

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1510

By: Representative Lowery
By: Senator M. Johnson

For An Act To Be Entitled

AN ACT TO ESTABLISH THE "ANY WILLING PARTNER LAW";
AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE "ANY WILLING PARTNER
LAW".

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

SECTION 1. Arkansas Code Title 4, Chapter 75, is amended to add an additional subchapter to read as follows:

Subchapter 13 – Any Willing Partner Law

4-75-1301. Title.

This subchapter shall be known and may be cited as the "Any Willing Partner Law".

4-75-1302. Purpose.

(a) The purpose of this subchapter is:

(1) To regulate the offer and expansion of billable clinical or coverage services that are offered in partnership between a health system and a healthcare provider; and

(2) To define circumstances under which a state-funded and state-supported entity can provide billable clinical or coverage services to a private health system.



(b) The purpose of this subchapter is to prevent discrimination in the offering of clinical or coverage services to any willing partner, especially if the offering of clinical or coverage services disrupts the precepts of a fair and free marketplace by an institution of higher education or the University of Arkansas for Medical Sciences.

4-75-1303. Definitions.

As used in this subchapter:

(1)(A) "Affiliation" means a formal or an informal relationship where the interests of the University of Arkansas for Medical Sciences and another entity are aligned based on a contract.

(B) "Affiliation" includes relationships outside the principles described in the mission statement of the University of Arkansas for Medical Sciences, specifically those relationships outside education, research, training, and tertiary services that are not otherwise provided for in a community;

(2) "Any willing partner" means a capable entity that would benefit from an affiliation or clinical or coverage services being offered;

(3) "Call" means physician coverage of onsite clinical or coverage services according to the Emergency Medical Treatment and Women in Labor Act, 42 U.S.C. § 1395dd, as in effect on January 1, 2019, to ensure public access to emergent or urgent clinical or coverage services regardless of the ability to pay;

(4) "Clinical services" means onsite physician specialty services provided by a physician in a health system;

(5) "Community" means an area that is at least twenty-five (25) miles from the University of Arkansas for Medical Sciences;

(6) "Contract" means a written contract, agreement, or understanding entered into between the University of Arkansas for Medical Sciences and an entity or health system to provide clinical or coverage services in a designated community;

(7) "Coverage services" means clinical services necessary for the effective functioning of a health system;

(8) "Entity" means any person, organization, or business entity of any type that engages a physician as an employee, independent contractor, member, or in any other capacity for the practice of medicine as defined in §

17-95-202;

(9) "Fair market value" means a determination of the value of a clinical or coverage service either by court order or by agreement by all parties of the contract;

(10)(A) "Health system" means an agency, clinic, entity, facility, institution, or place, whether publicly or privately owned or operated, that provides clinical services, coverage services, medical treatment, or nursing or rehabilitative care to a person.

(B) "Health system" includes without limitation:

(i) An ambulatory surgical facility;

(ii) A birth center;

(iii) A home health agency;

(iv) A hospital;

(v) An intermediate care facility for individuals with intellectual disabilities;

(vi) A mental health center;

(vii) An assisted living facility;

(viii) A nursing home;

(ix) An outpatient diagnostic center;

(x) A residential treatment facility;

(xi) A rehabilitation facility; and

(xii) A hospice;

(11) "Healthcare provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business of his or her profession;

(12) "Offloading" means the transferring of the University of Arkansas for Medical Sciences' patient volume to an affiliated entity not wholly owned by the University of Arkansas for Medical Sciences where revenue associated with the patient volume has a beneficial effect for the entity that is affiliated with the University of Arkansas for Medical Sciences;

(13) "Partnership" means an association of two (2) or more persons in which the University of Arkansas for Medical Services may enter into a contract to partner with another health system or healthcare provider to meet a clearly defined need for clinical or coverage services in a designated community;

(14) "Private practice services" means clinical or coverage

services provided by a physician in a clinic setting outside of a government entity or brand, or outside of the support of the government entity;

(15) "Physician" means an individual licensed to practice medicine in the State of Arkansas under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;

(16) "State-funded entity" or "state-supported entity" means an institution of higher education in this state that is funded, in whole or in part, by state funds; and

(17) "University of Arkansas for Medical Sciences patient volume" means a list of patients that originate in an entity that is branded as a University of Arkansas for Medical Sciences entity or clinic and the patient has been evaluated and treated by a healthcare provider employed by the University of Arkansas for Medical Sciences.

