**STORAGE NAME**: h1523.hcs
**DATE**: April 11, 2000

**HOUSE OF REPRESENTATIVES**
**COMMITTEE ON**
**HEALTH CARE SERVICES**
**ANALYSIS**

**BILL #**: HB 1523

**RELATING TO**: Health Insurance/Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

**SPONSOR(S)**: Representative Sublette

**TIED BILL(S)**:

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**:

(1) HEALTH CARE SERVICES
(2) INSURANCE
(3) JUDICIARY
(4)
(5)

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I. SUMMARY:

HB 1523 specifies an additional unfair method of competition and unfair or deceptive act or practice for health insurance plans and health maintenance organizations, specific to conditioning provider participation in any one plan or product on that provider's participation in all plans or products with which the plan or organization is affiliated.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

| | | | | |
|---|---|---|---|---|
| 1. | Less Government | Yes [] | No [] | N/A [x] |
| 2. | Lower Taxes | Yes [] | No [] | N/A [x] |
| 3. | Individual Freedom | Yes [] | No [] | N/A [x] |
| 4. | Personal Responsibility | Yes [] | No [] | N/A [x] |
| 5. | Family Empowerment | Yes [] | No [] | N/A [x] |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Background**

The recent merger of Aetna U.S. Healthcare and Prudential HealthCare has raised interests throughout the country. In Florida, the merger has affected hundreds of thousands of enrollees and made the health plan Florida's largest with about 776,000 members. The merger has given the merged health plan a 40 percent market share in Orlando, and has vastly increased Aetna's reach in South Florida.

Many physicians have expressed anti-competitive concerns about the merger and several states, including Florida, have required Aetna to adhere to certain conditions in order for the merger to be approved. In addition, the "all-or-nothing" or "all products clause" provisions in Aetna's contracts have created a great deal of controversy and are widely criticized by doctors throughout the country.

The "all products clause" requires physicians to participate in all the plans an insurer offers, including health maintenance organizations, preferred provider organizations, point-of-service health plans, and indemnity plans, if the physician wants to participate in any one of of these products. Insurers and HMOs defend this policy by citing concern for continuity of care for patients.

Although Aetna admits that their policy may be perceived as "doctor unfriendly," Aetna states that its approach is designed to be "patient friendly" because the patient is the customer the health plan ultimately serves. In a recent interview with the editors of the journal *Medical Economics*, Arthur N. Leibowitz, Aetna's chief medical officer, stated with regard to Aetna's "all products clause" that, "We've structured our offerings in a way that asks the physician, in essence, to join our company. It doesn't mean that he receives the same reimbursement for each of our products. It doesn't mean that the rules for the policies we sell are the same across the board. But, as a national company doing business with employers that frequently have sites across the country, we need consistent contracting. Part of that consistency lies in asking physicians to participate in all of our products." In addition, Aetna also argues that the policy will lead to administrative savings because it will need to print only one provider directory and enter into only one set of contract negotiations with its doctors.

The physician perspective on "all products clause" is quite different. The American Medical Association has come out publicly against Aetna's contract provision, as have other provider associations throughout the country. Physicians see these provisions as: an attempt by Aetna to force them to provide services at below market rates; shortchanging consumers through less market competition; and unfairly keeping competing health plans out of the marketplace. An editorial in the July 12, 1999, issue of *America Medical News* stated that Aetna's "all products clause" policy was "a marketing ploy that makes it easier to move patients into more restrictive HMO plans by creating the illusion, by offering the same doctor in any plan, that all coverage is the same." The editorial further stated that to physicians familiar with the policies, "they are a striking symbol of what can go wrong when a health plan gets too much power. The fact that 'all-or-nothing' provisions even exist is a testament to the power of health plans with a too-healthy share of the marketplace to ram a bad deal down the throats of physicians. It's hard to imagine any physician signing one willingly if given a choice."

**Florida**

In July 1999, the Florida Medical Association asked the Florida Department of Insurance to investigate whether Aetna's "all products clause" violates s. 626.9541(1)(d), F.S., which proscribes agreements or concerted action to coerce or intimidate resulting in restraint of or monopoly in the business of insurance. According to the department, the policy does not violate current Florida law based on the fact that nothing indicates that the provision "results in or tends to cause restraint of or monopoly in the 'business of insurance' as that term has been defined." Furthermore, the department noted that s. 641.201, F.S., generally exempts health maintenance organizations regulated under ch. 641, F.S., from other provisions of the Florida Insurance Code, and s. 641.3903, F.S., which governs the trade practice of HMOs, does not contain a coercion provision similar to s. 626.9541(1)(d), F.S.

The legal staff from the Department of Insurance also discussed the "all products clause" policy with the Attorney General's staff to determine whether such contract provisions could be said to result in monopoly or restraint of trade within the meaning of the statute. According to the Attorney General's staff, "If an anti-trust market analysis is applicable and the insured and HMO products of the Aetna affiliates are considered to constitute one combined market, the contract requirements in question may not be violative of the requirements of section 626.9541(l)(d)."

Although there are currently no provisions in Florida law that prevent Aetna from enforcing its "all products clause" provision, the controversy and dissention the policy ignites between Florida's health care providers and its largest health plan is obviously an issue of concern.

**Other States**

In Nevada, "all products clause" provisions have been banned by the state's insurance department because they violate Nevada's Unfair Trade Practices Act. Kentucky just passed a law banning "all products clause" in their 2000 legislative session. Other states including Illinois and Rhode Island are investigating whether the clause violates antitrust law. In addition, the American Medical Association, along with the Texas Medical Association and several Texas county medical associations, have requested in a letter to the United States Department of Justice that Aetna be required to stop using its "all products clause" policy in Dallas and Houston for a period of five years to ensure those markets remain competitive.

C. EFFECT OF PROPOSED CHANGES:

HB 1523 amends ss. 626.9541 and 641.3903, F.S., to specify that it is an unfair method of competition and unfair or deceptive act or practice for heath insurance plans and health maintenance organizations, respectively, to require health care providers to participate in additional plans or products of the health insurance plan or products of the health maintenance organization, which have different terms, conditions, or levels of payments.

The bill's effective date is July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

See EFFECT OF PROPOSED CHANGES above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

According to the Agency for Health Care Administration, this bill has no fiscal impact on the agency.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill's effective date is July 1, 2000. There is no qualifying date that would allow insurers or HMOs that may currently be using an "all products clause" to modify their business practice.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by: Staff Director:

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