



General Assembly

January Session, 2023

Raised Bill No. 6620

LCO No. 3172



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. (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 its contractors or agents, any enrollee, any
30 treating health care provider of an enrollee, plan sponsor or potential
31 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", "participating
36 provider" and "tiered network" have the same meanings as provided in
37 section 38a-472f of the 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, large physician group with eight or more physicians,
51 physician staffing organization, urgent care center and any physician or
52 physician group in a practice of fewer than eight physicians that is
53 employed by or an affiliate of any hospital, medical foundation,
54 insurance company or other similar entity;

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

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 and

60 (10) "Most-favored health carrier or health plan administrator clause"
61 means any provision of a health care contract that:

62 (A) Prohibits or grants any health carrier or health plan administrator
63 an option to prohibit any health care provider from contracting with
64 another entity to provide health care services at the same or lower price
65 than the payment specified in the health care contract;

66 (B) Requires or grants any health carrier or health plan administrator
67 an option to require any health care provider to accept a lower payment
68 in the event the health care provider agrees to provide health care
69 services to another entity at a lower price;

70 (C) Requires or grants any health carrier or health plan administrator
71 an option to require termination or renegotiation of an existing health
72 care contract if such health care provider agrees to provide health care
73 services to another entity at the same or lower price; or

74 (D) Restricts any health carrier or health plan administrator, not party
75 to the health care contract, from paying the same or lower rates for items
76 or services than the contracting health carrier or health plan
77 administrator pays for such items or services.

78 (b) Except as provided in subsections (d) and (e) of this section, no
79 health care provider, health carrier, health plan administrator or any
80 agent or other entity that contracts on behalf of a health care provider,
81 health carrier, or health plan administrator, may offer, solicit, request,
82 amend, renew or enter into a health care contract on or after January 1,
83 2024, that directly or indirectly includes any of the following provisions:

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

85 (2) An anti-steering clause;

86 (3) An anti-tiering clause;

87 (4) A gag clause; or

88 (5) A most-favored health carrier or health plan administrator clause.

89 (c) Except as provided in subsections (d) and (e) of this section, any
90 clause in a health care contract, written policy, written procedure or
91 agreement entered into, renewed or amended on or after January 1,
92 2024, that is contrary to the provisions set forth in subsection (b) of this
93 section shall be null and void. All remaining clauses of such health care
94 contract, written policy, written procedure or agreement shall remain in
95 effect for the duration of the contract term.

96 (d) Any party to a health care contract that contains a provision as set
97 forth in subdivisions (1) to (5), inclusive, of subsection (b) of this section
98 may apply for a waiver of the requirements of subsection (b) of this
99 section by submitting to the Insurance Commissioner the following:

100 (1) A copy of the health care contract;

101 (2) The name and business address of each party to the health care

102 contract and each location where each party to the health care contract
103 provides health care services; and

104 (3) Any information to demonstrate that such health care contract
105 improves the welfare of consumers in this state in a way that could not
106 have been accomplished through less restrictive alternative means.

107 (e) The Insurance Commissioner shall approve or deny such waiver
108 submitted pursuant to subsection (d) of this section not later than sixty
109 days after receipt of such application for a waiver by a party to a health
110 care contract. The Insurance Commissioner may approve a waiver to
111 allow a contract to include a clause specified in subsection (b) of this
112 section upon finding that: (1) The health care contract improves the
113 welfare of consumers in this state to such a degree that the
114 procompetitive benefits of including the provision outweigh any harms
115 to competition; (2) such improvement to the welfare of consumers in this
116 state could not have been accomplished through less restrictive
117 alternative means; and (3) the health care contract does not constitute a
118 contract, combination or conspiracy in restraint of trade pursuant to the
119 provisions of chapter 624 of the general statutes.

120 (f) The provisions of subsection (b) of this section shall not apply to a
121 partnership plan, as defined in section 3-123aaa of the general statutes,
122 or a state employee plan, as defined in section 3-123rrr of the general
123 statutes.

124 (g) Nothing in this section shall be construed to limit network design
125 or cost or quality initiatives by a group health plan, health carrier or an
126 administrator working on behalf of a plan sponsor, including an
127 accountable care organization, exclusive provider organization,
128 network that tiers health care providers by cost or quality or that steer
129 enrollees to centers of excellence or other pay-for-performance
130 programs.

131 (h) Nothing in this section shall be construed to modify, reduce or
132 eliminate the existing privacy protections and standards pursuant to the
133 federal Health Insurance Portability and Accountability Act of 1996, P.L.

134 104-191, as amended from time to time, the federal Genetic Information
135 Nondiscrimination Act of 2008, P.L. 110-233, as amended from time to
136 time, or the federal Americans with Disabilities Act of 1990, 42 USC
137 12101, as amended from time to time.

138 (i) The Attorney General may:

139 (1) Issue in writing and cause to be served upon any parties to a
140 health care contract by subpoena, a demand requiring that such parties
141 submit to the Attorney General any records from a health care contract
142 that are necessary for the Attorney General to investigate suspected
143 violations of subsection (b) of this section;

144 (2) Seek a temporary or permanent injunction and such other relief as
145 may be appropriate to enjoin a health care provider, health carrier,
146 health plan administrator or any agent or other entity that contracts on
147 behalf of a health care provider, health carrier or health plan
148 administrator from continuing to enforce contract provisions that
149 violate the requirements as set forth in subsection (b) of this section. If
150 the court determines that any such violation exists, it may grant such
151 injunctive relief and such other relief as justice may require and may set
152 a time period within which such health care provider, health carrier,
153 health plan administrator or any agent or other entity that contracts on
154 behalf of a health care provider, health carrier or health plan
155 administrator shall comply with any such order.

156 (j) The Insurance Commissioner may:

157 (1) Inspect records and papers of any health carrier, health plan
158 administrator or any agent or other entity that contracts on behalf of a
159 health carrier or health plan administrator that pertain to health care
160 contract negotiation;

161 (2) Require any health carrier, health plan administrator or any agent
162 or other entity that contracts on behalf of a health carrier or health plan
163 administrator to produce a list of all health care contracts or pricing
164 arrangements entered into during the preceding twelve months;

165 (3) Except as provided in subsections (d) and (e) of this section, assess
166 any health carrier, health plan administrator or any agent or other entity
167 that contracts on behalf of a health carrier or health plan administrator
168 an administrative penalty in an amount not to exceed five thousand
169 dollars for each day that such health carrier, health plan administrator
170 or any agent or other entity that contracts on behalf of a health carrier
171 or health plan administrator violates subsection (b) of this section; and

172 (4) Refer any health care contract to the Attorney General to review
173 for compliance with subsection (b) of this section.

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

Statement of Purpose:

To exclude the following in contracts between health carriers and health care providers: (1) All-or-nothing clauses; (2) anti-steering clauses; (3) anti-tiering clauses; (4) gag clauses; and (5) most-favored health carrier or health plan administrator 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.]