



House Bill No. 7363

Public Act No. 19-199

AN ACT PROHIBITING CERTAIN RECOUPMENT PROVISIONS IN PHARMACY SERVICES CONTRACTS AND CONCERNING A PREVAILING RATE OF WAGES EXEMPTION.

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

Section 1. Section 38a-477cc of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(a) [On and after January 1, 2018, no] No contract for pharmacy services entered into in the state between a health carrier, as defined in section 38a-591a, or pharmacy benefits manager, as defined in section 38a-479aaa, and a pharmacy or pharmacist shall:

(1) On and after January 1, 2018, contain a provision prohibiting or penalizing, including through increased utilization review, reduced payments or other financial disincentives, a pharmacist's disclosure to an individual purchasing prescription medication of information regarding: [(1) the]

(A) The cost of the prescription medication to the individual; [,] or [(2) the]

(B) The availability of any therapeutically equivalent alternative medications or alternative methods of purchasing the prescription

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medication, including, but not limited to, paying a cash price, that are less expensive than the cost of the prescription medication to the individual; [.] and

(2) On and after January 1, 2020, contain a provision permitting the health carrier or pharmacy benefits manager to recoup, directly or indirectly, from a pharmacy or pharmacist any portion of a claim that such health carrier or pharmacy benefits manager has paid to the pharmacy or pharmacist, unless such recoupment is permitted under section 38a-479iii or required by applicable law.

(b) (1) On and after January 1, 2018, no health carrier or pharmacy benefits manager shall require an individual to make a payment at the point of sale for a covered prescription medication in an amount greater than the lesser of: [(1) the]

(A) The applicable copayment for such prescription medication; [,
(2) the]

(B) The allowable claim amount for the prescription medication; [,]
or [(3) the]

(C) The amount an individual would pay for the prescription medication if the individual purchased the prescription medication without using a health benefit plan, as defined in section 38a-591a, or any other source of prescription medication benefits or discounts.

(2) For the purposes of this subsection, "allowable claim amount" means the amount the health carrier or pharmacy benefits manager has agreed to pay the pharmacy for the prescription medication.

(c) Any provision of a contract that violates the provisions of this section shall be void and unenforceable. Any general business practice that violates the provisions of this section shall constitute an unfair trade practice pursuant to chapter 735a. The invalidity or

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unenforceability of any contract provision under this subsection shall not affect any other provision of the contract.

(d) The Insurance Commissioner may: [(1) pursuant to the provisions of chapter 697, enforce]

(1) Enforce the provisions of this section [pursuant to chapter 697;
and

(2) [upon] Upon request, audit a contract for pharmacy services for compliance with the provisions of this section.

Sec. 2. Section 31-53 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2019*):

(a) Each contract for the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project by the state or any of its agents, or by any political subdivision of the state or any of its agents, shall contain the following provision: "The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day."

(b) Any contractor or subcontractor who knowingly or wilfully employs any mechanic, laborer or worker in the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or

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repair of any public works project for or on behalf of the state or any of its agents, or any political subdivision of the state or any of its agents, at a rate of wage on an hourly basis that is less than the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed, remodeled, refinished, refurbished, rehabilitated, altered or repaired, or who fails to pay the amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, or in lieu thereof to the person, as provided by subsection (a) of this section, shall be fined not less than two thousand five hundred dollars but not more than five thousand dollars for each offense and (1) for the first violation, shall be disqualified from bidding on contracts with the state or any political subdivision until the contractor or subcontractor has made full restitution of the back wages owed to such persons and for an additional six months thereafter, and (2) for subsequent violations, shall be disqualified from bidding on contracts with the state or any political subdivision until the contractor or subcontractor has made full restitution of the back wages owed to such persons and for not less than an additional two years thereafter. In addition, if it is found by the contracting officer representing the state or political subdivision of the state that any mechanic, laborer or worker employed by the contractor or any subcontractor directly on the site for the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as required by this section, the state or contracting political subdivision of the state may (A) by written or electronic notice to the contractor, terminate such contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the state or the contracting political subdivision for any excess costs occasioned the state or the contracting political subdivision thereby, or (B) withhold payment of money to the contractor or

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subcontractor. The contracting department of the state or the political subdivision of the state shall, not later than two days after taking such action, notify the Labor Commissioner, in writing or electronically, of the name of the contractor or subcontractor, the project involved, the location of the work, the violations involved, the date the contract was terminated, and steps taken to collect the required wages.

(c) The Labor Commissioner may make complaint to the proper prosecuting authorities for the violation of any provision of subsection (b) of this section.

(d) For the purpose of predetermining the prevailing rate of wage on an hourly basis and the amount of payment or contributions paid or payable on behalf of each person to any employee welfare fund, as defined in subsection (i) of this section, in each town where such contract is to be performed, the Labor Commissioner shall (1) hold a hearing at any required time to determine the prevailing rate of wages on an hourly basis and the amount of payment or contributions paid or payable on behalf of each person to any employee welfare fund, as defined in subsection (i) of this section, upon any public work within any specified area, and shall establish classifications of skilled, semiskilled and ordinary labor, or (2) adopt and use such appropriate and applicable prevailing wage rate determinations as have been made by the Secretary of Labor of the United States under the provisions of the Davis-Bacon Act, as amended.

