

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1583

H.P. 1168

House of Representatives, June 7, 2011

### An Act To Provide Oversight in Certain Negotiations

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Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative RICHARDSON of Warren. (GOVERNOR'S BILL)  
Cosponsored by Senator: WHITEMORE of Somerset.

1 **Be it enacted by the People of the State of Maine as follows:**

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

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

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

7 (1) Prohibits, or grants the carrier an option to prohibit, the provider from  
8 entering into a participation agreement with another carrier to provide services at  
9 a lower price than the payment specified in the participation agreement;

10 (2) Requires, or grants the carrier an option to require, the provider to accept a  
11 lower payment in the event the provider agrees to provide services to any other  
12 carrier at a lower price;

13 (3) Requires, or grants the carrier an option of, termination or renegotiation of  
14 the existing participation agreement in the event the provider agrees to provide  
15 services to any other carrier at a lower price; or

16 (4) Requires the provider to disclose its reimbursement rates from other carriers.

17 B. The superintendent may grant a waiver to paragraph A on application by either a  
18 carrier or a provider. A carrier or provider requesting a waiver for more than one  
19 participation agreement must file a separate application for each requested waiver.  
20 The superintendent may grant a waiver only after issuing a finding that the inclusion  
21 in the participation agreement of a most favored nation clause as described in  
22 paragraph A is not anticompetitive. The findings and decision of the superintendent  
23 are final agency actions for the purposes of Title 5, chapter 375, subchapter 7. The  
24 superintendent's decision under this paragraph is for purposes of this subsection only  
25 and may not be construed as a finding or decision regarding the legality of the  
26 provision under other applicable law. Any contracts, proposals or draft legal  
27 instruments submitted to the superintendent in an application for a waiver are not  
28 public records for the purposes of Title 1, chapter 13.

29 C. A carrier may not discriminate or retaliate against a provider for opposing an  
30 application for a waiver under this subsection.

31 D. For the purposes of this subsection, a finding that inclusion of a most favored  
32 nation clause as described in paragraph A is anticompetitive means that the  
33 participation agreement will:

34 (1) Result in raising prices in the provider marketplace; or

35 (2) Limit competition.

36 **SUMMARY**

37 This bill prohibits the inclusion of so-called "most favored nation" clauses in the  
38 participation agreements between health insurance carriers and health care service  
39 providers and authorizes the Superintendent of Insurance to waive this restriction upon

1 finding that the inclusion of such a clause will not be anticompetitive. This bill also  
2 prohibits carriers from discriminating against providers for opposing requests for such  
3 waivers.