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DELAWARE STATE SENATE

148th GENERAL ASSEMBLY

SENATE BILL NO. 238
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE DELAWARE HEALTH INFORMATION NETWORK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 103, Title 16 of the Delaware Code by designating §§ 10301 through 10308 of Title 16 as part of a new Subchapter I by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 103. Delaware Health Information Network.

Subchapter I. Purpose, Power and Duties, and other Governing Provisions of the Delaware Health Information Network.

Section 2. Amend § 10301, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10301. Purpose.

(a) The purpose of this ~~subchapter~~ chapter is to create a public instrumentality of this State known as the Delaware Health Information Network (“DHIN”) which is a not-for-profit body both politic and corporate, which shall have the rights, obligations, ~~privileges~~ privileges, and purpose to promote the design, implementation, ~~operation~~ operation, and maintenance of facilities for public and private use of health care information in the State. The DHIN shall be the State’s sanctioned provider of health information exchange services.

Section 3. Amend § 10303, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10303. Powers and duties.

(a) In furtherance of the purposes of this ~~subchapter~~ chapter, the DHIN shall have the following powers and duties:

(18) ~~The DHIN shall make~~ Make annual reports to the Governor and members of the General Assembly setting forth in detail its operations and transactions, which shall include annual audits of the books and accounts of the DHIN made by a firm of independent certified public accountants mutually agreed to by the Auditor of Accounts and the Director of the Office of Management and Budget; ~~and~~

(19) Develop, maintain, and administer the Delaware Health Care Claims Database under subchapter II of this chapter; and

~~(19)~~ (20) Perform any and all other activities in furtherance of ~~the above~~ this section.

Section 4. Amend § 10306, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10306. Regulations; resolution of disputes.

(a) The DHIN ~~is hereby authorized to~~ may promulgate rules and regulations under ~~and pursuant to~~ subchapter II of Chapter 101 of Title 29 to carry out the objective of this ~~subchapter~~ chapter. All prior regulations and rules promulgated by the Delaware Health Care Commission in regards to the DHIN shall remain in full force and effect until amended or repealed by the DHIN.

(b) To resolve disputes under this ~~subchapter~~ chapter, or the rules and regulations promulgated ~~herein~~ under this chapter, among participants, ~~subscribers~~ subscribers, or the public, the DHIN ~~is hereby authorized to~~ may hear and determine case decisions under ~~and pursuant to~~ subchapter III of Chapter 101 of Title 29.

Section 5. Amend Chapter 103, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. The Delaware Health Care Claims Database.

§ 10311. The Delaware Health Care Claims Database—findings; purpose; creation.

(a) The General Assembly finds that:

(1) The establishment of effective health care data analysis and reporting initiatives is essential to achieving the “Triple Aim” of the State’s ongoing health care innovation efforts: improved health, health care quality and experience, and affordability for all Delawareans.

(2) The ongoing work of the Delaware Center for Health Innovation to transform the State’s health care system from a fee-for-service system to a value-based system that rewards health care providers for quality and

efficiency of care is a worthy effort, and, to that end, the General Assembly supports the establishment of a health care claims database that would assist in the State's efforts to achieve the Triple Aim.

(3) Claims data is an important component of population health research and analysis, and that appropriate access to claims data can facilitate the development of value-based health care purchasing and the study of the prevalence of illness or injury across the broader population of Delaware and in particular communities or neighborhoods.

(4) Providers and other health care entities accepting financial risk for managing the health care needs of a population, including the State of Delaware as a self-insured employer, should have access to claims data as necessary to effectively manage that risk.

(b) The purpose of this subchapter is to create a centralized health care claims database to enable the State to more effectively understand utilization across the continuum of health care in Delaware and achieve the Triple Aim.

(c) The DHIN, assisted by the Department of Health and Social Services and the Delaware Health Care Commission as necessary, shall administer a centralized health care claims database, known as the Delaware Health Care Claims Database.

