

1 AN ACT relating to health care trade practices.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF SUBTITLE 17C OF KRS CHAPTER 304
4 IS CREATED TO READ AS FOLLOWS:

5 *As used in Sections 1 to 5 of this Act:*

6 *(1) "Covered person" means an individual who is covered by a dental benefit plan;*

7 *(2) "Dental benefit plan" means a limited health service benefit plan that provides*
8 *coverage for dental services;*

9 *(3) "Dental carrier" means a health insurer that provides coverage for dental*
10 *services;*

11 *(4) "Dental services":*

12 *(a) Means services for the diagnosis, prevention, treatment, or cure of a dental*
13 *condition, illness, injury, or disease; and*

14 *(b) Does not include services delivered by a provider that are billed as medical*
15 *expenses under a health insurance plan;*

16 *(5) "Dentist" means any dentist licensed or otherwise authorized in this state to*
17 *furnish dental services;*

18 *(6) "Health insurer" means any insurance company, health maintenance*
19 *organization, self-insurer or multiple employer welfare arrangement not exempt*
20 *from state regulation by ERISA, provider-sponsored integrated health delivery*
21 *network, self-insured employer-organized association, nonprofit hospital,*
22 *medical-surgical, dental, and health service corporation, or limited health service*
23 *organization authorized to transact health insurance business in Kentucky; and*

24 *(7) "Provider":*

25 *(a) Means an individual or entity, acting within the scope of the individual or*
26 *entity's licensure or certification, that provides dental services or supplies*
27 *defined by the dental benefit plan; and*

1 (b) Does not include a physician organization or physician hospital
2 organization that leases or rents its network to a third party.

3 ➔SECTION 2. A NEW SECTION OF SUBTITLE 17C OF KRS CHAPTER 304
4 IS CREATED TO READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Contracting entity" means a dental carrier, a third-party administrator, or
7 any other person that enters into direct contracts with providers for the
8 delivery of dental services in the ordinary course of business;

9 (b) "Provider network contract" means a contract between a contracting entity
10 and a provider that:

- 11 1. Specifies the rights and responsibilities of the contracting entity; and
12 2. Provides for the delivery and payment of dental services to a covered
13 person; and

14 (c) "Third party":

- 15 1. Means an individual or entity that enters into a contract with a
16 contracting entity or with another person to gain access to the dental
17 services or contractual discounts of a provider network contract; and
18 2. Does not include an employer or other group for whom the dental
19 carrier or contracting entity provides administrative services.

20 (2) A contracting entity may grant a third party access to a provider network contract
21 or a provider's dental services or contractual discounts provided pursuant to a
22 provider network contract if:

23 (a) At the time the provider network contract is entered into or renewed, or
24 when there are material modifications to the provider network contract
25 relevant to granting a third party access to a provider network contract, the
26 dental carrier allows any provider which is part of the dental carrier's
27 provider network to choose to:

- 1 1. Not participate in third-party access to the provider network contract;
2 or
3 2. Enter into a provider network contract directly with the health insurer
4 that acquired the provider network;
- 5 (b) The provider network contract includes the following third-party access
6 provisions:
- 7 1. That the contracting entity may enter into an agreement with third
8 parties allowing the third parties to obtain the contracting entity's
9 rights and responsibilities as if the third party were the contracting
10 entity; and
- 11 2. When the contracting entity is a dental carrier:
- 12 a. That the provider network contract grants third-party access to
13 the provider network;
- 14 b. The provider chose to participate in third-party access at the time
15 the provider network contract was entered into or renewed; and
- 16 c. The provider has the right to choose not to participate in third-
17 party access;
- 18 (c) The third party accessing the provider network contract agrees to comply
19 with all of the contract's terms;
- 20 (d) The contracting entity:
- 21 1. Identifies all third parties in existence in a list on its Internet Web site,
22 which shall be updated at least once every sixty (60) days;
- 23 2. Except for electronic transactions required by the Health Insurance
24 Portability and Accountability Act of 1996, Pub. L. No. 104-191,
25 requires the third party to identify the source of the discount on all
26 remittance advices or explanations of payment under which a discount
27 is taken; and

1 3. Makes available a copy of the provider network contract relied on in
2 the adjudication of a claim to a participating provider within thirty
3 (30) days of a request from the provider; and

4 (e) The third party's right to a provider's discounted rate ceases as of the
5 termination date of the provider network contract with the exception of
6 covered dental services that are in progress.

