

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.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/12/01

A Bill

HOUSE BILL 2447

5 By: Representative Bledsoe
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE HEALTH CARE CONSUMER ACT TO
10 PROHIBIT GENETIC DISCRIMINATION AGAINST CONSUMERS
11 AND RETALIATION AGAINST PROVIDERS; TO INCLUDE DUE
12 PROCESS RIGHTS FOR TERMINATED PROVIDERS; AND FOR
13 OTHER PURPOSES.
14

Subtitle

15 AN ACT TO AMEND THE HEALTH CARE CONSUMER
16 ACT TO PROHIBIT GENETIC DISCRIMINATION
17 AGAINST CONSUMERS, RETALIATION AGAINST
18 PROVIDERS.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 23, Chapter 99, Subchapter 4 is amended
25 by adding additional sections to read as follows:

26 23-99-417. Genetic discrimination prohibited.

27 (a) Discrimination by a health care insurer against any person on the
28 basis of genetic information is prohibited.

29 (b) A health care insurer shall not consider genetic information for
30 the purpose of providing or denying coverage, limiting or excluding benefits,
31 establishing rates or for any other purpose that would adversely affect a
32 covered person or potential covered person.

33 (c) The provisions of this section shall not require a health care
34 insurer to provide particular benefits other than those provided under the
35 terms of the health benefit plan.

36 (d)(1) For purposes of this section, "genetic information" means any

1 information about genes, gene products, or inherited characteristics that may
2 derive from the individual or a family member.

3 (2) "Genetic information" includes, but is not limited to,
4 information regarding carrier status, an increased likelihood of future
5 disease or increased sensitivity to any substance, information derived from
6 laboratory tests that identify mutations in specific genes or chromosomes,
7 physical medical examinations, family histories, requests for genetic testing
8 or counseling, tests of gene products, and direct analysis of genes or
9 chromosomes.

10
11 23-99-418. Termination of participating providers.

12 (a) A health care insurer offering a managed care plan shall not
13 terminate or nonrenew a contract with a participating provider unless the
14 insurer provides the provider a written explanation prior to the termination
15 or nonrenewal of the specific reasons for the proposed termination or
16 nonrenewal and provides an opportunity for a review hearing in accordance
17 with this section.

18 (b) The existence of a termination without cause or similar provision
19 in an insurer's contract with a provider shall not supersede the requirements
20 of this section.

21 (c) This section shall not apply to termination cases involving
22 imminent harm to patient care, a final determination of fraud by a
23 governmental agency, or a final disciplinary action by a state licensing
24 board or other governmental agency that impairs the ability of a provider to
25 practice.

26 (d) The notice of the proposed contract termination or nonrenewal
27 provided by the insurer to the participating provider shall include:

28 (1) The reason or reasons for the proposed action in sufficient
29 detail to permit the provider to respond;

30 (2)(A) Reference to the evidence or documentation underlying the
31 insurer's decision to pursue the proposed action.

32 (B) An insurer shall permit a provider to review this
33 evidence and documentation upon request;

34 (3) Notice that the provider has the right to request a review
35 hearing before a panel appointed by the carrier;

36 (4) A time limit of at least thirty (30) calendar days from the

1 date the provider receives the notice within which a provider may request a
2 review hearing; and

3 (5) A time limit for a hearing date that shall be not less than
4 thirty (30) calendar days after the date of receipt of a request for a
5 hearing.

6 (e) Termination or nonrenewal shall not be effective earlier than
7 sixty (60) calendar days from the receipt of the notice of termination or
8 nonrenewal.

9 (f)(1) A hearing panel shall be composed of at least three (3) persons
10 appointed by the carrier and two (2) of the three (3) members shall be a
11 clinical peer in the same discipline and the same specialty of the provider
12 under review.

13 (2) A hearing panel may be composed of more than three (3)
14 persons if the number of clinical peers on the hearing panel constitutes two-
15 thirds (2/3) or more of the total membership of the panel.

16 (3) No person serving on the panel shall be employed by, have a
17 family member employed by, be a consultant for, have a financial interest in
18 the carrier, other than participating provider status, or otherwise have a
19 conflict of interest.

20 (g) The provider shall be afforded the opportunity to appear at the
21 hearing.

22 (h)(1) A hearing panel shall render a written decision on the proposed
23 action in a timely manner.

24 (2)(A) This decision shall be either the reinstatement of the
25 provider by the carrier, the provisional reinstatement of the provider
26 subject to conditions established by the carrier, or the termination or
27 nonrenewal of the provider.

28 (B) A decision by a hearing panel to terminate or nonrenew
29 a contract with a provider shall not become effective less than sixty (60)
30 calendar days after the receipt by the provider of the hearing panel's
31 decision or until the termination date in the provider's contract, whichever
32 is earlier.

33
34 23-99-419. Enforcement.

35 Any person injured by a violation of the Health Care Consumer Act may
36 file suit in a court of competent jurisdiction for appropriate legal and

1 equitable relief, and, upon prevailing, recover reasonable attorney fees.

2
3 SECTION 2. Arkansas Code Annotated 23-99-407 is amended as follows:
4 23-99-407 "~~Gag clause~~" prohibition. Anti-retaliation provision.

5 (a) No participating provider may be prohibited, restricted, or
6 penalized in any way from disclosing to any covered person any health care
7 information that the provider deems appropriate regarding the nature of
8 treatment, risks, or alternatives thereto, the availability of alternate
9 therapies, consultations, or tests, the decision of utilization reviewers or
10 similar persons to authorize or deny services, the process that is used to
11 authorize or deny health care services or benefits, or information on
12 financial incentives and structures used by the insurer.

13 (b)(1) A health care insurer shall not remove a participating provider
14 from its network or refuse to renew the provider or take any other adverse
15 action against the provider for advocating on behalf of a covered person for
16 what, in the provider's professional judgment, is appropriate and medically
17 necessary care for the covered person.

18 (2) For purposes of this subdivision (b)(2), "advocating"
19 includes, but is not limited to, discussing or recommending a course of
20 treatment; appealing an insurer's decision to deny payment for a service; and
21 protesting a decision, policy or practice that the provider reasonably
22 believes impairs the provider's ability to provide medically appropriate
23 health care to the provider's patients.

24
25 SECTION 3. (a) This act applies to all health plans issued, renewed,
26 extended or modified by a health carrier on or after the effective date of
27 this act.

28 (b) For purposes of this act, "Renewed, extended, or modified" shall
29 include a change in premium or other financial term.

30
31 SECTION 4. The Arkansas Code Revision Commission shall no longer
32 codify the language currently found in § 23-99-416 containing language
33 similar to that in section 5 of this act.

34
35 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly that as modern science advances in its understanding of

1 human genetic makeup there is insufficient protection for consumers against
2 misuse of that information by health care insurers; that providers often fear
3 retaliation for advocating on behalf of their patients; and that often times
4 providers are given no reason and have no recourse when they are terminated
5 from an insurer's network. Therefore, an emergency is declared to exist and
6 this act being immediately necessary for the preservation of the public
7 peace, health and safety shall become effective on the date of its approval
8 by the Governor. If the bill is neither approved nor vetoed by the Governor,
9 it shall become effective on the expiration of the period of time during
10 which the Governor may veto the bill. If the bill is vetoed by the Governor
11 and the veto is overridden, it shall become effective on the date the last
12 house overrides the veto.

13 */s/ Bl edsoe*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36