

1 **H. B. 3192**

2  
3 (By Delegates Perry, Morgan, White, Ashley  
4 and Walters)

5 [Introduced February 18, 2011; referred to the  
6 Committee on Banking and Insurance then the Judiciary.]

7 **FISCAL**  
8 **NOTE**

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §33-49-1, §33-49-2,  
12 §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7 and §33-49-8,  
13 all relating to those persons or entities that enters into  
14 direct contracts with providers for the delivery of health  
15 care services; requiring registration of contracting entities  
16 with the Insurance Commissioner; setting forth the rights and  
17 responsibilities of contracting entities; setting forth the  
18 right and responsibilities of third parties; making it an  
19 unfair insurance practice for unauthorized access to provider  
20 network contracts; providing that the Insurance Fraud Unit has  
21 enforcement responsibilities; defining terms; and establishing  
22 an effective date.

23 *Be it enacted by the Legislature of West Virginia:*

24 That the Code of West Virginia, 1931, as amended, be amended  
25 by adding thereto a new article, designated §33-49-1, §33-49-2,

1 §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7 and §33-49-8, all  
2 to read as follows:

3 **ARTICLE 49. RENTAL NETWORK CONTRACT ARRANGEMENTS ACT.**

4 **§33-49-1. Definitions.**

5 For purposes of this article, the following definitions  
6 apply:

7 (1) "Contracting entity" means any person or entity that  
8 enters into direct contracts with providers for the delivery of  
9 health care services in the ordinary course of business.

10 (2) "Covered individual" means an individual who is covered  
11 under a health insurance plan.

12 (3) "Direct notification" is a written or electronic  
13 communication from a contracting entity to a provider documenting  
14 third party access to a provider network.

15 (4) "Health care services" means services for the diagnosis,  
16 prevention, treatment, or cure of a health condition, illness,  
17 injury, or disease.

18 (5) "Health insurance plan" means any hospital and medical  
19 expense incurred policy, nonprofit health care service plan  
20 contract, health maintenance organization subscriber contract, or  
21 any other health care plan or arrangement that pays for or  
22 furnishes medical or health care services, whether by insurance or  
23 otherwise. "Health insurance plan" does not include one or more, or  
24 any combination of, the following: coverage only for accident, or

1 disability income insurance; coverage issued as a supplement to  
2 liability insurance; liability insurance, including general  
3 liability insurance and automobile liability insurance; automobile  
4 medical payment insurance; credit-only insurance; coverage for on-  
5 site medical clinics; coverage similar to the foregoing as  
6 specified in federal regulations issued pursuant to the Health  
7 Insurance Portability and Accountability Act of 1996, P. L. 104-  
8 191, under which benefits for medical care are secondary or  
9 incidental to other insurance benefits; dental or vision benefits;  
10 benefits for long-term care, nursing home care, home health care,  
11 or community-based care; specified disease or illness coverage,  
12 hospital indemnity or other fixed indemnity insurance, or such  
13 other similar, limited benefits as are specified in regulations;  
14 Medicare supplemental health insurance as defined under Section  
15 1882(g) (1) of the Social Security Act; coverage supplemental to the  
16 coverage provided under Chapter 55 of Title 10, United States Code;  
17 or other similar limited benefit supplemental coverages.

18 (6) "Provider" means a physician, a physician organization, or  
19 a physician hospital organization that is acting exclusively as an  
20 administrator on behalf of a provider to facilitate the provider's  
21 participation in health care contracts. "Provider" does not include  
22 a physician organization or physician hospital organization that  
23 leases or rents the physician organization's or physician hospital  
24 organization's network to a third party.

1       (7) "Provider network contract" means a contract between a  
2 contracting entity and a provider specifying the rights and  
3 responsibilities of the contracting entity and provider for the  
4 delivery of and payment for health care services to covered  
5 individuals.

6       (8) "Third party" means an organization that enters into a  
7 contract with a contracting entity or with another third party to  
8 gain access to a provider.