7 (3) A dental carrier:

8 (a) Shall not cancel or otherwise end a contractual relationship with a provider
9 as a result of the provider opting out of third-party access in accordance
10 with subsection (2)(a) of this section; and

11 (b) When initially contracting with a provider, shall accept a qualified provider
12 even if the provider opts out of a third-party access provision.

13 (4) A provider shall not be bound by, or required to provide dental services under, a
14 provider network contract that has been granted to a third party in violation of
15 this section.

16 (5) This section shall not apply:

17 (a) If access to a provider network contract is granted to:

18 1. A dental carrier or any other entity operating in accordance with the
19 same brand licensee program as the contracting entity; or

20 2. An entity that is an affiliate of the contracting entity. A contracting
21 entity shall make a list of its affiliates available to providers on its
22 Internet Web site; or

23 (b) To a provider network contract for dental services provided to beneficiaries
24 of state-sponsored public medical assistance programs, including Medicaid
25 and the Kentucky Children's Health Insurance Program.

26 ➔SECTION 3. A NEW SECTION OF SUBTITLE 17C OF KRS CHAPTER 304
27 IS CREATED TO READ AS FOLLOWS:

- 1 (1) As used in this section, "prior authorization" means any written communication
2 that:
- 3 (a) Indicates that a specific procedure is, or multiple procedures are, covered
4 under the covered person's dental benefit plan and reimbursable at a
5 specific amount, subject to applicable cost sharing; and
- 6 (b) Is issued in response to a request submitted by a dentist using a format
7 prescribed by the dental carrier.
- 8 (2) A dental benefit plan shall not deny any claim subsequently submitted by a
9 dentist for procedures specifically included in a prior authorization unless at least
10 one (1) of the following circumstances applies for each procedure denied:
- 11 (a) Benefit limitations, which may include annual maximums and frequency
12 limitations, not applicable at the time of prior authorization are reached due
13 to utilization subsequent to issuance of the prior authorization;
- 14 (b) Documentation for the claim provided by the person submitting the claim
15 clearly fails to support the claim as originally authorized;
- 16 (c) In accordance with the dental benefit plan, the service is not covered
17 because it:
- 18 1. Is not considered medically necessary; or
19 2. Does not meet any other terms or conditions for coverage that were in
20 effect at the time the prior authorization was issued;
- 21 (d) Another payer is responsible for payment;
- 22 (e) The dentist has already been paid for procedures identified on the claim;
- 23 (f) The covered person was not eligible to receive the procedure on the date of
24 service and the dental carrier did not know, and with the exercise of
25 reasonable care could not have known, of the covered person's eligibility
26 status; or
- 27 (g) The prior authorization was based upon fraudulent, materially inaccurate,

1 or misrepresented information submitted by the covered person or dentist.

2 ➔SECTION 4. A NEW SECTION OF SUBTITLE 17C OF KRS CHAPTER 304
3 IS CREATED TO READ AS FOLLOWS:

4 (1) As used in this section:

5 (a) "Credit card payment":

6 1. Means a type of electronic funds transfer in which a dental benefit
7 plan or its contracted vendor issues a single-use series of numbers
8 associated with the payment of dental services:

9 a. Performed by a dentist and chargeable to a predetermined dollar
10 amount; and

11 b. For which the dentist is responsible for processing the payment
12 by a credit card terminal or Internet portal; and

13 2. Shall include virtual or online credit card payments for which no
14 physical credit card is presented to the dentist and the single-use credit
15 card expires upon payment processing;

16 (b) "Dentist agent" means a person that establishes an agency relationship
17 contract with a dentist to process bills for services provided by the dentist
18 under terms and conditions established between the agent and dentist. Such
19 contracts may permit the dentist agent to submit bills, request
20 reconsideration, and receive reimbursement; and

21 (c) "Electronic funds transfer payment":

22 1. Means a payment by any method of electronic funds transfer other
23 than health care electronic fund transfer and remittance advice
24 transactions under 45 C.F.R. secs. 162.1601 and 162.1602; and

25 2. Shall include virtual credit card payments.

