



General Assembly

February Session, 2022

Raised Bill No. 416

LCO No. 3028



Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:
(INS)

***AN ACT PROMOTING COMPETITION IN CONTRACTS BETWEEN
HEALTH CARRIERS AND HEALTH CARE PROVIDERS.***

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

1 Section 1. Section 38a-477g of the 2022 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective January 1, 2023*):

4 (a) As used in this section:

5 (1) "Anti-steering clause" means a provision of a health care contract
6 that restricts the ability of the health insurance carrier or health plan
7 administrator from encouraging an enrollee to obtain a health care
8 service from a competitor of the hospital or health system, including
9 offering incentives to encourage enrollees to utilize specific health care
10 providers.

11 (2) "Anti-tiering clause" means a provision in a health care contract
12 that:

13 (A) Restricts the ability of the health insurance carrier or health plan

14 administrator from introducing or modifying a tiered network plan or
15 assign health care providers into tiers; or

16 (B) Requires the health insurance carrier or health plan administrator
17 to place all members of a health care provider in the same tier of a tiered
18 network plan.

19 (3) "All-or-nothing clause" means a provision in a health care contract
20 that:

21 (A) Requires the health insurance carrier or health plan administrator
22 to include all members of a health care provider in a network plan; or

23 (B) Requires the health insurance carrier or health plan administrator
24 to enter into any additional contract with an affiliate of the health care
25 provider as a condition to entering into a contract with such health care
26 provider.

27 [(1)] (4) "Covered person", "facility" and "health carrier" have the
28 same meanings as provided in section 38a-591a. [,]

29 [(2) "health care provider"] (5) "Health care provider" has the same
30 meaning as provided in subsection (a) of section 38a-477aa. [, and]

31 (6) "Health plan administrator" means a third-party administrator
32 who acts on behalf of a plan sponsor to administer a health benefit plan.

33 [(3) "intermediary"] (7) "Intermediary", "network", "network plan"
34 and "participating provider" have the same meanings as provided in
35 subsection (a) of section 38a-472f.

36 (8) "Tiered network" has the same meaning as provided in section
37 38a-472f.

38 (b) (1) Each contract entered into, renewed or amended on or after
39 January 1, 2017, between a health carrier and a participating provider
40 shall include:

41 (A) A hold harmless provision that specifies protections for covered

42 persons. Such provision shall include the following statement or a
43 substantially similar statement: "Provider agrees that in no event,
44 including, but not limited to, nonpayment by the health carrier or
45 intermediary, the insolvency of the health carrier or intermediary, or a
46 breach of this agreement, shall the provider bill, charge, collect a deposit
47 from, seek compensation, remuneration or reimbursement from, or
48 have any recourse against a covered person or a person (other than the
49 health carrier or intermediary) acting on behalf of the covered person
50 for services provided pursuant to this agreement. This agreement does
51 not prohibit the provider from collecting coinsurance, deductibles or
52 copayments, as specifically provided in the evidence of coverage, or fees
53 for uncovered services delivered on a fee-for-service basis to covered
54 persons. Nor does this agreement prohibit a provider (except for a
55 health care provider who is employed full-time on the staff of a health
56 carrier and has agreed to provide services exclusively to that health
57 carrier's covered persons and no others) and a covered person from
58 agreeing to continue services solely at the expense of the covered
59 person, as long as the provider has clearly informed the covered person
60 that the health carrier does not cover or continue to cover a specific
61 service or services. Except as provided herein, this agreement does not
62 prohibit the provider from pursuing any available legal remedy.";

63 (B) A provision that in the event of a health carrier or intermediary
64 insolvency or other cessation of operations, the participating provider's
65 obligation to deliver covered health care services to covered persons
66 without requesting payment from a covered person other than a
67 coinsurance, copayment, deductible or other out-of-pocket expense for
68 such services will continue until the earlier of (i) the termination of the
69 covered person's coverage under the network plan, including any
70 extension of coverage provided under the contract terms or applicable
71 state or federal law for covered persons who are in an active course of
72 treatment, as set forth in subdivision (2) of subsection (g) of section 38a-
73 472f, or are totally disabled, or (ii) the date the contract between the
74 health carrier and the participating provider would have terminated if
75 the health carrier or intermediary had remained in operation, including

76 any extension of coverage required under applicable state or federal law
77 for covered persons who are in an active course of treatment or are
78 totally disabled;

79 (C) (i) A provision that requires the participating provider to make
80 health records available to appropriate state and federal authorities
81 involved in assessing the quality of care provided to, or investigating
82 grievances or complaints of, covered persons, and (ii) a statement that
83 such participating provider shall comply with applicable state and
84 federal laws related to the confidentiality of medical and health records
85 and a covered person's right to view, obtain copies of or amend such
86 covered person's medical and health records; and

87 (D) (i) If such contract is entered into, renewed or amended before
88 July 1, 2022, definitions of what is considered timely notice and a
89 material change for the purposes of subparagraph (A) of subdivision (2)
90 of subsection (c) of this section, or (ii) if such contract is entered into,
91 renewed or amended on or after July 1, 2022, (I) a statement disclosing
92 the ninety-day advance written notice requirement established under
93 subparagraph (B) of subdivision (2) of subsection (c) of this section and
94 what is considered a material change for the purposes of subdivision (2)
95 of subsection (c) of this section, and (II) provisions affording the
96 participating provider a right to appeal any proposed change to the
97 provisions, other documents, provider manuals or policies disclosed
98 pursuant to subdivision (1) of subsection (c) of this section.