9 **§33-49-2. Scope.**

10       (a) This article does not apply to provider network contracts  
11 for services provided to Medicaid, Medicare, or State Children's  
12 Health Insurance Program (SCHIP) beneficiaries.

13       (b) This article does not apply in circumstances where access  
14 to the provider network contract is granted to an entity operating  
15 under the same brand licensee program as the contracting entity.

16       (c) This article does not apply to a contract between a  
17 contracting entity and a discount medical plan organization.

18       (d) This article applies to self-funded employer-sponsored  
19 health insurance plans and/or third-party administrators operating  
20 on their behalf as regulated under the Employee Retirement Income  
21 Security Act of 1974 (ERISA).

22 **§33-49-3. Registration.**

23       (a) Any person that commences business as a contracting entity  
24 shall register with the Insurance Commissioner within thirty days

1 of commencing business in this state unless that person is licensed  
2 by the Insurance Commissioner as an insurer. Upon passage of this  
3 article, each person, not licensed by the Insurance Commissioner as  
4 a contracting entity shall register with the Insurance Commissioner  
5 within ninety days of the effective date of this article.

6 (b) Registration shall consist of the submission of the  
7 following information:

8 (1) The official name of the contracting entity, including any  
9 "during business as" designations used in this state;

10 (2) The mailing address and main telephone number for the  
11 contracting entity's main headquarters; and

12 (3) The name and telephone number of the contracting entity's  
13 representative who shall serve as the primary contact with the  
14 department.

15 (c) The information required by this section shall be  
16 submitted in written or electronic format, as prescribed by the  
17 Insurance Commissioner.

18 (d) The Insurance Commissioner may collect a reasonable fee  
19 for the purpose of administering the registration process.

20 **§33-49-4. Contracting entity rights and responsibilities.**

21 (a) A contracting entity may not grant access to a provider's  
22 health care services and contractual discounts pursuant to a  
23 provider network contract unless:

1       (1) The provider network contract specifically states that the  
2 contracting entity may enter into an agreement with a third party  
3 allowing the third party to obtain the contracting entity's rights  
4 and responsibilities under the provider network contract as if the  
5 third party were the contracting entity; and

6       (2) The third party accessing the provider network contract is  
7 contractually obligated to comply with all applicable terms,  
8 limitations, and conditions of the provider network contract.

9       (b) A contracting entity that grants access to a provider's  
10 health care services and contractual discounts pursuant to a  
11 provider network contract shall:

12       (1) Identify and provide to the provider, upon request at the  
13 time a provider network contract is entered into with a provider,  
14 a written or electronic list of all third parties known at the time  
15 of contracting, to which the contracting entity has or will grant  
16 access to the provider's health care services and contractual  
17 discounts pursuant to a provider network contract;

18       (2) Maintain an Internet website or other readily available  
19 mechanism, such as a toll-free telephone number, through which a  
20 provider may obtain a listing, updated at least every ninety days,  
21 of the third parties to which the contracting entity or another  
22 third party has executed contracts to grant access to the  
23 provider's health care services and contractual discounts pursuant  
24 to a provider network contract;

1 (3) Provide the third party with sufficient information  
2 regarding the provider network contract to enable the third party  
3 to comply with all relevant terms, limitations, and conditions of  
4 the provider network contract;

5 (4) Require that the third party who contracts with the  
6 contracting entity to gain access to the provider network contract  
7 identify the source of the contractual discount taken by the third  
8 party on each remittance advice (RA) or explanation of payment  
9 (EOP) form furnished to a health care provider when such discount  
10 is pursuant to the contracting entity's provider network contract;  
11 and

12 (A) Notify the third party who contracts with the`contracting  
13 entity to gain access to the provider network contract of the  
14 termination of the provider network contract no later than thirty  
15 days prior to the effective date of the final termination of the  
16 provider network contract; and

17 (B) Require those that are by contract eligible to claim the  
18 right to access a provider's discounted rate to cease claiming  
19 entitlement to those rates or other contracted rights or  
20 obligations for services rendered after termination of the provider  
21 network contract.

