

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/31/09

A Bill

SENATE BILL 933

5 By: Senator G. Baker
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For An Act To Be Entitled

9 AN ACT TO CLARIFY THE MEDICAID FAIRNESS ACT; TO
10 AMEND THE LAW REGARDING PROVIDER PARTICIPATION
11 AND ADMINISTRATIVE APPEALS UNDER THE MEDICAID
12 FAIRNESS ACT; AND FOR OTHER PURPOSES.
13

Subtitle

14 TO CLARIFY THE MEDICAID FAIRNESS ACT AND
15 TO AMEND THE LAW REGARDING PROVIDER
16 PARTICIPATION AND ADMINISTRATIVE APPEALS
17 UNDER THE MEDICAID FAIRNESS ACT.
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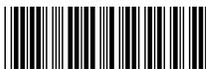
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. The purpose of this act is to clarify the Medicaid Fairness
24 Act and to amend the law regarding provider participation and administrative
25 appeals under the Medicaid Fairness Act.
26

27 SECTION 2. *Arkansas Code § 20-77-1702(2), concerning the definition of*
28 *"adverse decision" for law regarding Medicaid fairness, is amended to read as*
29 *follows:*

30 (2) "Adverse decision" means any decision by the Department of
31 Human Services or its reviewers or contractors that adversely affect a
32 Medicaid provider's ability to participate in the Arkansas Medicaid Program
33 or adversely affects a Medicaid provider or recipient in regard to receipt of
34 and payment for Medicaid claims and services, including, but not limited to,
35 decisions as to:

36 (A) *Appropriate level of care or coding;*



- 1 (B) Medical necessity;
2 (C) Prior authorization;
3 (D) Concurrent reviews;
4 (E) Retrospective reviews;
5 (F) Least restrictive setting;
6 (G) Desk audits;
7 (H) Field audits and onsite audits; and
8 (I) Inspections;
9

10 SECTION 3. Arkansas Code § 20-77-1709 is amended to read as follows:
11 20-77-1709. Promulgation before enforcement.

12 (a) ~~The Department of Human Services~~ state may not use state rules,
13 standards, policies, guidelines, manuals, or other such criteria in
14 enforcement actions against providers unless the criteria have been
15 promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et
16 seq.

17 (b) Nothing in this section requires or authorizes the department to
18 attempt to promulgate standards of care that practitioners use in determining
19 medical necessity or rendering medical decisions, diagnoses, or treatment.

20 (c) Medicaid contractors may not use a different provider manual than
21 the Medicaid Provider Manual promulgated for each service category.

22 (d) After adoption of new state rules, standards, policies,
23 guidelines, manuals, or other such criteria, the department shall give an
24 existing provider affected by the new state rules, standards, policies,
25 guidelines, manuals, or other such criteria an opportunity and a reasonable
26 period of time to achieve compliance without restrictions being imposed on
27 the provider.
28

29 SECTION 4. Arkansas Code Title 20, Chapter 77, Subchapter 17 is
30 amended to add an additional section to read as follows:

31 20-77-1717. Termination -- Evidence of compliance.

32 (a) If the Department of Human Services determines during a survey,
33 field audit, onsite inspection or by any other means that a provider is not
34 in compliance with one (1) or more state rules, standards, policies,
35 guidelines, manuals, or other such criteria and issues an adverse decision to
36 terminate the provider's certification or participation, the department shall

1 provide to the provider with written notice of the termination decision under
2 this subchapter at least thirty (30) days before the effective date of the
3 termination.

4 (b) If a provider notified of a termination decision under this
5 section submits a reasonable and adequate plan of correction before the
6 effective date of termination, the department shall allow the provider to
7 continue to participate in the Arkansas Medicaid Program, if the instances of
8 noncompliance either individually or in combination neither jeopardize the
9 health and safety of patients nor are of such a character as to seriously
10 limit the provider's capacity to render adequate care.

11 (c)(1) The department shall grant a provider notified of a termination
12 decision under this section a reasonable period of time to achieve compliance
13 under its plan of correction.

14 (2) The time granted under subdivision (c)(1) of this section
15 depends upon:

16 (A) The nature of the deficiency; and

17 (B) The capacities of the provider to provide adequate and
18 safe care.

19 (3)(A) Ordinarily, the provider is expected to achieve
20 compliance within sixty (60) days of being notified of the adverse decision.

21 (B)(i) However, the department may recommend that
22 additional time be granted in individual cases, if in the department's
23 judgment, it is not reasonable to expect compliance within sixty (60) days.

24 (ii) Reasons for allowing additional time under
25 subdivision (c)(3)(B)(i) of this section include without limitation a
26 situation in which a provider must engage in competitive bidding or receive
27 additional certification or recertification before achieving compliance.

28 (d) The department shall allow a provider notified of a termination
29 decision under this section an opportunity to meet with representatives of
30 the department within fourteen (14) days following the issuance of the notice
31 of termination in order to clarify any instances of noncompliance and to
32 allow the provider to receive guidance on an acceptable plan of correction.

33 (e) Upon acceptance of a plan of correction, the department may
34 conduct follow-up visits to confirm evidence of compliance with the plan of
35 correction or, in the absence of a survey, deem the noncompliance corrected
36 upon the date designated in the plan for compliance.

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/s/ G. Baker