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2 92nd General Assembly
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4

As Engrossed: S3/13/19

A Bill

SENATE BILL 480

5 By: Senator Irvin
6 By: Representative Lowery
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE HEALTHCARE CONTRACTING
10 SIMPLIFICATION ACT; TO PROHIBIT ANTICOMPETITIVE
11 PRACTICES BY A HEALTHCARE INSURER; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

16 TO ESTABLISH THE HEALTHCARE CONTRACTING
17 SIMPLIFICATION ACT; AND TO PROHIBIT
18 ANTICOMPETITIVE PRACTICES BY A HEALTHCARE
19 INSURER.
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, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 12 – Healthcare Contracting Simplification Act

27
28 23-99-1201. Title.

29 This subchapter shall be known and may be cited as the "Healthcare
30 Contracting Simplification Act".
31

32 23-99-1202. Definitions.

33 As used in this subchapter:

34 (1) "All-products clause" means a provision in a healthcare
35 contract that requires a healthcare provider, as a condition of participation
36 or continuation in a provider network or a health benefit plan, to:



1 (A) Serve in another provider network utilized by the
2 contracting entity or a healthcare insurer affiliated with the contracting
3 entity; or

4 (B) Provide healthcare services under another health
5 benefit plan or product offered by a contracting entity or a healthcare
6 insurer affiliated with the contracting entity;

7 (2)(A) "Contracting entity" means an entity, plan, or program
8 that is subject to the jurisdiction of the Insurance Commissioner and
9 contracts directly or indirectly with a healthcare provider for the delivery
10 of healthcare services to enrollees in the ordinary course of business.

11 (B) "Contracting entity" includes without limitation:

12 (i) An insurance company;

13 (ii) A health maintenance organization;

14 (iii) A hospital and medical service corporation;

15 (iv) A preferred provider organization;

16 (v) A risk-based provider organization;

17 (vi) A third-party administrator; and

18 (vii) A pharmacy benefits manager;

19 (3) "Enrollee" means an individual who receives healthcare
20 services from a healthcare provider under the terms of a healthcare contract
21 between a contracting entity and the healthcare provider;

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

25 (B) "Health benefit plan" includes nonfederal governmental
26 plans as defined in 29 U.S.C. § 1002(32), as it existed on January 1, 2019.

27 (C) "Health benefit plan" does not include:

28 (i) A disability income plan;

29 (ii) A credit insurance plan;

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

32 (iv) A medical payment under automobile or
33 homeowners insurance plans;

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

1 (vi) A plan that provides only indemnity for
2 hospital confinement;

3 (vii) An accident-only plan;

4 (viii) A specified disease plan; or

5 (ix) A long-term-care only plan;

6 (5) "Healthcare contract" means a contract entered into,
7 materially amended, or renewed between a contracting entity and a healthcare
8 provider for the delivery of healthcare services to enrollees;

9 (6) "Healthcare insurer" means:

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

13 (B) A sponsor of a nonfederal self-funded governmental or
14 church plan;

15 (7) "Healthcare provider" means a person or entity that is
16 licensed, certified, or otherwise authorized by the laws of this state to
17 provide healthcare services;

18 (8) "Healthcare services" means services or goods provided for
19 the purpose of or incidental to the purpose of preventing, diagnosing,
20 treating, alleviating, relieving, curing, or healing human illness, disease,
21 condition, disability, or injury;

22 (9) "Lesser-of clause" means a provision in a healthcare
23 contract that allows payment of a healthcare provider for a healthcare
24 service at a rate equal to the healthcare provider's standard charges if the
25 standard charges are less than the fee, payment, or rate established in the
26 healthcare contract;

27 (10) "Material amendment" means a change in a healthcare
28 contract that results in:

29 (A) A decrease in fees, payments, or reimbursement to a
30 participating healthcare provider;

31 (B) A change in the payment methodology for determining
32 fees, payments, or reimbursement to a participating healthcare provider;

33 (C) A new or revised coding guideline;

34 (D) A new or revised payment rule; or

35 (E) A change of procedures that may reasonably be expected
36 to significantly increase a healthcare provider's administrative expenses;

1 (11) "Most favored nation clause" means a provision in a
2 healthcare contract that:

