounts.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning certain health care provider networks, and  
2 supplementing chapter 30 of Title 17B of the New Jersey  
3 Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. This act shall be known and may be cited as the “Health  
9 Care Provider Network Transparency Act.”

10  
11 2. As used in this act:  
12 “Contracting entity” means any person or entity that enters into  
13 direct contracts with providers for the delivery of health care  
14 services in the ordinary course of business.

15 “Covered person” means an individual who is covered under a  
16 health insurance plan.

17 “Discount medical plan organization” means an entity that, in  
18 exchange for fees, dues, charges or other consideration, provides to  
19 its members access to providers of medical services and the right to  
20 receive medical services from those providers at a discount.

21 “Electronic claims transport” means accepting and digitizing  
22 claims already digitized, placing those claims into a format that  
23 complies with the electronic transaction standards issued by the  
24 United States Department of Health and Human Services under  
25 subtitle F of title II of the federal “Health Insurance Portability and  
26 Accountability Act of 1996,” Pub.L.104-191 (42 U.S.C. s. 1320d et  
27 seq.) as those electronic standards are applicable to the parties, and  
28 electronically transmitting those claims to the appropriate  
29 contracting entity, payer, or third party administrator.

30 “Health care services” means services for the diagnosis,  
31 prevention, treatment, or cure of a health condition, illness, injury,  
32 or disease.

33 “Health insurance plan” means any hospital and medical expense  
34 incurred policy, health maintenance organization subscriber  
35 contract, or any other health care plan or arrangement that pays for  
36 or furnishes medical or health care services, whether by insurance  
37 or otherwise. “Health insurance plan” shall not include one or  
38 more, or any combination of, the following: coverage only for  
39 accident, or disability income insurance; coverage issued as a  
40 supplement to liability insurance; liability insurance, including  
41 general liability insurance and private passenger automobile  
42 insurance; workers’ compensation or similar insurance; automobile  
43 medical payment insurance; credit-only insurance; coverage for on-  
44 site medical clinics; coverage similar to the foregoing as specified  
45 in federal regulations issued pursuant to the federal “Health  
46 Insurance Portability and Accountability Act of 1996,” P.L.104-191  
47 (29 U.S.C. s.1181 et al.), under which benefits for medical care are  
48 secondary or incidental to other insurance benefits; dental or vision

1 benefits; benefits for long-term care, nursing home care, home  
2 health care, or community-based care; specified disease or illness  
3 coverage, hospital indemnity or other fixed indemnity insurance, or  
4 such other similar, limited benefits as are specified in regulations;  
5 Medicare supplemental health insurance as defined under section  
6 1882(g)(1) of the federal Social Security Act Pub.L.74-271 (42  
7 U.S.C. s.1395ss(g)(1)); coverage supplemental to the coverage  
8 provided under chapter 55 of title 10, United States Code (10  
9 U.S.C. s.1071 et seq.); or other similar limited benefit supplemental  
10 coverages.

11 “Payer” means a carrier, organized delivery system, or any other  
12 person who undertakes to provide and assumes financial risk for the  
13 payment of health benefits, and is obligated to pay claims for health  
14 benefits on behalf of a covered person to a provider or other  
15 claimant.

16 “Provider” means a physician licensed pursuant to Title 45 of the  
17 Revised Statutes, a general acute care facility licensed by the  
18 Commissioner of Health and Senior Services pursuant to P.L.1971,  
19 c.136 (C.26:2H-1 et seq.), including rehabilitation, psychiatric and  
20 long-term acute facilities, a physician organization, a physician  
21 hospital organization that is acting exclusively as an administrator  
22 on behalf of a provider to facilitate the provider’s participation in  
23 health care contracts. “Provider” shall not include a physician  
24 organization or physician hospital organization that leases or rents  
25 the physician organization’s or physician hospital organization’s  
26 network to a third party.

27 “Provider network contract” means a contract between a  
28 contracting entity and a provider specifying the rights and  
29 responsibilities of the contracting entity and providing for the  
30 delivery of and payment for health care services to covered persons.

31 “Third party” means a person or entity that enters into a contract  
32 with a contracting entity or with another third party to gain access  
33 to a provider network contract.

34 “Third party administrator” means “third party administrator” as  
35 defined by section 1 of P.L.2001, c.267 (C.17B:27B-1).

