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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

BILL #: CS/HB 809
RELATING TO: Health Insurers and Health Maintenance Organizations
SPONSOR(S): Committee on Insurance, Representative Murman, and Others

TIED BILL(S):

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

- (1) INSURANCE YEAS 14 NAYS 0
 - (2) HEALTH PROMOTION YEAS 9 NAYS 0
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
-

I. SUMMARY:

An "all products" clause is a contractual provision in a health insurer's or HMO's provider agreement requiring the provider to deliver health care services to all of an insurer's or HMO's subscribers, regardless of the subscriber's individual plan. "All products" clauses typically require a provider to submit to the same payment and employment terms as if they had originally signed a separate contract to provide services for a specific insurance plan.

Currently, no provisions of Florida law expressly prevent insurers or HMOs from enforcing "all products" clauses.

CS/HB 809 prohibits health insurers and HMOs from requiring physicians or dentists, under contract with the insurer or HMO, to accept the terms of other health care provider contracts as a condition of continuing or renewing their initial contract. Any sections of a provider contract requiring providers to accept the terms of other provider contracts as a condition of continuing or renewing a contract would be void.

This bill takes effect on July 1, 2001.

Strike-all amendment: There is a strike-all amendment by the Committee on Health Promotion traveling with the bill. Under the strike-all amendment:

- Health insurers and HMOs cannot require any contracted health care practitioner (physicians, dentists, nurses, pharmacists, therapists, psychologists, etc.) to accept the terms of other health care practitioner contracts with the insurer or HMO.
- The prohibition specifically applies to Medicare, Medicaid, preferred provider arrangements, and exclusive provider arrangements.
- An exception is provided for group practice contracts.
- Contracts in violation of this prohibition are void, but no criminal penalties apply.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

What are health care provider contracts?

Health care provider contracts specify the arrangement between a health insurer or health maintenance organization (HMO) and a health care provider such as a physician or a hospital. Health insurers or HMOs may offer many different subscriber plans such as HMO based services, preferred provider organizations (PPOs), and point of service health plans (POS). The contract terms for a health care provider performing health care services can vary depending on the plan type. For example, provider contracts to render services to an insurer's HMO subscribers may have different payment terms and employment terms than contracts to render services to the same insurer's PPO subscribers.

What is an "all products" clause?

A contractual provision in a health insurer's or HMO's provider agreement requiring the provider to render health services to all of an insurer's subscribers, regardless of the subscriber's individual plan, is called an "all products" clause.

Operation of "all products" clauses

"All products" clauses typically require a provider to submit to the same payment and employment terms as if they had originally signed a separate contract to provide services for the specific insurance plan's subscribers. "All products" clauses can also obligate the contracting provider to deliver health care services to all subscribers of an insurer's future subscriber plans as well. In effect, under an "all products" clause, a health care provider contracting to deliver health care services to subscribers of one plan type may be contracting to give health care services to subscribers of all of the insurer's plan types, both present and future. Should a health care provider decide to leave a health plan under which he or she is obligated by an "all products" clause to render services, insurers and HMOs under the clause may terminate his or her participation in all of their plans. The following is an example of an "all products" clause from a provider contract:

"Plan Participation. Company, Group, and Participating Group Providers acknowledge that having one contract covering many types of Plans provides a variety of benefits to Members, Participating Providers, and Company, including maximizing Member choice

of Participating Providers; minimizing the need for Members to change Providers when changing Plans (thereby fostering long-term physician relationships and continuity of care);... and simplifying and streamlining the contracting, directory development, and other administrative processes. Company therefore has and retains the right to designate Group and Participating Group Providers as Participating Providers in any specific Plan. Company reserves the right to introduce new Plans during the course of this Agreement and to designate Group and Participating Group Providers as Participating Providers in such Plans. ... Group shall accept compensation in accordance with this Agreement for the provision of any Covered Services to Members under a Plan, regardless of whether Group is a Participating Provider in such Plan. ...”¹

Use of “all products” clauses

One health insurer/HMO has used all product clauses both in new contracts and renewal contracts with providers. That health insurer/HMO recently changed its policy concerning provider contracts. The company now allows both new and continuing health care providers to contract only to render PPO-based services and to contract only to render HMO-based services except for hospital-based physicians.

Are “all products” clauses illegal in Florida?

No provisions of Florida law expressly prevent insurers or HMOs from enforcing “all products” clauses.

The Insurance Code does prevent “coercion” in the marketplace in the “Unfair Insurance Trade Practices Act.”² Alleged violations of the coercion provision, however, are addressed in the same manner as antitrust cases, which are heavily based on market definition and difficult to prove. Under an antitrust analysis, if the insured and HMO products of the company’s affiliates are considered to constitute one combined market, the contract requirements in question may not violate the coercion provision.

Companies in violation of the Unfair Insurance Trade Practices Act can be subject to a fine of up to \$20,000 and a criminal misdemeanor conviction per willful violation.

