
Health Care & Wellness Committee

HB 2066

Brief Description: Addressing affordability through health care provider contracting.

Sponsors: Representatives Riccelli, Macri, Ramel, Simmons, Reed, Ormsby, Fosse, Lekanoff and Doglio.

Brief Summary of Bill

- Prohibits the use of certain contractual provisions in contracts between health carriers and hospitals.
- Requires a provider and health carrier to engage in good faith negotiations when a provider contract is expiring or terminating due to a without-cause notification.

Hearing Date: 1/17/24

Staff: Kim Weidenaar (786-7120).

Background:

Provider Contracts and Provider Compensation Agreements.

Health carriers must file all provider contracts and provider compensation agreements with the Office of the Insurance Commissioner (OIC) 30 calendar days before use. When a carrier and provider negotiate an agreement that deviates from a filed agreement, the specific contract must be filed 30 days prior to use. Any provider compensation agreements not affirmatively disapproved by the OIC are deemed approved, except the OIC may extend the approval date an additional 15 days with notice before the initial 30-day period expires. Changes to the previously filed agreements that modify the compensation or related terms must be filed and are deemed approved upon filing if no other changes are made to the previously approved agreement. The OIC may not base a disapproval of the agreement on the amount of the

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compensation or other financial arrangements between the carrier and provider, unless the compensation amount causes the underlying health benefit plan to be in violation of state or federal law.

The Office of the Insurance Commissioner regulations require a health carrier and participating provider and facility to provide at least sixty days written notice to each other before terminating the contract without cause. For without-cause terminations, the health carrier must make a good faith effort to ensure written notice of a termination is provided at least 30 days before the effective date of the termination.

Consumer Protection Act.

Under the Consumer Protection Act (CPA), unfair or deceptive acts or practices in trade or commerce are unlawful. The CPA provides that any person injured in his or her business or property through such practices may bring a civil action to recover actual damages sustained and costs of the suit, including reasonable attorneys' fees. The Attorney General may bring an action under the CPA to restrain and prevent unfair and deceptive acts and practices.

Summary of Bill:

A provider or health carrier may not directly or indirectly offer, solicit, request, or enter into a provider contract that includes an:

- all-or-nothing clause, defined as a provision of a provider contract that requires a health carrier to contract with multiple hospitals or affiliates of a hospital owned or controlled by the same single entity;
- anti-steering clause, defined as a provision of a provider contract that restricts the ability of a health carrier to encourage an enrollee to obtain a health care service from a competitor of the hospital or an affiliate of the hospital, including offering incentives to encourage enrollees to utilize specific health care providers; or
- anti-tiering clause, defined as a provision in a provider contract that requires a health carrier to place a hospital or any affiliate of the hospital in a tier or a tiered provider network reflecting the lowest or lower enrollee cost-sharing amounts.

Any provision in a provider contract that is an all-or-nothing clause, an anti-steering clause, or an anti-tiering clause is void and unenforceable, but remaining contractual provisions remain in effect and are enforceable.

For provider contracts, a provider and health carrier must engage in good faith negotiations when a provider contract is expiring or terminating due to a without-cause notification as permitted by the provider contract, regardless of the initiating party, unless the parties agree not to negotiate a new provider contract and allow the existing provider contract to terminate. Providers are prohibited from making any public statements or releasing notices of any potential or planned terminations of agreements with health carriers to any patients or third party until 30 days prior to the termination effective date.

The Attorney General is authorized to enforce these provisions under the CPA. For purposes of CPA actions that are brought by the Attorney General, contracts that violate these provisions are considered an unfair or deceptive act in trade or commerce and an unfair method of competition.

Definitions.

"Provider contract" is a written contract between a carrier and a provider for any health care services rendered to an enrollee. "Control" is defined as the possession, directly, of the power the management, and policies of a person, whether through ownership of voting securities, membership rights, by contract, or otherwise. "Tiered provider network" means a network that identifies and groups providers and facilities into specific groups to which different provider reimbursement, enrollee cost sharing, or provider access requirements, or any combination thereof, apply as a means to manage cost, utilization, quality, or to otherwise incentivize enrollee or provider behavior. "Affiliate" means a person who directly through one or more intermediaries, controls, is controlled by, or is under common control with, another specified person.

For purposes of these requirements, "provider" means:

- a health care provider and the employees or agents of a health care provider;
- a hospital, hospice, rural health care facility, psychiatric hospital, nursing home, community mental health center, kidney disease treatment center, ambulatory diagnostic, treatment, or surgical facilities, drug and alcohol treatment facilities, home health agencies, and other facilities as required by federal law;
- a health care benefit manager; and
- intermediaries that have agreed in writing with a health carrier to provide access to providers who render covered services to the enrollees of a health carrier.

A new chapter in Title 19 is created.

Appropriation: None.

Fiscal Note: Requested on January 10, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.