

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1900

By: Representative L. Johnson

By: Senator Irvin

For An Act To Be Entitled

AN ACT TO AMEND THE STATUTES CONCERNING THE
LIMITATIONS ON FINANCIAL PENALTIES IN ALTERNATIVE
PAYMENT SYSTEMS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE STATUTES CONCERNING THE
LIMITATIONS ON FINANCIAL PENALTIES IN
ALTERNATIVE PAYMENT SYSTEMS.

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

SECTION 1. Arkansas Code Title 23, Chapter 99, Subchapter 9, as amended by Acts 2019, No. 300, is amended to read as follows:

23-99-901. Legislative findings.

The General Assembly finds that:

(1) Under an alternative payment system, a healthcare payor, when determining a ~~physician's~~ healthcare provider's patient care costs, may use factors that are not under the control of the ~~physician~~ healthcare provider;

(2) A ~~physician~~ healthcare provider may not receive an appropriate share of savings or reduction in recoupment under an alternative payment system if the ~~physician's~~ healthcare provider's patients have a higher cost of care; and

(3) A ~~physician~~ healthcare provider should not be penalized for higher patient care costs if any of the costs, or other factors determining reimbursement, are not under the control of the ~~physician~~ healthcare



provider.

23-99-902. Definitions.

As used in this subchapter:

(1) "Alternative payment system" means a payment methodology used by a healthcare payor that includes a risk-sharing or gain-sharing component for a ~~physician~~ healthcare provider that participates in a plan, program, or network offered by the healthcare payor;

(2) "Gain-sharing payment" means an increase in a payment or additional payments made by a healthcare payor to a ~~physician~~ healthcare provider as a result of the achievement of identified benchmarks, including without limitation that patient care costs that fall below cost thresholds of any form;

(3)(A) "Healthcare payor" means an entity that reimburses a physician for the delivery of healthcare services that are covered by a plan administered, issued, or delivered by the entity.

(B) "Healthcare payor" does not include a provider-based network or system that utilizes risk-sharing including an accountable care organization or a clinically integrated network; ~~and~~

(4) "Healthcare provider" means any type of a provider that renders healthcare services to patients for compensation, including:

(A) A doctor of medicine, a doctor of osteopathy, or another licensed healthcare professional acting within the professional's licensed scope of practice; or

(B) A healthcare facility, including a hospital, ambulatory surgery center, or other type of facility licensed in this state to provide healthcare services; and

~~(4)(A)~~(5)(A) "Risk-sharing payment" means a reduction in a payment to or refund of a payment already made to a ~~physician~~ healthcare provider as a result of failure to achieve identified benchmarks, including without limitation that patient care costs ~~that~~ exceed cost thresholds of any form.

(B) "Risk-sharing payment" includes the alternative payment method by gift card, credit card, or other type of electronic payment or virtual credit card as payment if the ~~physician~~ healthcare provider is given clear instructions about how to select an alternative payment method

that does not result in the ~~physician's~~ healthcare provider's being charged a service fee to process.

23-99-903. Physician penalties – Limitation.

(a) A healthcare payor doing business in this state, when determining any gain-sharing or risk-sharing for a ~~physician~~ healthcare provider, shall not attribute to a ~~physician~~ healthcare provider any costs that are a result of variations in the healthcare payor's freely negotiated contract pricing with other persons or entities outside the ~~physician's~~ healthcare provider's practice if including the costs reduces a ~~physician's~~ healthcare provider's gain-sharing amount or increases a ~~physician's~~ healthcare provider's risk-sharing amount.

(b)(1) When determining any gain-sharing or risk-sharing for a healthcare provider based on the achievement of or failure to attain certain benchmarks, a healthcare payor doing business in this state shall use clearly expressed and identifiable benchmarks.

(2) At least ninety (90) days in advance of implementation, the healthcare payor shall explain to the healthcare provider the applicability of the identifiable benchmarks.

(3) Any identifiable benchmarks shall be within the control of the healthcare provider to achieve or fail to attain.

23-99-904. Waiver prohibited.

(a) The provisions of this subchapter shall not be waived by contract.

(b) Contractual arrangements or actions taken in conflict with this subchapter or that purport to waive any requirements of this subchapter are void.

23-99-905. Enforcement.

(a) The State Insurance Department shall develop and promulgate rules for the implementation and enforcement of this subchapter.

(b) In addition to or as an alternative to any enforcement action by the department, a ~~physician, a physician practice or clinic,~~ healthcare provider or an organization that represents ~~physicians~~ healthcare providers may enforce this subchapter by filing suit against a healthcare payor in:

(1) Pulaski County Circuit Court; or

(2) The circuit court of a county in Arkansas in which one (1) of the ~~physician~~ healthcare provider claimants resides or does business.

APPROVED: 4/10/19