3 (A) Prohibits or grants a contracting entity an option to
4 prohibit a participating healthcare provider from contracting with another
5 contracting entity to provide healthcare services at a lower price than the
6 payment specified in the healthcare contract;

7 (B) Requires or grants a contracting entity an option to
8 require a participating healthcare provider to accept a lower payment in the
9 event the participating healthcare provider agrees to provide healthcare
10 services to another contracting entity at a lower price;

11 (C) Requires or grants a contracting entity an option to
12 require termination or renegotiation of an existing healthcare contract if a
13 participating healthcare provider agrees to provide healthcare services to
14 another contracting entity at a lower price; or

15 (D) Requires a participating healthcare provider to
16 disclose the participating healthcare provider's contractual reimbursement
17 rates with other contracting entities;

18 (12) "Participating healthcare provider" means a healthcare
19 provider that has a healthcare contract with a contracting entity to provide
20 healthcare services to enrollees with the expectation of receiving payment
21 from the contracting entity or a healthcare insurer affiliated with the
22 contracting entity; and

23 (13) "Provider network" means a group of healthcare providers
24 that are contracted to provide healthcare services to enrollees at contracted
25 rates.

26
27 23-99-1203. All-products clause – Prohibition.

28 (a) Except as provided in subsection (c) of this section, a
29 contracting entity shall not:

30 (1) Offer to a healthcare provider a healthcare contract that
31 includes an all-products clause;

32 (2) Enter into a healthcare contract with a healthcare provider
33 that includes an all-products clause; or

34 (3) Amend or renew an existing healthcare contract previously
35 entered into with a healthcare provider so that the healthcare contract as
36 amended or renewed adds or continues to include an all-products clause.

1 (b) A contracting entity shall not require as a condition of
2 contracting with the contracting entity for one (1) health benefit plan,
3 product, or line of business that the healthcare provider agree to any
4 business arrangement that would result in requiring the healthcare provider
5 to participate in any other health benefit plan, product, line of business,
6 or provider network.

7 (c) A contracting entity shall not require as a condition of
8 continuing to contract with the contracting entity for one (1) health benefit
9 plan, product, or line of business, that the healthcare provider agree to any
10 business arrangement that would result in requiring the healthcare provider
11 to participate in another health benefit plan, product, or line of business.

12 (d)(1) This section does not require a separate contract for each
13 health benefit plan or product offered by a contracting entity or healthcare
14 insurer affiliated with the contracting entity.

15 (2) Multiple health benefit plans or products may be included in
16 the same contract so long as the healthcare provider may opt out of
17 participation in one (1) or more of the plans or products without opting out
18 of the entire contract.

19 (e)(1) A violation of this section is:

20 (A) An unfair trade practice under § 23-66-206; and

21 (B) Subject to the Trade Practices Act, § 23-66-201 et
22 seq.

23 (2) If a healthcare contract contains a provision that violates
24 this section, the healthcare contract is void.

25 (f) A contracting entity may require a healthcare provider to
26 participate in the State and Public School Life and Health Insurance Program
27 as a condition of contracting or continuing to contract with the healthcare
28 provider for healthcare services under another health benefit plan, if:

29 (1) The other health benefit plan is an individual health plan
30 not sold on the health insurance marketplace, as defined in § 23-64-602; and

31 (2) The rates offered to the healthcare provider for healthcare
32 services to State and Public School Life and Health Insurance Program
33 enrollees are no lower than the rates paid to the healthcare provider under
34 the other health benefit plan.

35
36 23-99-1204. Prohibition – Lesser-of clause.

1 (a) A contracting entity shall not:

2 (1) Offer to a healthcare provider a healthcare contract that
3 includes a lesser-of clause;

4 (2) Enter into a healthcare contract with a healthcare provider
5 that includes a lesser-of clause; or

6 (3) Amend or renew an existing healthcare contract previously
7 entered into with a healthcare provider so that the healthcare contract as
8 amended or renewed adds or continues to include a lesser-of clause.

9 (b)(1) A violation of this section is:

10 (A) An unfair trade practice under § 23-66-206; and

11 (B) Subject to the Trade Practices Act, § 23-66-201 et
12 seq.

13 (2) If a healthcare contract contains a provision that violates
14 this section, the healthcare contract is void.

15
16 23-99-1205. Prohibition – Most favored nation clause.