22 (c) The notice required by paragraph (A), subdivision (5),  
23 subsection (b) of this section can be provided through any  
24 reasonable means, including, but not limited to, written notice,

1 electronic communication, or an update to electronic database or  
2 other provider listing.

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

5 (1) A third party's right to access a provider's health care  
6 services and contractual discounts pursuant to a provider network  
7 contract shall terminate on the date the provider network contract  
8 is terminated;

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

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

17 (e) (1) All information made available to provider in  
18 accordance with this article shall be confidential and shall not be  
19 disclosed to any person or entity not involved in the provider's  
20 practice or the administration thereof without the prior written  
21 consent of the contracting entity.

22 (2) Nothing contained in this article shall be construed to  
23 prohibit a contracting entity from requiring the provider to  
24 execute a reasonable confidentiality agreement to ensure that



1 confidential or proprietary information disclosed by the  
2 contracting entity is not used for any purpose other than the  
3 provider's direct practice management or billing activities.

4 **§33-49-5. Third party rights and responsibilities.**

5 (a) A third party, having itself been granted access to a  
6 provider's health care services and contractual discounts pursuant  
7 to a provider network contract, that subsequently grants access to  
8 another third party is obligated to comply with the rights and  
9 responsibilities imposed on contracting entities under sections  
10 four and six of this article.

11 (b) A third party that enters into a contract with another  
12 third party to access a provider's health care services and  
13 contractual discounts pursuant a provider network contract is  
14 obligated to comply with the rights and responsibilities imposed on  
15 third parties under section five of this article.

16 (c) (1) A third party will inform the contracting entity and  
17 providers under the contracting entity's provider network contract  
18 of the location of a website, toll-free number, or other readily  
19 available mechanism, to identify the name of the person or entity  
20 to which the third party subsequently grants access to the  
21 provider's health care services and contractual discounts pursuant  
22 to the provider network contract.

23 (2) The website will be updated on a routine basis as  
24 additional persons or entities are granted access. The website

1 shall be updated to reflect all current persons and entities with  
2 access every ninety days. Upon request, a contracting entity shall  
3 make access information available to a provider via telephone or  
4 through direct notification.

5 **§33-49-6. Unauthorized access to provider network contracts.**

6 (a) It is an unfair insurance practice to knowingly access or  
7 utilize a provider's contractual discount pursuant to a provider  
8 network contract without a contractual relationship with the  
9 provider, contracting entity, or third party, as specified in this  
10 article.

11 (b) A provider may refuse the discount taken on services  
12 referenced on a remittance advice (RA) or explanation of payment  
13 (EOP), if the provider did not receive notice via ID card or  
14 pursuant to subdivision (2), subsection (b), section four of this  
15 section or subsection (c), section five of this article prior to  
16 the services referenced in the RA or EOP.

17 (c) A contracting entity may not lease, rent, or otherwise  
18 grant to a third party, access to a provider network contract  
19 unless the third party accessing the health care contract is:

20 (1) A payer or third party administrator or another entity  
21 that administers or processes claims on behalf of the payer;

22 (2) A preferred provider organization or preferred provider  
23 network, including a physician organization or physician-hospital  
24 organization; or

1       (3) An entity engaged in the electronic claims transport  
2 between the contracting entity and the payer that does not provide  
3 access to the provider's services and discount to any other third  
4 party.

5 **§33-49-7. Enforcement.**

6       The West Virginia Insurance Fraud Unit shall enforce this  
7 article.

8 **§33-49-8. Effective Date.**

9       This article shall be effective on July 1, 2011.

NOTE: The purpose of this bill relates to those persons or entities that enters into direct contracts with providers for the delivery of health care services. The bill requires registration of contracting entities. The bill sets forth the rights and responsibilities of contracting entities and third parties. The bill makes it an unfair insurance practice for unauthorized access to provider network contracts. The bill provides that the Insurance Fraud Unit has enforcement responsibilities. The bill also defines terms and establishes an effective date.

This article is new; therefore, it has been completely underscored.