Consumers for Affordable Health Care

Advocating the right to quality, affordable health care for all Mainers.

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Testimony In Support of:

LD 1713, An Act to Prohibit Certain Provisions in Health Care Provider Contracts with Insurance Carriers

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Senator Bailey, Representative Mathieson, and esteemed members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services. Thank you for the opportunity to provide this testimony in support of LD 1713, An Act to Prohibit Certain Provisions in Health Care Provider Contracts with Insurance Carriers.

My name is Kate Ende, and I am the Policy Director at Consumers for Affordable Health Care (CAHC), a nonpartisan, nonprofit organization that advocates the right to quality, affordable health care for every person in Maine. As designated by Maine's Attorney General, CAHC serves as Maine's Health Insurance Consumer Assistance Program (CAP), which operates a toll-free HelpLine. Our HelpLine fielded nearly 7,300 calls and emails last year from people across Maine who needed help obtaining, keeping, using, or fixing problems with private health insurance or with accessing or affording health care services. CAHC also serves as the Ombudsman program for Maine's Medicaid program, MaineCare, and helps people apply for and navigate the enrollment process for MaineCare. It is with that background that we provide these comments.

LD 1713 addresses anticompetitive health insurance contract terms that have been used by some health systems to impede competition and increase prices. Specifically, this bill prohibits the use of anti-steering, anti-tiering clauses, and all-or-nothing clauses in contracts between health insurers and health care providers.[1] Nationally, some dominant health systems have used anticompetitive contract provisions to keep high-cost, low-value providers in preferred plan networks and to raise hospital prices.[2] Prohibiting anticompetitive contract terms can help level the playing field for negotiations between insurers and large health systems, allowing insurers to negotiate lower in-network prices and design networks with the highest-quality, lowest-cost providers.

Some insurers often offer incentives, such as lower copays or deductibles, to patients who choose higher-quality, lower-cost providers, in other words steering them to these more efficient providers. They might also place more efficient providers in a preferred tier, encouraging providers to compete to offer better care at lower prices, in order to be included in the preferred tier. However, some health systems contractually require carriers to include all providers and facilities within their system in the carrier's preferred network tier, regardless of each individual facility's performance or prices, or

[1] https://nashp.org/nashp-model-prohibiting-anticompetitive-contract-terms-application-to-employer-plans/#:~:text=NASHP's%20model%20legislation%20prohibiting%20anticompetitive%20contract%20terms%20prevents%20health%20care,contract%20that%20contains%20anticompetitive%20terms.
[2] Ibid.

prohibits a carrier from steering consumers to other providers outside of the health system.[3] These practices are referred to as anti-tiering or anti-steering clauses. Some contracts also include all-or-nothing clauses, in which a health system refuses to contract with a carrier for a specific provider or facility in their system, unless carrier agrees to contract with all the system's affiliated providers and facilities, across all markets.[4] Since carriers are required to maintain adequate provider networks, there are some providers or facilities, particularly in rural areas, that they likely have to contract with, in order to meet network adequacy requirements. If these facilities are part of a larger health care system, anti-steering, anti-tiering, and all or nothing clauses can take away a carrier's leverage when negotiating rates and contract terms for other facilities or hospitals within the health system, which often leads to higher prices.

Higher prices not only contribute to higher premium costs, but also to higher out-of-pocket costs that consumers have to pay, when services are subject to a deductible or coinsurance. Results from a recent survey of Maine voters found that nearly seven out of ten Mainers believe a major medical event would be a financial disaster for them. Nearly four out of ten Mainers delayed or skipped going to the doctor when they were sick due to high healthcare costs. Additionally, when Mainers do access care, they frequently struggle to pay their medical bills, and often go into debt. Roughly one in three Mainers reported they struggled to pay for basic necessities, such as food, heat, or housing, within the past two years as a result of a medical bill. Among those who struggled to pay for basic necessities, 70% reported they experienced this as the result of a hospital bill. Nearly one in three Mainers reported they had been contacted by a collection agency about a medical bill within the past two years, of which 85% said the medical bill that was sent to collections was from a hospital.[5] It is clear that Mainers are struggling to afford the health care services they need, including hospital services. Excluding anti-steering, anti-teering, and all-or-nothing clauses in these contracts will help insurers to negotiate fair prices, resulting in lower costs for consumers.

Massachusetts, California and Nevada currently have laws that restrict these types of clauses. Maine would benefit from following their lead, especially given the highly consolidated nature of our market. For this reason, I urge you to support LD 1713. Thank you for your time and I'd be happy to answer any questions.

[3] https://ctmirror.org/2022/03/16/lawmakers-weigh-anti-competitive-practices-in-health-care/
[4] Ibid.
[5] https://drive.google.com/file/d/1of-aZWztHbCJDGZODeqoWEVvYcokHw41/view