

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

HOUSE BILL 1824

4
5 By: Representatives Magie, Henderson

For An Act To Be Entitled

8 AN ACT TO PROHIBIT THE USE OF AN ALL PRODUCTS CLAUSE
9 IN A HEALTHCARE PROVIDER CONTRACT; TO DECLARE AN
10 EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

14 TO PROHIBIT THE USE OF AN ALL PRODUCTS
15 CLAUSE IN A HEALTHCARE PROVIDER CONTRACT;
16 AND TO DECLARE AN EMERGENCY.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. DO NOT CODIFY. Legislative findings.

22 The General Assembly finds that:

23 (1) An all products clause is an anticompetitive tactic used in
24 certain healthcare provider contracts by a healthcare insurer;

25 (2) A healthcare insurer may use an all products clause to
26 require a healthcare provider with which it has a contract to provide
27 healthcare services to agree to participate in other plans or products that
28 are offered by the healthcare insurer;

29 (3) An all products clause does not permit the healthcare
30 provider to select or negotiate the terms of the health benefit plan in which
31 it will participate;

32 (4) An all products clause unfairly requires a healthcare
33 provider to participate in a health benefit plan in which the healthcare
34 provider:

35 (A) Has no interest;

36 (B) Has not been provided the necessary information to



1 make an informed decision; or

2 (C) Is bound to health benefit plans not yet in existence;

3 and

4 (5) An all products clause is a form of tying arrangement that
 5 suppresses competition by allowing a healthcare insurer with dominant market
 6 power to artificially influence prices and impairs competition in the health
 7 insurance marketplace by discouraging potential competitors who might
 8 otherwise enter the health insurance marketplace.

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 10 SECTION 2. Arkansas Code Title 23, Chapter 99, is amended to add an
 11 additional subchapter to read as follows:

12 Subchapter 9 – Prohibition of All Products Clauses

13
 14 23-99-901. Definitions.

15 As used in this subchapter:

16 (1) "All products clause" means a provision in a contract
 17 between a healthcare insurer and a healthcare provider that requires a
 18 healthcare provider, as a condition of participation or continuation in a
 19 provider network or a health benefit plan, to serve in another provider
 20 network utilized by the healthcare insurer for a health benefit plan or
 21 product, or to participate in another health benefit plan offered by the
 22 healthcare insurer;

23 (2)(A) "Health benefit plan" means an individual, blanket, or
 24 any group plan, policy, or contract for healthcare services issued or
 25 delivered in this state by a healthcare insurer.

26 (B) "Health benefit plan" does not include:

27 (i) A disability income plan;

28 (ii) A credit insurance plan;

29 (iii) Insurance coverage issued as a supplement to
 30 liability insurance;

31 (iv) Medical payments under an automobile or
 32 homeowners' insurance plan;

33 (v) A health benefit plan provided under Arkansas
 34 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
 35 seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

36 (vi) A plan that provides only indemnity for

1 hospital confinement;

2 (vii) An accident-only plan;

3 (viii) A specified disease plan;

4 (ix) Traditional Medicaid; or

5 (x) A long-term care insurance plan;

6 (3) "Healthcare insurer" means:

7 (A) An insurance company, hospital and medical service
 8 corporation, and health maintenance organization that issues or delivers a
 9 health benefit plan in this state; and

10 (B) Any sponsor of a nonfederal self-funded governmental
 11 or church plan;

12 (4) "Healthcare provider" means a person or entity that is
 13 licensed, certified, or otherwise authorized by the laws of this state to
 14 provide services and goods used for the purpose or incidental to the purpose
 15 of preventing, alleviating, curing, or healing human illness or injury;

16 (5) "Products" means the health benefit plan options that are
 17 offered by a healthcare insurer;

18 (6) "Provider contract" means a contract between a healthcare
 19 insurer and a healthcare provider; and

20 (7) "Provider network" means a group of healthcare providers who
 21 are contracted to provide healthcare services to plan members at contracted
 22 rates.

23
 24 23-99-902. All products clause – Prohibition.

25 (a) The requirements of this section apply to a provider contract that
 26 is delivered, issued for delivery, reissued, extended, or has a change in any
 27 term of the provider contract or a related health benefit plan that affects
 28 the provider contract in this state beginning on the effective date of this
 29 subchapter.

30 (b) If an all products clause is in a provider contract, the all
 31 products clause is void.

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 33 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 34 General Assembly of the State of Arkansas that the healthcare insurance
 35 marketplace is in flux, and changes are occurring rapidly at the state and
 36 federal level; that this state seeks to enlarge and promote an attractive

1 commercial environment or marketplace and to encourage competition that
 2 enhances healthcare options for consumers in this state; and that this act is
 3 immediately necessary to prevent anticompetitive practices by healthcare
 4 insurers using all products clauses that may deter many healthcare insurers
 5 from entering the state healthcare insurance marketplace. Therefore, an
 6 emergency is declared to exist, and this act being immediately necessary for
 7 the preservation of the public peace, health, and safety shall become
 8 effective on:

9 (1) The date of its approval by the Governor;

10 (2) If the bill is neither approved nor vetoed by the Governor,
 11 the expiration of the period of time during which the Governor may veto the
 12 bill; or

13 (3) If the bill is vetoed by the Governor and the veto is
 14 overridden, the date the last house overrides the veto.

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