SENATE BILL REPORT
SB 5393

As of January 27, 2023

Title: An act relating to addressing affordability through health care provider contracting.

Brief Description: Addressing affordability through health care provider contracting.

Sponsors: Senators Robinson, Dhingra, Hasegawa, Keiser, Randall, Valdez and Wilson, C..

Brief History:
Committee Activity: Health & Long Term Care: 1/27/23.

Brief Summary of Bill

- Prohibits the use of certain contractual provisions in contracts between health carriers and hospitals or hospital affiliates.
- Requires the Office of the Insurance Commissioner to study regulatory approaches used by other states to address affordability of health plan rates.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: Greg Attanasio (786-7410)

Background: 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 OIC are deemed approved, except 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

OIC may not base a disapproval of the agreement on the amount of the 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.

Provider compensation agreements are confidential and not subject to public inspection or public disclosure if they are filed following the procedures for submitting confidential filings in the electronic rate and form filings. If the filing instructions are not followed and the carrier indicates that the compensation agreement will be withheld from public inspection, OIC must reject the filing and notify the carrier to amend the filing to comply with the confidentiality instructions.

Summary of Bill: For health plans, including plans offered to public employees, issued on or after January 1, 2024, a provider contract between a hospital or any affiliate of a hospital and a health carrier may not directly or indirectly include an all-or-nothing clause, an anti-steering clause, an anti-tiering clause, or any clause that sets provider compensation agreements or other terms for an affiliate of a hospital that will not be included as participating providers in the agreement.

For the purposes of this act:

- an "all-or-nothing clause" means a contract provision that requires a health carrier to contract with multiple hospitals or affiliates of a hospital owned or controlled by the same single entity;
- an "anti-steering clause" means a contract provision 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; and
- an "anti-tiering clause" means a contract provision 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.

The health carrier must also submit an attestation signed by the carrier and the hospital or any affiliate of the hospital, attesting that the contract negotiations did not include discussion of or agreement to any of the contract provisions prohibited under this act.

A health carrier is not prohibited from voluntarily agreeing to contract with other hospitals owned or controlled by the same single entity, however, if a health carrier voluntarily agrees to contract with other hospitals owned or controlled by the same single entity, the health carrier must file a declaration with OIC.

The prohibition on contract terms does not apply if it would prevent a hospital, provider, or health carrier from participating in a state-sponsored or federally funded health care program, state or federal grant opportunity, or a value-based purchasing arrangement structured to reduce unnecessary utilization, improve health outcomes, and contain health

care costs.

This act does not prohibit a critical access hospital or sole community hospital from negotiating payment rates and methodologies on behalf of an individual health care practitioner or a medical group the hospital is affiliated with.

A health plan contract between a health carrier and a hospital, physician or physician group, or ancillary provider may not include a clause requiring the health carrier to reimburse a hospital, physician or physician group, or ancillary provider at the contract rate of an acquiring entity when that entity acquires the hospital, physician or physician group, or ancillary provider, or the hospital, physician or physician group, or ancillary provider enters into a management, co-management, professional services, leasing, joint venture, or similar agreement 39 or arrangement with the acquiring entity.

Self-funded group health plans may elect to participate in the provisions of the act by providing notice to OIC in a manner prescribed by OIC.

OIC, in collaboration with Office of the Attorney General, must study regulatory approaches used by other states to address affordability of health plan rates and the impact of anticompetitive behaviors on health care affordability. OIC must submit a report to the Legislature by December 1, 2023.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: One key driver of health care prices is consolidation of health systems. Consolidation does not lead to lower costs or better care. Carriers need sufficient networks, and with health system consolidation network participation is controlled by a single entity that can leverage that power for higher rates. Contract negotiations are not level and this bill helps to level the playing field and puts sideboards on consolidation. Increased health care costs reduces the ability of small businesses to provide health care to employees. This bill prohibits anticompetitive practices.

CON: Consolidation allows needed facilities to remain open and it is not done for market leverage. This bill gives disproportionate power to health carriers. This bill will negatively affect the ability to negotiate value based contracts. This bill would fracture integrated care models. Increased payment rates have been below inflation. The bill only applies in one direction and carriers use all or nothing provision as well. This bill is unnecessary and could harm competition. This would affect those groups without market power.

OTHER: There is a concern that value-based care will be negatively affected by this bill. To provide value-based care, hospitals need partnerships.

Persons Testifying: PRO: Senator June Robinson, Prime Sponsor; Jennifer Ziegler, Association of Washington Health Care Plans; Jane Beyer, Office of the Insurance Commissioner; Gary Strannigan, Premera Blue Cross; Chris Bandoli, AHIP; Denise Corcoran, Regence; Bill Kramer, Purchaser Business Group on Health; Emily Brice, Northwest Health Law Advocates; Sam Hatzenbeler, Economic Opportunity Institute; Sybill Hyppolite, WA State Labor Council; Jim Freeburg, Patient Coalition of Washington.

CON: Bill Robertson, MultiCare Health System; Suzanne Daly, MultiCare Health System; Dhyan Lal, Virginia Mason Franciscan Health; Douglas Ross; Sean Graham, Washington State Medical Association; Lisa Thatcher, Washington State Hospital Association.

OTHER: Nari Heshmati, The Everett Clinic.

Persons Signed In To Testify But Not Testifying: No one.