

Proponent Testimony of  
Catherine M. Ballard, Esq.  
Bricker & Eckler, LLP  
on behalf the  
Ohio Hospital Association  
On House Bill 185

House Civil and Commercial Law Committee  
June 9, 2009

Chairman Okey, Vice Chairman Murray, Ranking Member Oelslager and members of the House Civil and Commercial Law Committee, my name is Catherine Ballard and I am a partner in the law firm Bricker & Eckler, LLP, where I represent hospitals and other health care providers and work closely with Medical Staff leadership. I am here today on behalf of the Ohio Hospital Association and its over 170 hospital and 40 health system members to testify in support of House Bill 185. Thank you for the opportunity to speak with you today.

As you know, HB 185 would prevent a unilateral material amendment to a health insurance provider agreement from becoming part of the agreement without the mutual consent of both parties. Last session's House Bill 125 made great strides in creating transparency and eliminating unnecessary administrative costs in the contracting process between managed care insurance carriers and health care providers. After overwhelming support in the legislature, the bill became law last June. In the past year, however, a few problems have arisen with inconsistent interpretations of certain HB 125 provisions.

Specifically, certain insurance carriers insist that HB 125 states that a unilateral contract amendment that is not accepted by a provider will go into effect unless the

provider chooses to terminate the contract – even if the contract itself prohibits amendments unless both parties agree. HB 125 was not intended to eliminate one party’s right to negotiate price and other terms of a contract. But particular insurers contend that is the result of the legislation. Unfortunately, the legislative language is sufficiently imprecise that HB 185 is necessary to clarify the issue.

Hospitals and health systems are often pulled into extended negotiations with managed care plans that result in contracts with multi-year terms. If an insurer is able to force termination of a contract simply by posting a notice of a dramatic decrease in reimbursement in a managed care newsletter (which is a preferred notice method of some carriers), the time and effort spent negotiating a contract are wasted. Administrative costs will be added to the health care system and patients will be affected when their hospital is eliminated from the managed care panel, resulting in higher co-payments and out-of-pocket costs for patients and their families.

House Bill 185 better reflects the reality of contract negotiations and is consistent with basic tenets of contract law—a contract exists when there is a meeting of the minds between the parties. A provider should not be placed in the untenable position of being between “a rock and a hard place” i.e., being required to either (1) accept the material amendment (one that may well have been rejected in initial negotiations); or (2) terminate the contract (thereby losing the ability to care for certain patients). As such, House Bill 185 is consistent with Ohio contract law and is a minor fix that will prevent significant problems.

Thank you, Mr. Chairman, for the opportunity to testify today and I would be please to address any questions.