



House of Representatives

General Assembly

File No. 151

January Session, 2011

Substitute House Bill No. 6471

House of Representatives, March 22, 2011

The Committee on Insurance and Real Estate reported through REP. MEGNA of the 97th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROHIBITING MOST FAVORED NATION CLAUSES IN HEALTH CARE PROVIDER CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (2) of subsection (a) of section 38a-479 of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2011*):

4 (2) "Provider" means a physician, surgeon, chiropractor, podiatrist,
5 psychologist, optometrist, natureopath or advanced practice registered
6 nurse licensed in this state or a group or organization of such
7 individuals, who has entered into or renews a participating provider
8 contract with a contracting health organization to render services to
9 such organization's enrollees and [enrollee's] enrollees' dependents.

10 Sec. 2. Section 38a-479b of the general statutes is amended by
11 adding subsection (c) as follows (*Effective October 1, 2011*):

12 (NEW) (c) No contracting health organization shall include in any

13 participating provider contract, contract with a dentist or contract with
14 a hospital licensed under chapter 368v, that is entered into, renewed or
15 amended on or after October 1, 2011, or contract offered to a provider,
16 dentist or hospital on or after October 1, 2011, any clause, covenant or
17 agreement that:

18 (1) Requires the provider, dentist or hospital to:

19 (A) Disclose to the contracting health organization the provider's,
20 dentist's or hospital's payment or reimbursement rates from any other
21 contracting health organization the provider, dentist or hospital has
22 contracted, or may contract, with;

23 (B) Provide services or procedures to the contracting health
24 organization at a payment or reimbursement rate equal to or lower
25 than the lowest of such rates the provider, dentist or hospital has
26 contracted, or may contract, with any other contracting health
27 organization;

28 (C) Certify to the contracting health organization that the provider,
29 dentist or hospital has not contracted with any other contracting health
30 organization to provide services or procedures at a payment or
31 reimbursement rate lower than the rates contracted for with the
32 contracting health organization;

33 (2) Prohibits or limits the provider, dentist or hospital from
34 contracting with any other contracting health organization to provide
35 services or procedures at a payment or reimbursement rate lower than
36 the rates contracted for with the contracting health organization; or

37 (3) Allows the contracting health organization to terminate or
38 renegotiate a contract with the provider, dentist or hospital prior to
39 renewal if the provider, dentist or hospital contracts with any other
40 contracting health organization to provide services or procedures at a
41 lower payment or reimbursement rate than the rates contracted for
42 with the contracting health organization.

| | | |
|---|------------------------|---------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2011</i> | 38a-479(a)(2) |
| Sec. 2 | <i>October 1, 2011</i> | 38a-479b |

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 12 \$ | FY 13 \$ |
|---|--------------------|-----------------|-----------------|
| Comptroller Misc. Accounts (Fringe Benefits) | GF & TF- Cost | Indeterminate | Indeterminate |

Note: GF=General Fund and TF = Transportation Fund

Municipal Impact:

| Municipalities | Effect | FY 12 \$ | FY 13 \$ |
|------------------------|----------------------------|-----------------|-----------------|
| Various Municipalities | STATE MANDATE - Cost | Indeterminate | Indeterminate |

Explanatio

As of July 1, 2010, the State Employees' Health plan went self insured. Pursuant to current federal law, the state's self-insured health plan would be exempt from state health insurance benefit mandates. However, in previous self-funded arrangements the state has traditionally adopted all state mandates. To the extent that the state continues this practice of voluntary mandate adoption, the following impact would be anticipated.

The bill may result in a cost to the state employee health plan. The cost is indeterminate as it would depend on the price the state is able to secure as a result of the bill's provision when it negotiates rates with providers. The bill would inhibit the state's ability to assure the lowest price paid for services.

