General Assembly

Amendment

January Session, 2023

LCO No. **8220**

Offered by:
REP. WOOD K., 29th Dist.

To: Subst. House Bill No. **6620** File No. 326 Cal. No. 225

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

Strike everything after the enacting clause and substitute the following in lieu thereof:

"Section 1. (NEW) (*Effective January 1, 2025*) (a) As used in this section:

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

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

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

(2) "Anti-steering clause" means any provision in a health care contract that restricts the ability of the health carrier or health plan administrator from encouraging an enrollee to obtain a health care

service from a competitor of a hospital or health system, including offering incentives to encourage enrollees to utilize specific health care providers such as centers of excellence or any other pay-for-performance program;

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

(A) Restricts the ability of the health carrier or health plan administrator to introduce and modify a tiered network plan or assign health care providers into tiers, including a network that tiers providers by cost or quality; or

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

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

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

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

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

(6) "Health care contract" means any contract, agreement or understanding, either orally or in writing, entered into, amended,

restated or renewed between a health care provider and a health carrier, health plan administrator, plan sponsor or its contractors or agents for delivery of health care services to an enrollee of a health benefit plan;

(7) "Health care provider" means any for-profit or nonprofit entity, corporation or organization, parent corporation, member, affiliate, subsidiary or entity under common ownership that is or whose members are licensed or otherwise authorized by this state to furnish, bill for or receive payment for health care service delivery in the normal course of business, including, but not limited to, a health system, hospital, hospital-based facility, freestanding emergency department, imaging center, physician group with eight or more physicians, urgent care center, as defined in section 19a-493d of the general statutes, and any physician or physician group in a practice of fewer than eight physicians that is employed by or an affiliate of any hospital, medical foundation or insurance company;

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

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

(b) No health care provider, health carrier, health plan administrator or any agent or other entity that contracts on behalf of a health care provider, health carrier, or health plan administrator, may offer, solicit, request, amend, renew or enter into a health care contract on or after January 1, 2025, that directly or indirectly includes any of the following provisions:

(1) An all-or-nothing clause;

(2) An anti-steering clause;

(3) An anti-tiering clause; or

(4) A gag clause.

(c) Any clause in a health care contract, written policy, written procedure or agreement entered into, renewed or amended on or after January 1, 2025, that is contrary to the provisions set forth in subsection (b) of this section shall be null and void. All remaining clauses of such health care contract, written policy, written procedure or agreement shall remain in effect for the duration of the contract term.

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

Sec. 2. Subsection (f) of section 38a-472f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2025*):

(f) (1) Each health carrier shall develop standards, to be used by such health carrier and its intermediaries, for selecting and tiering, as applicable, participating providers and each health care provider specialty. Each contract involving a tiered network entered into, renewed or amended on or after January 1, 2025, between a health carrier and participating provider shall include a provision requiring that such health carrier provide to the participating provider, upon request, such participating provider's calculated score and related data, as available, and a description of the standards used for selecting and tiering such participating provider, including:

(A) Definitions and specifications of measures related to quality, cost, efficiency, satisfaction and any other factors used to develop such standards and measure performance under such standards, with delineation of any inclusions or exclusions under each measure;

(B) A defined time period of not less than one year to measure performance based on such standards; and

(C) A summary of the grievance process established pursuant to subdivision (2) of this subsection for a participating provider to appeal the results of such health carrier's tiering decisions and performance measures.

(2) The standards developed by each health carrier pursuant to subdivision (1) of this subsection shall remain in effect for not less than one year. Each health carrier shall (A) provide not less than ninety days' written notice to each participating provider before such health carrier may implement any changes to such standards and measures, and (B) establish a grievance process for a participating provider to appeal such health carrier's tiering decisions and performance measures for such participating provider.

[(2)**]** (3) No health carrier shall establish selection or tiering criteria in a manner that would (A) allow the health carrier to discriminate against high-risk populations by excluding or tiering participating providers because they are located in a geographic area that contains populations or participating providers that present a risk of higher-than-average claims, losses or health care services utilization, or (B) exclude participating providers because they treat or specialize in treating populations that present a risk of higher-than-average claims, losses or health care services utilization. Nothing in this subdivision shall be construed to prohibit a health carrier from declining to select a health care provider or facility for participation in such health carrier's network who fails to meet legitimate selection criteria established by such health carrier.

[(3)**]** (4) No health carrier shall establish selection criteria that would allow the health carrier to discriminate, with respect to participation in a network plan, against any health care provider who is acting within the scope of such health care provider's license or certification under state law. Nothing in this subdivision shall be construed to require a health carrier to contract with any health care provider or facility willing to abide by the terms and conditions for participation established by such health carrier.

[(4)**]** (5) Each health carrier shall make the standards required under subdivision (1) of this subsection available to the commissioner for review and shall post on its Internet web site and make available to the public a plain language description of such standards, including all measures and corresponding definitions and specifications used to tier participating providers and to evaluate participating provider performance in each tier. Each health carrier shall post on its Internet web site a plain language description of the grievance process established pursuant to subdivision (2) of this subsection for a participating provider to appeal the results of such health carrier's tiering decisions and performance measures.

[(5)**]** (6) Nothing in this subsection shall require a health carrier, its intermediaries or health care provider networks with which such health carrier or intermediary contracts to (A) employ specific health care providers acting within the scope of such health care providers' license or certification under state law who meet such health carrier's selection criteria, or (B) contract with or retain more health care providers acting within the scope of such health care providers' license or certification under state law than are necessary to maintain a sufficient network."

This act shall take effect as follows and shall amend the following sections:		
Section 1	*January 1, 2025*	New section
Sec. 2	*January 1, 2025*	38a-472f(f)