(e) The Labor Commissioner shall determine the prevailing rate of wages on an hourly basis and the amount of payment or contributions paid or payable on behalf of such person to any employee welfare fund, as defined in subsection (i) of this section, in each locality where any such public work is to be constructed, and the agent empowered to let such contract shall contact the Labor Commissioner, at least ten but not more than twenty days prior to the date such contracts will be advertised for bid, to ascertain the proper rate of wages and amount of

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employee welfare fund payments or contributions and shall include such rate of wage on an hourly basis and the amount of payment or contributions paid or payable on behalf of each person to any employee welfare fund, as defined in subsection (i) of this section, or in lieu thereof the amount to be paid directly to each person for such payment or contributions as provided in subsection (a) of this section for all classifications of labor in the proposal for the contract. The rate of wage on an hourly basis and the amount of payment or contributions to any employee welfare fund, as defined in subsection (i) of this section, or cash in lieu thereof, as provided in subsection (a) of this section, shall, at all times, be considered as the minimum rate for the classification for which it was established. Prior to the award of any contract, purchase order, bid package or other designation subject to the provisions of this section, such agent shall certify to the Labor Commissioner, either in writing or electronically, the total dollar amount of work to be done in connection with such public works project, regardless of whether such project consists of one or more contracts. Upon the award of any contract subject to the provisions of this section, the contractor to whom such contract is awarded shall certify, under oath, to the Labor Commissioner the pay scale to be used by such contractor and any of the contractor's subcontractors for work to be performed under such contract.

(f) Each employer subject to the provisions of this section, section 31-53c or 31-54 shall (1) keep, maintain and preserve such records relating to the wages and hours worked by each person performing the work of any mechanic, laborer and worker and a schedule of the occupation or work classification at which each person performing the work of any mechanic, laborer or worker on the project is employed during each work day and week in such manner and form as the Labor Commissioner establishes to assure the proper payments due to such persons or employee welfare funds under this section, section 31-53c or 31-54, regardless of any contractual relationship alleged to exist

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between the contractor and such person, provided such employer shall have the option of keeping, maintaining and preserving such records in an electronic format, and (2) submit monthly to the contracting agency or the Department of Economic and Community Development pursuant to section 31-53c by mail, electronic mail or other method accepted by such agency or the Department of Economic and Community Development, a certified payroll that shall consist of a complete copy of such records accompanied by a statement signed by the employer that indicates (A) such records are correct; (B) the rate of wages paid to each person performing the work of any mechanic, laborer or worker and the amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of this section, are not less than the prevailing rate of wages and the amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, as determined by the Labor Commissioner pursuant to subsection (d) of this section, and not less than those required by the contract to be paid; (C) the employer has complied with the provisions of this section, section 31-53c and 31-54; (D) each such person is covered by a workers' compensation insurance policy for the duration of such person's employment, which shall be demonstrated by submitting to the contracting agency the name of the workers' compensation insurance carrier covering each such person, the effective and expiration dates of each policy and each policy number; (E) the employer does not receive kickbacks, as defined in 41 USC 52, from any employee or employee welfare fund; and (F) pursuant to the provisions of section 53a-157a, the employer is aware that filing a certified payroll which the employer knows to be false is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both. This subsection shall not be construed to prohibit a general contractor from relying on the certification of a lower tier subcontractor, provided the general contractor shall not be exempted from the provisions of section 53a-

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157a if the general contractor knowingly relies upon a subcontractor's false certification. Notwithstanding the provisions of section 1-210, the certified payroll shall be considered a public record and every person shall have the right to inspect and copy such records in accordance with the provisions of section 1-212. The provisions of subsections (a) and (b) of section 31-59 and sections 31-66 and 31-69 that are not inconsistent with the provisions of this section, section 31-53c or 31-54 apply to this section. Failing to file a certified payroll pursuant to subdivision (2) of this subsection is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both.

(g) Any contractor who is required by the Labor Department to make any payment as a result of a subcontractor's failure to pay wages or benefits, or any subcontractor who is required by the Labor Department to make any payment as a result of a lower tier subcontractor's failure to pay wages or benefits, may bring a civil action in the Superior Court to recover no more than the damages sustained by reason of making such payment, together with costs and a reasonable attorney's fee.

(h) (1) The provisions of this section shall not apply where (A) the combined total cost or total bond authorization for all work to be performed by all contractors and subcontractors in connection with new construction of any public works project is less than one million dollars, or (B) the combined total cost of all work to be performed by all contractors and subcontractors in connection with any remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project is less than one hundred thousand dollars.

(2) [From the effective date of this section until] On and after October 31, 2017, and prior to July 1, 2019, the provisions of this subdivision shall not apply where the work to be performed by any contractor or subcontractor in connection with new construction,

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remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project funded in whole or in part by any private bequest that is greater than nine million dollars but less than twelve million dollars for a municipality in New Haven County with a population of not less than twelve thousand and not more than thirteen thousand, as determined by the most recent population estimate by the Department of Public Health.

(3) On and after July 1, 2019, and prior to January 1, 2020, the provisions of this subdivision shall not apply where the work to be performed by any contractor or subcontractor in connection with new construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project funded in whole or in part by any private bequest that is greater than nine million dollars but less than twenty-two million dollars for a municipality in New Haven County with a population of not less than twelve thousand and not more than thirteen thousand, as determined by the most recent population estimate by the Department of Public Health.

(i) As used in this section [, section] and sections 31-53c and 31-54, "employee welfare fund" means any trust fund established by one or more employers and one or more labor organizations or one or more other third parties not affiliated with the employers to provide from moneys in the fund, whether through the purchase of insurance or annuity contracts or otherwise, benefits under an employee welfare plan; provided such term shall not include any such fund where the trustee, or all of the trustees, are subject to supervision by the Banking Commissioner of this state or any other state or the Comptroller of the Currency of the United States or the Board of Governors of the Federal Reserve System, and "benefits under an employee welfare plan" means one or more benefits or services under any plan established or maintained for persons performing the work of any mechanics, laborers or workers or their families or dependents, or for both,

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including, but not limited to, medical, surgical or hospital care benefits; benefits in the event of sickness, accident, disability or death; benefits in the event of unemployment, or retirement benefits.

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