36

37 3. This act shall not apply to:

38 a. A provider network contract for services provided to  
39 beneficiaries of the Medicaid program established pursuant to  
40 P.L.1968, c.413 (C.30:4D-1 et seq.), the Medicare program  
41 established pursuant to the federal Social Security Act, Pub.L.74-  
42 271 (42 U.S.C. s.1395 et seq.), or the NJ FamilyCare Program  
43 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.);

44 b. Situations in which access to a provider network contract is  
45 granted to an entity operating under the same brand licensee  
46 program as the contracting entity; and

- 1 c. A contract between a contracting entity and a discount  
2 medical plan organization.  
3
- 4 4. a. Any person conducting business as a contracting entity in  
5 this State on the effective date of this act shall register with the  
6 Department of Banking and Insurance within 90 days of the  
7 effective date of this act unless the person is licensed by the  
8 department as an insurer. Any person that commences business as a  
9 contracting entity in this State on or after the effective date of the  
10 act shall register with the department within 30 days of  
11 commencing business unless the person is licensed by the  
12 department as an insurer.
- 13 b. Registration shall consist of the submission to the  
14 department of the following information:
- 15 (1) the official name of the contracting entity and any other  
16 names under which the contracting entity does business or was  
17 formerly known;
- 18 (2) the mailing address and main telephone number for the  
19 contracting entity's main headquarters;
- 20 (3) the name and telephone number of the contracting entity's  
21 representative who serves as the primary contact with the  
22 department; and
- 23 (4) any other information deemed to be necessary by the  
24 department.
- 25 c. The information required by this section shall be submitted  
26 in written or electronic format, as prescribed by the department  
27 through regulation.
- 28 d. The department may collect a reasonable fee for the purpose  
29 of administering the registration process, as prescribed by the  
30 department through regulation.  
31
- 32 5. A contracting entity shall not grant to a third party access to  
33 a provider network contract unless the third party accessing the  
34 provider network contract is:
- 35 a. A payer or third party administrator or other entity that  
36 administers or processes claims on behalf of the payer;
- 37 b. A preferred provider organization or preferred provider  
38 network, including a physician organization or physician-hospital  
39 organization; or
- 40 c. An entity engaged in the business of providing electronic  
41 claims transport between the contracting entity and the payer, that  
42 does not provide access to the provider's health care services and  
43 contractual discounts to any other third party.  
44
- 45 6. A contracting entity shall not grant to a third party access to  
46 a provider's health care services and contractual discounts pursuant  
47 to a provider network contract unless:

1       a. The provider network contract specifically states that the  
2       contracting entity may enter into an agreement with a third party  
3       allowing the third party to obtain the contracting entity's rights and  
4       responsibilities under the provider network contract as if the third  
5       party were the contracting entity; and

6       b. The third party accessing the provider network contract is  
7       contractually obligated to comply with all applicable terms,  
8       limitations, and conditions of the provider network contract.

9

10       7. a. A contracting entity that grants to a third party access to a  
11       provider's health care services and contractual discounts pursuant to  
12       a provider network contract shall, at the time a provider network  
13       contract is entered into with a provider:

14       (1) identify and provide to the provider upon request, a written  
15       or electronic list of all third parties known at the time of  
16       contracting, to which the contracting entity has or will grant access  
17       to the provider's health care services and contractual discounts  
18       pursuant to a provider network contract; and

19       (2) maintain an Internet website or other readily available  
20       mechanism, such as a toll-free telephone number, through which a  
21       provider may obtain a listing, updated at least every 90 days, of the  
22       third parties with which the contracting entity or another third party  
23       has executed contracts to grant access to the provider's health care  
24       services and contractual discounts pursuant to a provider network  
25       contract.

26       b. A contracting entity that grants to a third party access to a  
27       provider's health care services and contractual discounts pursuant to  
28       a provider network contract shall, at the time that access is provided  
29       to the third party:

30       (1) provide the third party with sufficient information regarding  
31       the provider network contract to enable the third party to comply  
32       with all relevant terms, limitations, and conditions of the provider  
33       network contract; and

34       (2) require that the third party identify the contracting entity that  
35       is the source of the contractual discount taken by the third party on  
36       each remittance advice or explanation of payment furnished to a  
37       provider when the discount is pursuant to the contracting entity's  
38       provider network contract.

39

40       8. a. A contracting entity that grants to a third party access to a  
41       provider's health care services and contractual discounts pursuant to  
42       a provider network contract shall, in situations in which the  
43       provider network contract is terminated:

44       (1) provide notice to the third party of the termination of the  
45       provider network contract no later than 60 days prior to the  
46       effective date of the termination of the provider network contract,  
47       which notice may be provided through any reasonable means,

1 including but not limited to, written notice, electronic  
2 communication, or an update to an electronic database or other  
3 provider listing; and

4 (2) require all persons that are by contract eligible to claim the  
5 right to access a provider's discounted rates to cease claiming  
6 entitlement to those rates or other contracted rights or obligations  
7 for services rendered after termination of the provider network  
8 contract.

