SENATE BILL REPORT
E2SHB 1160

As of March 16, 2021

Title: An act relating to health provider contracts.

Brief Description: Concerning health provider contracts.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Cody, Macri and Pollet).

Brief History: Passed House: 2/26/21, 60-35.
Committee Activity: Health & Long Term Care: 3/19/21.

Brief Summary of Bill

- Regulates health carrier contracts with hospitals and providers.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: Greg Attanasio (786-7410)

Background: Provider Contracts and Provider Compensation Agreements. Health insurance carriers must file all provider contracts and provider compensation agreements with the Office of the Insurance Commissioner (OIC) 30 calendar days before use. When a carrier and provider negotiate an agreement that deviates from a filed agreement, the specific contract must be filed 30 days prior to use. Any provider compensation agreements not affirmatively disapproved by OIC are deemed approved, except OIC may extend the approval date an additional 15 days with notice before the initial 30-day period expires. Changes to the previously filed agreements that modify the compensation or related terms must be filed and are deemed approved upon filing if no other changes are made to the previously approved agreement. OIC may not base a disapproval of the agreement on the amount of the compensation or other financial arrangements between the carrier and provider, unless the compensation amount causes the underlying health benefit plan to be in violation of state or federal law.

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

Provider compensation agreements are confidential and not subject to public inspection or public disclosure if they are filed following the procedures for submitting confidential filings in the electronic rate and form filings. If the filing instructions are not followed and the carrier indicates the compensation agreement will be withheld from public inspection, OIC must reject the filing and notify the carrier to amend the filing to comply with the confidentiality instructions.

Critical Access Hospitals. There are 39 hospitals in Washington that are federally certified by the Centers for Medicare or Medicaid Services (CMS) as critical access hospitals. These are hospitals with 25 beds or less, generally located in rural areas. They must deliver continuous emergency department services and they may not have an average length of stay of more than 96 hours per patient. The Critical Access Hospital Program allows hospitals under Washington's medical assistance programs to receive payment for hospital services based on allowable costs and to have more flexibility in staffing.

Sole Community Hospitals. Sole community hospital is a federal hospital classification for hospitals that meet certain criteria based on location, size, or distance.

Consumer Protection Act. Under the Consumer Protection Act (CPA), unfair or deceptive acts or practices in trade or commerce are unlawful. The CPA provides that any person injured in their business or property through such practices may bring a civil action to recover actual damages sustained and costs of the suit, including reasonable attorneys' fees. The attorney general may bring an action under the CPA to restrain and prevent unfair and deceptive acts and practices.

Summary of Bill: Beginning January 1, 2022, a contract between a hospital or affiliate hospital and a health carrier may not, directly or indirectly:

- set provider compensation agreements or other terms for affiliates of the hospital out of the carrier's network;
- require a health carrier to contract with multiple hospitals owned or controlled by the same single entity;
- require health carriers to place a hospital or affiliate in an enrollee cost-sharing tier that reflects the lowest or lower enrollee cost-sharing amounts; or
- require health carriers to keep the contracts payment rates confidential from any existing or potential payor that is or may become financially responsible for the payments, though these communications may be subject to a reasonable nondisclosure agreement.

The restriction on prohibiting a contract from requiring a health carrier to contract with multiple hospitals owned or controlled by the same single entity does not prohibit a health carrier from voluntarily agreeing to contract with other hospitals owned or controlled by the same single entity. If the health carrier voluntarily agrees to contract with other hospitals owned or controlled by the same single entity, the health carrier must file an attestation with

the OIC 30 days before the contract is used.

The prohibitions against these contractual requirements between a health carrier and hospital do not apply to the extent that the prohibitions impair the ability of a hospital, provider, or health carrier to participate in a state-sponsored, federally funded program, or grant opportunity. A certified critical access hospital or an independent certified sole community hospital is not prohibited from negotiating payment rates and methodologies on behalf of an individual health care practitioner or medical group that the hospital is affiliated with.

The Attorney General is authorized to enforce the act under the CPA. For purposes of CPA actions brought by the attorney general, contracts that violate these provisions are considered an unfair or deceptive act in trade or commerce and an unfair method of competition.

The insurance commissioner is authorized to adopt rules necessary to implement the act.

"Provider compensation agreement" is defined as any written agreement that includes specific information about payment methodology, payment rates, and other terms that determine the remuneration a carrier will pay to a provider. "Affiliate" is defined as a person who directly or indirectly through intermediaries, controls or is controlled by, or is under common control with, another specified person. "Control" is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, membership rights, by contract, or otherwise.

"Provider" means:

- a health care provider that is regulated under Title 18 or by in-home care agencies to practice health or health-related services and the employees or agents of a health care provider;
- a participating provider, who is a provider, who has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services;
- a hospital, hospice, rural health care facility, psychiatric hospital, nursing home, community mental health center, kidney disease treatment center, ambulatory diagnostic, treatment, or surgical facilities, home health agencies, and other facilities as required by federal law; and
- intermediaries that have agreed in writing with a health carrier to provide access to providers who render covered services to the enrollees of a health carrier.

Appropriation: None.

Fiscal Note: Requested on March 16, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.