17 (a) A contracting entity shall not:

18 (1) Offer to a healthcare provider a healthcare contract that
19 includes a most favored nation clause;

20 (2) Enter into a healthcare contract with a healthcare provider
21 that includes a most favored nation clause; or

22 (3) Amend or renew an existing healthcare contract previously
23 entered into with a healthcare provider so that the contract as amended or
24 renewed adds or continues to include a most favored nation clause.

25 (b)(1) A violation of this section is:

26 (A) An unfair trade practice under § 23-66-206; and

27 (B) Subject to the Trade Practices Act, § 23-66-201 et
28 seq.

29 (2) If a healthcare contract contains a provision that violates
30 this section, the healthcare contract is void.

31
32 23-99-1206. Contracting process.

33 (a)(1) A material amendment to a healthcare contract is allowed if a
34 contracting entity provides to a participating healthcare provider the
35 material amendment at least ninety (90) days before the effective date of the
36 material amendment and in writing.

1 (2) The notice required under subdivision (a)(1) of this section
2 shall specify the precise healthcare contract or healthcare contracts to
3 which the material amendment applies and be conspicuously labeled as follows:
4 "Notice of Material Amendment to Healthcare Contract".

5 (b) A contracting entity shall not effect a unilateral material
6 amendment to a healthcare contract unless the contracting entity provides to
7 each healthcare provider a calculation that estimates any reduction in the
8 healthcare provider's cumulative allowed fee, payment, or reimbursement
9 amount based on a twelve-month period of actual data or an annualized shorter
10 look-back period of actual data.

11 (c)(1) Within ten (10) business days of a healthcare provider's
12 request, a contracting entity shall provide to the healthcare provider a full
13 and complete copy of each healthcare contract between the contracting entity
14 and the healthcare provider.

15 (2) A full and complete copy of the healthcare contract shall
16 include any amendments to the healthcare contract.

17 (d)(1)(A) A healthcare contract shall open for renegotiation and
18 revision at least one (1) time every three (3) years.

19 (B) Under subdivision (d)(1)(A) of this section, a party
20 to the healthcare contract is not required to terminate the healthcare
21 contract in order to open the healthcare contract for renegotiation of the
22 terms.

23 (2) This section does not prohibit a renegotiation of a
24 healthcare contract at any time during the term of the healthcare contract.

25 (e)(1) A violation of this section is:

26 (A) An unfair trade practice under § 23-66-206; and

27 (B) Subject to the Trade Practices Act, § 23-66-201 et
28 seq.

29 (2) If a healthcare contract contains a provision that violates
30 this section, the healthcare contract is void.

31
32 23-99-1207. Freedom of contract.

33 (a) A contracting entity shall not, directly or indirectly, offer or
34 enter into a healthcare contract that:

35 (1) Prohibits a participating healthcare provider from entering
36 into a healthcare contract with another contracting entity; or

1 (2) Prohibits a contracting entity from entering into a
2 healthcare contract with another healthcare provider.

3 (b)(1) A violation of this section is:

4 (A) An unfair trade practice under § 23-66-206; and

5 (B) Subject to the Trade Practices Act, § 23-66-201 et
6 seq.

7 (2) If a healthcare contract contains a provision that violates
8 this section, the healthcare contract is void.

9
10 23-99-1208. Enforcement.

11 (a) A contracting entity is subject to the Trade Practices Act, § 23-
12 66-201 et seq.

13 (b) The State Insurance Department shall enforce this subchapter.

14
15 23-99-1209. Rules.

16 (a) The Insurance Commissioner shall promulgate rules necessary to
17 implement this subchapter.

18 (b)(1) When adopting the initial rules to implement this subchapter,
19 the final rule shall be filed with the Secretary of State for adoption under
20 § 25-15-204(f):

21 (A) On or before January 1, 2020; or

22 (B) If approval under § 10-3-309 has not occurred by
23 January 1, 2020, as soon as practicable after approval under § 10-3-309.

24 (2) The commissioner shall file the proposed rule with the
25 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
26 2020, so that the Legislative Council may consider the rule for approval
27 before January 1, 2020.

28
29 23-99-1210. Effective date.

30 (a) This subchapter applies to the activities of risk-based provider
31 organizations on and after January 1, 2021.

32 (b) Except as provided in subsection (a) of this section, this
33 subchapter is effective on and after September 1, 2019.

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35
36 /s/Irvin