

# SENATE BILL NO. 1644

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HUDSON.

6945S.011

KRISTINA MARTIN, Secretary

## 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  
2 one new section, to be known as section 376.1068, to read as  
3 follows:

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

3 (1) "Anti-steering clause", a provision in a provider  
4 network contract that restricts the ability of a general  
5 contracting entity to encourage an enrollee to obtain a  
6 health care service from a competitor of the provider,  
7 including offering incentives to encourage enrollees to use  
8 specific providers;

9 (2) "Anti-tiering clause", a provision in a provider  
10 network contract that:

11 (a) Restricts the ability of a general contracting  
12 entity to introduce or modify a tiered network plan or  
13 assign providers into tiers; or

14 (b) Requires a general contracting entity to place all  
15 members of a provider in the same tier of a tiered network  
16 plan;

17           (3) "Covered individual", an individual who is covered  
18 under a health benefit plan;

19           (4) "Enrollee", the same meaning given to the term in  
20 section 376.1350;

21           (5) "Facility", the same meaning given to the term in  
22 section 376.1350;

23           (6) "Gag clause", a provision in a provider network  
24 contract that restricts the ability of a general contracting  
25 entity or provider to disclose:

26           (a) Price or quality information, including the  
27 allowed amount, negotiated rates or discounts, fees for  
28 services, or other claim-related financial obligations  
29 included in the contract, to a governmental entity as  
30 authorized by law or its contractors or agents, an enrollee,  
31 a treating provider of an enrollee, a plan sponsor, or  
32 potential eligible enrollees and plan sponsors; or

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

34           (7) "General contracting entity", a person who enters  
35 into a direct contract with a provider for the delivery of  
36 health care services to covered individuals regardless of  
37 whether the person, in the ordinary course of business,  
38 establishes a provider network for access by another party.  
39 The term "general contracting entity" shall not include a  
40 health care provider or facility unless the provider or  
41 facility is entering into the contract in the provider's or  
42 facility's role as a health benefit plan;

43           (8) "Health benefit plan", the same meaning given to  
44 the term in section 376.1350;

45           (9) "Health care service", the same meaning given to  
46 the term in section 376.1350;

47           (10) "Most-favored-nation clause", a provision in a  
48 provider network contract that:

- 49           (a) Prohibits or grants an option to prohibit:
- 50           a. A provider from contracting with another general
- 51 contracting entity to provide health care services at a
- 52 lower rate; or
- 53           b. A general contracting entity from contracting with
- 54 another provider to provide health care services at a higher
- 55 rate;
- 56           (b) Requires or grants an option to require:
- 57           a. A provider to accept a lower rate for health care
- 58 services if the provider agrees with another general
- 59 contracting entity to accept a lower rate for the services;
- 60 or
- 61           b. A general contracting entity to pay a higher rate
- 62 for health care services if the entity agrees with another
- 63 provider to pay a higher rate for the services;
- 64           (c) Requires or grants an option to require
- 65 termination or renegotiation of an existing provider network
- 66 contract if:
- 67           a. A provider agrees with another general contracting
- 68 entity to accept a lower rate for providing health care
- 69 services; or
- 70           b. A general contracting entity agrees with a provider
- 71 to pay a higher rate for health care services; or
- 72           (d) Requires:
- 73           a. A provider to disclose the provider's contractual
- 74 reimbursement rates with other general contracting entities;
- 75 or
- 76           b. A general contracting entity to disclose the
- 77 general contracting entity's contractual reimbursement rates
- 78 with other providers;
- 79           (11) "Provider", the same meaning given to the term in
- 80 section 376.1350;

81           (12) "Provider network contract", a contract between a  
82 general contracting entity and a provider for the delivery  
83 of, and payment for, health care services to a covered  
84 individual.

85           2. A provider shall not:

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

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

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

97           3. Any provision in a provider network contract that  
98 is an anti-steering, anti-tiering, gag, or most-favored-  
99 nation clause is void and unenforceable. The remaining  
100 provisions in the provider network contract shall remain in  
101 effect and are enforceable.

102           4. A health benefit plan issuer that encourages an  
103 enrollee to obtain a health care service from a particular  
104 provider, including offering incentives to encourage  
105 enrollees to use specific providers, or that introduces or  
106 modifies a tiered network plan or assigns providers into  
107 tiers has a good faith duty to the enrollee or policyholder  
108 to engage in that conduct for the benefit of the enrollee or  
109 policyholder.

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