



131st MAINE LEGISLATURE

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Legislative Document

No. 1708

H.P. 1097

House of Representatives, April 18, 2023

An Act to Address Anticompetitive Terms in Health Insurance Carrier and Health Care Provider Contracts

Reference to the Committee on Health Coverage, Insurance and Financial Services
suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MORRIS of Turner.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §1728** is enacted to read:

3 **§1728. Health care provider contract requirements**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "All-or-nothing clause" means a provision in a contract that:

7 (1) Requires a carrier to include all members of a provider in a network plan;

8 (2) Requires a carrier to enter into any additional contract with any or all affiliates
9 of a provider as a condition to entering into a contract with that provider; or

10 (3) Requires a carrier to agree to payment rates or other terms for an affiliate or
11 individual facility that is not party to the contract.

12 B. "Anti-steering clause" means a provision in a contract that restricts the ability of a
13 carrier to direct or steer an enrollee to obtain a health care service from another
14 provider, including offering incentives to encourage enrollees to use specific providers.

15 C. "Anti-tiering clause" means a provision in a contract that:

16 (1) Restricts the ability of a carrier to introduce or modify a tiered network plan or
17 assign providers into tiers;

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

20 (3) Restricts the ability of a carrier to introduce or assign providers to a particular
21 network.

22 D. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3.

23 E. "Enrollee" has the same meaning as in Title 24-A, section 4301-A, subsection 5.

24 F. "Excessively concentrated market" means a market in which the provider has a
25 Herfindahl-Hirschman index of 2,500 or more.

26 G. "Health plan" has the same meaning as in Title 24-A, section 4301-A, subsection
27 7.

28 H. "Provider" has the same meaning as in Title 24-A, section 4301-A, subsection 16.

29 **2. Contract requirements.** Beginning January 1, 2024, a provider, or a person acting
30 on the provider's behalf, may not offer, solicit, request, amend, renew or enter into a
31 contract with a carrier that would directly or indirectly include any of the following
32 provisions:

33 A. An anti-steering clause;

34 B. An anti-tiering clause; or

35 C. An all-or-nothing clause.

36 **3. Termination of contracts; notice.** A provider may not terminate a contract with a
37 carrier prior to the date on which the contract ends unless the provider provides prior notice
38 to the Attorney General and the Superintendent of Insurance. The Attorney General may

1 intervene to prevent termination of the contract if the Attorney General finds the
2 termination would result in any of the following:

3 A. The health care market would be excessively concentrated in the county in which
4 the provider is located;

5 B. Fewer than 2 of that type of provider in a county or a net loss of more than 5 primary
6 care providers in a county; or

7 C. A material adverse impact on health care costs.

8 **4. Unenforceable.** A person may not enforce any contract provision, written policy,
9 written procedure or agreement contrary to the provisions set forth in this section.

10 **5. Enforcement.** The following provisions apply.

11 A. A carrier may institute a civil action against a provider to enforce the provisions of
12 subsection 2, including specific performance, injunctive or declaratory relief, and any
13 other relief the court deems appropriate.

14 B. The Attorney General may:

15 (1) Subpoena any records necessary to enforce this section or to investigate
16 suspected violations of this section;

17 (2) Institute proceedings on behalf of the State or as parens patriae of the persons
18 residing in this State for:

19 (a) Injunctive relief to prevent and restrain a violation of this section,
20 including, but not limited to, a temporary restraining order, preliminary
21 injunction or permanent injunction;

22 (b) Civil penalties for violations of this section; or

23 (c) Other equitable relief for violations of this section, including, but not
24 limited to, disgorgement or restitution.

25 **Sec. 2. 24-A MRSA §4308-A** is enacted to read:

26 **§4308-A. Health care provider contract requirements**

27 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
28 following terms have the following meanings.

29 A. "All-or-nothing clause" means a provision in a contract that:

30 (1) Requires a carrier to include all members of a provider in a network plan;

31 (2) Requires a carrier to enter into any additional contract with any or all affiliates
32 of a provider as a condition to entering into a contract with that provider; or

33 (3) Requires a carrier to agree to payment rates or other terms for an affiliate or
34 individual facility that is not party to the contract.

35 B. "Anti-steering clause" means a provision in a contract that restricts the ability of a
36 carrier to direct or steer an enrollee to obtain a health care service from another
37 provider, including offering incentives to encourage enrollees to use specific providers.

38 C. "Anti-tiering clause" means a provision in a contract that:

1 (1) Restricts the ability of a carrier to introduce or modify a tiered network plan or
2 assign providers into tiers;

3 (2) Requires a carrier to place all members of a provider in the same tier of a tiered
4 network plan; or

5 (3) Restricts the ability of a carrier to introduce or assign providers to a particular
6 network.

7 **2. Contract requirements.** Beginning January 1, 2024, a carrier, or a person acting
8 on the carrier's behalf, may not offer, solicit, request, amend, renew or enter into a contract
9 with a provider that would directly or indirectly include any of the following provisions:

10 A. An anti-steering clause;

11 B. An anti-tiering clause; or

12 C. An all-or-nothing clause.

13 **3. Termination of contracts; notice.** A provider may not terminate a contract with a
14 carrier prior to the date on which the contract ends unless the provider provides prior notice
15 to the Attorney General and the Superintendent of Insurance. The Attorney General may
16 intervene to prevent termination of the contract if the Attorney General finds the
17 termination would result in any of the following:

18 A. The health care market would be excessively concentrated in the county in which
19 the provider is located;

20 B. Fewer than 2 of that type of provider in a county or a net loss of more than 5 primary
21 care providers in a county; or

22 C. A material adverse impact on health care costs.

23 **4. Unenforceable.** A person may not enforce any contract provision, written policy,
24 written procedure or agreement contrary to the provisions set forth in this section.

25 **5. Enforcement.** A carrier may institute a civil action to enforce the provisions of this
26 section, including specific performance, injunctive or declaratory relief, and any other
27 relief the court deems appropriate.

28 **SUMMARY**

29 Beginning January 1, 2024, this bill prohibits contractual agreements between health
30 insurance carriers and health care providers that include provisions restricting the ability of
31 a health insurance carrier to encourage enrollees to use specific health care providers, to
32 use tiering as part of a carrier's provider network or to require the inclusion of all members
33 or affiliates of a health care provider in a carrier's network.