HOUSE BILL REPORT
E2SSB 5215

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to health care professionals contracting with public and private payors.

Brief Description: Concerning health care professionals contracting with public and private payors.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Becker, Holmquist Newbry, Ericksen, Dammeier, Honeyford and Schlicher).

Brief History:
Committee Activity:
Health Care & Wellness: 3/26/13, 3/28/13 [DPA].

Brief Summary of Engrossed Second Substitute Bill
(As Amended by Committee)

- Prohibits public and private insurers from making material contract amendments without providing the contracting health care provider with notice and the opportunity to opt out.
- Prohibits insurers from requiring a health care provider to accept Medicaid rates (or a specified percentage of Medicaid rates) in commercial products or other lines of business without the consent of the health care provider.
- Provides that health care providers may not be required to participate in any public or private third-party reimbursement program, or any plans or products offered by a payor, as a condition of licensure.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 17 members: Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Angel, Clibborn, Green, Harris, Manweller, Moeller, Morrell, Riccelli, Rodne, Ross, Short, Tharinger and Van De Wege.

Staff: Jim Morishima (786-7191).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

I. Health Insurance Provider Contracts.

Both public and private health insurance plans may enter into contracts with health care providers under which the providers agree to accept a specified reimbursement rate for their services. The Office of the Insurance Commissioner (OIC) requires private health carriers to report their master list of providers to determine network adequacy, but does not regulate the terms of the agreements.

II. Health Professions Licensing.

There are approximately 83 credentialed health professions in Washington. In order to be credentialed, these professions are subject to a variety of requirements, including the completion of an educational program, the passage of an examination, and the completion of continuing education/competency hours. No health profession is required to participate in any public or private insurance plan as a condition of licensure.

Summary of Amended Bill:

I. Health Insurance Provider Contracts.

A health carrier or a Medicaid managed care system (payor) must provide at least 60 days' notice to a health care provider of any proposed material amendments to the provider's contract during which time the provider may reject the material amendment without affecting the terms of the existing contract. The material amendment must be clearly defined in a notice to the provider before the notice period begins. The notice must inform the provider that he or she may choose to reject the terms of the material amendment through written or electronic means at any time during the notice period and that such rejection will not affect the terms of the existing contract. A payor's failure to comply with the notice requirements voids the effectiveness of the material amendment.

A material amendment to a contract is an amendment that would result in requiring the health care provider to participate in a health plan, product, or line of business with a lower fee schedule in order to continue to participate in a health plan, product, or line of business with a higher fee schedule. A material amendment does not include:

- a decrease in payment or compensation resulting from a change in a fee schedule published by the payor upon which the payment or compensation is based and the date of applicability is clearly identified in the contract, compensation addendum, or fee schedule notice;
- a decrease in payment or compensation that was anticipated under the terms of the contract, if the amount and date of applicability of the decrease is clearly identified in the contract; or
- changes unrelated to compensation so long as reasonable notice of not less than 60 days is provided.

A payor may require a health care provider to extend the payor's Medicaid rates, or some percentage above the payor's Medicaid rates, that govern a health benefit program administered by a public purchaser to a commercial plan or line of business offered by a payor that is not administered by a public purchaser only if the provider has expressly agreed in writing to the extension. The requirement that the provider expressly agree to the extension does not prohibit the payor from using its Medicaid rates, or some percentage above its Medicaid rates, as a base when negotiating payment rates with a provider.

II. Health Professions Licensing.

A member of a credentialed health care profession may not be required to participate in any public or private third-party reimbursement program, or any plans or products offered by a payor, as a condition of licensure.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill:

- allows a payor administering a public plan to extend its Medicaid rates, or some percentage above its Medicaid rates, to its non-Medicaid product offerings only if the contracting provider has expressly agreed in writing to the extension (instead of prohibiting such extension unless the provider has expressly agreed in writing); and
- clarifies that this restriction does not affect a payor's ability to use Medicaid rates, or some percentage above Medicaid rates, as a base when negotiating payment rates with a provider.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Some payors deem providers in compliance with new requirements if they do not respond within a certain time period. This sometimes results in providers being obligated to do things they may not want to do. Payors have more bargaining power than providers in contract negotiations. This bill is an important protection for providers, particularly in light of federal health care reform. Many insurers currently do not engage in the business practices prohibited in this bill; the practices should be eliminated from the market. This bill is fair to providers and can help address provider shortages. This bill does not address the issue of outsourced networks, which are not currently regulated by the OIC. This bill does not address the situation where a contract is cancelled and then renegotiated.

(Opposed) Medicaid managed care plans often use Medicaid rates as a base in contract negotiations, which would be prohibited by this bill. This prohibition is unnecessary and

overly prescriptive. The prohibition will adversely affect the ability of certain insurers to offer coverage in the state's health benefit exchange. Medicaid managed care plans should be allowed to continue their current business practices.

Persons Testifying: (In support) Senator Becker, prime sponsor; Mary Clogston, Washington Academy of Family Physicians; Len Sorrin, Premera; Chris Bandoli, Regence; Katie Kolan, Washington State Medical Association; Lori Grassi, Washington State Chiropractic Association; Debi Johnson, Washington State Urology Society; and Brad Tower, Optometric Physicians Association of Washington.

(Opposed) Davor Gjurasic, Molina Healthcare.

Persons Signed In To Testify But Not Testifying: None.