9 b. In situations in which a provider network contract is  
10 terminated, subject to any applicable continuity of care  
11 requirements, agreements, or contractual provisions:

12 (1) the right of a third party to access a provider's health care  
13 services and contractual discounts pursuant to a provider network  
14 contract shall terminate on the termination date of the provider  
15 network contract;

16 (2) claims for health care services performed after the  
17 termination date of the provider network contract shall not be  
18 eligible for processing and payment in accordance with the terms of  
19 the provider network contract; and

20 (3) claims for health care services performed before the  
21 termination date of the provider network contract, but processed  
22 after the termination date, shall be eligible for processing and  
23 payment in accordance with the terms of the provider network  
24 contract.

25

26 9. a. All information made available by a contracting entity to  
27 a provider in accordance with the requirements of this act shall be  
28 confidential and the provider shall not disclose the information to  
29 any person or entity not involved in the provider's practice or the  
30 administration thereof without the prior written consent of the  
31 contracting entity.

32 b. Nothing contained in this act shall be construed to prohibit a  
33 contracting entity from requiring a provider to execute a reasonable  
34 confidentiality agreement to ensure that confidential or proprietary  
35 information disclosed by the contracting entity is not used for any  
36 purpose other than the provider's practice or the administration  
37 thereof.

38

39 10. A third party that has been granted access to a provider's  
40 health care services and contractual discounts pursuant to a provider  
41 network contract and that grants access to a subsequent third party  
42 shall comply with the requirements imposed on a contracting entity  
43 pursuant to sections 5, 6, 7, 8, and 9 of this act, as if the third party  
44 were the contracting entity.

45

46 11. a. In situations in which a third party has been granted  
47 access to a provider's health care services and contractual discounts

1 pursuant to a provider network contract, the contracting entity and  
2 third party shall disclose, on each remittance advice or explanation  
3 of payment furnished to a provider, the entity that is the source of  
4 the contractual discount.

5 b. Except as provided in subsection c. of this section, a  
6 provider shall have the right to refuse to accept a discounted  
7 amount as the appropriate reimbursement amount under a provider  
8 network contract, and the provider shall have the right to require  
9 payment of the charge with no discount applied, if:

10 (1) a remittance advice or explanation of payment furnished by  
11 a contractual entity or third party fails to comply with subsection a.  
12 of this section; or

13 (2) the contractual discount is not exercised pursuant to a  
14 network provider contract that is in compliance with the provisions  
15 of this act.

16 c. In situations in which a provider refuses to accept a  
17 discounted amount pursuant to paragraph (1) of subsection b. of this  
18 section, a provider shall notify the contracting entity or third party  
19 of the apparent violation in writing. If the contracting entity or third  
20 party, within 30 days of receipt of notice of the apparent violation,  
21 notifies the provider that the apparent violation resulted from an  
22 administrative oversight or other unintentional error and submits to  
23 the provider a corrected remittance advice or explanation of benefits  
24 with documentation demonstrating eligibility for the discount  
25 applied, the discount shall be applied and the provider shall not  
26 have a right to refuse to accept the discounted amount.

27

28 12. a. Any person who violates any provision of this act shall be  
29 liable to a civil penalty in an amount of not less than \$500, or more  
30 than \$10,000, for each violation. A penalty shall be collected and  
31 enforced by a summary proceeding brought by the Commissioner of  
32 Banking and Insurance pursuant to the provisions of the "Penalty  
33 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34 b. In addition to any penalty pursuant to subsection a. of this  
35 section, it shall be an unfair trade practice pursuant to the  
36 provisions of N.J.S.17B:30-1 et seq. and a violation of that act for  
37 any person to knowingly access or utilize a provider's contractual  
38 discount pursuant to a provider network contract without a  
39 contractual relationship with the provider, contracting entity, or  
40 third party.

41

42 13. The Commissioner of Banking and Insurance shall, pursuant  
43 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
44 1 et seq.), adopt rules and regulations necessary to effectuate the  
45 purpose of this act.

1       14. This act shall take effect on the 90th day following  
2 enactment and shall apply to all provider network contracts that are  
3 delivered, issued, executed or renewed in this State, on or after the  
4 effective date.

5  
6  
7                               STATEMENT  
8

9       This bill establishes requirements for granting access to provider  
10 discounts under a provider network contract, in order to prevent the  
11 improper selling or leasing of these contractual discounts, under  
12 what is commonly known as a “silent PPO (preferred provider  
13 organization)” arrangement.

