

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 490 of the Regular Session

1 State of Arkansas As Engrossed: S1/12/05 S1/31/05 S2/3/05 H2/18/05

2 85th General Assembly

A Bill

3 Regular Session, 2005

SENATE BILL 43

4

5 By: Senators Faris, Critcher, B. Johnson, Horn, Wilkins, J. Jeffress, Lavery, G. Jeffress, Capps

6 By: Representatives Bradford, J. Johnson, Reep, Goss, Hardy, Bolin, Burris, Chesterfield, Cook, Davis,

7 Kidd, W. Lewellen, Kenney

8

9

For An Act To Be Entitled

PATIENT PROTECTION ACT OF 2005.

10

11

12

Subtitle

PATIENT PROTECTION ACT OF 2005.

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16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18

19 SECTION 1. Arkansas Code Title 23, Chapter 99 is amended to add an
20 additional subchapter to read as follows:

21 23-99-801. Title.

22 This subchapter shall be known and may be cited as the "Patient
23 Protection Act of 2005".

24

25 23-99-802. Legislative findings and intent.

26 The General Assembly finds that a patient should be given the
27 opportunity to see the health care provider of his or her choice. In order to
28 assure the citizens of the State of Arkansas the right to choose a provider
29 of their choice, it is the intent of the General Assembly to provide the
30 opportunity for providers to participate in health benefit plans.

31

32 23-99-803. Definitions.

33 As used in this subchapter:

34 (1) "Department" means the State Insurance Department;

35 (2) "ERISA" means the federal Employee Retirement Income



1 Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.;

2 (3)(A) "Health benefit plan" means any health insurance policy or
3 certificate; health maintenance organization contract; hospital and medical
4 service corporation contract or certificate; self-insured plan or plan
5 provided by a multiple employer welfare arrangement, to the extent permitted
6 by ERISA; or any health benefit plan that affects the rights of an Arkansas
7 insured and bears a reasonable relation to the State of Arkansas, whether
8 delivered or issued for delivery in the state.

9 (B) Health benefit plan shall not include insurance arising
10 out of a workers compensation law;

11 (4) "Health care provider" or "provider" means an individual or
12 entity licensed by the State of Arkansas to provide health care services,
13 limited to the following types of providers:

14 (A) Physicians and surgeons (M.D. and D.O.);

15 (B) Podiatrists;

16 (C) Chiropractors;

17 (D) Physical therapists;

18 (E) Speech pathologists;

19 (F) Audiologists;

20 (G) Dentists;

21 (H) Optometrists;

22 (I) Hospitals;

23 (J) Hospital-based services;

24 (K) Psychologists;

25 (L) Licensed professional counselors;

26 (M) Respiratory therapists;

27 (N) Pharmacists;

28 (O) Occupational therapists;

29 (P) Long-term care facilities;

30 (Q) Home health care providers;

31 (R) Hospice care providers;

32 (S) Licensed ambulatory surgery centers;

33 (T) Rural health clinics;

34 (U) Licensed certified social workers;

35 (V) Licensed psychological examiners;

36 (W) Advanced practice nurses;

1 (X) Licensed dieticians;
2 (Y) Community mental health centers or clinics;
3 (Z) Certified orthotists;
4 (AA) Prosthetists;
5 (BB) Licensed durable medical equipment providers; and
6 (CC) Other health care practitioners as determined by the
7 department in rules promulgated under the Arkansas Administrative Procedure
8 Act, § 25-15-201 et seq.; and

9 (5) "Health insurer" or "health care insurer" means any entity
10 that is authorized by the State of Arkansas to offer or provide health
11 benefit plans, policies, subscriber contracts, or any other contracts of
12 similar nature which indemnify or compensate health care providers for the
13 provision of health care services.

14
15 23-99-804. Nondiscrimination.

16 A health insurer shall not discriminate against any provider who is
17 located within the geographic coverage area of the health benefit plan and
18 who is willing to meet the terms and conditions for participation established
19 by the health insurer.

20
21 23-99-805. Different classes of providers.

22 Nothing in this subchapter shall be construed to require or prohibit
23 the same reimbursement to different types of providers whose licensed scope
24 of practice differs nor shall anything in this subchapter be construed to
25 require or prohibit coverage of the services of any particular type of
26 provider.

