

1 State of Arkansas As Engrossed: S3/13/19 S3/14/19 S3/25/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

SENATE BILL 480

4

5 By: Senator Irvin

6 By: Representative Lowery

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## For An Act To Be Entitled

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AN ACT TO ESTABLISH THE HEALTHCARE CONTRACTING

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SIMPLIFICATION ACT; TO PROHIBIT ANTICOMPETITIVE

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PRACTICES BY A HEALTHCARE INSURER; AND FOR OTHER

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PURPOSES.

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## Subtitle

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TO ESTABLISH THE HEALTHCARE CONTRACTING

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SIMPLIFICATION ACT; AND TO PROHIBIT

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ANTICOMPETITIVE PRACTICES BY A HEALTHCARE

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INSURER.

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

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SECTION 1. Arkansas Code Title 23, Chapter 99, is amended to add an additional subchapter to read as follows:

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Subchapter 12 – Healthcare Contracting Simplification Act

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23-99-1201. Title.

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

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23-99-1202. Definitions.

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As used in this subchapter:

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

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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) "Contracting entity" means a healthcare insurer or a  
8 subcontractor, affiliate, or other entity that contracts directly or  
9 indirectly with a healthcare provider for the delivery of healthcare services  
10 to enrollees;

11 (3) "Enrollee" means an individual who is entitled to receive  
12 healthcare services under the terms of a health benefit plan;

13 (4)(A) "Health benefit plan" means a plan, policy, contract,  
14 certificate, agreement, or other evidence of coverage for healthcare services  
15 offered or issued by a healthcare insurer in this state.

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

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

19 (i) A disability income plan;

20 (ii) A credit insurance plan;

21 (iii) Insurance coverage issued as a supplement to  
22 liability insurance;

23 (iv) A medical payment under automobile or  
24 homeowners insurance plans;

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

28 (vi) A plan that provides only indemnity for  
29 hospital confinement;

30 (vii) An accident-only plan;

31 (viii) A specified disease plan;

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

33 (x) A dental-only plan; or

34 (xi) A vision-only plan;

35 (5) "Healthcare contract" means a contract entered into,  
36 materially amended, or renewed between a contracting entity and a healthcare

1 provider for the delivery of healthcare services to enrollees;

2 (6)(A) "Healthcare insurer" means an entity that is subject to  
3 state insurance regulation and provides health insurance in this state.

4 (B) "Healthcare insurer" includes:

5 (i) An insurance company;

6 (ii) A health maintenance organization;

7 (iii) A hospital and medical service corporation;

8 (iv) A risk-based provider organization; and

9 (v) A sponsor of a nonfederal self-funded  
10 governmental plan;

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

14 (8) "Healthcare services" means services or goods provided for  
15 the purpose of or incidental to the purpose of preventing, diagnosing,  
16 treating, alleviating, relieving, curing, or healing human illness, disease,  
17 condition, disability, or injury;

18 (9) "Material amendment" means a change in a healthcare contract  
19 that results in:

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

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

24 (C) A new or revised coding guideline;

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

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

28 (10) "Most favored nation clause" means a provision in a  
29 healthcare contract that:

30 (A) Prohibits or grants a contracting entity an option to  
31 prohibit a participating healthcare provider from contracting with another  
32 contracting entity to provide healthcare services at a lower price than the  
33 payment specified in the healthcare contract;

34 (B) Requires or grants a contracting entity an option to  
35 require a participating healthcare provider to accept a lower payment in the  
36 event the participating healthcare provider agrees to provide healthcare

1 services to another contracting entity at a lower price;

2 (C) Requires or grants a contracting entity an option to  
3 require termination or renegotiation of an existing healthcare contract if a  
4 participating healthcare provider agrees to provide healthcare services to  
5 another contracting entity at a lower price; or

6 (D) Requires a participating healthcare provider to  
7 disclose the participating healthcare provider's contractual reimbursement  
8 rates with other contracting entities;

9 (11) "Participating healthcare provider" means a healthcare  
10 provider that has a healthcare contract with a contracting entity to provide  
11 healthcare services to enrollees with the expectation of receiving payment  
12 from the contracting entity or a healthcare insurer affiliated with the  
13 contracting entity; and

14 (12) "Provider network" means a group of healthcare providers  
15 that are contracted to provide healthcare services to enrollees at contracted  
16 rates.