(d) The Delaware Health Care Claims Database is created within the DHIN to facilitate data-driven, evidence-based improvements in access, quality, and cost of health care and to promote and improve the public health through increased transparency of accurate health care claims data and information. The DHIN shall collect and maintain claims data under this subchapter.

§ 10312. Definitions.

For purposes of this chapter, unless amended, supplemented, or otherwise modified by regulations adopted under this chapter:

(1) "Claims data" includes required claims data and any additional health care claims information that a voluntary reporting entity elects, through entry into an appropriate data submission and use agreement under this subchapter, to submit to the Delaware Health Care Claims Database.

(2) "Health care services" means as defined in § 6403 of Title 18.

(3) "Health insurer" means as defined in § 4004(b) of Title 18. "Health insurer" does not include providers of casualty insurance, as defined in § 906 of Title 18; providers of group long-term care insurance or long-term care insurance, as defined in § 7103 of Title 18; or providers of a dental plan or dental plan organization, as defined in § 3802 of Title 18.

(4) “Provider” means a hospital or any health care practitioner licensed, certified, or authorized under State law to provide health care services and includes hospitals and health care practitioners participating in group arrangements, including accountable care organizations, in which the hospital or health care practitioners agree to assume responsibility for the quality and cost of health care for a designed group of beneficiaries.

(5) “Pricing information” includes the pre-adjudicated price charged by a provider or facility to a reporting entity for health care services, the amount paid by a patient or insured party, including co-pays and deductibles, and the post-adjudicated price paid by a reporting entity to a provider for health care services.

(6) “Required claims data” includes the basic claims information that a mandatory reporting entity is required to submit to the Delaware Health Care Claims Database by the reporting date, including all of the following:

a. Basic demographic information, including the patient’s gender, age, and geographic area of residency.

b. Basic information relating to an individual episode of care, including the date and time of the patient’s admission and discharge; the identity of the health care services provider; and the location and type of facility, such as a hospital, office, or clinic, where the service was provided.

c. Information describing the nature of health care services provided to the patient in connection with the encounter, visit, or service, including diagnosis codes.

d. Health insurance product type, such as HMO or PPO.

e. Pricing information.

(7) “Reporting date” means a calendar deadline, to be scheduled on a regularly recurring basis, by which required claims data must be submitted by a mandatory reporting entity to the Delaware Health Care Claims Database.

(8) “Mandatory reporting entity” means all of the following entities, except as prohibited under federal law:

a. The State Employee Benefits Committee and the Office of Management and Budget, under each entity’s respective statutory authority to administer the State Group Health Insurance Program in Chapter 96 of Title 29, and any health insurer, third party administrator, or other entity that receives or collects charges, contributions, or premiums for, or adjusts or settles health claims for, any State employee, or their spouses or dependents, participating in the State Group Health Insurance Program, except for any carrier, as defined in § 5290 of Title 29, selected by the State Group Health Insurance Plan to offer supplemental insurance program coverage under Chapter 52C of Title 29.

b. The Division of Medicaid and Medical Assistance, with respect to services provided under programs administered under Titles XIX and XXI of the Social Security Act.

c. Any health insurer or other entity that is certified as a qualified health plan on the Delaware Health Insurance Marketplace for plan year 2017 or any subsequent plan year, except for any health insurer or other entity that is not otherwise required to provide claims data as a condition of certification as a qualified health plan on the Delaware Health Insurance Marketplace for plan year 2017 or any subsequent plan year.

d. Any federal health insurance plan providing health care services to a resident of this State, including Medicare and the Federal Employees Health Benefits Plan.

(9) "Third party administrator" means as defined in § 102 of Title 18.

(10) "Voluntary reporting entity" includes, except as prohibited under applicable federal law, any of the following entities, unless such entity is a mandatory reporting entity:

a. Any health insurer.

b. Any third party administrator.

c. Any entity, which is not a health insurer or third party administrator, when such entity receives or collects charges, contributions, or premiums for, or adjusts or settles health care claims for, residents of this State.

