



House of Representatives

General Assembly

File No. 326

January Session, 2023

Substitute House Bill No. 6620

House of Representatives, March 30, 2023

The Committee on Insurance and Real Estate reported through REP. WOOD of the 29th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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. (NEW) (*Effective October 1, 2023*) (a) As used in this section:

2 (1) "All-or-nothing clause" means any provision in a health care
3 contract that:

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

6 (B) Requires the health carrier or health plan administrator to enter
7 into any additional contract with an affiliate of the health care provider
8 as a condition to entering into a contract with such health care provider;

9 (2) "Anti-steering clause" means any provision in a health care
10 contract that restricts the ability of the health carrier or health plan
11 administrator from encouraging an enrollee to obtain a health care
12 service from a competitor of a hospital or health system, including
13 offering incentives to encourage enrollees to utilize specific health care
14 providers;

15 (3) "Anti-tiering clause" means any provision in a health care contract
16 that:

17 (A) Restricts the ability of the health carrier or health plan
18 administrator to introduce and modify a tiered network plan or assign
19 health care providers into tiers; or

20 (B) Requires the health carrier or health plan administrator to place
21 all members of a health care provider in the same tier of a tiered network
22 plan;

23 (4) "Gag clause" means any provision in a health care contract that:

24 (A) Restricts the ability of the health care provider, health carrier or
25 health plan administrator to disclose any price or quality information,
26 including, but not limited to, the allowed amount, negotiated rates or
27 discounts, any fees for services or any other claim-related financial
28 obligations included in the provider contract, to any governmental
29 entity as authorized by law or such government entity's contractors or
30 agents, any enrollee, any treating health care provider of an enrollee,
31 plan sponsor or potential eligible enrollees and plan sponsors; or

32 (B) Restricts the ability of either any health care provider, health
33 carrier or health plan administrator to disclose out-of-pocket costs to
34 any enrollee;

35 (5) "Health benefit plan", "network", "network plan" and "tiered
36 network" have the same meanings as provided in section 38a-472f of the
37 general statutes;

38 (6) "Health care contract" means any contract, agreement or
39 understanding, either orally or in writing, entered into, amended,
40 restated or renewed between a health care provider and a health carrier,
41 health plan administrator, plan sponsor or its contractors or agents for
42 delivery of health care services to an enrollee of a health benefit plan;

43 (7) "Health care provider" means any for-profit or nonprofit entity,
44 corporation or organization, parent corporation, member, affiliate,

45 subsidiary or entity under common ownership that is or whose
46 members are licensed or otherwise authorized by this state to furnish,
47 bill for or receive payment for health care service delivery in the normal
48 course of business, including, but not limited to, a health system,
49 hospital, hospital-based facility, freestanding emergency department,
50 imaging center, physician group with eight or more physicians, urgent
51 care center, as defined in section 19a-493d of the general statutes, and
52 any physician or physician group in a practice of fewer than eight
53 physicians that is employed by or an affiliate of any hospital, medical
54 foundation or insurance company;

55 (8) "Health carrier" has the same meaning as provided in section 38a-
56 591a of the general statutes; and

57 (9) "Health plan administrator" means any third-party administrator
58 who acts on behalf of a plan sponsor to administer a health benefit plan.

59 (b) No health care provider, health carrier, health plan administrator
60 or any agent or other entity that contracts on behalf of a health care
61 provider, health carrier, or health plan administrator, may offer, solicit,
62 request, amend, renew or enter into a health care contract on or after
63 January 1, 2024, that directly or indirectly includes any of the following
64 provisions:

65 (1) An all-or-nothing clause;

66 (2) An anti-steering clause;

67 (3) An anti-tiering clause; or

68 (4) A gag clause.

69 (c) Any clause in a health care contract, written policy, written
70 procedure or agreement entered into, renewed or amended on or after
71 January 1, 2024, that is contrary to the provisions set forth in subsection
72 (b) of this section shall be null and void. All remaining clauses of such
73 health care contract, written policy, written procedure or agreement
74 shall remain in effect for the duration of the contract term.

75 (d) Nothing in this section shall be construed to modify, reduce or
 76 eliminate the existing privacy protections and standards pursuant to the
 77 federal Health Insurance Portability and Accountability Act of 1996, P.L.
 78 104-191, as amended from time to time, the federal Genetic Information
 79 Nondiscrimination Act of 2008, P.L. 110-233, as amended from time to
 80 time, or the federal Americans with Disabilities Act of 1990, 42 USC
 81 12101, as amended from time to time.