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18 23-99-1203. All-products clause – Prohibition.

19 (a) Except as provided in subsections (b) and (d) of this section, a  
20 contracting entity shall not:

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

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

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

28 (b)(1) This section does not prohibit a contracting entity from:

29 (A) Offering a healthcare provider a contract that covers  
30 multiple health benefit plans that have the same reimbursement rates and  
31 other financial terms for the healthcare provider;

32 (B) Adding a new health benefit plan to an existing  
33 healthcare contract with a healthcare provider under the same reimbursement  
34 rates and other financial terms applicable under the original healthcare  
35 contract; or

36 (C) Requiring a healthcare provider to accept multiple

1 health benefit plans that do not differ in reimbursement rates or other  
2 financial terms for the healthcare provider.

3 (2) A healthcare contract may include health benefit plans or  
4 coverage options for enrollees within a health benefit plan with different  
5 cost-sharing structures, including different deductibles or copayments, as  
6 long as the reimbursement rates and other financial terms between the  
7 contracting entity and the healthcare provider remain the same for each plan  
8 or coverage option included in the healthcare contract.

9 (3) This section does not authorize a healthcare provider to:

10 (A) Opt out of providing services to an enrollee of a  
11 particular health benefit plan after the healthcare provider has entered into  
12 a valid contract under this section to provide the services; or

13 (B) Refuse to disclose the provider networks or health  
14 benefit plans in which the healthcare provider participates.

15 (c)(1) A violation of this section is:

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

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

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

21 (d) A contracting entity may require a healthcare provider to  
22 participate in the State and Public School Life and Health Insurance Program  
23 as a condition of contracting or continuing to contract with the healthcare  
24 provider for healthcare services under another health benefit plan, if:

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

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

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32 23-99-1204. Prohibition – Most favored nation clause.

33 (a) A contracting entity shall not:

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

36 (2) Enter into a healthcare contract with a healthcare provider

1 that includes a most favored nation clause; or

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

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

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

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

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

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12 23-99-1205. Contracting process.

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

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

21 (3) The notice shall contain sufficient information about the  
22 amendment to allow a healthcare provider to assess the financial impact, if  
23 any, of the amendment.

24 (b) A notice described under subdivision (a)(1) of this section is not  
25 required for a material amendment resulting solely from a change in a fee  
26 schedule or code set if:

27 (1) The fee schedule or code set is published by the federal  
28 government or another third party; and

29 (2) The terms of the healthcare contract expressly states that  
30 the healthcare provider's compensation or claims submission is based on the  
31 fee schedule or code set.

32 (c)(1) Within ten (10) business days of a healthcare provider's  
33 request, a contracting entity shall provide to the healthcare provider a full  
34 and complete copy of each healthcare contract between the contracting entity  
35 and the healthcare provider.

36 (2) A full and complete copy of the healthcare contract shall

1 include any amendments to the healthcare contract.

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

4 (B) Under subdivision (d)(1)(A) of this section, a party  
5 to the healthcare contract is not required to terminate the healthcare  
6 contract in order to open the healthcare contract for renegotiation of the  
7 terms.

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

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

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

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

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

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17 23-99-1206. Freedom of contract.

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

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

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

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

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

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

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

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31 23-99-1207. Enforcement.

32 (a) A contracting entity is subject to the Trade Practices Act, § 23-  
33 66-201 et seq.

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

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36 23-99-1208. Rules.

1       (a) The Insurance Commissioner shall promulgate rules necessary to  
2 ensure compliance with this subchapter.

3       (b)(1) When adopting the initial rules to ensure compliance with this  
4 subchapter, the final rule shall be filed with the Secretary of State for  
5 adoption under § 25-15-204(f):

6               (A) On or before March 1, 2020; or

7               (B) If approval under § 10-3-309 has not occurred by March  
8 1, 2020, as soon as practicable after approval under § 10-3-309.

9       (2) The commissioner shall file the proposed rule with the  
10 Legislative Council under § 10-3-309(c) sufficiently in advance of March 1,  
11 2020, so that the Legislative Council may consider the rule for approval  
12 before March 1, 2020.

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14       23-99-1209. Effective date.

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

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

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21                               /s/Irvin  
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