A BILL FOR AN ACT

CONCERNING PROHIBITIONS ON HEALTH CARE CONTRACT PROVISIONS THAT LIMIT COMPETITION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill prohibits a health system from requiring a carrier, as a condition of a contract for the delivery of health care services, to:

! Contract with every hospital or other facility within the health system;

! Agree to provide the same reimbursement rates at each hospital or other facility within the health system; or
Contract with all of the hospitals in the health system in order to access a lower reimbursement rate than is otherwise offered by the health system.

The bill also precludes a hospital or health system from, as a condition of a contract:

- Prohibiting a carrier from contracting with any other hospital or health system;
- Prohibiting a health care provider or provider group from contracting with any other hospital or health system.

The bill states that if, pursuant to the terms of employment or certain contract terms, a health care provider is prohibited from referring a patient to a health care provider outside the health system in which the referring provider is employed or contracted, the health care provider must disclose this restriction to any patient who the health care provider refers to another health care provider within the same health system.

The bill makes necessary conforming amendments.

---

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add part 2 to article 37 of title 25 as follows:

PART 2

HEALTH CARE CONTRACTS - HOSPITALS, HEALTH SYSTEMS, PROVIDERS, AND CARRIERS

25-37-201. Legislative declaration. (1) The General Assembly hereby finds and declares that:

(a) In Colorado, significant variations in cost and quality exist among health care facilities and geographic regions, with some medical procedures costing twice as much in one hospital as they cost in another hospital;

(b) Hospital contracts that require carriers to include or exclude facilities based on affiliations prioritize hospitals' interests over patient care and affordability while limiting carriers' ability to create low-cost, high-quality,
HIGH-PERFORMING NETWORKS;

    (c) Market power and dominance create the opportunity for large health systems to limit patient choices, cost efficiency, and better health outcomes through anticompetitive measures such as "all or nothing" contracting, mandating exclusion of hospital competitors, and barring health care providers from disclosing how contracts inform and affect referral decisions;

    (d) Innovation is leading to better information on care, cost, and quality by site, and the insights gained from these innovations, rather than considerations of market share, patient revenue, and profits, should inform and guide patient care;

    (e) Contracted physicians should not be prohibited by a health system from having admitting privileges at another health system, as this practice prioritizes system revenue control over free market forces that can improve affordability and quality of care; and

    (f) Patients should be informed if referrals for their care are being made based on criteria other than affordability and quality, such as hospital affiliation, control of patient volume, control of patient revenue, or business relationships.

    (2) The general assembly further declares that a competitive market, free from anticompetitive measures in contracting, allows patients and health care providers to make decisions based on affordability, quality of care, and desired health outcomes.
25-37-202. Definitions. As used in this Part 2, unless the context otherwise requires:

(1) "Carrier" has the meaning set forth in Section 10-16-102 (8).

(2) "Contract" means a contract entered into or renewed between a hospital or health system and a carrier or between a hospital or health system and a health care provider for the delivery of health care services to others, or the act of entering into such a contract by any such entities.

(3) "Health care provider" has the meaning set forth in Section 25-37-102 (7).

(4) "Health care services" has the meaning set forth in Section 10-16-102 (33).

(5) "Health maintenance organization" has the meaning set forth in Section 10-16-102 (35).

(6) "Health system" means a group of two or more health care facilities that are owned or operated by the same person.

(7) "Hospital" means a hospital licensed or certified by the Department of Public Health and Environment pursuant to the Department's authority under Section 25-1.5-103 (1)(a).

25-37-203. Contracts between hospitals, health systems, and carriers - prohibited provisions. (1) A health system that contracts with a carrier shall not, as a condition of the contract, require the carrier to:

(a) Enter into a contract with each hospital or outpatient health care facility, if any, within the health system;

(b) Agree to provide the same reimbursement rates to each
HOSPITAL OR OUTPATIENT HEALTH CARE FACILITY WITHIN THE HEALTH
SYSTEM; OR

(c) ENTER INTO A CONTRACT WITH ALL OF THE HOSPITALS IN THE
HEALTH SYSTEM IN ORDER TO ACCESS A LOWER REIMBURSEMENT RATE.

(2) A HOSPITAL OR HEALTH SYSTEM THAT CONTRACTS WITH A
CARRIER SHALL NOT, AS A CONDITION OF THE CONTRACT, PROHIBIT THE
CARRIER FROM CONTRACTING WITH ANY OTHER HOSPITAL OR HEALTH
SYSTEM.

25-37-204. Contracts between hospitals, health systems, and
health care providers - prohibited provisions. A HOSPITAL OR HEALTH
SYSTEM THAT CONTRACTS WITH A HEALTH CARE PROVIDER OR PROVIDER
GROUP SHALL NOT, AS A CONDITION OF THE CONTRACT, PROHIBIT THE
HEALTH CARE PROVIDER OR PROVIDER GROUP FROM CONTRACTING WITH,
OR HAVING ADMITTING PRIVILEGES AT, ANY OTHER HOSPITAL OR HEALTH
SYSTEM.

25-37-205. Enforcement. A KNOWING OR RECKLESS VIOLATION
OF THIS PART 2 IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE PURSUANT
TO THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE
6, AS DESCRIBED IN SECTION 6-1-105 (1)(kkk).