99 (2) The contract terms set forth in subparagraphs (A) and (B) of
100 subdivision (1) of this subsection shall (A) be construed in favor of the
101 covered person, (B) survive the termination of the contract regardless of
102 the reason for the termination, including the insolvency of the health
103 carrier, and (C) supersede any oral or written agreement between a
104 health care provider and a covered person or a covered person's
105 authorized representative that is contrary to or inconsistent with the
106 requirements set forth in subdivision (1) of this subsection.

107 (3) No contract subject to this subsection shall include any provision

108 that conflicts with the provisions contained in the network plan or
109 required under this section, section 38a-472f or section 38a-477h.

110 (4) No health carrier or participating provider that is a party to a
111 contract under this subsection shall assign or delegate any right or
112 responsibility required under such contract without the prior written
113 consent of the other party.

114 (c) (1) At the time a contract subject to subsection (b) of this section is
115 signed, the health carrier or such health carrier's intermediary shall
116 disclose to a participating provider:

117 (A) All provisions and other documents incorporated by reference in
118 such contract; and

119 (B) If such contract is entered into, renewed or amended on or after
120 July 1, 2022, all provider manuals and policies incorporated by reference
121 in such contract, if any.

122 (2) While such contract is in force, the health carrier shall:

123 (A) If such contract is entered into, renewed or amended before July
124 1, 2022, timely notify a participating provider of any change to the
125 provisions or other documents specified under subparagraph (A) of
126 subdivision (1) of this subsection that will result in a material change to
127 such contract; or

128 (B) If such contract is entered into, renewed or amended on or after
129 July 1, 2022, provide to a participating provider at least ninety days'
130 advance written notice of any change to the provisions or other
131 documents specified under subparagraph (A) of subdivision (1) of this
132 subsection, and any change to the provider manuals and policies
133 specified under subparagraph (B) of subdivision (1) of this subsection,
134 that will result in a material change to such contract or the procedures
135 that a participating provider must follow pursuant to such contract.

136 (d) (1) (A) Each contract between a health carrier and an intermediary
137 entered into, renewed or amended on or after January 1, 2017, shall

138 satisfy the requirements of this subsection.

139 (B) Each intermediary and participating providers with whom such
140 intermediary contracts shall comply with the applicable requirements
141 of this subsection.

142 (2) No health carrier shall assign or delegate to an intermediary such
143 health carrier's responsibilities to monitor the offering of covered
144 benefits to covered persons. To the extent a health carrier assigns or
145 delegates to an intermediary other responsibilities, such health carrier
146 shall retain full responsibility for such intermediary's compliance with
147 the requirements of this section.

148 (3) A health carrier shall have the right to approve or disapprove the
149 participation status of a health care provider or facility in such health
150 carrier's own or a contracted network that is subcontracted for the
151 purpose of providing covered benefits to the health carrier's covered
152 persons.

153 (4) A health carrier shall maintain at its principal place of business in
154 this state copies of all intermediary subcontracts or ensure that such
155 health carrier has access to all such subcontracts. Such health carrier
156 shall have the right, upon twenty days' prior written notice, to make
157 copies of any intermediary subcontracts to facilitate regulatory review.

158 (5) (A) Each intermediary shall, if applicable, (i) transmit to the health
159 carrier documentation of health care services utilization and claims
160 paid, and (ii) maintain at its principal place of business in this state, for
161 a period of time prescribed by the commissioner, the books, records,
162 financial information and documentation of health care services
163 received by covered persons, in a manner that facilitates regulatory
164 review, and shall allow the commissioner access to such books, records,
165 financial information and documentation as necessary for the
166 commissioner to determine compliance with this section and section
167 38a-472f.

168 (B) Each health carrier shall monitor the timeliness and

169 appropriateness of payments made by its intermediary to participating
170 providers and of health care services received by covered persons.

171 (6) In the event of the intermediary's insolvency, a health carrier shall
172 have the right to require the assignment to the health carrier of the
173 provisions of a participating provider's contract that address such
174 participating provider's obligation to provide covered benefits. If a
175 health carrier requires such assignment, such health carrier shall remain
176 obligated to pay the participating provider for providing covered
177 benefits under the same terms and conditions as the intermediary prior
178 to the insolvency.

179 (e) The commissioner shall not act to arbitrate, mediate or settle (1)
180 disputes regarding a health carrier's decision not to include a health care
181 provider or facility in such health carrier's network or network plan, or
182 (2) any other dispute between a health carrier, such health carrier's
183 intermediary or one or more participating providers, that arises under
184 or by reason of a participating provider contract or the termination of
185 such contract.

186 (f) No health insurance carrier, health care provider, health plan
187 administrator, or any agents or other entities that contract on behalf of
188 a health care provider, health insurance carrier or health plan
189 administrator may offer, solicit, request, amend, renew or enter into a
190 health care contract that would directly or indirectly include any of the
191 following provisions:

192 (1) An anti-steering clause;

193 (2) An anti-tiering clause;

194 (3) An all-or-nothing clause; or

195 (4) Any other clause that results or intends to result in
196 anticompetitive effects as may be adopted by the commissioner, in
197 accordance with chapter 54.

198 (g) Any contract, written policy, written procedure or agreement that

199 contains a clause contrary to the provisions set forth in subsection (f) of
200 this section shall be null and void. All remaining clauses of the contract
201 shall remain in effect for the duration of the contract term.

202 (h) The Insurance Commissioner may adopt regulations, in
203 accordance with chapter 54, to implement the provisions of subsection
204 (f) of this section.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	January 1, 2023	38a-477g
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Statement of Purpose:

To exclude the following in contracts between health carriers and health care providers: (1) Anti-steering clauses; anti-tiering clauses; and (2) all-or-nothing clauses.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]