



House of Representatives

File No. 835

General Assembly

January Session, 2011

(Reprint of File No. 151)

Substitute House Bill No. 6471
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 23, 2011

**AN ACT CONCERNING 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2 general statutes is repealed and the following is substituted in lieu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 subsections (c) and (d) as follows (*Effective October 1, 2011*):

12 (NEW) (c) Except as provided in subsection (d) of this section, no
13 contracting health organization shall include in any participating

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

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

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

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

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

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

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

44 (NEW) (d) (1) If a contract described in subsection (c) of this section
45 is in effect prior to October 1, 2011, and includes a clause, covenant or
46 agreement set forth under subdivisions (1) to (3), inclusive, of said
47 subsection (c), such clause, covenant or agreement shall be void and
48 unenforceable on the date such contract is next renewed or on January
49 1, 2014, whichever is earlier. Such invalidity shall not affect other
50 provisions of such contract.

51 (2) Nothing in subdivision (1) of this subsection shall be construed
52 to affect the rights of a contracting health organization to enforce such
53 clause, covenant or agreement prior to the invalidation of such clause,
54 covenant or agreement.

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

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 \$
State Comptroller - Fringe Benefits	GF & TF - Cost or Savings	Indeterminate	Indeterminate

Note: GF=General Fund and TF= Transportation Fund

Municipal Impact:

Municipalities	Effect	FY 12 \$	FY 13 \$
Various Municipalities	Cost or Savings	Indeterminate	Indeterminate

Explanation

The bill may result in a potential cost or a savings to the state employee health plan¹ and municipalities which is indeterminate. The potential cost or savings are a result of the bill's prohibition of Most Favored Nation Clauses (MFN) from contracts entered into, renewed, amended or offered on or after October 1, 2011. In addition, for those contracts with MFN clauses that are in effect prior to October 1, 2011; these contracts are void and unenforceable on the contract renewal date or January 1, 2014, whichever is earlier.

The potential cost to the state and municipalities would depend on the rates the insurer with the MFN is able to secure when the insurer negotiates rates with providers². The potential cost would accrue to the

¹ The state employee health plan is self insured and uses a third party administrator to negotiate with insurers to provide health packages to employees and retirees. The packages offered to state employees are provided by three separate insurance carriers.

² The nature of the MFN is such that only one insurer's contract with a provider contains the clause. According to the Federal Trade Commission, in general, the MFN

state and municipalities as the insurer would no longer be assured they received the lowest price for services from the provider. The potential increase in cost assumes any increase in provider rates is passed through to the state or municipalities by way of increased rates or premium costs. If the increase is passed through to the state or municipalities the cost of providing healthcare for employees may increase.

Conversely, there could be a potential savings to the state and municipalities. The savings would accrue to the state and municipalities if insurers who otherwise would not have been able to negotiate the MFN clause into a contract with a provider are able to secure lower prices as a result of MFN clauses being prohibited. The savings assumes two factors are true. First, the insurers secure lower pricing and the lower prices are passed on to the state or municipalities by way of decreased rates or premium costs. Secondly, the insurer who previously was not allowed to negotiate the MFN clause into the contract was not otherwise able to secure the lowest price that was offered by the provider to the insurer with the MFN³.

For illustrative purposes the following table presents the effect of a 1% change in the state’s portion of the premium for a state employee plus one dependent enrolled in the POE plan⁴:

	Incremental Increase	Adjusted Premium
1% Increase in State	Approximately \$104	\$10,470

is a promise by one party, for example a supplier, to treat a buyer as well as the supplier treats its best, "most favored" customer. If the supplier lowers the price to someone else, then the buyer's price will be lowered to match. To characterize it in the context of the health care market, it is a contractual requirement by a healthcare payor for the lowest price that a provider of services (like a hospital) offers to any payor.

³ MFN clauses take on different forms depending on what language is negotiated into the contract. One type of MFN is the equal rate provision, which assures the insurer gets the lowest price or greatest discount offered to another insurer. In, this case multiple insurers could theoretically have the same lower rate.

⁴ The state share and therefore the base for the example is \$10,366 (rounded to the nearest dollar).

Share		
1% Decrease in State Share	Approximately (\$104)	\$10,262

The state employee health plan currently covers approximately 202,157 lives. Employees and retirees have the option of selecting coverage for which the POE plan is one option. The state's share of premium costs range from \$3,408 to \$19,654 depending on the type and scope of coverage selected by the employee.

Lastly, the state employee health plan and many municipal health plans are recognized as "grandfathered" health plans under the Patient Protection and Affordable Care Act (PPACA). It is unclear what effect potential changes in plan costs will have on the grandfathered status of the state employee health plan or grandfathered municipal plans PPACA⁵.

House "A" specifies that (1) for contracts in effect prior to October 1, 2011 with a MFN clause; these contracts are void and unenforceable on the contract renewal date or January 1, 2014, whichever is earlier and (2) the contracting health organization has the right to enforce the a MFN clause before its invalidation. The changes result in the fiscal note explained herein and expands the potential contracts impacted.

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 impact to the state and municipalities

⁵ 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)

will be as a result of the bill's provisions in the out-years.

OLR Bill Analysis**sHB 6471 (as amended by House "A")******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” (MFN) clause in a contract with a health care provider, dentist, or hospital.

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 (1) containing provisions requiring a provider, dentist, or hospital to disclose the payment or reimbursement rates of another MCO or PPN with which it contracts or (2) 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.

The bill applies to contracts entered into, renewed, amended, or offered on or after October 1, 2011. Contracts in effect prior to this date that include a MFN clause are void and unenforceable on the contract renewal date or January 1, 2014, whichever is earlier. The bill specifies that its provisions do not affect the contracting health organization’s rights to enforce the MFN clause before its invalidation.

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

*House Amendment "A" specifies that (1) contracts in effect before October 1, 2011 that include a MFN clause are void and unenforceable on the earlier of either the contract renewal date or January 1, 2014 and (2) the contracting health organization has the right to enforce a MFN clause before its invalidation.

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)

Appropriations Committee

Joint Favorable

Yea 49 Nay 0 (04/25/2011)