25-37-206. Transparency - disclosure of limitations on
referrals required. IF A HEALTH CARE PROVIDER, PURSUANT TO
CONTRACTED TERMS OF EMPLOYMENT, TERMS OF A CONTRACT WITH A
HEALTH SYSTEM, TERMS OF A CONTRACT BETWEEN A HEALTH
MAINTENANCE ORGANIZATION OR CARRIER AND A PROFESSIONAL
CORPORATION OF WHICH THE HEALTH CARE PROVIDER IS A MEMBER, OR AS
A CONDITION OF ADMITTING PRIVILEGES, IS PROHIBITED FROM REFERRING
PATIENTS TO HEALTH CARE PROVIDERS WHO ARE NOT EMPLOYED BY OR
UNDER CONTRACT WITH THE SAME HEALTH SYSTEM OR HEALTH MAINTENANCE ORGANIZATION OR CARRIER, THE HEALTH CARE PROVIDER OR ANY PERSON ACTING ON BEHALF OF THE HEALTH CARE PROVIDER OR HEALTH SYSTEM SHALL DISCLOSE THIS RESTRICTION TO ANY PATIENT WHO THE HEALTH CARE PROVIDER REFERS TO ANOTHER HEALTH CARE PROVIDER WHO IS EMPLOYED BY OR UNDER CONTRACT WITH THE SAME HEALTH SYSTEM, HEALTH MAINTENANCE ORGANIZATION, OR CARRIER.

SECTION 2. In Colorado Revised Statutes, amend 25-37-101 as follows:

25-37-101. Applicability of part. A person or entity that contracts with a health care provider shall comply with this article PART 1 and shall include the provisions required by this article PART 1 in the contract.

SECTION 3. In Colorado Revised Statutes, 25-37-102, amend the introductory portion as follows:

25-37-102. Definitions. As used in this article PART 1, unless the context otherwise requires:

SECTION 4. In Colorado Revised Statutes, 25-37-103, amend (3), (4), and (5) as follows:

25-37-103. Health care contracts - required provisions - permissible provision. (3) When a proposed contract is presented by a person or entity for consideration by a health care provider, the person or entity shall provide in writing or make reasonably available the information required in subsections (1) and (2) of this section. If the information is not disclosed in writing, it shall be disclosed in a manner that allows the health care provider to timely evaluate the payment or compensation for services under the proposed contract. The disclosure
obligations in this article shall not prevent a person or entity from requiring a reasonable confidentiality agreement regarding the terms of a proposed contract.

(4) Nothing in this article may be construed to require the renegotiation of a contract in existence before the applicable compliance date in this article, and any disclosure required by this article for such contracts may be by notice to the health care provider.

(5) A contract subject to this article may include an agreement for binding arbitration.

SECTION 5. In Colorado Revised Statutes, amend 25-37-109 as follows:

25-37-109. Waiver of rights prohibited. Except as permitted by this article, a person or entity shall not require, as a condition of contracting, that a health care provider waive or forego any right or benefit to which the health care provider may be entitled under state or federal law, rule, or regulation that provides legal protections to a person solely based on the person's status as a health care provider providing services in this state.

SECTION 6. In Colorado Revised Statutes, amend 25-37-112 as follows:

25-37-112. Disclosure to third parties - confidentiality. A contract shall not preclude its use or disclosure to a third party for the purpose of enforcing the provisions of this article or enforcing other state or federal law. The third party shall be bound by the confidentiality requirements set forth in the contract or otherwise.

(1) introductory portion and (1)(a) as follows:

25-37-113. Part inapplicable - when. (1) This article shall PART
1 DOES not apply to:

(a) An exclusive contract with a single medical group in a specific
geographic area to provide or arrange for health care services; however, this article shall apply PART 1 APPLIES to contracts for health care services
between the medical group and other medical groups;

SECTION 8. In Colorado Revised Statutes, 25-37-114, amend
(1) introductory portion, (1)(c), (1)(d), and (2) as follows:

25-37-114. Enforcement. (1) With respect to the enforcement of
this article PART 1, including arbitration, there shall be available:

(c) Reasonable attorney fees when the health care provider is the
prevailing party in an action to enforce this article PART 1, except to the
extent that the violation of this article PART 1 consisted of a mere failure
to make payment pursuant to a contract;

(d) The option to introduce as persuasive authority prior
arbitration awards regarding a violation of this article PART 1.

(2) Arbitration awards related to the enforcement of this article
PART 1 may be disclosed to those who have a bona fide interest in the
arbitration.

SECTION 9. In Colorado Revised Statutes, amend 25-37-115 as
follows:

25-37-115. Providers obligated to comply with law. No
provision of this article shall PART 1 MAY be used to justify any act or
omission by a health care provider that is prohibited by any applicable
professional code of ethics or state or federal law prohibiting
discrimination against any person.
SECTION 10. In Colorado Revised Statutes, amend 25-37-116 as follows:

25-37-116. Copyrights protected. Nothing in this article PART 1, including the designation of standards, code sets, rules, edits, or related specifications, divests copyright holders of their copyrights in any work referenced in this article PART 1.

SECTION 11. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1(3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to contracts entered into or renewed on or after the applicable effective date of this act.