

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 85th General Assembly  
3 Regular Session, 2005  
4

*As Engrossed: S1/12/05 S1/31/05*

# A Bill

SENATE BILL 44

5 By: Senator Faris  
6 *By: Representative Bradford*  
7

## For An Act To Be Entitled

10 AN ACT TO PROVIDE FOR ENFORCEMENT OF THE PATIENT  
11 PROTECTION ACT OF 2005; AND FOR OTHER PURPOSES.  
12

### Subtitle

14 AN ACT TO PROVIDE FOR ENFORCEMENT OF THE  
15 PATIENT PROTECTION ACT OF 2005.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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#### SECTION 1. Civil penalties.

21 To the extent permitted by ERISA, the federal Employee Retirement  
22 Income Security Act of 1974, as amended, 29 U.S.C. § 1161 et seq. as in  
23 effect on January 1, 2005, any person adversely affected by a violation of  
24 the Patient Protection Act of 2005 may sue in a court of competent  
25 jurisdiction for injunctive relief against the health insurer and, upon  
26 prevailing, shall, in addition to injunctive relief, recover damages of not  
27 less than one thousand dollars (\$1,000), attorney's fees, and costs.  
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#### SECTION 2. Validity and construction.

30 (a) A health benefit plan delivered or issued for delivery to any  
31 person in this state in violation of the Patient Protection Act of 2005 but  
32 otherwise binding on the health insurer, shall be held valid, but shall be  
33 construed as provided in the Patient Protection Act of 2005.

34 (b) Any health benefit plan or related policy, rider, or endorsement  
35 issued and otherwise valid that contains any condition, omission, or  
36 provision not in compliance with the requirements of the Patient Protection



1 Act of 2005 shall not be rendered invalid because of the noncompliance, but  
2 shall be construed and applied in accordance with such condition, omission,  
3 or provision as would have applied if it had been in full compliance with the  
4 Patient Protection Act of 2005.

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6 SECTION 3. Agency Enforcement.

7 Notwithstanding Section 1 of this act, the Insurance Commissioner  
8 shall:

9 (1) Enforce the state's any willing provider laws using powers  
10 granted to the commissioner in the Arkansas Insurance Code, Arkansas Code §§  
11 23-60-101, et seq.; and

12 (2) Be entitled to seek an injunction against a health insurer  
13 in a court of competent jurisdiction.

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15 SECTION 4. (a) The state's any willing provider laws shall not be  
16 construed:

17 (1) To require all physicians or a percentage of physicians in  
18 the state or a locale to participate in the provision of services for a  
19 health maintenance organization; or

20 (2) To take away the authority of health maintenance  
21 organizations that provide coverage of physician services to set the terms  
22 and conditions for participation by physicians, though health maintenance  
23 organizations shall apply such terms and conditions in a nondiscriminatory  
24 manner.

25 (b)(1) The state's any willing provider laws shall apply to:

26 (A) All health insurers, regardless of whether they are  
27 providing insurance, including pre-paid coverage, or administering or  
28 contracting to provide provider networks; and

29 (B) All multiple employer welfare arrangements and  
30 multiple employer trusts.

31 (2) Subsection (b) of this section shall apply only to the  
32 extent permitted by ERISA as in effect on January 1, 2005.

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34 SECTION 5. As used in this act:

35 (1) "Any willing provider law" means a law that prohibits  
36 discrimination against a provider willing to meet the terms and conditions

1 for participation established by a health insurer or that otherwise precludes  
2 an insurer from prohibiting or limiting participation by a provider who is  
3 willing to accept a health insurer's terms and conditions for participation  
4 in the provision of services through a health benefit plan;

5 (2) "ERISA" means the federal Employee Retirement Income  
6 Security Act of 1974, as amended, 29 U.S.C. §§ 1161 et seq. except Section  
7 1169, and as in effect on January 1, 2005;

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

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

18 (A) Physicians and surgeons (M.D. and D.O.);

19 (B) Podiatrists;

20 (C) Chiropractors;

21 (D) Physical therapists;

22 (E) Speech pathologists;

23 (F) Audiologists;

24 (G) Dentists;

25 (H) Optometrists;

26 (I) Hospitals;

27 (J) Hospital-based services;

28 (K) Psychologists;

29 (L) Licensed professional counselors;

30 (M) Respiratory therapists;

31 (N) Pharmacists;

32 (O) Occupational therapists;

33 (P) Long-term care facilities;

34 (Q) Home health care;

35 (R) Hospice care;

36 (S) Licensed ambulatory surgery centers;

1 (T) Rural health clinics;

2 (U) Licensed certified social workers;

3 (V) Licensed psychological examiners;

4 (W) Advanced practice nurses;

5 (X) Licensed dieticians;

6 (Y) Community mental health centers or clinics;

7 (Z) Certified orthotists; and

8 (AA) Prosthetists.

9 (BB) Other health care practitioners as determined by the  
10 department in regulations promulgated under §§ 25-15-201, et seq.; and

11 (5) "Health insurer" means any entity, including but not limited  
12 to insurance companies, health maintenance organizations, hospital and  
13 medical services corporations, preferred provider organizations, physician  
14 hospital organizations, and third party administrators and prescription  
15 benefit management companies, that is authorized by the State of Arkansas to  
16 offer or provide health benefit plans, policies, subscriber contracts, or any  
17 other contracts of similar nature which indemnify or compensate health care  
18 providers for the provision of health care services.

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20 SECTION 6. If any provision of this Act or the application thereof to  
21 any person or circumstance is held invalid, such invalidity shall not affect  
22 other provisions or applications of the Act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 Act are declared to be severable.

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26 /s/ Faris  
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