

ARKANSAS SENATE
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of Senate Bill No. 933

"TO CLARIFY THE MEDICAID FAIRNESS ACT AND TO AMEND THE LAW
REGARDING PROVIDER PARTICIPATION AND ADMINISTRATIVE APPEALS UNDER
THE MEDICAID FAIRNESS ACT."

Amendment No. 1 to Senate Bill No. 933.

Amend Senate Bill No. 933 as originally introduced:

Page 1, line 27 add the following:

"SECTION 2. Arkansas Code § 20-77-1702(2), concerning the definition of "adverse decision" for law regarding Medicaid fairness, is amended to read as follows:

(2) "Adverse decision" means any decision by the Department of Human Services or its reviewers or contractors that adversely affect a Medicaid provider's ability to participate in the Arkansas Medicaid Program or adversely affects a Medicaid provider or recipient in regard to receipt of and payment for Medicaid claims and services, including, but not limited to, decisions as to:

- (A) Appropriate level of care or coding;
- (B) Medical necessity;
- (C) Prior authorization;
- (D) Concurrent reviews;
- (E) Retrospective reviews;
- (F) Least restrictive setting;
- (G) Desk audits;
- (H) Field audits and onsite audits; and
- (I) Inspections;

SECTION 3. Arkansas Code § 20-77-1709 is amended to read as follows:
20-77-1709. Promulgation before enforcement.

(a) The ~~Department of Human Services~~ state may not use state rules, standards, policies, guidelines, manuals, or other such criteria in enforcement actions against providers unless the criteria have been promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Nothing in this section requires or authorizes the department to attempt to promulgate standards of care that practitioners use in determining medical necessity or rendering medical decisions, diagnoses, or treatment.



(c) Medicaid contractors may not use a different provider manual than the Medicaid Provider Manual promulgated for each service category.

(d) After adoption of new state rules, standards, policies, guidelines, manuals, or other such criteria, the department shall give an existing provider affected by the new state rules, standards, policies, guidelines, manuals, or other such criteria an opportunity and a reasonable period of time to achieve compliance without restrictions being imposed on the provider.

SECTION 4. Arkansas Code Title 20, Chapter 77, Subchapter 17 is amended to add an additional section to read as follows:

20-77-1717. Termination -- Evidence of compliance.

(a) If the Department of Human Services determines during a survey, field audit, onsite inspection or by any other means that a provider is not in compliance with one (1) or more state rules, standards, policies, guidelines, manuals, or other such criteria and issues an adverse decision to terminate the provider's certification or participation, the department shall provide to the provider with written notice of the termination decision under this subchapter at least thirty (30) days before the effective date of the termination.

(b) If a provider notified of a termination decision under this section submits a reasonable and adequate plan of correction before the effective date of termination, the department shall allow the provider to continue to participate in the Arkansas Medicaid Program, if the instances of noncompliance either individually or in combination neither jeopardize the health and safety of patients nor are of such a character as to seriously limit the provider's capacity to render adequate care.

(c)(1) The department shall grant a provider notified of a termination decision under this section a reasonable period of time to achieve compliance under its plan of correction.

(2) The time granted under subdivision (c)(1) of this section depends upon:

(A) The nature of the deficiency; and

(B) The capacities of the provider to provide adequate and safe care.

(3)(A) Ordinarily, the provider is expected to achieve compliance within sixty (60) days of being notified of the adverse decision.

(B)(i) However, the department may recommend that additional time be granted in individual cases, if in the department's judgment, it is not reasonable to expect compliance within sixty (60) days.

(ii) Reasons for allowing additional time under subdivision (c)(3)(B)(i) of this section include without limitation a situation in which a provider must engage in competitive bidding or receive additional certification or recertification before achieving compliance.

(d) The department shall allow a provider notified of a termination decision under this section an opportunity to meet with representatives of the department within fourteen (14) days following the issuance of the notice of termination in order to clarify any instances of noncompliance and to allow the provider to receive guidance on an acceptable plan of correction.

(e) Upon acceptance of a plan of correction, the department may conduct follow-up visits to confirm evidence of compliance with the plan of correction or, in the absence of a survey, deem the noncompliance corrected

upon the date designated in the plan for compliance."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator G. Baker

MGF/KSW - 03-27-2009 16:05

MGF383

Secretary