

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999

# A Bill

HOUSE BILL 1038

4  
5 By: Representative Lendall  
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## For An Act To Be Entitled

8  
9 "THE UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE  
10 IN HEALTH BENEFIT PLANS ACT; AND FOR OTHER PURPOSES."

### Subtitle

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13 "THE UNFAIR DISCRIMINATION AGAINST  
14 SUBJECTS OF ABUSE IN HEALTH BENEFIT  
15 PLANS ACT."  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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#### SECTION 1. Purpose.

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21 The purpose of this Act is to prohibit unfair discrimination by health  
22 carriers and insurance professionals on the basis of abuse status. Nothing in  
23 this Act shall be construed to create or imply a private cause of action for a  
24 violation of this Act.  
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#### SECTION 2. Scope.

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27 This Act applies to all health carriers and insurance professionals  
28 involved in issuing or renewing in this state a policy or certificate of  
29 health insurance.  
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#### SECTION 3. Definitions.

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32 (1) "Abuse" means the occurrence of one or more of the following acts  
33 by a current or former family member, household member, intimate partner or  
34 caretaker:

35 (A) Attempting to cause or intentionally, knowingly or recklessly  
36 causing another person bodily injury, physical harm, severe emotional

1 distress, psychological trauma, rape, sexual assault or involuntary sexual  
2 intercourse;

3 (B) Knowingly engaging in a course of conduct or repeatedly  
4 committing acts toward another person, including following the person or minor  
5 child without proper authority, under circumstances that place the person or  
6 minor child in reasonable fear of bodily injury or physical harm;

7 (C) Subjecting another person to false imprisonment;

8 (D) Attempting to cause or intentionally, knowingly, or  
9 recklessly causing damage to property so as to intimidate or attempt to  
10 control the behavior of another person.

11 (2) "Abuse-related medical condition" means a medical condition  
12 sustained by a subject of abuse which arises in whole or part out of an act or  
13 pattern of abuse.

14 (3) "Abuse status" means the fact or perception that a person is, has  
15 been, or may be a subject of abuse, irrespective of whether the person has  
16 sustained abuse-related medical conditions.

17 (4) "Commissioner" means the insurance commissioner of this state.

18 (5) "Confidential abuse information" means information about acts of  
19 abuse or abuse status of a subject of abuse, a person's medical condition that  
20 the carrier knows or has reason to know is abuse-related, the address and  
21 telephone number (home and work) of a subject of abuse or the status of an  
22 applicant or insured as a family member, employer or associate of, or a person  
23 in a relationship with, a subject of abuse.

24 (6) "Health benefit plan" or "plan" means a policy, contract,  
25 certificate or agreement offered by a carrier or insurance professional to  
26 provide, deliver, arrange for, pay for or reimburse any of the costs of health  
27 care services. Health benefit plan includes accident only, credit health,  
28 dental, vision, Medicare supplement or long-term care insurance, coverage  
29 issued as a supplement to liability insurance, short-term and catastrophic  
30 health insurance policies, and a policy that pays on a cost-incurred basis.  
31 Health benefit plan does not include Workers' Compensation or similar  
32 insurance.

33 (7) "Health carrier" means an entity subject to the insurance laws and  
34 regulations of this state, or subject to the jurisdiction of the commissioner,  
35 that contracts or offers to contract to provide, deliver, arrange for, pay for  
36 or reimburse any of the costs of health care services, including a sickness

1 and accident insurance company, a health maintenance organization, a nonprofit  
 2 hospital and health service corporation or any other entity providing a plan  
 3 of health insurance, health benefits or health services.

4 (8) "Insurance professional" means an agent, broker, adjuster or third  
 5 party administrator as defined in the insurance laws of this state.

6 (9) "Insured" means a party named on a health benefit plan as the  
 7 person with legal rights to the benefits provided by the health benefit plan.  
 8 For group plans, "insured" includes a person who is a beneficiary covered by a  
 9 group health benefit plan.

