



# House of Representatives

General Assembly

**File No. 345**

January Session, 2021

Substitute House Bill No. 6589

*House of Representatives, April 8, 2021*

The Committee on Insurance and Real Estate reported through REP. WOOD, K. of the 29th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THIRD-PARTY ACCESS TO PARTICIPATING DENTAL PROVIDER CONTRACTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-1 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective January 1, 2022*):

3 Terms used in this title and section 2 of this act, unless it appears from  
4 the context to the contrary, shall have a scope and meaning as set forth  
5 in this section.

6 (1) "Affiliate" or "affiliated" means a person that directly, or indirectly  
7 through one or more intermediaries, controls, is controlled by or is  
8 under common control with another person.

9 (2) "Alien insurer" means any insurer that has been chartered by or  
10 organized or constituted within or under the laws of any jurisdiction or  
11 country without the United States.

12 (3) "Annuities" means all agreements to make periodical payments

13 where the making or continuance of all or some of the series of the  
14 payments, or the amount of the payment, is dependent upon the  
15 continuance of human life or is for a specified term of years. This  
16 definition does not apply to payments made under a policy of life  
17 insurance.

18 (4) "Commissioner" means the Insurance Commissioner.

19 (5) "Control", "controlled by" or "under common control with" means  
20 the possession, direct or indirect, of the power to direct or cause the  
21 direction of the management and policies of a person, whether through  
22 the ownership of voting securities, by contract other than a commercial  
23 contract for goods or nonmanagement services, or otherwise, unless the  
24 power is the result of an official position with the person.

25 (6) "Domestic insurer" means any insurer that has been chartered by,  
26 incorporated, organized or constituted within or under the laws of this  
27 state.

28 (7) "Domestic surplus lines insurer" means any domestic insurer that  
29 has been authorized by the commissioner to write surplus lines  
30 insurance.

31 (8) "Foreign country" means any jurisdiction not in any state, district  
32 or territory of the United States.

33 (9) "Foreign insurer" means any insurer that has been chartered by or  
34 organized or constituted within or under the laws of another state or a  
35 territory of the United States.

36 (10) "Insolvency" or "insolvent" means, for any insurer, that it is  
37 unable to pay its obligations when they are due, or when its admitted  
38 assets do not exceed its liabilities plus the greater of: (A) Capital and  
39 surplus required by law for its organization and continued operation;  
40 or (B) the total par or stated value of its authorized and issued capital  
41 stock. For purposes of this subdivision "liabilities" shall include but not  
42 be limited to reserves required by statute or by regulations adopted by  
43 the commissioner in accordance with the provisions of chapter 54 or

44 specific requirements imposed by the commissioner upon a subject  
45 company at the time of admission or subsequent thereto.

46 (11) "Insurance" means any agreement to pay a sum of money,  
47 provide services or any other thing of value on the happening of a  
48 particular event or contingency or to provide indemnity for loss in  
49 respect to a specified subject by specified perils in return for a  
50 consideration. In any contract of insurance, an insured shall have an  
51 interest which is subject to a risk of loss through destruction or  
52 impairment of that interest, which risk is assumed by the insurer and  
53 such assumption shall be part of a general scheme to distribute losses  
54 among a large group of persons bearing similar risks in return for a  
55 ratable contribution or other consideration.

56 (12) "Insurer" or "insurance company" includes any person or  
57 combination of persons doing any kind or form of insurance business  
58 other than a fraternal benefit society, and shall include a receiver of any  
59 insurer when the context reasonably permits.

60 (13) "Insured" means a person to whom or for whose benefit an  
61 insurer makes a promise in an insurance policy. The term includes  
62 policyholders, subscribers, members and beneficiaries. This definition  
63 applies only to the provisions of this title and does not define the  
64 meaning of this word as used in insurance policies or certificates.

65 (14) "Life insurance" means insurance on human lives and insurances  
66 pertaining to or connected with human life. The business of life  
67 insurance includes granting endowment benefits, granting additional  
68 benefits in the event of death by accident or accidental means, granting  
69 additional benefits in the event of the total and permanent disability of  
70 the insured, and providing optional methods of settlement of proceeds.  
71 Life insurance includes burial contracts to the extent provided by  
72 section 38a-464.

73 (15) "Mutual insurer" means any insurer without capital stock, the  
74 managing directors or officers of which are elected by its members.

75 (16) "Person" means an individual, a corporation, a partnership, a  
76 limited liability company, an association, a joint stock company, a  
77 business trust, an unincorporated organization or other legal entity.

78 (17) "Policy" means any document, including attached endorsements  
79 and riders, purporting to be an enforceable contract, which  
80 memorializes in writing some or all of the terms of an insurance  
81 contract.

