

# STATE OF NEW YORK

7199

2021-2022 Regular Sessions

## IN SENATE

June 7, 2021

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law and the public health law, in relation to certain prohibited contract provisions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 3217-b of the insurance law is amended by adding a  
2 new subsection (m) to read as follows:

3 (m) (1) No insurer that offers a managed care product or a comprehen-  
4 sive policy that utilizes a network of providers shall enter into a  
5 contract, written policy, written procedure or agreement (hereinafter  
6 and solely for purposes of this subsection collectively referred to as a  
7 "contract") with any health care provider that:

8 (A) requires the insurer to include within the scope of the contract  
9 all covered groups of the insurer, including groups or benefit funds  
10 that contract with the insurer, or an affiliate of the insurer, for  
11 access to the insurer's network of participating providers;

12 (B) requires an insurer to include all members of a provider system,  
13 including medical practice groups and affiliated facilities, in its  
14 network of participating providers;

15 (C) requires an insurer, or an affiliate of an insurer, to include all  
16 members of a provider system, including medical practice groups and  
17 affiliated facilities, in all products offered by the insurer or an  
18 affiliate of the insurer;

19 (D) restricts the ability of an insurer to create or modify a tiered  
20 network benefit plan or requires an insurer to place all members of a  
21 provider system, including medical practice groups and affiliated facil-  
22 ities, in the same network tier or otherwise limits the right of an  
23 insurer to place a provider in a particular tier;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (E) prohibits insurers from using benefit designs, including wellness  
2 programs and other benefits, to encourage members to seek services from  
3 value-based health care providers;

4 (F) contains a most-favored-nation provision; provided, however, noth-  
5 ing in this section shall be construed to prohibit a health insurer and  
6 a provider from negotiating payment rates and performance-based contract  
7 terms that would result in the insurer receiving a rate that is as  
8 favorable, or more favorable, than the rates negotiated between a health  
9 care provider and another entity; or

10 (G) restricts the ability of the insurer to disclose price or quality  
11 information, including the allowed amount, negotiated rates or  
12 discounts, or any other claim-related financial obligations covered by  
13 the provider contract to any enrollee, group or other entity receiving  
14 health care services pursuant to the contract.

15 (2) Beginning January first, two thousand twenty-two, any contract,  
16 written policy, written procedure or agreement that contains a clause  
17 contrary to the provisions set forth in this section shall be null and  
18 void; provided, however, the remaining clauses of the contract shall  
19 remain in effect for the duration of the contract term.

20 § 2. Section 4406 of the public health law is amended by adding a new  
21 subdivision 6 to read as follows:

22 6. (a) No health maintenance organization that offers a managed care  
23 product or a comprehensive policy that utilizes a network of providers  
24 shall enter into a contract, written policy, written procedure or agree-  
25 ment with any health care provider that:

26 (i) requires the insurer to include within the scope of the contract  
27 all covered groups of the insurer, including groups or benefit funds  
28 that contract with the insurer, or an affiliate of the insurer, for  
29 access to the insurer's network of participating providers;

30 (ii) requires an insurer to include all members of a provider system,  
31 including medical practice groups and affiliated facilities, in its  
32 network of participating providers;

33 (iii) requires an insurer, or an affiliate of an insurer, to include  
34 all members of a provider system, including medical practice groups and  
35 affiliated facilities, in all products offered by the insurer or an  
36 affiliate of the insurer;

37 (iv) restricts the ability of an insurer to create or modify a tiered  
38 network benefit plan or requires an insurer to place all members of a  
39 provider system, including medical practice groups and affiliated facil-  
40 ities, in the same network tier or otherwise limits the right of an  
41 insurer to place a provider in a particular tier;

42 (v) prohibits insurers from using benefit designs, including wellness  
43 programs and other benefits, to encourage members to seek services from  
44 value-based health care providers;

45 (vi) contains a most-favored-nation provision; provided, however,  
46 nothing in this section shall be construed to prohibit a health insurer  
47 and a provider from negotiating payment rates and performance-based  
48 contract terms that would result in the insurer receiving a rate that is  
49 as favorable, or more favorable, than the rates negotiated between a  
50 health care provider and another entity; or

51 (vii) restricts the ability of the insurer to disclose price or quali-  
52 ty information, including the allowed amount, negotiated rates or  
53 discounts, or any other claim-related financial obligations covered by  
54 the provider contract to any enrollee, group or other entity receiving  
55 health care services pursuant to the contract.

1 (b) After January first, two thousand twenty-two, any contract, writ-  
2 ten policy, written procedure or agreement that contains a clause  
3 contrary to the provisions set forth in this section shall be null and  
4 void; provided, however, the remaining clauses of the contract shall  
5 remain in effect for the duration of the contract term.

6 § 3. This act shall take effect January 1, 2022.