M|H|A

Maine Hospital Association

MAINE'S LEADING
VOICE FOR HEALTHCARE

COMMENTS OF THE MAINE HOSPITAL ASSOCIATION

In Opposition To

LD 1713 - *An Act to Prohibit Certain Provisions in Health Care Provider Contracts with Insurance Companies*

April 29, 2025

Senator Bailey, Representative ~~Perry~~ MATHIAS and members of the Heath Care, Insurance and Financial Services Committee, my name is Jeffrey Austin and I am here on behalf of the Maine Hospital Association to testify in opposition to LD 1713.

We have several concerns with the legislation.

Applicability. As a matter of principle, we strongly object to you giving state-level advantages to non-regulated carriers and payers. When we ask for legislation protecting providers, you can't help us with those carriers; as such, they should not benefit from legislation such as this unless they voluntarily agree to abide by all Maine laws imposed on regulated carriers.

Prohibition of Contract Negotiations. We don't have a position of absolute objection to the state barring negotiations over certain contract terms. It's ironic to see carriers running such a bill when they opposed that very thing in our 340B legislation.

Our only request is that you include prohibitions in favor of providers at the same time and in the same legislation. We would love to outright ban a number of contract terms imposed by carriers that harm patients and providers.

For example:

- Unilateral policy changes by carriers during a contract term;
- Retroactive denials;
- Denials after receipt of a prior authorization; and,
- Prior authorization in a number of situations;

The Legislation. The legislation before you does two things: It prohibits "all-of-nothing clauses" and it prohibits anti-steering and tiering clauses in contracts.[1]

All-or-nothing Clauses. These provisions allegedly require carriers to include all members of a health system in the carrier's network and not just those that the carrier chooses to contract with. On one level, you can understand the carriers' position; they should be allowed to contract with only those providers they choose to.

However, what may not be appreciated is that systems develop a method of service delivery that is interdependent. Eastern Maine Medical Center needs MaineCoast Memorial Hospital in Ellsworth just as Maine Medical Center needs Mid-Coast Hospital in Brunswick.

To take only the larger hospitals and leave the mid-size hospitals out-of-network simply doesn't work for the provider and the patients.

Some rural hospitals could be left behind entirely. Its odd that proponents accuse hospitals of "monopolistic" behavior by fighting to ensure all Mainers have local access to services.

Furthermore, think about this kind of contract term in reverse. Can providers refuse to treat some people the carriers cover or do we have to treat all of a carrier's insureds? Maybe it makes financial sense for us to exclude some kinds of patients.

Or, maybe it makes financial sense for providers to withhold some of our services to a carrier's entire panel patients; maybe we don't like the prices for some of the services, so we just won't do them for a particular carrier.

It's almost absurd to think we could reject some patients entirely or refuse some services. Yet, that is what the carriers are not only suggesting, but they are also asking you to ban any conversations about it.

Anti-tiering & steering Clauses. The provisions allegedly prohibit carriers from steering patients away from providers who are in network. Carriers steer patients with financial penalties. If the patient uses the provider the patient chooses, the patient pays more. If the patient uses the provider the carrier chooses for them, the patient pays the normal amount.

Our objections to steering & tiering by carriers is that patients have choice now. Patients choose their providers. Providers shouldn't be chosen for patients by their carriers. Furthermore, with the very sizeable number of Maine patients in high-deductible plans, patients have a significant financial incentive to shop around to different providers now.

What is more upsetting is that carriers want to steer patients away from hospitals, yet the carriers want the hospitals in their networks for network adequacy purposes. Hospitals don't like being

[1] As is the case with such legislation, MHA can not say the extent to which these terms appear in contracts negotiated by our members. As a general rule, we do not discuss negotiated terms with our members due to anti-trust concerns.

used. If legislation such as this were to pass, any provider that carriers punish patients for using (by increasing co-pays) should be excluded from the providers network for network adequacy rules. They shouldn't have it both ways – tell the regulator that the hospital is in the network but then make it financially difficult for patients to access it.

For these reasons, we don't think the carriers have met their burden to outlaw these provision. They should at least be negotiated.

Private Right of Action. Carriers opposed legislation with AG enforcement and a private right of action last week but now include it in their own legislation for their benefit. Hospitals are regulated by DHHS. All of Title 22 is enforced by DHHS. We have a regulator and we wonder why a private right of action, and AG enforcement, are layered on top of the existing enforcement scheme.

Commercial Costs. The impetus for this legislation, which is identical to legislation that was unanimously rejected by this committee two years ago, is healthcare costs and that somehow hospitals are too powerful compared to carriers.

MHDO has produced one report on overall healthcare costs back in 2022.

Here are the facts from that report:

Inpatient spending, per capita, in the commercial market DECLINED from 2017 to 2021 by 2.3%. Undoubtedly, the pandemic in contributed to the decrease in spending. But, the trendline prior to the pandemic was also declining. This data is NOT inflation adjusted. If it were, the decline would be even more notable.

Outpatient spending, per capita, in the commercial market increased by 5.6% or less than 1.5% per year. Inflation from 2017 to 2022 was nearly 20%.

Say what you will about hospital market power, it isn't powering money into hospital coffers.

Please oppose LD 1713 and let the parties negotiate these issues.

Thank you.

THEMHA. ORG | (207) 622-4794 | 33 FULLER ROAD | AUGUSTA, ME 04330