27
28 SECTION 2. This act shall become effective only if the Eighth Circuit
29 Court of Appeals in Prudential Insurance Co., et al. v. HMO Partners, Inc.,
30 et al., U.S.C.A. No. 04-1465/04-1644, does not order the injunction against
31 enforcement of the Patient Protection Act of 1995 lifted as to health
32 insurers of private, insured ERISA plans. If the injunction is not lifted,
33 then this act shall take effect upon the entry of the mandate from the Eight
34 Circuit, and the Patient Protection Act of 1995, Arkansas Code 23-99-201
35 through 209 shall be repealed simultaneously as follows:

36

1 ~~23-99-201. Short title.~~

2 ~~This subchapter may be cited as the "Patient Protection Act of 1995".~~

4 ~~23-99-202. Legislative findings and intent.~~

5 ~~The General Assembly finds that patients should be given the~~
6 ~~opportunity to see the health care provider of their choice. In order to~~
7 ~~assure the citizens of the State of Arkansas the right to choose the provider~~
8 ~~of their choice, it is the intent of the General Assembly to provide the~~
9 ~~opportunity of providers to participate in health benefit plans.~~

11 ~~23-99-203. Definitions.~~

12 ~~(a)(1) "Copayment" means a type of cost sharing whereby insured or~~
13 ~~covered persons pay a specified predetermined amount per unit of service or~~
14 ~~percentage of health care costs with their health care insurer paying the~~
15 ~~remainder of the charge.~~

16 ~~(2) The copayment is incurred at the time the service is~~
17 ~~rendered.~~

18 ~~(3) The copayment may be a fixed or variable amount.~~

19 ~~(b) "Gatekeeper system" means a system of administration used by any~~
20 ~~health benefit plan in which a primary care provider furnishes basic patient~~
21 ~~care and coordinates diagnostic testing, indicated treatment, and specialty~~
22 ~~referral for persons covered by the health benefit plan.~~

23 ~~(c) "Health benefit plan" means any entity or program that provides~~
24 ~~reimbursement, including capitation, for health care services, except and~~
25 ~~excluding any entity or program that provides reimbursement and benefits~~
26 ~~pursuant to Arkansas Constitution, Amendment 26, Acts 1993, No. 796, or the~~
27 ~~Public Employee Workers' Compensation Act, § 21-5-601 et seq., and rules,~~
28 ~~regulations, and schedules adopted thereunder.~~

29 ~~(d) "Health care provider" means those individuals or entities~~
30 ~~licensed by the State of Arkansas to provide health care services, limited to~~
31 ~~the following:~~

32 ~~(1) Physicians and surgeons (M.D. and D.O.);~~

33 ~~(2) Podiatrists;~~

34 ~~(3) Chiropractors;~~

35 ~~(4) Physical therapists;~~

36 ~~(5) Speech pathologists;~~

- 1 ~~(6) — Audiologists;~~
- 2 ~~(7) — Dentists;~~
- 3 ~~(8) — Optometrists;~~
- 4 ~~(9) — Hospitals;~~
- 5 ~~(10) — Hospital based services;~~
- 6 ~~(11) — Psychologists;~~
- 7 ~~(12) — Licensed professional counselors;~~
- 8 ~~(13) — Respiratory therapists;~~
- 9 ~~(14) — Pharmacists;~~
- 10 ~~(15) — Occupational therapists;~~
- 11 ~~(16) — Long term care facilities;~~
- 12 ~~(17) — Home health care;~~
- 13 ~~(18) — Hospice care;~~
- 14 ~~(19) — Licensed ambulatory surgery centers;~~
- 15 ~~(20) — Rural health clinics;~~
- 16 ~~(21) — Licensed certified social workers;~~
- 17 ~~(22) — Licensed psychological examiners;~~
- 18 ~~(23) — Advanced practice nurses;~~
- 19 ~~(24) — Licensed dieticians;~~
- 20 ~~(25) — Community mental health centers or clinics;~~
- 21 ~~(26) — Certified orthotists; and~~
- 22 ~~(27) — Prosthetists.~~

23 ~~(e) — "Health care services" means services and products provided by a~~
24 ~~health care provider within the scope of the provider's license.~~

25 ~~(f) — "Health care insurer" means any entity, including, but not limited~~
26 ~~to:~~