14       The bill imposes a registration requirement on contracting  
15 entities as defined in the bill, and allows them to grant to third  
16 parties access to the network discounts that they have negotiated  
17 with providers, which are defined to include physicians, hospitals,  
18 and certain other health care providers, only under certain  
19 circumstances and with certain disclosures.

20       The bill requires any person that is conducting business as a  
21 contracting entity in this State on the bill’s effective date to register  
22 with the Department of Banking and Insurance within 90 days of  
23 the effective date unless the person is licensed by the department as  
24 an insurer. Any person that commences business as a contracting  
25 entity in this State on or after the effective date shall register with  
26 the department within 30 days of commencing business unless the  
27 person is licensed by the department as an insurer. The bill provides  
28 certain specific registration requirements.

29       The bill allows contracting entities to grant access to a provider  
30 network contract only to certain types of third parties, and only in  
31 situations in which the provider network contract specifically  
32 allows such access and the third party accessing the provider  
33 network contract is contractually obligated to comply with all  
34 applicable terms, limitations, and conditions of the provider  
35 network contract.

36       A contracting entity that grants to a third party access to a  
37 provider’s health care services and contractual discounts pursuant to  
38 a network provider contract, shall, at the time a provider network  
39 contract is entered into with a provider, provide certain information  
40 as to the third parties that have or will have access to the services  
41 and discounts, and also maintain a website or other means to  
42 provide an updated listing of third parties with access.

43       A contracting entity that grants to a third party access to a  
44 provider’s health care services and contractual discounts pursuant to  
45 a provider network contract shall, at the time that access is provided  
46 to the third party: (1) provide the third party with sufficient  
47 information regarding the provider network contract to enable the

1 third party to comply with all relevant terms, limitations, and  
2 conditions of the provider network contract; and (2) require that the  
3 third party identify the contracting entity that is the source of the  
4 contractual discount taken by the third party on each remittance  
5 advice or explanation of payment furnished to a provider.

6 The bill provides that a contracting entity that grants to a third  
7 party access to a provider's health care services and contractual  
8 discounts pursuant to a provider network contract shall, in situations  
9 in which the provider network contract is terminated, provide  
10 certain notices to the third party of the termination of the provider  
11 network, and require all persons that are by contract eligible to  
12 claim the right to access a provider's discounted rates to cease  
13 claiming entitlement to those rates or other contracted rights or  
14 obligations for services rendered after termination of the provider  
15 network contract.

16 The bill also provides, in situations in which a provider network  
17 contract is terminated, subject to any applicable continuity of care  
18 requirements, agreements, or contractual provisions, that the right  
19 of a third party to access a provider's health care services and  
20 contractual discounts shall terminate on the termination date of the  
21 provider network contract. The bill also addresses, with respect to  
22 the date of termination, which claims remain eligible for processing  
23 and payment in accordance with the terms of the contract.

24 The bill also provides certain confidentiality requirements as to  
25 information made available, pursuant to the bill, by a contracting  
26 entity to a provider. Certain of the bill's provisions also apply to  
27 third parties that provide access to a provider's health care services  
28 and contractual discounts to a subsequent third party.

29 In situations in which a third party has been granted access to a  
30 provider's health care services and contractual discounts pursuant to  
31 a provider network contract, the contracting entity and third party  
32 shall disclose, on each remittance advice or explanation of payment  
33 furnished to a provider, the entity that is the source of the  
34 contractual discount. Under certain circumstances, the provider may  
35 refuse to accept a discounted amount as the appropriate  
36 reimbursement amount under a provider network contract, and the  
37 provider shall have the right to require payment of the charge with  
38 no discount applied.

39 Any person who violates any of the bill's provisions shall be  
40 liable to a civil penalty in an amount of not less than \$500, or more  
41 than \$10,000, for each violation, which may be collected by a  
42 summary proceeding. In addition, it shall be an unfair trade practice  
43 pursuant to the provisions of N.J.S.17B:30-1 et seq., and a violation  
44 of that act for any person to knowingly access or utilize a provider's  
45 contractual discount pursuant to a provider network contract  
46 without a contractual relationship with the provider, contracting  
47 entity, or third party.

**A1050 SCHAER**

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1       The Commissioner of Banking and Insurance shall adopt,  
2       pursuant to the “Administrative Procedure Act,” P.L.1968, c.410  
3       (C.52:14B-1 et seq.), rules and regulations necessary to effectuate  
4       the provisions of the bill.