§ 10313. Submission of required claims data by mandatory reporting entities; submission of claims data by voluntary reporting entities.

(a) Requirements for submission of required claims data by a mandatory reporting entity.

(1) A mandatory reporting entity shall submit required claims data to the Delaware Health Care Claims Database by the reporting date.

(2) The DHIN, subject to the provisions of this subchapter and regulations promulgated under this subchapter, shall collect the required claims data from mandatory reporting entities by the reporting date.

(3) The DHIN shall, under § 10306 of this title, promulgate a template form for a data submission and use agreement for the submission of required claims data by a mandatory reporting entity.

(4) The DHIN and each mandatory reporting entity shall execute a mutually acceptable data submission and use agreement. Such agreement shall include procedures for submission, collection, aggregation, and distribution of claims data and shall provide for, at a minimum, all of the following:

a. The protection of patient privacy and data security under provisions of this chapter and state and federal privacy laws, including the federal Health Insurance Portability and Accountability Act; Titles XIX and XXI of the Social Security Act; and the Health Information Technology for Economic and Clinical Health

(HITECH) Act, and all other applicable state and federal laws relating to the privacy and security of protected health information.

b. The identification of any claims data, in addition to required claims data, that the mandatory reporting entity elects to submit to the Delaware Health Care Claims Database.

c. A detailed summary of how claims data submitted by the mandatory reporting entity may be used for geographic, demographic, economic, and peer group comparisons.

d. A representation and warranty that the DHIN shall, abide to the fullest extent possible, by nationally recognized data collection standards and methods, including the standards promulgated by the APCD Council or successor organization, to establish and maintain the database in a cost-effective manner and to facilitate uniformity among various health care claims databases of other states and specification of data fields to be included in the submitted claims, consistent with such national standards, allowing for exemptions when submitting entities do not collect the specified data or pay on a per-claim basis.

(5) Exclusions from required claims data reporting requirement. The required claims data reporting requirements under this subchapter, and any rules and regulations promulgated under this chapter, do not apply to required claims data created for any employee welfare benefit plan or other employee health plan that is regulated by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. §1001 et seq., unless otherwise permitted by federal law or regulation.

(b) Submission of claims data by a voluntary reporting entity.

(1) The DHIN shall collect claims data from voluntary reporting entities under the terms and conditions of the applicable data submission and use agreement.

(2) The DHIN may promulgate regulations to clarify the types of claims data that may be submitted by a voluntary reporting entity.

(3) The DHIN and any voluntary reporting entity that elects to submit claims data to the Delaware Health Care Claims Database shall execute a mutually acceptable data submission and use agreement. The DHIN shall publish a template form data submission and use agreement that includes the required data submission and use agreement provisions under paragraph (a)(4) of this Section.

(c) Unless modified or supplemented by regulations promulgated under this chapter, in instances where more than one entity is involved in the administration of a policy, a health insurer shall be responsible for submitting the claims data

on policies that it has written, and the third party administrator shall be responsible for submitting claims data on self-insured plans that it administers.

§ 10314. External and public reporting of claims data.

(a) The DHIN shall provide Delaware health care payers, providers, and purchasers with access to the Delaware Health Care Claims Database for the purpose of facilitating the design and evaluation of alternative delivery and payment models, including population health research and provider risk-sharing arrangements.

(1) Claims data provided to the Delaware Health Care Claims Database shall only be provided to a requesting party when a majority of the DHIN Board of Directors, or of a subcommittee established under the DHIN's bylaws for purposes of administering the Health Care Claims Database, determines that the claims data should be provided to the requesting party to facilitate the purposes of this subchapter.

a. The determination under paragraph (a)(1) of this section shall be reduced to writing and provided to the requesting party.

b. The determination under paragraph (a)(1) of this section shall be final and not subject to appeal, and there is no private right of action to a requesting party against the DHIN or any other party to enforce the requirements of this section.