The bill may result in a cost to certain fully-insured municipalities when they enter into contracts with insurance companies or providers for the delivery of services on or after October 1, 2011. The cost is indeterminate as it would depend on the price municipalities are able

to secure as a result of the bill's provision when they negotiate rates with providers. The bill would inhibit municipalities' ability to assure the lowest price paid for services. Due to federal law, municipalities with self-insured health plans are exempt from state health insurance benefit mandates.

The state employee health plan and many municipal health plans are recognized as "grandfathered" health plans under the Patient Protection and Affordability Care Act (PPACA). It is unclear what effect the adoption of certain health mandates will have on the grandfathered status of the state employee health plan or grandfathered municipal plans PPACA¹.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

It is unclear what effect the PPACA will have on health care contracts and therefore what the net impact to the state and municipalities will be as a result of the bill's provisions.

The federal health care reform act requires that, effective January 1, 2014; all states must establish a health benefit exchange, which will offer qualified plans that must include a federally defined essential benefits package. While states are allowed to mandate benefits in excess of the basic package, the federal law appears to require the state to pay the cost of any such additional mandated benefits. The extent of these costs will depend on the mandates included in the federal essential benefit package, which have not yet been determined. However, neither the agency nor mechanism for the state to pay these

¹ According to the PPACA, compared to the plans' policies as of March 23, 2010, grandfathered plans who make any of the following changes within a certain margin may lose their grandfathered status: 1) Significantly cut or reduce benefits, 2) Raise co-insurance charges, 3) Significantly raise co-payment charges, 4) Significantly raise deductibles, 5) Significantly lower employer contributions, and 5) Add or tighten annual limits on what insurer pays. (www.healthcare.gov)

costs has been established.

OLR Bill Analysis**sHB 6471*****AN ACT PROHIBITING MOST FAVORED NATION CLAUSES IN HEALTH CARE PROVIDER CONTRACTS.*****SUMMARY:**

This bill prohibits a contracting health organization (i.e., managed care organization (MCO) or preferred provider network (PPN)) from including a “most favored nation” clause in a contract with a health care provider, dentist, or hospital. It applies to contracts entered into, renewed, amended, or offered on or after October 1, 2011.

Specifically, it prohibits these contracts from including any provision that prohibits a provider, dentist, or hospital from contracting with another MCO or PPN at a lower payment or reimbursement rate. It also prohibits these contracts from containing provisions requiring a provider, dentist, or hospital to disclose the payment or reimbursement rates of another MCO or PPN with which it contracts. It also prohibits contracts from being renegotiated before renewal if a lower payment or reimbursement rate is agreed to between the provider, dentist, or hospital and another MCO or PPN.

By law, “providers” includes physicians, surgeons, chiropractors, podiatrists, psychologists, optometrists, naturopaths, and advanced practice registered nurses.

EFFECTIVE DATE: October 1, 2011

CONTRACT PROVISIONS

The bill prohibits a contracting health organization from including in any contract with a provider, dentist, or hospital, any clause, covenant, or agreement that:

1. requires the hospital, dentist, or provider to (a) disclose to the organization its payment or reimbursement rates from any other organization it contracts or may contract with; (b) provide services or procedures to the organization at a payment or reimbursement rate equal to or lower than the lowest rate the provider, dentist, or hospital contracts or may contract with another organization; or (c) certify to the organization that the provider, dentist, or hospital has not contracted with any other organization to provide services or procedures at a lower payment or reimbursement rate;
2. prohibits or limits the provider, dentist, or hospital from contracting with any other organization to provide services or procedures at a lower payment or reimbursement rate; or
3. allows the organization to terminate or renegotiate a contract with a provider, dentist, or hospital prior to renewal if the provider, dentist, or hospital contracts with another organization to provide services or procedures at a lower payment or reimbursement rate.

BACKGROUND

Most Favored Nation Clauses

A “most favored nation clause” is a provision in a contract between a health care provider and an insurer that prohibits the provider from charging the insurer a rate that is higher than the lowest reimbursement rate the provider accepts from any other insurer.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 16 Nay 4 (03/08/2011)