82 (e) The Attorney General may:

83 (1) Issue in writing and cause to be served upon any parties to a
 84 health care contract by subpoena, a demand requiring that such parties
 85 submit to the Attorney General any records from a health care contract
 86 that are necessary for the Attorney General to investigate suspected
 87 violations of subsection (b) of this section; or

88 (2) Seek a temporary or permanent injunction and such other relief as
 89 may be appropriate to enjoin a health care provider, health carrier,
 90 health plan administrator or any agent or other entity that contracts on
 91 behalf of a health care provider, health carrier or health plan
 92 administrator from continuing to enforce contract provisions that
 93 violate the requirements as set forth in subsection (b) of this section. If
 94 the court determines that any such violation exists, it may grant such
 95 injunctive relief and such other relief as justice may require and may set
 96 a time period within which such health care provider, health carrier,
 97 health plan administrator or any agent or other entity that contracts on
 98 behalf of a health care provider, health carrier or health plan
 99 administrator shall comply with any such order.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	New section

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Attorney General	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill may result in a revenue gain to the state beginning in FY 24 associated with potential fines for violations of the bill's prohibition of certain health care contract provisions. The bill allows the Office of the Attorney General to seek an injunction and other relief, including monetary fines, from violations.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations for which fines are collected.

OLR Bill Analysis**sHB 6620*****AN ACT PROMOTING COMPETITION IN CONTRACTS BETWEEN HEALTH CARRIERS AND HEALTH CARE PROVIDERS.*****SUMMARY**

This bill prohibits health care providers, health carriers (i.e., insurers and HMOs), health plan administrators, or any agent or entity contracting on their behalf from offering, soliciting, requesting, amending, renewing, or entering a health care contract on or after January 1, 2024, that includes an all-or-nothing clause, anti-steering clause, anti-tiering clause, or gag clause.

The bill makes null and void any of these clauses in a health care contract (i.e., an oral or written agreement to provide services under a health benefit plan), written policy or procedure, or agreement. However, it specifies that (1) all remaining clauses remain in effect for the contract's duration and (2) that it does not modify, reduce, or eliminate any existing privacy protections and standards under the federal Health Insurance Portability and Accountability, Genetic Information Nondiscrimination, or federal Americans with Disabilities acts.

The bill authorizes the attorney general to enforce its provisions, including by seeking a permanent injunction against violators.

EFFECTIVE DATE: October 1, 2023

PROHIBITED CLAUSES

Under the bill, an "all-or-nothing clause" requires health carriers or health plan administrators to (1) include all members of a health care provider in a network plan or (2) contract with a provider's affiliate as a

condition of contracting with the provider.

An “anti-steering clause” restricts a carrier or administrator from encouraging an enrollee to get healthcare services from a competing hospital or health system, including by offering incentives for enrollees to use specific healthcare providers.

An “anti-tiering clause” (1) restricts health carriers from introducing or modifying a tiered network plan or assigning providers to tiers or (2) requires a health carrier to assign all health care provider members to the same tier.

A “gag clause” restricts a health care provider, carrier, or administrator from disclosing certain information to a government entity (or its contractors or agents), enrollee or their treating provider, plan sponsor or potential eligible enrollees. The information is any price or quality information, including allowed amounts, negotiated rates or discounts, fees for services, or other claim related financial obligations. It also includes a clause that restricts the ability of a health care provider, carrier, or plan administrator to disclose out of pocket costs to enrollees.

Applicability to Health Care Providers

The bill defines a health care provider as a physician group with (1) eight or more members or (2) less than eight members that are employed by or are an affiliate of a hospital, medical foundation, or insurance company. A health care provider is also a for-profit or nonprofit entity, corporation or organization, parent corporation, member, affiliate, subsidy, or entity under common ownership that is authorized by Connecticut to bill or receive payment for health care services in the normal course of business. It also includes hospitals, hospital-based facilities, health systems, freestanding emergency departments, and imaging centers.

ENFORCEMENT

Under the bill, the attorney general may subpoena any parties to a health care contract to require them to submit related records needed to investigate suspected violations of the bill. The attorney general may

seek temporary or permanent injunctions and other relief as appropriate to enjoin a health care provider, carrier, administrator, or other contracting entity from enforcing the prohibited contract clauses. If the court determines a contract violation exists, it may grant injunctive relief and other relief as justice may require. It may also set a deadline for the violating party to comply with an order.

BACKGROUND

Related Bill

sSB 983, favorably reported by the Insurance and Real Estate Committee, contains substantially similar contract provisions.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 12 Nay 0 (03/14/2023)