(2) The DHIN shall, in consultation with the Delaware Health Care Commission, promulgate rules and regulations regarding the appropriate form and content of an application to receive claims data, providing examples of requests for claims data that will generally be deemed consistent with the purposes of this subchapter.

(b) Claims data provided to a requesting party under this section shall be provided under the DHIN's existing confidentiality and data security protocols and in compliance with all applicable state and federal laws relating to the privacy and security of protected health information, including compliance, to the fullest extent practicable consistent with the purposes under this subchapter, with guidance found in Statement 6 of the Department of Justice and Federal Trade Commission Enforcement Policy regarding the exchange of price and cost information. Individually identifiable patient health information shall be maintained by providers and purchasers in accordance with all applicable state and federal laws relating to the confidentiality and security of protected health information and any additional privacy and security requirements set forth in regulations promulgated under this chapter.

(c) The Office of Management and Budget, State Employee Benefits Committee, Division of Public Health, and Division of Medicaid and Medical Assistance shall have access to all claims data reported by the Delaware Health Care Claims Database under this subchapter at no cost for the purposes of public health improvement research and activities.

These entities are authorized to enter into appropriate agreements with the DHIN to allow the Delaware Health Care Claims Database to perform data warehousing and analytics functions that have been performed pursuant to the existing statutory authority of the Office of Management and Budget, the State Employee Benefits Committee, or the Department of Health and Social Services.

(d) The DHIN may promulgate regulations to make available to the public certain non-individually identifiable data extracts and analyses, as the DHIN determines is consistent with, and necessary to, achieve the goals and policies of this subchapter. Prior to the release of such data extracts and analyses, the same processes identified in subsection (e) of this section shall be completed.

(e) The DHIN shall promulgate regulations to notify a mandatory reporting entity or voluntary reporting entity when claims data submitted by the mandatory reporting entity or voluntary reporting entity may be released for a purpose permitted under this subchapter and provide the mandatory reporting entity or voluntary reporting entity with an opportunity to comment on the data release request prior to its release. Any comments received from a mandatory reporting entity or voluntary reporting entity during the comment period shall be reviewed, considered, and responded to by DHIN prior to the data release. If a party requesting the release of data is identified by a mandatory reporting entity or voluntary reporting entity as a potential competitor of the reporting entity, the DHIN shall limit disclosure of any pricing information that includes post-adjudicated claims data, to the fullest extent practicable and consistent with the purposes of this subchapter, to a summary format that allows for analysis without revealing contracted pricing information.

(f) The DHIN shall promulgate regulations to ensure confidentiality, privacy, and security protections of health care data and all other information collected, stored, or released by DHIN, subject to all applicable state and federal health care privacy, confidentiality, and data security laws.

§ 10315. Funding of Delaware Health Care Claims Database.

(a) The DHIN may not require any mandatory reporting entity, voluntary reporting entity, or provider to pay any cost or fee to submit or verify the accuracy of claims data or otherwise to enable the operation of the Delaware Health Care Claims Database with respect to required claims data submissions.

(b) The DHIN may enter contracts under § 10303(11) of this title with individuals and entities who voluntarily subscribe to access the database.

(c) The DHIN, with the assistance of the Department of Health and Social Services, shall develop short-term and long-term funding strategies for the creation and operation of the Delaware Health Care Claims Database that may include

public and private grant funding, subscriptions for access to data reports, access fees, and revenue for specific data projects, subject to the limitations of this section.

Section 6. Effective date. This Act shall take effect on January 1, 2017.

Section 7. Transitional provision. A mandatory reporting entity may not be required to submit claims data to the Delaware Health Care Claims Database until at least 180 days after the DHIN promulgates final regulations setting forth the specific format and other requirements for claims data submission, including the form, medium, and content of the required data elements.

Section 8. Severability. If any provision of this Act, or the application of this Act to any person, thing, or circumstances is determined by a Court to be invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.