

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

HOUSE BILL 1900

5 By: Representative L. Johnson  
6 By: Senator Irvin  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE STATUTES CONCERNING THE  
10 LIMITATIONS ON FINANCIAL PENALTIES IN ALTERNATIVE  
11 PAYMENT SYSTEMS; AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

15 TO AMEND THE STATUTES CONCERNING THE  
16 LIMITATIONS ON FINANCIAL PENALTIES IN  
17 ALTERNATIVE PAYMENT SYSTEMS.  
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19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code Title 23, Chapter 99, Subchapter 9, as  
23 amended by Acts 2019, No. 300, is amended to read as follows:

24 23-99-901. Legislative findings.

25 The General Assembly finds that:

26 (1) Under an alternative payment system, a healthcare payor,  
27 when determining a ~~physician's~~ healthcare provider's patient care costs, may  
28 use factors that are not under the control of the ~~physician~~ healthcare  
29 provider;

30 (2) A ~~physician~~ healthcare provider may not receive an  
31 appropriate share of savings or reduction in recoupment under an alternative  
32 payment system if the ~~physician's~~ healthcare provider's patients have a  
33 higher cost of care; and

34 (3) A ~~physician~~ healthcare provider should not be penalized for  
35 higher patient care costs if any of the costs, or other factors determining  
36 reimbursement, are not under the control of the ~~physician~~ healthcare



1 provider.

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3 23-99-902. Definitions.

4 As used in this subchapter:

5 (1) "Alternative payment system" means a payment methodology  
6 used by a healthcare payor that includes a risk-sharing or gain-sharing  
7 component for a ~~physician~~ healthcare provider that participates in a plan,  
8 program, or network offered by the healthcare payor;

9 (2) "Gain-sharing payment" means an increase in a payment or  
10 additional payments made by a healthcare payor to a ~~physician~~ healthcare  
11 provider as a result of the achievement of identified benchmarks, including  
12 without limitation that patient care costs that fall below cost thresholds of  
13 any form;

14 (3)(A) "Healthcare payor" means an entity that reimburses a  
15 physician for the delivery of healthcare services that are covered by a plan  
16 administered, issued, or delivered by the entity.

17 (B) "Healthcare payor" does not include a provider-based  
18 network or system that utilizes risk-sharing including an accountable care  
19 organization or a clinically integrated network; ~~and~~

20 (4) "Healthcare provider" means any type of a provider that  
21 renders healthcare services to patients for compensation, including:

22 (A) A doctor of medicine, a doctor of osteopathy, or  
23 another licensed healthcare professional acting within the professional's  
24 licensed scope of practice; or

25 (B) A healthcare facility, including a hospital,  
26 ambulatory surgery center, or other type of facility licensed in this state  
27 to provide healthcare services; and

28 ~~(4)(A)~~(5)(A) "Risk-sharing payment" means a reduction in a  
29 payment to or refund of a payment already made to a ~~physician~~ healthcare  
30 provider as a result of failure to achieve identified benchmarks, including  
31 without limitation that patient care costs ~~that~~ exceed cost thresholds of any  
32 form.

33 (B) "Risk-sharing payment" includes the alternative  
34 payment method by gift card, credit card, or other type of electronic payment  
35 or virtual credit card as payment if the ~~physician~~ healthcare provider is  
36 given clear instructions about how to select an alternative payment method

1 that does not result in the ~~physician's~~ healthcare provider's being charged a  
 2 service fee to process.

3  
 4 23-99-903. Physician penalties – Limitation.

5 (a) A healthcare payor doing business in this state, when determining  
 6 any gain-sharing or risk-sharing for a ~~physician~~ healthcare provider, shall  
 7 not attribute to a ~~physician~~ healthcare provider any costs that are a result  
 8 of variations in the healthcare payor's freely negotiated contract pricing  
 9 with other persons or entities outside the ~~physician's~~ healthcare provider's  
 10 practice if including the costs reduces a ~~physician's~~ healthcare provider's  
 11 gain-sharing amount or increases a ~~physician's~~ healthcare provider's risk-  
 12 sharing amount.

13 (b)(1) When determining any gain-sharing or risk-sharing for a  
 14 healthcare provider based on the achievement of or failure to attain certain  
 15 benchmarks, a healthcare payor doing business in this state shall use clearly  
 16 expressed and identifiable benchmarks.

17 (2) At least ninety (90) days in advance of implementation, the  
 18 healthcare payor shall explain to the healthcare provider the applicability  
 19 of the identifiable benchmarks.

20 (3) Any identifiable benchmarks shall be within the control of  
 21 the healthcare provider to achieve or fail to attain.

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 23 23-99-904. Waiver prohibited.

24 (a) The provisions of this subchapter shall not be waived by contract.

25 (b) Contractual arrangements or actions taken in conflict with this  
 26 subchapter or that purport to waive any requirements of this subchapter are  
 27 void.

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 29 23-99-905. Enforcement.

30 (a) The State Insurance Department shall develop and promulgate rules  
 31 for the implementation and enforcement of this subchapter.

32 (b) In addition to or as an alternative to any enforcement action by  
 33 the department, a ~~physician, a physician practice or clinic,~~ healthcare  
 34 provider or an organization that represents ~~physicians~~ healthcare providers  
 35 may enforce this subchapter by filing suit against a healthcare payor in:

36 (1) Pulaski County Circuit Court; or

