

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0702.01 Richard Sweetman x4333

HOUSE BILL 20-1264

HOUSE SPONSORSHIP

Kennedy,

SENATE SPONSORSHIP

(None),

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PROHIBITIONS ON HEALTH CARE CONTRACT PROVISIONS
102 THAT LIMIT COMPETITION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits a health system from requiring a carrier, as a condition of a contract for the delivery of health care services, to:

- ! Contract with every hospital or other facility within the health system;
- ! Agree to provide the same reimbursement rates at each hospital or other facility within the health system; or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

! Contract with all of the hospitals in the health system in order to access a lower reimbursement rate than is otherwise offered by the health system.

The bill also precludes a hospital or health system from, as a condition of a contract:

! Prohibiting a carrier from contracting with any other hospital or health system;

! Prohibiting a health care provider or provider group from contracting with any other hospital or health system.

The bill states that if, pursuant to the terms of employment or certain contract terms, a health care provider is prohibited from referring a patient to a health care provider outside the health system in which the referring provider is employed or contracted, the health care provider must disclose this restriction to any patient who the health care provider refers to another health care provider within the same health system.

The bill makes necessary conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 2 to article
3 37 of title 25 as follows:

4 PART 2

5 HEALTH CARE CONTRACTS - HOSPITALS,

6 HEALTH SYSTEMS, PROVIDERS, AND CARRIERS

7 **25-37-201. Legislative declaration.** (1) THE GENERAL ASSEMBLY
8 HEREBY FINDS AND DECLARES THAT:

9 (a) IN COLORADO, SIGNIFICANT VARIATIONS IN COST AND QUALITY
10 EXIST AMONG HEALTH CARE FACILITIES AND GEOGRAPHIC REGIONS, WITH
11 SOME MEDICAL PROCEDURES COSTING TWICE AS MUCH IN ONE HOSPITAL
12 AS THEY COST IN ANOTHER HOSPITAL;

13 (b) HOSPITAL CONTRACTS THAT REQUIRE CARRIERS TO INCLUDE OR
14 EXCLUDE FACILITIES BASED ON AFFILIATIONS PRIORITIZE HOSPITALS'
15 INTERESTS OVER PATIENT CARE AND AFFORDABILITY WHILE LIMITING
16 CARRIERS' ABILITY TO CREATE LOW-COST, HIGH-QUALITY,

1 HIGH-PERFORMING NETWORKS;

2 (c) MARKET POWER AND DOMINANCE CREATE THE OPPORTUNITY
3 FOR LARGE HEALTH SYSTEMS TO LIMIT PATIENT CHOICES, COST
4 EFFICIENCY, AND BETTER HEALTH OUTCOMES THROUGH ANTICOMPETITIVE
5 MEASURES SUCH AS "ALL OR NOTHING" CONTRACTING, MANDATING
6 EXCLUSION OF HOSPITAL COMPETITORS, AND BARRING HEALTH CARE
7 PROVIDERS FROM DISCLOSING HOW CONTRACTS INFORM AND AFFECT
8 REFERRAL DECISIONS;

9 (d) INNOVATION IS LEADING TO BETTER INFORMATION ON CARE,
10 COST, AND QUALITY BY SITE, AND THE INSIGHTS GAINED FROM THESE
11 INNOVATIONS, RATHER THAN CONSIDERATIONS OF MARKET SHARE,
12 PATIENT REVENUE, AND PROFITS, SHOULD INFORM AND GUIDE PATIENT
13 CARE;

14 (e) CONTRACTED PHYSICIANS SHOULD NOT BE PROHIBITED BY A
15 HEALTH SYSTEM FROM HAVING ADMITTING PRIVILEGES AT ANOTHER
16 HEALTH SYSTEM, AS THIS PRACTICE PRIORITIZES SYSTEM REVENUE
17 CONTROL OVER FREE MARKET FORCES THAT CAN IMPROVE AFFORDABILITY
18 AND QUALITY OF CARE; AND

19 (f) PATIENTS SHOULD BE INFORMED IF REFERRALS FOR THEIR CARE
20 ARE BEING MADE BASED ON CRITERIA OTHER THAN AFFORDABILITY AND
21 QUALITY, SUCH AS HOSPITAL AFFILIATION, CONTROL OF PATIENT VOLUME,
22 CONTROL OF PATIENT REVENUE, OR BUSINESS RELATIONSHIPS.

23 (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT A
24 COMPETITIVE MARKET, FREE FROM ANTICOMPETITIVE MEASURES IN
25 CONTRACTING, ALLOWS PATIENTS AND HEALTH CARE PROVIDERS TO MAKE
26 DECISIONS BASED ON AFFORDABILITY, QUALITY OF CARE, AND DESIRED
27 HEALTH OUTCOMES.

1 **25-37-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3 (1) "CARRIER" HAS THE MEANING SET FORTH IN SECTION
4 10-16-102 (8).

