



Senate

General Assembly

File No. 635

January Session, 2015

Senate Bill No. 249

Senate, April 14, 2015

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING DISPUTES BETWEEN HOSPITALS OR HOSPITAL SYSTEMS AND HEALTH INSURERS.

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

1 Section 1. (NEW) (*Effective July 1, 2015*) (a) For contracts entered
2 into, renewed or amended on or after July 1, 2015, if a hospital or
3 hospital system, as defined in section 19a-486i of the general statutes,
4 fails to reach an agreement with a health insurer to continue
5 participating for at least one additional year in the network of health
6 care providers with which the health insurer has contracted to provide
7 covered health care services to its enrollees, at least one hundred
8 twenty days prior to the expiration of the contract between the hospital
9 or hospital system and the health insurer for participation in such
10 network, either party to the contract may submit the issue of
11 participation to binding arbitration pursuant to the provisions of this
12 section.

13 (b) (1) Not later than five days following the submission of such
14 issue to binding arbitration, the parties to the contract shall jointly

15 select an arbitrator with experience in impartial arbitration of
16 commercial disputes. If the parties fail to agree on an arbitrator, the
17 selection of an arbitrator shall be made pursuant to the rules of the
18 American Arbitration Association regarding the procedures for large,
19 complex commercial disputes.

20 (2) Each party shall submit written briefs to the arbitrator selected
21 pursuant to subdivision (1) of this subsection, and to the opposing
22 party, setting forth a proposal as to how each of the unresolved issues
23 with regard to participation should be resolved. The arbitrator shall
24 convene a hearing to allow each party to present evidence and
25 argument on its proposal. The arbitration record shall be officially
26 closed upon the arbitrator's receipt of such briefs or the close of the
27 hearing, whichever occurs later.

28 (3) The arbitrator's authority shall be limited to selecting the
29 proposal of either party, in its entirety, on each such unresolved issue.
30 The arbitrator shall issue a decision not later than forty-five days after
31 the close of the arbitration record.

32 (4) The arbitrator shall consider the following factors in arriving at a
33 decision in accordance with subdivision (3) of this subsection: (A) The
34 needs and welfare of patients receiving in-network services pursuant
35 to such contract or currently eligible for such services; (B) the needs
36 and interests of the hospital or hospital system and the health insurer,
37 including, but not limited to, each party's proposal set forth in its brief;
38 (C) the history of negotiations between the parties, including, but not
39 limited to, the negotiations leading up to arbitration; (D) any other
40 contracts between the hospital or hospital system and another health
41 insurer for participation in the network of health care providers with
42 which such health insurer has contracted for the purpose of providing
43 covered health care services to its enrollees; (E) any other contracts
44 between the health insurer and another hospital or hospital system for
45 participation in the network of health care providers with which such
46 health insurer has contracted for the purpose of providing covered
47 health care services to its enrollees; (F) current conditions and changes

48 in the health care market and the community in which the hospital or
49 hospital system is located; and (G) the interests and welfare of the
50 employees of the hospital or hospital system.

51 (5) The costs or any fees associated with the arbitration shall be
52 shared equally by each party. The arbitration award shall be final and
53 binding, unless otherwise vacated or modified pursuant to the
54 provisions of chapter 909 of the general statutes.

55 (6) If the arbitrator has not issued a decision pursuant to this
56 subsection in advance of the expiration of the contract between the
57 hospital or hospital system and the health insurer, such contract shall
58 be extended until the date on which the decision is issued.

59 (c) If neither party to the contract submits to binding arbitration
60 pursuant to subsection (a) of this section at least ninety days prior to
61 the expiration of such contract, such contract shall be extended for one
62 additional year. If such an extension occurs, the parties may modify,
63 by mutual agreement, the terms of such contract, but may not reduce
64 the one-year extension period or limit the participation of the hospital
65 or hospital system in such network. No further extension or binding
66 arbitration shall be required, provided either party gives public notice,
67 at least six months prior to the termination of the one-year extension
68 period, of its intention to terminate such contract upon the termination
69 of such extension period.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2015	New section

PH *Joint Favorable*

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
UConn Health Center	Other - See Below
State Comptroller - Fringe Benefits (State Employee And Retiree Health Accounts)	See Below

Municipal Impact:

Municipalities	Effect
Various Municipalities	See Below

Explanation

The bill requires a binding arbitration process for certain contract disputes between hospitals and health insurers. To the extent that (1) the contract negotiation timelines imposed in the bill and (2) binding arbitration result in reduced administrative expenses, the UConn Health Center may incur reduced costs.

