

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 S2/3/05

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.
16
17

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.

33 (c)(1) The state's any willing provider laws shall be construed to
34 include within their provider definitions all those providers of the same
35 class or classes who:

36 (A) Are practicing or operating within a border city in an

1 adjoining state; and

2 (B) Are licensed or authorized to practice or operate by
3 the adjoining state, regardless of whether the provider is licensed or
4 otherwise authorized to operate in Arkansas.

5 (2) For purposes of this section, "border city" means a city in a
6 state adjoining Arkansas which adjoins the Arkansas state line or is
7 separated from an Arkansas city only by a navigable river.

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9 SECTION 5. As used in this act:

10 (1) "Any willing provider law" means a law that prohibits
11 discrimination against a provider willing to meet the terms and conditions
12 for participation established by a health insurer or that otherwise precludes
13 an insurer from prohibiting or limiting participation by a provider who is
14 willing to accept a health insurer's terms and conditions for participation
15 in the provision of services through a health benefit plan;

16 (2) "ERISA" means the federal Employee Retirement Income
17 Security Act of 1974, as amended, 29 U.S.C. §§ 1161 et seq. except Section
18 1169, and as in effect on January 1, 2005;

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

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

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

30 (B) Podiatrists;

31 (C) Chiropractors;

32 (D) Physical therapists;

33 (E) Speech pathologists;

34 (F) Audiologists;

35 (G) Dentists;

36 (H) Optometrists;

- 1 (I) Hospitals;
- 2 (J) Hospital-based services;
- 3 (K) Psychologists;
- 4 (L) Licensed professional counselors;
- 5 (M) Respiratory therapists;
- 6 (N) Pharmacists;
- 7 (O) Occupational therapists;
- 8 (P) Long-term care facilities;
- 9 (Q) Home health care;
- 10 (R) Hospice care;
- 11 (S) Licensed ambulatory surgery centers;
- 12 (T) Rural health clinics;
- 13 (U) Licensed certified social workers;
- 14 (V) Licensed psychological examiners;
- 15 (W) Advanced practice nurses;
- 16 (X) Licensed dietitians;
- 17 (Y) Community mental health centers or clinics;
- 18 (Z) Certified orthotists; and
- 19 (AA) Prosthetists.
- 20 (BB) Other health care practitioners as determined by the

21 department in regulations promulgated under §§ 25-15-201, et seq.; and

22 (5) "Health insurer" means any entity, including but not limited
23 to insurance companies, health maintenance organizations, hospital and
24 medical services corporations, preferred provider organizations, physician
25 hospital organizations, and third party administrators and prescription
26 benefit management companies, that is authorized by the State of Arkansas to
27 offer or provide health benefit plans, policies, subscriber contracts, or any
28 other contracts of similar nature which indemnify or compensate health care
29 providers for the provision of health care services.

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31 SECTION 6. If any provision of this Act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the Act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 Act are declared to be severable.

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/s/ Faris