HMOs are generally exempt from the Insurance Code.³ While Florida statutes do address what constitutes unfair methods of competition and unfair or deceptive acts or practices by HMOs, there is no coercion provision in the statute dealing with unfair trade practices by HMOs.⁴

How many Florida health insurers and health plans use “all products” clauses?

Neither the Department of Insurance nor the Agency for Health Care Administration keeps statistics on the number of Florida HMOs and Florida health insurers that use all products clauses.

¹ Aetna contract, v. 2.2.9.99

² See generally part IX, chapter 626, F.S. The coercion provision, section 626.9541(1)(d), F.S., states:

“Boycott, coercion, and intimidation.— Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.”

³ Section 641.201, F.S.

⁴ Section 641.3903, F.S.

Other states

According to the National Conference of State Legislatures, "all products" clauses are banned by law in Alaska, Kentucky, Maryland, and Virginia, and prohibited by administrative rule in Nevada.

C. EFFECT OF PROPOSED CHANGES:

Health insurers and HMOs would be prohibited from requiring certain health care providers, under contract with the insurer or HMO, to accept the terms of other health care provider contracts as a condition of continuing or renewing their initial contract.

Any sections of a provider contract that would require a provider to accept the terms of other provider contracts as a condition of continuing or renewing a contract would be void.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 627.6474, F.S., relating to provider contracts, to prohibit health insurers from requiring contracted health care providers to accept the terms of other health care contracts as a condition of contract continuation or renewal. This section applies to health care providers licensed under chapter 458, F.S., relating to medical practice; chapter 459, F.S., relating to Osteopathy; chapter 460, F.S., relating to Chiropractic Medicine; chapter 461, F.S., relating to Podiatric medicine; or chapter 466, F.S., relating to Dentistry, Dental Hygiene, and Dental Laboratories. Provides that a contract provision which violates this section is void. Provides that a violation of the section is not subject to the criminal penalty specified in s. 624.15, F.S., relating to general penalties under the Florida Insurance Code.

Section 2. Amends s. 627.622, F.S., relating to other provisions applicable to group health insurance, providing statutory cross-reference to newly created s. 627.6474, F.S., thus making the new provisions created above applicable to group health insurance.

Section 3. Amends s. 641.315, F.S., relating to HMO provider contracts, to add a new subsection (10) to prohibit health maintenance organizations from requiring contracted health care providers to accept the terms of other health care contracts as a condition of contract continuation or renewal. This section applies to health care providers licensed under chapter 458, F.S., relating to medical practice; chapter 459, F.S., relating to Osteopathy; chapter 460, F.S., relating to Chiropractic Medicine; chapter 461, F.S., relating to Podiatric medicine; or chapter 466, F.S., relating to Dentistry, Dental Hygiene, and Dental Laboratories. Provides that a contract provision which violates this section is void. Provides that a violation of the section is not subject to the criminal penalty specified in s. 624.15, F.S., relating to general penalties under the Florida Insurance Code.

Section 4. Provides an effective date of July 1, 2001, and shall apply to contracts entered into or renewed on or after that date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

See FISCAL COMMENTS below for impact on state government contracting HMOs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

See FISCAL COMMENTS below for impact on local government contracting HMOs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers may lose the ability, if their insurer or HMO is an "all products" company, to switch health plans within a company and keep the same physicians or specialists with which he or she has built up a physician-patient relationship.

See FISCAL COMMENTS below for impact on private HMOs.

D. FISCAL COMMENTS:

As health care providers would have a choice to participate in a health insurer's or HMO's plan, health insurers or HMOs may see a reduction in the number of participating physicians in some of their plans. As a result, HMOs and insurers may have to expend an indeterminate amount contracting with new physicians and providers to properly staff some plans.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not mandate county or municipal spending.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce county or municipal revenue raising authority.

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

This bill does not reduce state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Strike-all amendment: There is a strike-all amendment by the Committee on Health Promotion traveling with the bill. Under the strike-all amendment:

- Health insurers and HMOs cannot require any contracted health care practitioner (physicians, dentists, nurses, pharmacists, therapists, psychologists, etc.) to accept the terms of other health care practitioner contracts with the insurer or HMO. CS/HB 809 applied only to medical doctors, chiropractors, osteopaths, podiatrists, and dentists.
- The prohibition specifically applies to Medicare, Medicaid, preferred provider arrangements, and exclusive provider arrangements. These specific references were not included in CS/HB 809.
- An exception is provided for group practice contracts (not included in CS/HB 809).
- Contracts in violation of this prohibition are void, but no criminal penalties apply (same as CS/HB 809).

Differences between CS/HB 809 and HB 809 as filed

CS/HB 809 differs from the original bill in that the CS removes criminal penalties, removes provisions making coercion or retaliation against a health care provider an unfair or deceptive trade practice, and restricts applicability to physicians, osteopaths, chiropractors, podiatrists, and dentists only.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

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AS REVISED BY THE COMMITTEE ON HEALTH PROMOTION:

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