82 (18) "State" means any state, district, or territory of the United States.

83 (19) "Subsidiary" of a specified person means an affiliate controlled  
84 by the person directly, or indirectly through one or more intermediaries.

85 (20) "Unauthorized insurer" or "nonadmitted insurer" means an  
86 insurer that has not been granted a certificate of authority by the  
87 commissioner to transact the business of insurance in this state or an  
88 insurer transacting business not authorized by a valid certificate.

89 (21) "United States" means the United States of America, its territories  
90 and possessions, the Commonwealth of Puerto Rico and the District of  
91 Columbia.

92 Sec. 2. (NEW) (*Effective January 1, 2022*) (a) For the purposes of this  
93 section:

94 (1) "Covered person" means a policyholder, subscriber, enrollee or  
95 other individual participating in a network dental benefit plan;

96 (2) "Dentist" means an individual licensed and registered as a dentist  
97 under chapter 379 of the general statutes;

98 (3) "Dental office" means a dental office, or an office, laboratory or  
99 operation or consultation room in which dental medicine, dental  
100 surgery or dental hygiene is carried on as a portion of such office's,  
101 laboratory's or room's regular business, that is owned or operated by a  
102 dentist who, or a professional corporation organized and existing under  
103 chapter 594a of the general statutes for the purpose of rendering

104 professional dental services that, is authorized to own or operate such  
105 office, laboratory or room under section 20-122 of the general statutes;

106 (4) "Health carrier" has the same meaning as provided in section 38a-  
107 591a of the general statutes;

108 (5) "Intermediary" means a person authorized to negotiate and  
109 execute a health care provider contract with a health carrier on behalf of  
110 a dentist, dental office or network;

111 (6) "Network" means the group or groups of participating dental  
112 providers providing dental services under a network dental benefit  
113 plan;

114 (7) "Network dental benefit plan" means an insurance policy or  
115 contract, certificate or agreement offered, delivered, issued for delivery,  
116 renewed, amended or continued in this state to provide, deliver, arrange  
117 for, pay for or reimburse any of the costs of dental services that requires  
118 a covered person to use, or creates incentives, including, but not limited  
119 to, financial incentives, for a covered person to use, dentists or dental  
120 offices that are managed, owned, under contract with or employed by  
121 the health carrier or the health carrier's contractor or subcontractor;

122 (8) "Participating dental provider" means a dentist or dental office  
123 that, under a participating dental provider contract with a health carrier  
124 or the health carrier's contractor or subcontractor, agrees to provide  
125 dental services to the health carrier's covered persons, with an  
126 expectation of receiving payment or reimbursement directly or  
127 indirectly from the health carrier, other than coinsurance, copayments  
128 or deductibles;

129 (9) "Participating dental provider contract" means a contract between  
130 a health carrier, or the health carrier's contractor or subcontractor, and a  
131 participating dental provider under which the participating dental  
132 provider agrees to provide dental services to the health carrier's covered  
133 persons, with an expectation of receiving payment or reimbursement  
134 directly or indirectly from the health carrier, other than coinsurance,

135 copayments or deductibles; and

136 (10) "Third party" means a person that enters into a contract with a  
137 health carrier, or the health carrier's contractor or subcontractor, to gain  
138 access to the dental services or discounts provided under a participating  
139 dental provider contract, but does not mean an employer or other group  
140 for whom the health carrier, or the health carrier's contractor or  
141 subcontractor, provides administrative services.

142 (b) (1) Except as provided in subsection (c) of this section, no  
143 participating dental provider contract entered into, renewed or  
144 amended on or after January 1, 2022, between:

145 (A) A health carrier and an intermediary or a participating dental  
146 provider shall allow a third party to gain access to such participating  
147 dental provider contract, except the health carrier may permit a third  
148 party to gain access to such participating dental provider contract if, at  
149 the time the health carrier allows the third party to gain access to such  
150 participating dental provider contract, the health carrier allows each  
151 participating dental provider that is a party to such participating dental  
152 provider contract to:

153 (i) Decline to participate in such third party's access to such  
154 participating dental provider contract; or

155 (ii) If such third party is a health carrier that gains access to such  
156 participating dental provider contract by leasing or purchasing such  
157 participating dental provider contract, contract with such third party; or

158 (B) A participating dental provider or an intermediary and a health  
159 carrier, or the health carrier's contractor or subcontractor, shall permit  
160 the health carrier, or the health carrier's contractor or subcontractor, to  
161 enter into a contract with a third party that allows the third party to gain  
162 access to such participating dental provider contract unless:

163 (i) Such participating dental provider contract:

164 (I) Provides that the health carrier, or the health carrier's contractor

165 or subcontractor, may enter into such contract with a third party and  
166 grant such access to a third party, and such third party may obtain the  
167 rights and responsibilities of such health carrier, or such health carrier's  
168 contractor or subcontractor, as if such third party were such health  
169 carrier, or such health carrier's contractor or subcontractor;

170 (II) Clearly identifies the provisions of such participating dental  
171 provider contract that allow the health carrier, or the health carrier's  
172 contractor or subcontractor, to grant such access to a third party; and

173 (III) Provides that a participating dental provider under such  
174 participating dental provider contract may decline to participate in such  
175 third party's access to such participating dental provider contract;

176 (ii) Such third party agrees to comply with all terms of such  
177 participating dental provider contract;

178 (iii) The health carrier, or the health carrier's contractor or  
179 subcontractor, discloses, in writing or by electronic means, to each  
180 participating dental provider under such participating dental provider  
181 contract the identity of such third party on the date that the health  
182 carrier, or the health carrier's contractor or subcontractor, enters into a  
183 contract with such third party to allow such third party to gain access to  
184 such participating dental provider contract;

185 (iv) The health carrier, or the health carrier's contractor or  
186 subcontractor:

187 (I) Makes a list containing the name of each third party that enters  
188 into a contract with such health carrier, or such health carrier's  
189 contractor or subcontractor, that allows such third party to gain access  
190 to such participating dental provider contract publicly available on such  
191 health carrier's, or such health carrier's contractor's or subcontractor's,  
192 Internet web site; and

193 (II) Updates the list required under subparagraph (B)(iv)(I) of this  
194 subdivision at least once every ninety days;

195 (v) The health carrier, or the health carrier's contractor or  
196 subcontractor, requires such third party to identify the source of any  
197 discount provided under such participating dental provider contract on  
198 each remittance advice or explanation of payment under which such  
199 third party takes such discount, except no such identification shall be  
200 required for an electronic transaction required under the Health  
201 Insurance Portability and Accountability Act of 1996, P.L. 104-191, as  
202 amended from time to time;

203 (vi) If the health carrier, or the health carrier's contractor or  
204 subcontractor, intends to terminate such participating dental provider  
205 contract, the health carrier, or the health carrier's contractor or  
206 subcontractor, sends a written notice to such third party disclosing such  
207 intended termination not later than thirty days before the intended  
208 termination date;

209 (vii) Such third party's right to a discounted rate under such  
210 participating dental provider contract ends on the termination date of  
211 such participating dental provider contract; and

212 (viii) The health carrier, or the health carrier's contractor or  
213 subcontractor, provides a copy of such participating dental provider  
214 contract to any participating dental provider under such participating  
215 dental provider contract not later than thirty days after such  
216 participating dental provider submits a request to the health carrier, or  
217 the health carrier's contractor or subcontractor, for such copy.

218 (2) No participating dental provider shall be required to provide  
219 dental services under a participating dental provider contract if a health  
220 carrier, or the health carrier's contractor or subcontractor, enters into a  
221 contract with a third party that allows the third party to gain access to  
222 the participating dental provider contract in violation of this section.

223 (c) The requirements of subsection (b) of this section shall not apply  
224 to any contract that grants access to a participating dental provider  
225 contract:



226 (1) To a health carrier or other entity operating in accordance with the  
227 same brand licensee program as the health carrier, or the health carrier's  
228 contractor or subcontractor, that is a party to the participating dental  
229 provider contract;

230 (2) To an affiliate of the health carrier, or the health carrier's contractor  
231 or subcontractor, that is a party to the participating dental provider  
232 contract, provided such health carrier, or such health carrier's contractor  
233 or subcontractor, makes a list of such affiliates publicly available on such  
234 health carrier's, or such health carrier's contractor's or subcontractor's,  
235 Internet web site; or

236 (3) For dental services provided to beneficiaries in this state under the  
237 Medicaid program under Title XIX of the Social Security Act, as  
238 amended from time to time, or the Children's Health Insurance Program  
239 (CHIP) under Title XXI of the Social Security Act, as amended from time  
240 to time.

241 (d) The commissioner may adopt regulations, in accordance with the  
242 provisions of chapter 54 of the general statutes, to implement the  
243 provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2022	38a-1
Sec. 2	January 1, 2022	New section

**Statement of Legislative Commissioners:**

In Section 2(a)(3), "service" was deleted for accuracy.

**INS** Joint Favorable Subst.

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*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill does not result in a fiscal impact to the state or municipalities as it regards certain requirements for contracting between private entities.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

**OLR Bill Analysis****sHB 6589****AN ACT CONCERNING THIRD-PARTY ACCESS TO PARTICIPATING DENTAL PROVIDER CONTRACTS.****SUMMARY**

This bill prohibits the parties to dental provider contracts from allowing third-party access to the contract (i.e., the health carrier's dental network) unless the third party meets certain requirements. It also allows participating dental providers to decline to participate in third-party access if these parties grant a third party access to the contract in violation of the bill's provisions. The bill applies to contracts entered, amended, or renewed on or after January 1, 2022.