26 (2) A dental benefit plan shall not contain restrictions on methods of payment from
27 the dental benefit plan or its vendors to the dentist in which the only acceptable

1 payment method is a credit card payment.

2 (3) When initiating or changing payments to a dentist using electronic funds transfer
 3 payments, a dental benefit plan or its vendors shall:

4 (a) Notify the dentist if any fees are associated with a particular payment
 5 method;

6 (b) Advise the dentist of the available methods of payment; and

7 (c) Provide clear instructions to the dentist as to how to select an alternative
 8 payment method.

9 (4) (a) A dental benefit plan or its vendor that initiates or changes payments to a
 10 dentist for health care electronic fund transfer and remittance advice
 11 transactions under 45 C.F.R. secs. 162.1601 and 162.1602 shall not charge
 12 a fee solely to transmit the payment to the dentist unless the dentist has
 13 consented to the fee.

14 (b) When transmitting health care electronic fund transfer and remittance
 15 advice transactions under 45 C.F.R. secs. 162.1601 and 162.1602, a dentist
 16 agent may charge reasonable fees for payments related to transaction
 17 management, data management, portal services, and other value-added
 18 services in addition to the bank transmittal.

19 ➔SECTION 5. A NEW SECTION OF SUBTITLE 17C OF KRS CHAPTER 304
 20 IS CREATED TO READ AS FOLLOWS:

21 The provisions of Sections 1 to 5 of this Act shall not be waived by contract. Any
 22 contractual arrangement in conflict with this section or that purports to waive any
 23 requirement of this section of shall be null and void.

24 ➔Section 6. KRS 304.17C-085 is amended to read as follows:

25 (1) As used in this section:

26 (a) "Contractual discount" means a percentage reduction from a provider's
 27 usual and customary rate for covered services and material required under

1 *a participating provider agreement; and*

2 *(b) "Covered services" means services and materials for which:*

3 *1. Reimbursement from a plan is provided by the enrollee's plan*
 4 *contract; or*

5 *2. Reimbursement would be available but for the application of the*
 6 *enrollee's contractual limitations of deductibles, copayments,*
 7 *coinsurance, or frequency limitations.*

8 (2) A participating provider agreement shall not require a participating provider to
 9 provide services to an enrollee~~[enrolled participant]~~ at a fee set by or subject to the
 10 approval of the limited health service benefit plan unless the services are covered
 11 services under the provider agreement.

12 (3) A provider shall not charge more for services and materials that are noncovered
 13 services under a limited health service benefit plan than the provider's rate for
 14 the services and materials.

15 (4) The amount of a contractual discount shall not result in a fee that is less than the
 16 limited health service benefit plan would pay for covered services but for the
 17 application an enrollee's contractual limitations of deductibles, copayments,
 18 coinsurance, or frequency limitations.

19 (5) Reimbursement paid by the limited health service benefit plan for covered
 20 services:

21 (a) Shall be reasonable; and

22 (b) Shall not provide nominal reimbursement in order to claim that services
 23 and materials are covered services.

24 ➔Section 7. Pursuant to KRS 304.2-110, the commissioner of insurance may
 25 promulgate administrative regulations to aid in the effectuation of the provisions of this
 26 Act.

27 ➔Section 8. Sections 1 to 6 of this Act shall apply to contracts issued, delivered,

1 entered, extended, or renewed on or after the effective date of this Act.