

# MAINE STATE LEGISLATURE

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5/16/11  
R. C.

Date: 6/16/11

(Filing No. H-662)

**INSURANCE AND FINANCIAL SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1168, L.D. 1583, Bill, "An Act To Provide Oversight in Certain Negotiations"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 24-A MRSA §4303, sub-§15** is enacted to read:

**15. Prohibition on "most favored nation" clauses.** Participation agreements between carriers and providers are governed by this subsection.

A. A participation agreement between a carrier and a provider may not include a provision, commonly referred to as a "most favored nation" clause, that:

- (1) Prohibits, or grants the carrier an option to prohibit, the provider from entering into a participation agreement with another carrier to provide services at a lower price than the payment specified in the participation agreement;
- (2) Requires, or grants the carrier an option to require, the provider to accept a lower payment in the event the provider agrees to provide services to any other carrier at a lower price;
- (3) Requires, or grants the carrier an option of, termination or renegotiation of the existing participation agreement in the event the provider agrees to provide services to any other carrier at a lower price; or
- (4) Requires the provider to disclose its reimbursement rates from other carriers.

B. The superintendent may grant a waiver to paragraph A on application by either a carrier or a provider. A carrier or provider requesting a waiver for more than one participation agreement must file a separate application for each requested waiver. The superintendent may grant a waiver only after issuing a finding that the inclusion in the participation agreement of a most favored nation clause as described in paragraph A is not anticompetitive. A carrier or provider requesting a waiver may request a hearing on the application for a waiver in accordance with section 229. The

**COMMITTEE AMENDMENT**

1 findings and decision of the superintendent are final agency actions for the purposes  
2 of Title 5, chapter 375, subchapter 7 and, notwithstanding section 236, subsection 2,  
3 may be appealed regardless of whether a hearing was held. The superintendent's  
4 review under this paragraph is limited to the most favored nation clause, and any  
5 decision under this paragraph is for purposes of this subsection only and may not be  
6 construed as a finding or decision regarding the legality of the provision under other  
7 applicable law.

8 C. Prior to the issuance of the superintendent's findings and decision on an  
9 application for a waiver pursuant to this subsection, any contract, proposal or draft  
10 legal instrument submitted to the superintendent in an application for a waiver is not  
11 a public record for the purposes of Title 1, chapter 13, except that the name and  
12 business address of the parties to an application for a waiver are public information.  
13 After the issuance of the superintendent's findings and decision, the superintendent  
14 may disclose any information that the superintendent determines is not proprietary  
15 information. For the purposes of this paragraph, "proprietary information" means  
16 information that is a trade secret or production, commercial or financial information  
17 the disclosure of which would impair the competitive position of the carrier or  
18 provider submitting the information and would make available information not  
19 otherwise publicly available.

20 D. A carrier may not discriminate or retaliate against a provider for filing or  
21 opposing an application for a waiver under this subsection.

22 E. A provider may not discriminate or retaliate against a carrier for filing or  
23 opposing an application for a waiver under this subsection.

24 F. For the purposes of this subsection, the factors the superintendent may consider in  
25 determining whether to grant a waiver based on a finding that the inclusion of a most  
26 favored nation clause as described in paragraph A is not anticompetitive include, but  
27 are not limited to:

- 28 (1) Any reduction or limit on competition among carriers or providers;
- 29 (2) The impact on quality and availability of health care services, including the  
30 geographic distribution of providers;
- 31 (3) The size of the provider and the type of any specialty;
- 32 (4) The market share of the carrier and the provider;
- 33 (5) The impact on the price and stability of health insurance and health care  
34 services to consumers; and
- 35 (6) The impact on reimbursement rates in the provider marketplace.

36 **Sec. 2. Application.** This Act applies to any contract executed or renewed on or  
37 after January 1, 2012.'

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**SUMMARY**

This amendment replaces the bill. Like the bill, the amendment prohibits the inclusion of so-called "most favored nation" clauses in the participation agreements between health insurance carriers and health care service providers and authorizes the Superintendent of Insurance to waive this restriction upon finding that the inclusion of such a clause will not be anticompetitive. This amendment also prohibits carriers and providers from taking discriminatory or retaliatory actions for filing or opposing requests for such waivers.

This amendment clarifies that an applicant for a waiver may request a hearing and further clarifies that a decision of the superintendent may be appealed whether a hearing is held or not. The amendment also clarifies the factors that may be considered by the superintendent in determining whether the inclusion of a "most favored nation" clause is anticompetitive. The amendment also narrows the scope of the public records exception included in the bill. The amendment makes the bill apply to contracts executed or renewed on or after January 1, 2012.

**FISCAL NOTE REQUIRED**

**(See attached)**



# 125th MAINE LEGISLATURE

LD 1583

LR 2193(02)

## An Act To Provide Oversight in Certain Negotiations

Fiscal Note for Bill as Amended by Committee Amendment "A"  
Committee: Insurance and Financial Services  
Fiscal Note Required: Yes

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### Fiscal Note

Minor cost increase - Other Special Revenue Funds

#### Fiscal Detail and Notes

Additional costs to the Bureau of Insurance in the Department of Professional and Financial Regulation can be absorbed within existing budgeted resources.