HB 897

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 897 (Delegate Donoghue, *et al.*)
Health and Government Operations Finance

Health Insurance - Contracts of Carriers with Providers , Ambulatory Surgical Facilities, or Hospitals - Prohibited Provisions

This bill prohibits a health insurer, nonprofit health service plan, HMO, or dental plan organization (carrier) from including in a contract with a provider, ambulatory surgical center, or hospital a term or condition that: (1) prohibits the provider, ambulatory surgical center, or hospital from offering to provide services to another carrier's enrollees at a lower reimbursement rate; (2) requires the provider, ambulatory surgical center, or hospital to provide the carrier with the same reimbursement arrangement as another carrier, if the reimbursement arrangement with the other carrier is for a lower reimbursement rate; or (3) requires the provider, ambulatory surgical center, or hospital to certify that the reimbursement rate being paid by the carrier is not higher than the reimbursement rate being paid by another carrier.

Violation of these provisions is considered an unfair method of competition and unfair and deceptive act or practice in the business of insurance.

Fiscal Summary

State Effect: Any additional complaints could be handled with existing budgeted Maryland Insurance Administration resources. State Employee and Retiree Health and Welfare Benefits Program (State plan) expenditures could increase to the extent the bill erodes a State plan carrier's ability to contain costs. No effect on Medicaid. No effect on revenues.

Local Effect: None.

Small Business Effect: Potential meaningful. Small business health care providers could be able to negotiate carrier contracts with lower reimbursement rates from additional carriers.

Analysis

Current Law: A carrier may not reimburse a health care provider in an amount less than the sum or rate negotiated in the carrier's provider contract. A carrier may provide bonuses or other incentive-based compensation under specified circumstances. A carrier that compensates health care providers wholly or partly on a capitated basis may not retain any capitated fee attributable to an enrollee during an enrollee's contract year.

Background: CareFirst BlueCross BlueShield is the only health insurer in the State that uses a "most favored nation" provision in its contracts with certain providers. CareFirst has stated that it only uses this most favored nation provision when it offers the provider a higher rate than the CareFirst standard fee schedule. Under such a provision, a health care provider must agree that it will not accept contracted rates with any other carriers that are lower than CareFirst's rates. If the provider does accept lower rates from another carrier, CareFirst will adjust the provider's rates downward.

"Most favored nation" contract provisions can take different forms. Some forbid providers from contracting with other carriers at lower rates. Some contracts specify that the carrier may adjust its reimbursement payments downward to match discounts providers give to other plans. In recent years, such contract provisions have been deemed anti-competitive, especially when the carrier has a large market share in a given region. If most health care providers get a large portion of their total reimbursements from a carrier with a "most favored nation" clause in their contracts, health care providers could be reluctant to give up that income to contract with other, lower-cost carriers.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene (Medicaid, Maryland Health Care Commission), Maryland Insurance Administration, Department of Legislative Services

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