It is unclear whether substituting binding arbitration for the negotiation process will result in more or less revenue from insurers for the UConn Health Center.

The bill may also result in a fiscal impact to the state employee and retiree health plan and municipal health plans to the extent that (1) the contract negotiation timelines imposed in the bill and (2) binding arbitration result in reduced administrative expenses for the plans.

The Out Years

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation.

OLR Bill Analysis**SB 249*****AN ACT CONCERNING DISPUTES BETWEEN HOSPITALS OR HOSPITAL SYSTEMS AND HEALTH INSURERS.*****SUMMARY:**

This bill establishes a binding arbitration process for contract disputes between hospitals or hospital systems and health insurers about network participation.

Specifically, if a hospital or hospital system fails to reach an agreement with an insurer to continue participating in the insurer's network for at least one additional year, the bill allows either party to submit the issue to binding arbitration, at least 120 days before the existing contract is set to expire. If neither party submits the issue to arbitration at least 90 days before the contract expires, the contract is extended for a year.

The bill sets conditions governing the arbitration process, including the factors the arbitrator must consider in coming to a decision. It requires the parties to share the costs of arbitration. Arbitrations under the bill are subject to the same limited court review as generally applies to arbitrations.

The bill applies to contracts entered into, renewed, or amended on or after July 1, 2015.

Under the bill and existing law, a "hospital system" is a (1) parent corporation of one or more hospitals and any entity affiliated with that corporation through ownership, governance, or membership or (2) hospital and any entity affiliated with it through these means.

EFFECTIVE DATE: July 1, 2015

BINDING ARBITRATION

Selection of Arbitrator

Under the bill, after the issue is submitted to arbitration, the parties must jointly select an arbitrator with experience in impartial arbitration of commercial disputes. If the parties cannot agree on an arbitrator within five days, the bill requires the selection of an arbitrator using the American Arbitration Association's rules for large, complex commercial disputes. Under those rules, if the parties are unable to agree, the association selects arbitrators from a panel.

Arbitration Process

Once an arbitrator is chosen, each party must submit written briefs to the arbitrator and opposing party, setting forth its proposal on each unresolved issue. The arbitrator must hold a hearing to allow them to provide evidence and arguments. The arbitration record is closed at the end of the hearing or once the arbitrator receives the briefs, whichever is later.

The bill requires the arbitrator to issue a decision within 45 days of the record's closure. If the arbitrator has not issued a decision when the parties' contract expires, the contract is extended until he or she issues the decision.

The arbitrator's authority is limited to selecting either party's proposal in its entirety, on each unresolved issue. The arbitrator must consider:

1. the needs and welfare of patients receiving or eligible for in-network services under the contract;
2. the parties' needs and interests, including their proposals outlined in their written briefs;
3. the history of the parties' negotiations, including those leading up to arbitration;

4. any other network participation contracts between the hospital or hospital system and another insurer or between the insurer and another hospital or hospital system;
5. the current conditions and changes in the health care market and the community where the hospital or hospital system is located; and
6. the interests and welfare of the hospital's or hospital system's employees.

The parties must split equally any fees associated with the arbitration.

Finality of Arbitration Award

Under the bill, the arbitration award is final and binding, unless otherwise vacated or modified under existing law's procedures. By law, either party to an arbitration can apply to Superior Court to vacate or modify an arbitration award, for limited reasons. Either party can appeal from the court's order as in other civil cases (CGS §§ 52-418, -419, and -423).

EXTENSION OF CONTRACT IN ABSENCE OF ARBITRATION

Under the bill, if neither party submits the issue of network participation to binding arbitration at least 90 days before the contract expires, it is extended for one year. The parties can agree to modify the contract terms during this period, but the bill prohibits them from reducing the one-year extension period or limiting the hospital's or hospital system's participation in the network.

After this one-year period, the bill does not require binding arbitration or another extension, as long as the party seeking to terminate the contract during this period gives at least six months' public notice.

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 19 Nay 8 (03/27/2015)