Anthem

Testimony of Anthem Blue Cross and Blue Shield

In Support of L.D. 1713

"An Act to Prohibit Certain Provisions in Health Care Provider Contracts with Insurance Carriers"

April 29, 2025

Good afternoon, Senator Bailey, Representative Mathieson, and Members of the Health Coverage, Insurance, and Financial Services Committee. My name is Kristine Ossenfort, and I am the Senior Government Relations Director for Anthem Blue Cross and Blue Shield in South Portland, Maine. I appear before you this morning to testify in support of **L.D. 1713, "An Act to Prohibit Certain Provisions in Health Care Provider Contracts with Insurance Carriers".**

First, we would like to thank Senator Bailey for introducing this very important piece of legislation. As she noted, L.D. 1713 represents an abbreviated version of model legislation developed by the National Academy of State Health Policy, and four other states (Massachusetts, Nevada, Texas, and Connecticut) have enacted similar legislation.

What does the legislation do?

L.D. 1713 prohibits providers from requiring that anti-tiering, anti-steering, and all or nothing clauses in their contracts with health insurers.

- Anti-steering clauses are clauses in the contract that restrict the ability of a health plan to direct or steer enrollees to certain providers;
- Anti-tiering clauses are clauses that restrict the ability of a health plan to offer a tiered network plan, assign providers to a particular tier, or assign providers to a particular network; and
- All-or-nothing clauses are provisions in a contract that require a health plan to include all members of a provider in a network plan, to contract with all affiliates

anthem.com

Kristine M. Ossenfort, Esq., Senior Government Relations Director
2 Gannett Drive, South Portland, Maine 04106
kristine.ossenfort@anthem.com | 207-822-7260 (o) | 207-232-6845 (m)

of a provider, or agree to payment rates for a provider that is not a party to the contract.

Why is this legislation important?

As Senator Bailey noted in her testimony, the health care landscape in Maine is highly consolidated, with two systems controlling over half the hospitals in Maine, as well as many professional practices. One-half of all the hospitals in Maine are controlled by just two companies: one large system owns ten hospitals in Maine while the other owns nine.

Consolidation among health care providers leads to higher prices.[1] According to a report by the National Academy for State Health Policy ("NASHP"), health care consolidation is a primary driver of health care costs because it gives providers the market leverage to raise prices "unhampered by competitive forces"[2]:

> One of the primary ways that dominant providers raise prices is through **anticompetitive health plan contracting,** in which powerful provider groups and health systems exploit their market power to demand terms in their contracts with health insurance plans. When health care markets become consolidated, a dominant health system may control multiple hospitals, multi-specialty physician practices, clinics, and ancillary service providers. Due to network adequacy laws, some services or providers are considered "must-haves," such as a hospital with a neonatal intensive care unit or trauma facility, for a health plan to offer a commercially viable provider network. Health plans must ensure their provider networks are robust enough for their members to have access to essential services.
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> Insurers typically have two options for containing costs in competitive contracting:
>
> - Exclude high-cost, low-value providers from the network, or
> - Give consumers an incentive to choose more cost-effective alternatives.
>
> Consolidated health systems leverage their market power in negotiations with insurers because the insurer cannot afford to exclude must-have providers from

[1] "Preventing Anticompetitive Contracting Practices in Healthcare Markets," The Source on Healthcare Price & Competition, September 2020, https://sourceonhealth.wpenginepowered.com/wp-content/uploads/2020/09/Preventing-Anticompetitive-Contracting-Practices-in-Healthcare-Markets-FINAL.pdf; A Tool for States to Address Health Care Consolidation: Prohibiting Anticompetitive Health Plan Contracts," National Academy for State Health Policy. April 12, 2021, https://nashp.org/a-tool-for-states-to-address-health-care-consolidation-prohibiting-anticompetitive-health-plan-contracts/; "Mitigating the Price Impacts of Health Care Provider Consolidation," Milbank Memorial Fund, September 2021, https://www.milbank.org/publications/mitigating-the-price-impacts-of-health-care-provider-consolidation/;

[2] "A Tool for States to Address Health Care Consolidation: Prohibiting Anticompetitive Health Plan Contracts," National Academy for State Health Policy. April 12, 2021, https://nashp.org/a-tool-for-states-to-address-health-care-consolidation-prohibiting-anticompetitive-health-plan-contracts/

> its network. Dominant health systems can use all-or-nothing negotiations to raise prices for all of their affiliated providers by threatening to prevent any of their providers from participating in the insurer's network unless the insurer accepts the prices and terms set by the health system. These types of distorted negotiations between providers and insurers directly contribute to higher costs for states, employers, and patients.[3]

The report went on to state:

> In highly consolidated markets, dominant health systems use their market power to demand anticompetitive terms in their contracts with health insurers, thus increasing prices and thwarting health insurers' cost-containment efforts. . . . Legislation prohibiting anticompetitive contract terms will level the playing field between health insurers and dominant health systems, giving insurers the bargaining leverage to resist price demands of dominant systems and to direct patients to higher-value options.[4]

