

**Enrolled**  
**Senate Bill 634**

Sponsored by COMMITTEE ON HEALTH CARE, HUMAN SERVICES AND RURAL HEALTH  
POLICY (at the request of Oregon Medical Association)

CHAPTER .....

AN ACT

Relating to provider contracts for health care services; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. As used in this section and sections 3 to 5 of this 2011 Act:**

**(1)(a) "Contracting entity" means any person that contracts directly with a provider for the delivery of health care services or contracts with a third party for the purpose of selling or making available to the third party the provider's health care services or discounted rates or the services or rates of a provider panel under a provider network contract.**

**(b) "Contracting entity" includes a person under common ownership and control of a contracting entity.**

**(c) "Contracting entity" does not include:**

**(A) A managed care organization that is certified under ORS 656.260;**

**(B) A discount medical plan organization as defined in ORS 742.420;**

**(C) The state medical assistance program;**

**(D) An independent practice association; or**

**(E) A self-funded, employer-sponsored health insurance plan regulated under the Employee Retirement Income Security Act of 1974, as codified and amended at 29 U.S.C. 1001, et seq., or any person that provides only administrative services to the self-funded employer-sponsored health insurance plan.**

**(2) "Health care services" means the treatment of humans for bodily injury, disablement or death by accidental means or as a result of sickness or childbirth, or in prevention of sickness, but does not include treatment for bodily injury, disablement or occupational diseases incurred as a result of employment.**

**(3) "Independent practice association" has the meaning given that term in ORS 743.801.**

**(4) "Person" has the meaning given that term in ORS 731.116.**

**(5)(a) "Provider" includes:**

**(A) A physician as defined in ORS 677.010.**

**(B) A physician group, independent practice association, physician-controlled organization, hospital organization or other provider organization that contracts with a provider for the purpose of facilitating the provider's participation in a provider network contract.**

**(C) A person licensed, certified or otherwise authorized or permitted by the laws of this state to administer medical services or mental health services in the ordinary course of business or practice of a profession.**

**(b) "Provider" does not include a contracting entity.**

(6) "Provider network contract" means a contract between a provider and a contracting entity for the provision of health care services to patients other than Medicare enrollees or medical assistance recipients.

(7)(a) "Third party" means a person that enters into a contract with a contracting entity or with another party, other than a provider, for the right to exercise the rights of the contracting entity under a provider network contract.

(b) "Third party" includes any of the following:

(A) A payer that directly reimburses the cost of the delivery of health care services;

(B) A third party administrator or other entity that administers or processes claims on behalf of a payer;

(C) A preferred provider organization or network;

(D) A physician-controlled organization or a hospital organization; or

(E) An entity that is engaged in the electronic transmission of claims between a contracting entity and a payer and does not provide to another party access to the health care services and discounted rates of a provider.

(c) "Third party" does not include:

(A) Entities offering health care services under the same brand pursuant to a brand licensing agreement with the same licensor; or

(B) A self-funded, employer-sponsored health insurance plan regulated under the Employee Retirement Income Security Act of 1974, as codified and amended at 29 U.S.C. 1001, et seq., or any person that provides only administrative services to the self-funded employer-sponsored health insurance plan.

**SECTION 2.** Section 3 of this 2011 Act is added to and made a part of the Insurance Code.

**SECTION 3.** (1) A contracting entity that does not have a certificate of authority shall register with the Department of Consumer and Business Services as a contracting entity by submitting the following information to the department in written or electronic form as prescribed by the department along with any fee prescribed by the department:

(a) The official name of the entity and any secondary, alternative or substitute designations.

(b) The mailing address and telephone number of the headquarters of the entity.

(c) The name and telephone number of a representative of the entity who shall serve as the primary contact for the department.

(2) The requirements of this section do not apply to a contracting entity that is under common ownership and control of a contracting entity that is licensed by or has a certificate of authority from the department.

