

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

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 480

4

5 By: Senator Irvin

6 By: Representative Lowery

7

8

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.

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Subtitle

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17 TO ESTABLISH THE HEALTHCARE CONTRACTING
18 SIMPLIFICATION ACT; AND TO PROHIBIT
19 ANTICOMPETITIVE PRACTICES BY A HEALTHCARE
20 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
25 additional subchapter to read as follows:

26

Subchapter 12 – Healthcare Contracting Simplification Act

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28

23-99-1201. Title.

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This subchapter shall be known and may be cited as the "Healthcare
30 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
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) "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.

17
18 23-99-1203. All-products clause – Prohibition.

19 (a) Except as provided in subsection (c) 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) A contracting entity shall not require as a condition of
29 contracting with the contracting entity for one (1) health benefit plan,
30 product, or line of business that the healthcare provider agree to any
31 business arrangement that would result in requiring the healthcare provider
32 to participate in any other health benefit plan, product, line of business,
33 or provider network.

34 (c) A contracting entity shall not require as a condition of
35 continuing to contract with the contracting entity for one (1) health benefit
36 plan, product, or line of business, that the healthcare provider agree to any

1 business arrangement that would result in requiring the healthcare provider
2 to participate in another health benefit plan, product, or line of business.

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

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

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

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

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

26
27 23-99-1204. Prohibition – Most favored nation clause.

28 (a) A contracting entity shall not:

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

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

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

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

1 (A) An unfair trade practice under § 23-66-206; and
2 (B) Subject to the Trade Practices Act, § 23-66-201 et
3 seq.

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

6
7 23-99-1205. Contracting process.

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

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

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

22 (c)(1) Within ten (10) business days of a healthcare provider's
23 request, a contracting entity shall provide to the healthcare provider a full
24 and complete copy of each healthcare contract between the contracting entity
25 and the healthcare provider.

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

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

30 (B) Under subdivision (d)(1)(A) of this section, a party
31 to the healthcare contract is not required to terminate the healthcare
32 contract in order to open the healthcare contract for renegotiation of the
33 terms.

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

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

1 (A) An unfair trade practice under § 23-66-206; and
2 (B) Subject to the Trade Practices Act, § 23-66-201 et
3 seq.

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

6
7 23-99-1206. Freedom of contract.

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

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

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

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

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

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

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

20
21 23-99-1207. Enforcement.

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

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

25
26 23-99-1208. Rules.

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

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

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

33 (B) If approval under § 10-3-309 has not occurred by March
34 1, 2020, as soon as practicable after approval under § 10-3-309.

35 (2) The commissioner shall file the proposed rule with the
36 Legislative Council under § 10-3-309(c) sufficiently in advance of March 1,

1 2020, so that the Legislative Council may consider the rule for approval
2 before March 1, 2020.

3
4 23-99-1209. Effective date.

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

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

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/s/Irvin