The bill defines the various parties to these contracts and the contracts themselves. It also allows the insurance commissioner to adopt implementing regulations and makes a conforming change.

EFFECTIVE DATE: January 1, 2022

**DEFINITIONS**

Under the bill, a "participating dental provider" is a dentist or dental office providing services to patients under a participating dental provider contract. A "participating dental provider contract" is a contract between a participating dental provider and a carrier or its contractor or subcontractor, in which the provider agrees to provide services to people the carrier covers with an expectation that the carrier pays or reimburses him or her, excluding cost-sharing paid by the patients themselves (i.e., copayments, coinsurance, or deductibles).

A "health carrier" is an insurer, HMO, hospital or medical service corporation, or certain other entities that pay for or reimburse health service costs or provide health insurance plans or benefits.

A “third party” is a person that contracts with a health carrier or its contractors or subcontractors to gain access to dental services or discounts provided under a participating dental provider contract, but it excludes an employer or other group that the health carrier (or its contractors or subcontractors) administers.

A “dental office” is a dental office, or an office, laboratory, or operation or consultation room (1) in which dental medicine, dental surgery, or dental hygiene is regularly performed in the course of business and (2) that is owned or operated by a dentist or professional service corporation legally allowed to own or operate it.

#### **CONTRACTS BETWEEN A HEALTH CARRIER AND AN INTERMEDIARY OR PARTICIPATING DENTAL PROVIDER**

The bill prohibits participating dental provider contracts between a health carrier and an intermediary (i.e., a person authorized to negotiate and execute these contracts on behalf of dentists, or dental offices or networks) or participating dental provider from allowing a third party to gain access to the participating dental provider contract. However, it allows the health carrier to grant a third party access if it simultaneously allows each participating dental provider that is a party to the contract to (1) decline to participate in third-party access to the contract or (2) contract with the third party if it gained access to the contract by leasing or purchasing it.

#### **CONTRACTS BETWEEN PARTICIPATING DENTAL PROVIDERS OR INTERMEDIARIES AND HEALTH CARRIERS**

The bill also prohibits contracts between a participating dental provider or an intermediary and a health carrier (or its contractors or subcontractors) from allowing the health carrier or its contractors or subcontractors from contracting with a third party that allows the third party to gain access to the participating dental provider contract. However, it allows this access if the participating dental provider contract:

1. allows the health carrier or its contractors or subcontractors to contract with a third party and grants it access, and allows the

third party to obtain the health carrier's rights and responsibilities as if it were the health carrier or its contractors or subcontractors, as applicable;

2. clearly identifies the provisions allowing the health carrier, or its contractor or subcontractor, to grant third-party access; and
3. allows a participating dental provider to decline to participate in third-party access.

It also places the following requirements on these participating dental provider contracts that allow health carrier to grant access to a third party:

1. the third party must comply with all terms of the contract;
2. the health carrier (or its contractor or subcontractor) must disclose electronically or in writing the third party's identity to each participating dental provider under the contract on the date it contracts with it for access;
3. the health carrier (or its contractor or subcontractor) must (a) make publicly available on its website a list containing the name of every third party with which it contracts that is granted access to the participating dental provider contract and (b) update it at least every 90 days;
4. the health carrier (or its contractor or subcontractor) must require a third party to identify the source of any discount provided under the contract on each remittance advice or explanation of payment under which the third party takes this discount, excluding electronic transactions required by the federal Health Insurance Portability and Accountability Act;
5. a health carrier (or its contractor or subcontractor) intending to end a participating provider contract must notify a third party in writing at least 30 days before the contract termination date, with the third party's right to a discounted rate under the contract

ending when the contract does; and

6. the health carrier (or its contractor or subcontractor) must provide a copy of a participating provider contract to any participating dental provider within 30 days of request.

**EXEMPTIONS**

The bill exempts from its provisions any contract that grants the following entities access to a participating dental provider contract:

1. a health carrier or other entity operating in accordance with the health carrier’s (or contractor’s or subcontractor’s) brand licensee program when the health carrier or other entity is a party to the provider contract (the bill does not define “brand licensee program”);
2. a health carrier’s (or contractor’s or subcontractor’s) affiliate that is a party to the dental provider contract, if the health carrier, contractor, or subcontractor makes a list of affiliates publicly available on their website; or
3. dental services provided to Medicaid beneficiaries or through the Children’s Health Insurance Program (CHIP).

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/22/2021)