Similarly, a report by Families USA found:

> There is long-standing evidence that the excessive cost of health care in the United States relative to peer countries is driven by Americans paying much higher prices than any other country rather than receiving better health care. These high prices have gotten much worse in recent years because of health care industry consolidation — particularly among hospitals— that has eliminated healthy competition and led to monopolistic pricing. Consolidation has taken place without meaningful regulatory oversight or effective intervention.[5]

The degree of consolidation that exists today gives hospital and provider systems significant leverage when negotiating the terms and conditions of a contract with a carrier, particularly when combined with network adequacy requirements. L.D. 1713 seeks to prohibit the inclusion of these anti-competitive provisions, anti-steering, anti-tiering and all or nothing clauses, in the contracts between providers and carriers.

There is significant disparity in costs for the same services of the same quality. Health plans need the ability to direct members to providers who can provide high quality, lower cost services. This not only reduces claims costs, which in turn impacts premiums, but also reduces member out of pocket costs. Attached to my testimony are examples from CompareMaine.org, the Maine Health Data Organization's website, showing the significant variation in price that can depending on the site of care:

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[3] *Id.*

[4] *Id.*

[5]: "Hospitals' High Fees, Misaligned Incentives Are Bleeding Families Dry", Families USA, September 15, 2022, https://familiesusa.org/wp-content/uploads/2022/09/People-First-Care_Role-of-Hospitals.pdf.

L.D. 1713 allows employers and health plans to decide whether all providers in a large system should be included in a network and in what tier those providers should be placed.

L.D. 1713 provides employers and health plans with the ability to steer members to higher value providers—this helps employers and carriers to control costs and can provide lower out of pocket cost for members due to lower costs and benefit designs that can incent the use of particular providers.

It is important to remember that health plans must still comply with all network adequacy requirements. Opponents of the bill may tell you that all-or-nothing clauses are needed to keep rural hospitals in a health plan's network. That simply isn't true, as network adequacy requirements still apply and keep small rural hospitals in network.

Smaller and independent providers do not have the same leverage and market power as the large health care systems. L.D. 1713 will help to protect these smaller and independent providers from efforts by large systems to keep them out of a health plan network or placed in a less favorable tier.

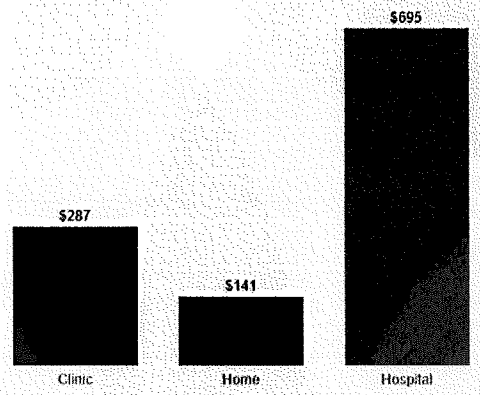
It is also worth noting that, not surprisingly, large health systems often tier their own health benefit plans to take advantage of cost efficiencies and steer members to designated providers (usually owned or affiliated with the system). Why do they want to deny other employers the same opportunity?

We urge you to take an important step to address rising health care costs and vote "ought to pass" on L.D. 1713. Thank you, and I would be happy to answer any questions you may have either now or at your work session.

Comparisons from MHDO's CompareMaine.Org

Infusion Therapy

Median Infusion Therapy Payments Among All Payers



Prescription Drugs

- ○ Fentanyl Citrate Injection (.1 mg): Treats severe pain
- ○ Gammagard Liquid Injection (500 mg): Protects against infection in immune system
- ◉ Infliximab Injection (10 mg): Minimizes inflammation
- ○ Ringers Lactate Infusion (up to 1000 cc): Restores fluids and electrolytes

Facility Type	Median Paid	Procedure Count	Provider Count
Clinic	$287	777	18
Home	$141	215	3
Hospital	$695	626	26
All Settings	$349	1,619	47

Colonoscopy with removal of polyps or growths using an endoscope (CPT Code 45385)

Compare Healthcare Settings | Sort by: Average Total Payment (low to high) | Average Total Payment

Portland Gastroenterology Center
161 Marginal Way Portland, ME 04101
$1,869
what makes up this payment?
count of 5,130

Northern Light Mercy Hospital
175 Fore River Parkway Portland, ME 04102
★★★★☆ Overall Hospital Quality Rating
View more hospital quality data
$6,280
what makes up this payment?
count of 1,340

MaineHealth Maine Medical Center Portland
22 Bramhall Street Portland, ME 04102-3134
★★★★★ Overall Hospital Quality Rating
View more hospital quality data
$7,378
what makes up this payment?
count of 800

MaineHealth Maine Medical Center Biddeford
1 Medical Center Drive Biddeford, ME 04005-9422
★★★☆☆ Overall Hospital Quality Rating
View more hospital quality data
$9,804
what makes up this payment?
count of 3,840