- 27 ~~(1) — Insurance companies;~~
- 28 ~~(2) — Hospital and medical service corporations;~~
- 29 ~~(3) — Health maintenance organizations;~~
- 30 ~~(4) — Preferred provider organizations;~~
- 31 ~~(5) — Physician hospital organizations;~~
- 32 ~~(6) — Third party administrators; and~~
- 33 ~~(7) — Prescription benefit management companies, — authorized to~~
34 ~~administer, offer, or provide health benefit plans.~~

35
36 ~~23-99-204. Terms of health benefit plan.~~

1 ~~(a) A health care insurer shall not, directly or indirectly:~~

2 ~~(1)(A) Impose a monetary advantage or penalty under a health~~
3 ~~benefit plan that would affect a beneficiary's choice among those health care~~
4 ~~providers who participate in the health benefit plan according to the terms~~
5 ~~offered.~~

6 ~~(B) "Monetary advantage or penalty" includes:~~

7 ~~(i) A higher copayment;~~

8 ~~(ii) A reduction in reimbursement for services; or~~

9 ~~(iii) Promotion of one (1) health care provider over~~
10 ~~another by these methods;~~

11 ~~(2) Impose upon a beneficiary of health care services under a~~
12 ~~health benefit plan any copayment, fee, or condition that is not equally~~
13 ~~imposed upon all beneficiaries in the same benefit category, class, or~~
14 ~~copayment level under that health benefit plan when the beneficiary is~~
15 ~~receiving services from a participating health care provider pursuant to that~~
16 ~~health benefit plan; or~~

17 ~~(3) Prohibit or limit a health care provider that is qualified~~
18 ~~under § 23-99-203(d) and is willing to accept the health benefit plan's~~
19 ~~operating terms and conditions, schedule of fees, covered expenses, and~~
20 ~~utilization regulations and quality standards, from the opportunity to~~
21 ~~participate in that plan.~~

22 ~~(b) Nothing in this subchapter shall prevent a health benefit plan~~
23 ~~from instituting measures designed to maintain quality and to control costs,~~
24 ~~including, but not limited to, the utilization of a gatekeeper system, as~~
25 ~~long as such measures are imposed equally on all providers in the same class.~~

26
27 ~~23-99-205. Construction.~~

28 ~~(a) Nothing in this subchapter shall be construed to require any~~
29 ~~health care insurer to cover any specific health care service.~~

30 ~~(b) Provided, however, no condition or measure shall have the effect~~
31 ~~of excluding any type or class of provider qualified under § 23-99-204(a)(3)~~
32 ~~to provide that service.~~

33
34 ~~23-99-206. Violations.~~

35 ~~It is a violation of this subchapter for any health care insurer or~~
36 ~~other person or entity to provide any health benefit plan providing for~~

1 ~~health care services to residents of this state that does not conform to this~~
2 ~~subchapter, but nothing in this subchapter shall constitute a violation on~~
3 ~~the basis of actions taken by the health benefit plan to maintain quality,~~
4 ~~enforce utilization regulations, and to control costs.~~

5
6 ~~23-99-207. Civil penalties.~~

7 ~~Any person adversely affected by a violation of this subchapter may sue~~
8 ~~in a court of competent jurisdiction for injunctive relief against the health~~
9 ~~care insurer and, upon prevailing, shall, in addition to such relief, recover~~
10 ~~damages of not less than one thousand dollars (\$1,000), attorney's fees, and~~
11 ~~costs.~~

12
13 ~~23-99-208. Void provisions.~~

14 ~~(a) To avoid impairment of existing contracts, this subchapter shall~~
15 ~~only apply to contracts issued or renewed after July 28, 1995.~~

16 ~~(b) Any provision in a health benefit plan which is executed,~~
17 ~~delivered, or renewed, or otherwise contracts for provision of services in~~
18 ~~this state that is contrary to this subchapter, shall, to the extent of the~~
19 ~~conflict, be void.~~

20
21 ~~23-99-209. Applicability.~~

22 ~~The provisions of this subchapter shall not apply to self-funded or~~
23 ~~other health benefit plans that are exempt from state regulation by virtue of~~
24 ~~the Employee Retirement Income Security Act of 1974, as amended.~~

25
26 SECTION 3. If any provision of this Act or the application thereof to
27 any person or circumstance is held invalid, such invalidity shall not affect
28 other provisions or applications of the Act which can be given effect without
29 the invalid provision or application, and to this end the provisions of this
30 Act are declared to be severable.

31
32 /s/ Faris, et al

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35 APPROVED: 3/02/2005

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