

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 491 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 44

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5 By: Senator Faris

6 By: Representatives Bradford, Kenney

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For An Act To Be Entitled

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AN ACT TO PROVIDE FOR ENFORCEMENT OF THE PATIENT

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PROTECTION ACT OF 2005; AND FOR OTHER PURPOSES.

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Subtitle

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AN ACT TO PROVIDE FOR ENFORCEMENT OF THE

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PATIENT PROTECTION ACT OF 2005.

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

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SECTION 1. Civil penalties.

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To the extent permitted by ERISA, the federal Employee Retirement

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Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., any person

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adversely affected by a violation of the Patient Protection Act of 2005 may

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sue in a court of competent jurisdiction for injunctive relief against the

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health insurer and, upon prevailing, shall, in addition to injunctive relief,

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recover damages of not less than one thousand dollars (\$1,000), attorney's

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fees, and costs.

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SECTION 2. Validity and construction.

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(a) A health benefit plan delivered or issued for delivery to any

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person in this state in violation of the Patient Protection Act of 2005 but

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otherwise binding on the health insurer, shall be held valid, but shall be

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construed as provided in the Patient Protection Act of 2005.

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(b) Any health benefit plan or related policy, rider, or endorsement

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issued and otherwise valid that contains any condition, omission, or



1 provision not in compliance with the requirements of the Patient Protection
2 Act of 2005 shall not be rendered invalid because of the noncompliance, but
3 shall be construed and applied in accordance with such condition, omission,
4 or provision as would have applied if it had been in full compliance with the
5 Patient Protection Act of 2005.

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7 SECTION 3. Agency Enforcement.

8 The Insurance Commissioner shall:

9 (1) Enforce the state's any willing provider laws using powers
10 granted to the commissioner in the Arkansas Insurance Code, Arkansas Code §§
11 23-60-101, et seq.; and

12 (2) Be entitled to seek an injunction against a health insurer
13 in a court of competent jurisdiction.

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15 SECTION 4. (a) The state's any willing provider laws shall not be
16 construed:

17 (1) To require all physicians or a percentage of physicians in
18 the state or a locale to participate in the provision of services for a
19 health maintenance organization; or

20 (2) To take away the authority of health maintenance
21 organizations that provide coverage of physician services to set the terms
22 and conditions for participation by physicians, though health maintenance
23 organizations shall apply such terms and conditions in a nondiscriminatory
24 manner.

25 (b)(1) The state's any willing provider laws shall apply to:

26 (A) All health insurers, regardless of whether they are
27 providing insurance, including pre-paid coverage, or administering or
28 contracting to provide provider networks; and

29 (B) All multiple employer welfare arrangements and
30 multiple employer trusts.

31 (2) Subsection (b) of this section shall apply only to the
32 extent permitted by ERISA.

33 (c)(1) The state's any willing provider laws shall be construed to
34 include within their provider definitions all those providers of the same
35 class or classes who:

36 (A) Are practicing or operating within a border city in an

1 adjoining state; and

2 (B) Are licensed or authorized to practice or operate by
3 the adjoining state, regardless of whether the provider is licensed or
4 otherwise authorized to operate in Arkansas.

5 (2) For purposes of this section, "border city" means a city in a
6 state adjoining Arkansas which adjoins the Arkansas state line and is not
7 separated from an Arkansas city only by a navigable river.

8 (d)(1) As clarification, nothing in the state's any willing provider
9 laws shall be construed to cover or regulate health care provider networks
10 offered by non-insurers.

11 (2) If an employer sponsoring a self-insured health benefit plan
12 contracts directly with providers or contracts for a health care provider
13 network through a non-insurer, then the any willing provider law does not
14 apply.

15 (3) If a health insurer subcontracts with a non-insurer whose
16 health care network does not meet the requirements of the any willing
17 provider law, then the non-insurer may, but is not required to, create a
18 separate health care provider network that meets the requirements of the any
19 willing provider law.

20 (4) If the non-insurer chooses not to create the separate health
21 care provider network, then the responsibility for compliance with the any
22 willing provider law is the obligation of the health insurer to the extent
23 permitted by ERISA.

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25 SECTION 5. As used in this act:

26 (1) "Any willing provider law" means a law that prohibits
27 discrimination against a provider willing to meet the terms and conditions
28 for participation established by a health insurer or that otherwise precludes
29 an insurer from prohibiting or limiting participation by a provider who is
30 willing to accept a health insurer's terms and conditions for participation
31 in the provision of services through a health benefit plan;

32 (2) "ERISA" means the federal Employee Retirement Income
33 Security Act of 1974, as amended, 29 U.S.C. §§ 1001 et seq.;

34 (3) "Health benefit plan" means any health insurance policy or
35 certificate; health maintenance organization contract; hospital and medical
36 service corporation contract or certificate; a self-insured plan or a plan

1 provided by a multiple employer welfare arrangement, to the extent permitted
2 by ERISA; or any health benefit plan that affects the rights of an Arkansas
3 insured and bears a reasonable relation to Arkansas, whether delivered or
4 issued for delivery in Arkansas;

5 (4) "Health care provider" or "provider" means those individuals
6 or entities licensed by the State of Arkansas to provide health care
7 services, limited to the following:

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

9 (B) Podiatrists;

10 (C) Chiropractors;

11 (D) Physical therapists;

12 (E) Speech pathologists;

13 (F) Audiologists;

14 (G) Dentists;

15 (H) Optometrists;

16 (I) Hospitals;

17 (J) Hospital-based services;

18 (K) Psychologists;

19 (L) Licensed professional counselors;

20 (M) Respiratory therapists;

21 (N) Pharmacists;

22 (O) Occupational therapists;

23 (P) Long-term care facilities;

24 (Q) Home health care;

25 (R) Hospice care;

26 (S) Licensed ambulatory surgery centers;

27 (T) Rural health clinics;

28 (U) Licensed certified social workers;

29 (V) Licensed psychological examiners;

30 (W) Advanced practice nurses;

31 (X) Licensed dietitians;

32 (Y) Community mental health centers or clinics;

33 (Z) Certified orthotists;

34 (AA) Prosthetists;

35 (BB) Licensed durable medical equipment providers; and

36 (CC) Other health care practitioners as determined by the

1 department in regulations promulgated under §§ 25-15-201, et seq.;

2 (5) "Health insurer" or "health care insurer" means any entity
3 that is authorized by the State of Arkansas to offer or provide health
4 benefit plans, policies, subscriber contracts, or any other contracts of
5 similar nature which indemnify or compensate health care providers for the
6 provision of health care services;

7 (6) "Non-insurer" means an entity that is not required to obtain
8 authorization from the department to do business as a health insurer but that
9 does have a provider network; and

10 (7) "Self-insured" includes self-funded and vice versa.

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12 SECTION 6. If any provision of this Act or the application thereof to
13 any person or circumstance is held invalid, such invalidity shall not affect
14 other provisions or applications of the Act which can be given effect without
15 the invalid provision or application, and to this end the provisions of this
16 Act are declared to be severable.

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18 SECTION 7. Sections 3, 4, 5 and 6 of this Act shall take effect and
19 apply to any of the state's any willing provider laws regardless of whether
20 the Patient Protection Act of 2005 becomes effective.

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22 /s/ Faris

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25 **APPROVED: 3/02/2005**

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