10 (10) "Subject of abuse" means a person against whom who has current or  
 11 prior injuries, illnesses or disorders that resulted from abuse; or who seeks,  
 12 may have sought, or had reason to seek medical or psychological treatment for  
 13 abuse; or protection, court-ordered protection or shelter from abuse.

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 15 SECTION 4. Unfairly Discriminatory Acts Relating to Health Benefit  
 16 Plans.

17 (a) It is unfairly discriminatory to:

18 (1) Deny, refuse to issue, renew or reissue, cancel or otherwise  
 19 terminate a health benefit plan, or restrict or exclude health benefit plan  
 20 coverage or add a premium differential to any health benefit plan on the basis  
 21 of the applicant's or insured's abuse status; or

22 (2) Exclude or limit coverage for losses or deny a claim incurred  
 23 by an insured on the basis of the insured's abuse status;

24 (b) When the health carrier or insurance professional has information  
 25 in its possession that clearly indicates that the insured or applicant is a  
 26 subject of abuse, the disclosure or transfer of the confidential abuse  
 27 information, as defined in this Act, by a person employed by or contracting  
 28 with a health carrier or insurance professional for any purpose or to any  
 29 person is unfairly discriminatory, except:

30 (1) To the subject of abuse or an individual specifically  
 31 designated in writing by the subject of abuse;

32 (2) To a health care provider for the direct provision of health  
 33 care services;

34 (3) To a licensed physician identified and designated by the  
 35 subject of abuse;

36 (4) When ordered by the commissioner or a court of competent

1 jurisdiction or otherwise required by law; or

2 (5) When necessary for a valid business purpose to transfer  
3 information that includes confidential abuse information that cannot  
4 reasonably be segregated without undue hardship. Confidential abuse  
5 information may be disclosed only if the recipient has executed a written  
6 agreement to be bound by the prohibitions of this Act in all respects and to  
7 be subject to the enforcement of this Act by the courts of this state for the  
8 benefit of the applicant or the insured, and only to the following persons:

9 (A) A reinsurer that seeks to indemnify or indemnifies all  
10 or any part of a policy covering a subject of abuse and that cannot underwrite  
11 or satisfy its obligations under the reinsurance agreement without that  
12 disclosure;

13 (B) A party to a proposed or consummated sale, transfer,  
14 merger or consolidation of all or part of the business of the health carrier  
15 or insurance professional;

16 (C) Medical or claims personnel contracting with the health  
17 carrier or insurance professional, only where necessary to process an  
18 application or perform the health carrier's or insurance professional's duties  
19 under the policy or to protect the safety or privacy of a subject of abuse  
20 (also includes parent or affiliate companies of the health carrier or  
21 insurance professional that have service agreements with the health carrier or  
22 insurance professional); or

23 (D) With respect to address and telephone number, to  
24 entities with whom the health carrier or insurance professional transacts  
25 business when the business cannot be transacted without the address and  
26 telephone number;

27 (6) To an attorney who needs the information to represent the  
28 health carrier or insurance professional effectively, provided the health  
29 carrier or insurance professional notifies the attorney of its obligations  
30 under this Act and requests that the attorney exercise due diligence to  
31 protect the confidential abuse information consistent with the attorney's  
32 obligation to represent the health carrier or insurance professional;

33 (7) To the policyowner or assignee, in the course of delivery of  
34 the policy, if the policy contains information about abuse status; or

35 (8) To any other entities deemed appropriate by the commissioner.

36 (c) It is unfairly discriminatory to request information relating to

1 acts of abuse or an applicant's or insured's abuse status, or make use of that  
2 information, however obtained, except for the limited purposes of complying  
3 with legal obligations or verifying a person's claim to be a subject of abuse.

4 (d) It is unfairly discriminatory to terminate group coverage for a  
5 subject of abuse because coverage was originally issued in the name of the  
6 abuser and the abuser has divorced, separated from, or lost custody of the  
7 subject of abuse, or the abuser's coverage has terminated voluntarily or  
8 involuntarily. Nothing in this subsection prohibits the health carrier or  
9 insurance professional from requiring the subject of abuse to pay the full  
10 premium for coverage under the health plan or from requiring as a condition of  
11 coverage that the subject of abuse reside or work within its service area, if  
12 the requirements are applied to all insureds of the health carrier or  
13 insurance professional. The health carrier or insurance professional may  
14 terminate group coverage after the continuation coverage required by this  
15 subsection has been in force for eighteen (18) months, if it offers conversion  
16 to an equivalent individual plan. The continuation coverage required by this  
17 section shall be satisfied by coverage required under P.L. 99-272, the  
18 Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, provided to a  
19 subject of abuse and is not intended to be in addition to coverage provided  
20 under COBRA.

21 (e) Nothing in this act shall preclude a subject of abuse from  
22 obtaining his or her insurance records.

23 (f) Nothing in this act shall prohibit a health carrier or insurance  
24 professional from asking about a medical condition or from using medical  
25 information to underwrite or to carry out its duties under the policy, even if  
26 the medical information is related to a medical condition that the insurer or  
27 insurance professional knows or has reason to know is abuse-related, to the  
28 extent otherwise permitted under this Act and other applicable law.

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30 SECTION 5. Justification of Adverse Insurance Decisions.

31 A health carrier or insurance professional that takes an action that  
32 adversely affects an applicant or insured on the basis of a medical condition  
33 that the health carrier or insurance professional knows or has reason to know  
34 is abuse-related shall explain the reason for its action to the applicant or  
35 insured in writing and shall be able to demonstrate that its action, and any  
36 applicable plan provision:

1       (1) Does not have the purpose or effect of treating abuse status as a  
2 medical condition or underwriting criterion;

3       (2) Is not based upon any actual or perceived correlation between a  
4 medical condition and abuse;

5       (3) Is otherwise permissible by law and applies in the same manner and  
6 to the same extent to all applicants and insureds with a similar medical  
7 condition without regard to whether the condition or claim is abuse-related;  
8 and

9       (4) Except for claim actions, is based on a determination, made in  
10 conformance with sound actuarial principles and supported by reasonable  
11 statistical evidence, that there is a correlation between the medical  
12 condition and a material increase in insurance risk.

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14       SECTION 6. Insurance Protocols for Subjects of Abuse.

15       (a) Health carriers shall develop and adhere to written policies  
16 specifying procedures to be followed by employees and by insurance  
17 professionals they contract with, for the purpose of protecting the safety and  
18 privacy of a subject of abuse and shall otherwise implement the provisions of  
19 this Act when taking an application, investigating a claim, pursuing  
20 subrogation or taking any other action relating to a policy or claim involving  
21 a subject of abuse. Insurers shall distribute their written policies to  
22 employees and insurance professionals.

23       (b) The commissioner shall conduct a reasonable investigation based on  
24 a written and signed complaint received by the commissioner and issue a prompt  
25 determination as to whether a violation of this Act may have occurred. If the  
26 commissioner finds from the investigation that a violation of this Act may  
27 have occurred, the commissioner shall promptly begin an adjudicatory  
28 proceeding. The commissioner may address a violation through means  
29 appropriate to the nature and extent of the violation, which may include  
30 suspension or revocation of certificates of authority or licenses, imposition  
31 of civil penalties, issuance of cease and desist orders, injunctive relief, a  
32 requirement for restitution, referral to prosecutorial authorities or any  
33 combination of these. The powers and duties set forth in this section are in  
34 addition to all other authority of the commissioner.

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1 SECTION 7. Effective Date.

2 This Act applies to all actions taken on or after the effective date,  
3 except where otherwise explicitly stated. Nothing in this Act shall require a  
4 health carrier or insurance professional to conduct a comprehensive search of  
5 its contract files existing on the effective date solely to determine which  
6 applicants or insureds are subjects of abuse.

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8 SECTION 8. All provisions of this Act of a general and permanent nature  
9 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
10 Revision Commission shall incorporate the same in the Code.

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12 SECTION 9. 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 10. All laws and parts of laws in conflict with this Act are  
19 hereby repealed.