

HOUSE BILL NO. 3088

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

6664H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 376, RSMo, by adding thereto one new section relating to conduct affecting health care provider networks.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 376, RSMo, is amended by adding thereto one new section, to be known as section 376.1068, to read as follows:

376.1068. 1. As used in this section, the following terms mean:

- (1) "Anti-steering clause", a provision in a provider network contract that restricts the ability of a general contracting entity to encourage an enrollee to obtain a health care service from a competitor of the provider, including offering incentives to encourage enrollees to use specific providers;
- (2) "Anti-tiering clause", a provision in a provider network contract that:
- (a) Restricts the ability of a general contracting entity to introduce or modify a tiered network plan or assign providers into tiers; or
- (b) Requires a general contracting entity to place all members of a provider in the same tier of a tiered network plan;
- (3) "Covered individual", an individual who is covered under a health benefit plan;
- (4) "Enrollee", the same meaning given to the term in section 376.1350;
- (5) "Facility", the same meaning given to the term in section 376.1350;
- (6) "Gag clause", a provision in a provider network contract that restricts the ability of a general contracting entity or provider to disclose:

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(a) Price or quality information, including the allowed amount, negotiated rates**
18 **or discounts, fees for services, or other claim-related financial obligations included in**
19 **the contract, to a governmental entity as authorized by law or its contractors or agents,**
20 **an enrollee, a treating provider of an enrollee, a plan sponsor, or potential eligible**
21 **enrollees and plan sponsors; or**

22 **(b) Out-of-pocket costs to an enrollee;**

23 **(7) "General contracting entity", a person who enters into a direct contract with**
24 **a provider for the delivery of health care services to covered individuals regardless of**
25 **whether the person, in the ordinary course of business, establishes a provider network**
26 **for access by another party. The term "general contracting entity" shall not include a**
27 **health care provider or facility unless the provider or facility is entering into the**
28 **contract in the provider's or facility's role as a health benefit plan;**

29 **(8) "Health benefit plan", the same meaning given to the term in section**
30 **376.1350;**

31 **(9) "Health care service", the same meaning given to the term in section**
32 **376.1350;**

33 **(10) "Most-favored-nation clause", a provision in a provider network contract**
34 **that:**

35 **(a) Prohibits or grants an option to prohibit:**

36 **a. A provider from contracting with another general contracting entity to**
37 **provide health care services at a lower rate; or**

38 **b. A general contracting entity from contracting with another provider to**
39 **provide health care services at a higher rate;**

40 **(b) Requires or grants an option to require:**

41 **a. A provider to accept a lower rate for health care services if the provider**
42 **agrees with another general contracting entity to accept a lower rate for the services; or**

43 **b. A general contracting entity to pay a higher rate for health care services if the**
44 **entity agrees with another provider to pay a higher rate for the services;**

45 **(c) Requires or grants an option to require termination or renegotiation of an**
46 **existing provider network contract if:**

47 **a. A provider agrees with another general contracting entity to accept a lower**
48 **rate for providing health care services; or**

49 **b. A general contracting entity agrees with a provider to pay a higher rate for**
50 **health care services; or**

51 **(d) Requires:**

52 **a. A provider to disclose the provider's contractual reimbursement rates with**
53 **other general contracting entities; or**

54 **b. A general contracting entity to disclose the general contracting entity's**
55 **contractual reimbursement rates with other providers;**

56 **(11) "Provider", the same meaning given to the term in section 376.1350;**

57 **(12) "Provider network contract", a contract between a general contracting**
58 **entity and a provider for the delivery of, and payment for, health care services to a**
59 **covered individual.**

60 **2. A provider shall not:**

61 **(1) Offer to a general contracting entity a written provider network contract**
62 **that includes an anti-steering, anti-tiering, gag, or most-favored-nation clause;**

63 **(2) Enter into a provider network contract that includes an anti-steering, anti-**
64 **tiering, gag, or most-favored-nation clause; or**

65 **(3) Amend or renew an existing provider network contract previously entered**
66 **into with a general contracting entity so that the contract as amended or renewed adds**
67 **or retains an anti-steering, anti-tiering, gag, or most-favored-nation clause.**

68 **3. Any provision in a provider network contract that is an anti-steering, anti-**
69 **tiering, gag, or most-favored-nation clause is void and unenforceable. The remaining**
70 **provisions in the provider network contract shall remain in effect and are enforceable.**

71 **4. A health benefit plan issuer that encourages an enrollee to obtain a health care**
72 **service from a particular provider, including offering incentives to encourage enrollees**
73 **to use specific providers, or that introduces or modifies a tiered network plan or assigns**
74 **providers into tiers has a fiduciary duty to the enrollee or policyholder to engage in that**
75 **conduct only for the primary benefit of the enrollee or policyholder.**

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