5 (2) "CONTRACT" MEANS A CONTRACT ENTERED INTO OR RENEWED
6 BETWEEN A HOSPITAL OR HEALTH SYSTEM AND A CARRIER OR BETWEEN A
7 HOSPITAL OR HEALTH SYSTEM AND A HEALTH CARE PROVIDER FOR THE
8 DELIVERY OF HEALTH CARE SERVICES TO OTHERS, OR THE ACT OF
9 ENTERING INTO SUCH A CONTRACT BY ANY SUCH ENTITIES.

10 (3) "HEALTH CARE PROVIDER" HAS THE MEANING SET FORTH IN
11 SECTION 25-37-102 (7).

12 (4) "HEALTH CARE SERVICES" HAS THE MEANING SET FORTH IN
13 SECTION 10-16-102 (33).

14 (5) "HEALTH MAINTENANCE ORGANIZATION" HAS THE MEANING
15 SET FORTH IN SECTION 10-16-102 (35).

16 (6) "HEALTH SYSTEM" MEANS A GROUP OF TWO OF MORE HEALTH
17 CARE FACILITIES THAT ARE OWNED OR OPERATED BY THE SAME PERSON.

18 (7) "HOSPITAL" MEANS A HOSPITAL LICENSED OR CERTIFIED BY THE
19 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO THE
20 DEPARTMENT'S AUTHORITY UNDER SECTION 25-1.5-103 (1)(a).

21 **25-37-203. Contracts between hospitals, health systems, and**
22 **carriers - prohibited provisions.** (1) A HEALTH SYSTEM THAT
23 CONTRACTS WITH A CARRIER SHALL NOT, AS A CONDITION OF THE
24 CONTRACT, REQUIRE THE CARRIER TO:

25 (a) ENTER INTO A CONTRACT WITH EACH HOSPITAL OR OUTPATIENT
26 HEALTH CARE FACILITY, IF ANY, WITHIN THE HEALTH SYSTEM;

27 (b) AGREE TO PROVIDE THE SAME REIMBURSEMENT RATES TO EACH

1 HOSPITAL OR OUTPATIENT HEALTH CARE FACILITY WITHIN THE HEALTH
2 SYSTEM; OR

3 (c) ENTER INTO A CONTRACT WITH ALL OF THE HOSPITALS IN THE
4 HEALTH SYSTEM IN ORDER TO ACCESS A LOWER REIMBURSEMENT RATE.

5 (2) A HOSPITAL OR HEALTH SYSTEM THAT CONTRACTS WITH A
6 CARRIER SHALL NOT, AS A CONDITION OF THE CONTRACT, PROHIBIT THE
7 CARRIER FROM CONTRACTING WITH ANY OTHER HOSPITAL OR HEALTH
8 SYSTEM.

9 **25-37-204. Contracts between hospitals, health systems, and**
10 **health care providers - prohibited provisions.** A HOSPITAL OR HEALTH
11 SYSTEM THAT CONTRACTS WITH A HEALTH CARE PROVIDER OR PROVIDER
12 GROUP SHALL NOT, AS A CONDITION OF THE CONTRACT, PROHIBIT THE
13 HEALTH CARE PROVIDER OR PROVIDER GROUP FROM CONTRACTING WITH,
14 OR HAVING ADMITTING PRIVILEGES AT, ANY OTHER HOSPITAL OR HEALTH
15 SYSTEM.

16 **25-37-205. Enforcement.** A KNOWING OR RECKLESS VIOLATION
17 OF THIS PART 2 IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE PURSUANT
18 TO THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE
19 6, AS DESCRIBED IN SECTION 6-1-105 (1)(kkk).

20 **25-37-206. Transparency - disclosure of limitations on**
21 **referrals required.** IF A HEALTH CARE PROVIDER, PURSUANT TO
22 CONTRACTED TERMS OF EMPLOYMENT, TERMS OF A CONTRACT WITH A
23 HEALTH SYSTEM, TERMS OF A CONTRACT BETWEEN A HEALTH
24 MAINTENANCE ORGANIZATION OR CARRIER AND A PROFESSIONAL
25 CORPORATION OF WHICH THE HEALTH CARE PROVIDER IS A MEMBER, OR AS
26 A CONDITION OF ADMITTING PRIVILEGES, IS PROHIBITED FROM REFERRING
27 PATIENTS TO HEALTH CARE PROVIDERS WHO ARE NOT EMPLOYED BY OR

1 UNDER CONTRACT WITH THE SAME HEALTH SYSTEM OR HEALTH
2 MAINTENANCE ORGANIZATION OR CARRIER, THE HEALTH CARE PROVIDER
3 OR ANY PERSON ACTING ON BEHALF OF THE HEALTH CARE PROVIDER OR
4 HEALTH SYSTEM SHALL DISCLOSE THIS RESTRICTION TO ANY PATIENT WHO
5 THE HEALTH CARE PROVIDER REFERS TO ANOTHER HEALTH CARE PROVIDER
6 WHO IS EMPLOYED BY OR UNDER CONTRACT WITH THE SAME HEALTH
7 SYSTEM, HEALTH MAINTENANCE ORGANIZATION, OR CARRIER.

