

**A-Engrossed**  
**Senate Bill 634**

Ordered by the Senate May 17  
Including Senate Amendments dated May 17

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

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Imposes requirements for contracts between **specified** contracting entities and third parties for access to health care services of providers. Imposes requirements on third party contracts to obtain access to provider's services and discounted rates under provider network contract. Requires third parties to comply with terms of contract between provider and contracting entity.

Requires contracting entities and third parties with access to provider network contract to maintain websites containing list of third parties with access to provider's services and discounted rates.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to provider contracts for health care services; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

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

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

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

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

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

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

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

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

21 (C) A preferred provider organization or network;

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

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

26 (c) "Third party" does not include:

27 (A) Entities offering health care services under the same brand pursuant to a brand li-  
28 censing agreement with the same licensor; or

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

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

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

38 (a) The official name of the entity and any secondary, alternative or substitute desig-  
39 nations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43       **(5)(a) All information made available to a provider in accordance with the requirements**  
44 **of this section and section 5 of this 2011 Act shall be confidential and may not be disclosed**  
45 **to any person not involved in the provider's practice or the administration thereof without**

1 the prior written consent of the contracting entity.

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

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

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

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

19 (3) A provider may refuse to accept as payment in full a discounted payment made by a  
20 third party under the terms of a provider network contract if there is no valid contractual  
21 basis for the discount or the discount is taken in violation of this section or section 4 of this  
22 2011 Act.

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

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

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

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