**SECTION 4.** (1) A contracting entity or a third party may not contract with another third party to provide access to the health care services and discounted rates of a provider under a provider network contract unless:

(a) The third party contract is specifically authorized by the provider network contract; and

(b) The third party contract obligates the third party to comply with all applicable terms, limitations and conditions of the provider network contract.

(2) A contracting entity that provides access to the health care services and discounted rates of a provider under a provider network contract shall:

(a) Give to the provider in writing or electronically, at the time a provider network contract is entered into, a list of all third parties known by the contracting entity at the time to which the contracting entity has or will provide access to the health care services and discounted rates of a provider under the provider network contract;

(b) Maintain an Internet website, toll-free telephone number or other readily available mechanism through which a provider may obtain a list, updated at least every 90 days, of all third parties that have access to the provider's health care services and discounted rates under the provider network contract;

(c) Provide each third party listed under paragraph (a) or (b) of this subsection with information necessary to enable the third party to comply with all relevant terms, limitations and conditions of the provider network contract;

(d) Require a third party to identify on each remittance or explanation of payment sent to a provider the source of any contractual discount in rates taken by the third party under the provider network contract; and

(e)(A) Notify each third party listed under paragraph (a) or (b) of this subsection of the termination of the provider network contract no later than 30 days prior to the effective date of the termination; and

(B) Require third parties to cease claiming entitlement to discounted rates or other rights under a provider network contract after the termination of the contract.

(3) The notice required under subsection (2)(e)(A) of this section can be provided by any reasonable means, including but not limited to written notice, electronic communication or an update to an electronic database.

(4) Subject to any applicable continuity of care requirements, agreements or contractual provisions:

(a) A third party's right to access a provider's health care services and discounted rates under a provider network contract shall terminate on the date the provider network contract is terminated;

(b) Claims for health care services performed after the termination date of the provider network contract are not eligible for processing and payment in accordance with the provider network contract; and

(c) Claims for health care services performed before the termination date of the provider network contract, but processed after the termination date, are eligible for processing and payment in accordance with the provider network contract.

(5)(a) All information made available to a provider in accordance with the requirements of this section and section 5 of this 2011 Act shall be confidential and may not be disclosed to any person not involved in the provider's practice or the administration thereof without the prior written consent of the contracting entity.

(b) This section and section 5 of this 2011 Act may not be construed to prohibit a contracting entity from requiring a provider to execute a reasonable confidentiality agreement to ensure that confidential or proprietary information disclosed by the contracting entity is not used for any purpose other than the provider's direct practice management or billing activities.

**SECTION 5.** (1) A contract between a third party and a contracting entity or between two third parties with respect to a provider network contract must comply with this section and section 4 of this 2011 Act.

(2)(a) A third party shall inform the contracting entity and providers under a contracting entity's provider network contract of a website, toll-free number or other readily available mechanism to identify the names of all third parties to which the third party provides access to the health care services and discounted rates of a provider under the provider network contract.

(b) The third party shall update the website described in paragraph (a) of this subsection at least every 90 days to reflect all third parties currently provided access. Upon request, the third party shall make the information available to a provider via telephone or through direct notification.

(3) A provider may refuse to accept as payment in full a discounted payment made by a third party under the terms of a provider network contract if there is no valid contractual basis for the discount or the discount is taken in violation of this section or section 4 of this 2011 Act.

**SECTION 6.** Sections 1 to 5 of this 2011 Act become operative January 1, 2012, and apply to contracts entered into or renewed on or after January 1, 2012.

**SECTION 7.** The Department of Consumer and Business Services may take any action prior to the operative date specified in section 6 of this 2011 Act that is necessary to allow the department to carry out the provisions of sections 1 to 5 of this 2011 Act on and after the operative date specified in section 6 of this 2011 Act.

**SECTION 8.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

**Passed by Senate May 19, 2011**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 17, 2011**

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State