

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)



# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

---

Legislative Document

No. 1708

---

H.P. 1097

House of Representatives, April 18, 2023

---

**An Act to Address Anticompetitive Terms in Health Insurance  
Carrier and Health Care Provider Contracts**

---

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

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk

Presented by Representative MORRIS of Turner.

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

2 **Sec. 1. 22 MRSA §1728** is enacted to read:

3 **§1728. Health care provider contract requirements**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "All-or-nothing clause" means a provision in a contract that:

7 (1) Requires a carrier to include all members of a provider in a network plan;

8 (2) Requires a carrier to enter into any additional contract with any or all affiliates  
9 of a provider as a condition to entering into a contract with that provider; or

10 (3) Requires a carrier to agree to payment rates or other terms for an affiliate or  
11 individual facility that is not party to the contract.

12 B. "Anti-steering clause" means a provision in a contract that restricts the ability of a  
13 carrier to direct or steer an enrollee to obtain a health care service from another  
14 provider, including offering incentives to encourage enrollees to use specific providers.

15 C. "Anti-tiering clause" means a provision in a contract that:

16 (1) Restricts the ability of a carrier to introduce or modify a tiered network plan or  
17 assign providers into tiers;

18 (2) Requires a carrier or health plan administrator to place all members of a  
19 provider in the same tier of a tiered network plan; or

20 (3) Restricts the ability of a carrier to introduce or assign providers to a particular  
21 network.

22 D. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3.

23 E. "Enrollee" has the same meaning as in Title 24-A, section 4301-A, subsection 5.

24 F. "Excessively concentrated market" means a market in which the provider has a  
25 Herfindahl-Hirschman index of 2,500 or more.

26 G. "Health plan" has the same meaning as in Title 24-A, section 4301-A, subsection  
27 7.

28 H. "Provider" has the same meaning as in Title 24-A, section 4301-A, subsection 16.

29 **2. Contract requirements.** Beginning January 1, 2024, a provider, or a person acting  
30 on the provider's behalf, may not offer, solicit, request, amend, renew or enter into a  
31 contract with a carrier that would directly or indirectly include any of the following  
32 provisions:

33 A. An anti-steering clause;

34 B. An anti-tiering clause; or

35 C. An all-or-nothing clause.

36 **3. Termination of contracts; notice.** A provider may not terminate a contract with a  
37 carrier prior to the date on which the contract ends unless the provider provides prior notice  
38 to the Attorney General and the Superintendent of Insurance. The Attorney General may

1 intervene to prevent termination of the contract if the Attorney General finds the  
2 termination would result in any of the following:

3 A. The health care market would be excessively concentrated in the county in which  
4 the provider is located;

5 B. Fewer than 2 of that type of provider in a county or a net loss of more than 5 primary  
6 care providers in a county; or

7 C. A material adverse impact on health care costs.

8 **4. Unenforceable.** A person may not enforce any contract provision, written policy,  
9 written procedure or agreement contrary to the provisions set forth in this section.

10 **5. Enforcement.** The following provisions apply.

11 A. A carrier may institute a civil action against a provider to enforce the provisions of  
12 subsection 2, including specific performance, injunctive or declaratory relief, and any  
13 other relief the court deems appropriate.

14 B. The Attorney General may:

15 (1) Subpoena any records necessary to enforce this section or to investigate  
16 suspected violations of this section;

17 (2) Institute proceedings on behalf of the State or as parens patriae of the persons  
18 residing in this State for:

19 (a) Injunctive relief to prevent and restrain a violation of this section,  
20 including, but not limited to, a temporary restraining order, preliminary  
21 injunction or permanent injunction;

22 (b) Civil penalties for violations of this section; or

23 (c) Other equitable relief for violations of this section, including, but not  
24 limited to, disgorgement or restitution.

25 **Sec. 2. 24-A MRSA §4308-A** is enacted to read:

26 **§4308-A. Health care provider contract requirements**

27 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
28 following terms have the following meanings.

29 A. "All-or-nothing clause" means a provision in a contract that:

30 (1) Requires a carrier to include all members of a provider in a network plan;

31 (2) Requires a carrier to enter into any additional contract with any or all affiliates  
32 of a provider as a condition to entering into a contract with that provider; or

33 (3) Requires a carrier to agree to payment rates or other terms for an affiliate or  
34 individual facility that is not party to the contract.

35 B. "Anti-steering clause" means a provision in a contract that restricts the ability of a  
36 carrier to direct or steer an enrollee to obtain a health care service from another  
37 provider, including offering incentives to encourage enrollees to use specific providers.

38 C. "Anti-tiering clause" means a provision in a contract that:

