

ARKANSAS SENATE
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of Senate Bill No. 43

"PATIENT PROTECTION ACT OF 2005."

Amendment No. 2 to Senate Bill No. 43.

Amend Senate Bill No. 43 as engrossed, S1/12/05 (version: 01-12-2005 09:13):

Page 1, line 35, delete the phrase "except § 1169, and"

AND

Page 2, delete lines 1 through 7, and substitute the following:

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

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

AND

Page 3, line 12, delete the phrase "; and"

AND

Page 3, lines 18 and 19, delete the phrase ", including the Arkansas state Medicaid program and Medicaid partnerships"

AND

Page 3, delete line 26, and substitute the following:

"provider.

SECTION 2. This act shall become effective only if the Eighth Circuit



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mandate from the Eight Circuit, and the Patient Protection Act of 1995, Arkansas Code 23-99-201 through 209 shall be repealed simultaneously as follows:

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

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

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

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

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

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

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

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

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

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

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

- ~~(1) Physicians and surgeons (M.D. and D.O.);~~
- ~~(2) Podiatrists;~~
- ~~(3) Chiropractors;~~
- ~~(4) Physical therapists;~~
- ~~(5) Speech pathologists;~~
- ~~(6) Audiologists;~~
- ~~(7) Dentists;~~
- ~~(8) Optometrists;~~
- ~~(9) Hospitals;~~
- ~~(10) Hospital based services;~~
- ~~(11) Psychologists;~~
- ~~(12) Licensed professional counselors;~~
- ~~(13) Respiratory therapists;~~

- ~~(14) Pharmacists;~~
- ~~(15) Occupational therapists;~~
- ~~(16) Long term care facilities;~~
- ~~(17) Home health care;~~
- ~~(18) Hospice care;~~
- ~~(19) Licensed ambulatory surgery centers;~~
- ~~(20) Rural health clinics;~~
- ~~(21) Licensed certified social workers;~~
- ~~(22) Licensed psychological examiners;~~
- ~~(23) Advanced practice nurses;~~
- ~~(24) Licensed dieticians;~~
- ~~(25) Community mental health centers or clinics;~~
- ~~(26) Certified orthotists; and~~
- ~~(27) Prosthetists.~~

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

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

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

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

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

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

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

~~(i) A higher copayment;~~
~~(ii) A reduction in reimbursement for services; or~~
~~(iii) Promotion of one (1) health care provider over another by these methods;~~

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

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

~~(b) Nothing in this subchapter shall prevent a health benefit plan from instituting measures designed to maintain quality and to control costs, including, but not limited to, the utilization of a gatekeeper system, as~~

~~long as such measures are imposed equally on all providers in the same class.~~

~~23-99-205. Construction.~~

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

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

~~23-99-206. Violations.~~

~~It is a violation of this subchapter for any health care insurer or other person or entity to provide any health benefit plan providing for health care services to residents of this state that does not conform to this subchapter, but nothing in this subchapter shall constitute a violation on the basis of actions taken by the health benefit plan to maintain quality, enforce utilization regulations, and to control costs.~~

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

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

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

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

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

~~23-99-209. Applicability.~~

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

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

By: Senator Faris
SFI/SFI - 01-27-2005 12:15
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Secretary