8 **SECTION 2.** In Colorado Revised Statutes, **amend** 25-37-101 as
9 follows:

10 **25-37-101. Applicability of part.** A person or entity that
11 contracts with a health care provider shall comply with this ~~article~~ PART
12 1 and shall include the provisions required by this ~~article~~ PART 1 in the
13 contract.

14 **SECTION 3.** In Colorado Revised Statutes, 25-37-102, **amend**
15 the introductory portion as follows:

16 **25-37-102. Definitions.** As used in this ~~article~~ PART 1, unless the
17 context otherwise requires:

18 **SECTION 4.** In Colorado Revised Statutes, 25-37-103, **amend**
19 (3), (4), and (5) as follows:

20 **25-37-103. Health care contracts - required provisions -**
21 **permissible provision.** (3) When a proposed contract is presented by a
22 person or entity for consideration by a health care provider, the person or
23 entity shall provide in writing or make reasonably available the
24 information required in subsections (1) and (2) of this section. If the
25 information is not disclosed in writing, it shall be disclosed in a manner
26 that allows the health care provider to timely evaluate the payment or
27 compensation for services under the proposed contract. The disclosure

1 obligations in this ~~article shall~~ PART 1 DO not prevent a person or entity
2 from requiring a reasonable confidentiality agreement regarding the terms
3 of a proposed contract.

4 (4) Nothing in this ~~article shall~~ PART 1 MAY be construed to
5 require the renegotiation of a contract in existence before the applicable
6 compliance date in this ~~article~~ PART 1, and any disclosure required by this
7 ~~article~~ PART 1 for such contracts may be by notice to the health care
8 provider.

9 (5) A contract subject to this ~~article~~ PART 1 may include an
10 agreement for binding arbitration.

11 **SECTION 5.** In Colorado Revised Statutes, **amend** 25-37-109 as
12 follows:

13 **25-37-109. Waiver of rights prohibited.** Except as permitted by
14 this ~~article~~ PART 1, a person or entity shall not require, as a condition of
15 contracting, that a health care provider waive or forego any right or
16 benefit to which the health care provider may be entitled under state or
17 federal law, rule, or regulation that provides legal protections to a person
18 solely based on the person's status as a health care provider providing
19 services in this state.

20 **SECTION 6.** In Colorado Revised Statutes, **amend** 25-37-112 as
21 follows:

22 **25-37-112. Disclosure to third parties - confidentiality.** A
23 contract shall not preclude its use or disclosure to a third party for the
24 purpose of enforcing the provisions of this ~~article~~ PART 1 or enforcing
25 other state or federal law. The third party ~~shall be~~ IS bound by the
26 confidentiality requirements set forth in the contract or otherwise.

27 **SECTION 7.** In Colorado Revised Statutes, 25-37-113, **amend**

1 (1) introductory portion and (1)(a) as follows:

2 **25-37-113. Part inapplicable - when.** (1) This ~~article shall~~ PART
3 1 DOES not apply to:

4 (a) An exclusive contract with a single medical group in a specific
5 geographic area to provide or arrange for health care services; however,
6 this ~~article shall apply~~ PART 1 APPLIES to contracts for health care services
7 between the medical group and other medical groups;

8 **SECTION 8.** In Colorado Revised Statutes, 25-37-114, **amend**
9 (1) introductory portion, (1)(c), (1)(d), and (2) as follows:

10 **25-37-114. Enforcement.** (1) With respect to the enforcement of
11 this ~~article~~ PART 1, including arbitration, there shall be available:

12 (c) Reasonable attorney fees when the health care provider is the
13 prevailing party in an action to enforce this ~~article~~ PART 1, except to the
14 extent that the violation of this ~~article~~ PART 1 consisted of a mere failure
15 to make payment pursuant to a contract;

16 (d) The option to introduce as persuasive authority prior
17 arbitration awards regarding a violation of this ~~article~~ PART 1.

18 (2) Arbitration awards related to the enforcement of this ~~article~~
19 PART 1 may be disclosed to those who have a bona fide interest in the
20 arbitration.

21 **SECTION 9.** In Colorado Revised Statutes, **amend** 25-37-115 as
22 follows:

23 **25-37-115. Providers obligated to comply with law.** No
24 provision of this ~~article shall~~ PART 1 MAY be used to justify any act or
25 omission by a health care provider that is prohibited by any applicable
26 professional code of ethics or state or federal law prohibiting
27 discrimination against any person.

1 **SECTION 10.** In Colorado Revised Statutes, **amend** 25-37-116
2 as follows:

3 **25-37-116. Copyrights protected.** Nothing in this ~~article~~ PART 1,
4 including the designation of standards, code sets, rules, edits, or related
5 specifications, divests copyright holders of their copyrights in any work
6 referenced in this ~~article~~ PART 1.

7 **SECTION 11. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
9 the expiration of the ninety-day period after final adjournment of the
10 general assembly (August 5, 2020, if adjournment sine die is on May 6,
11 2020); except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within such period, then the act, item, section, or part
14 will not take effect unless approved by the people at the general election
15 to be held in November 2020 and, in such case, will take effect on the
16 date of the official declaration of the vote thereon by the governor.

17 (2) This act applies to contracts entered into or renewed on or
18 after the applicable effective date of this act.