4-75-1304. Contracts – Clinical or coverage services – Any willing partners.

(a) The Board of Trustees of the University of Arkansas shall not allow the University of Arkansas for Medical Sciences to discriminate against other health systems or healthcare providers.

(b) Clinical or coverage services that are provided by the University of Arkansas for Medical Sciences shall be aligned with the mission of the University of Arkansas for Medical Sciences to improve the health and health care of Arkansans in the furtherance of education, training, and research not commonly provided in the community.

(c) A contract entered into by the University of Arkansas for Medical Sciences for clinical services or coverage services:

(1) Provide clinical or coverage services that are not otherwise provided in the community by another health system or healthcare provider;

(2)(A) Be offered and available to any capable willing partner, including a health system or a healthcare provider, at the same fair and equitable rate and under the same contractual terms so as to not provide an advantage to one (1) health system or healthcare provider over another health system or healthcare provider in the same community as perceived by any entity within the community.

(B) As used in subdivision (c)(2)(A) of this section, "advantage" means any circumstance or arrangement that puts one (1) entity in

a favorable or superior position over another that, absent the circumstance or arrangement, the entity would spend considerably more resources, incur significant operational risks, and would take time to develop independent of the circumstance or arrangement, and includes a situation in which a similar organization would have a vested business interest if the circumstance or arrangement being offered universally;

(3) Meet considerations of fair market value;

(4) Be subject to sunshine legislation, rules, or practice;

(5)(A) Be subject to examination or disclosure as public information under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(B) Any claim by the University of Arkansas for Medical Sciences that a disclosure under subdivision (c)(5)(A) of this section violates competitive exclusions shall result in termination of the contract;

(6)(A) Except as provided under subdivision (c)(6)(B) of this section, maintain that the objective in offering the clinical or coverage services is to serve the community incrementally and not by offloading.

(B) Offloading by the University of Arkansas for Medical Sciences is permissible if:

(i) Offloading is offered universally across health systems and healthcare providers within twenty-five (25) miles of the University of Arkansas for Medical Sciences' main campus location; and

(ii) Offloading is the result of a request for a proposals process that is overseen by a multidisciplinary state-appointed group; and

(7)(A) Aim at serving a long-term community need that is determined by size, demographics, and growth relative to the supply and practice patterns of existing clinical or coverage services of the population in the community.

(B) For purposes of subdivision (c)(7)(A) of this section, "community need" shall be considered a priority over a business interest that supports the community and strive to provide as much clinical or coverage services locally as possible if the safest and most advanced option to provide the highest patient care to the citizens of the community.

(d) The terms of the contract shall require:

(1) Clinical or coverage services of a term not to exceed three (3) years from the date of the contract; and

(2) Require a long-term commitment from healthcare providers.

4-75-1305. University of Arkansas for Medical Sciences – Clinical or coverage services.

The University of Arkansas for Medical Sciences may provide clinical or coverage services to a community even though the University of Arkansas for Medical Sciences does not satisfy one (1) or more of the conditions required under § 4-75-1304 if one (1) or more of the following are met:

(1) Clinical or coverage services by the University of Arkansas for Medical Sciences are provided in a hospital or clinic setting that is fully owned by the University of Arkansas for Medical Sciences; or

(2) Payment of a sales tax.

4-75-1306. Healthcare provider – Employment by the University of Arkansas for Medical Sciences.

(a) A healthcare provider who is employed by the University of Arkansas for Medical Sciences may provide clinical or coverage services to another health system outside of the requirements under this subchapter.

(b) A healthcare provider may provide clinical or coverage services under subsection (a) of this section if:

(1) A healthcare provider is prohibited from accepting compensation for call and coverage services directly from another health system unless the compensation amount is offered to all healthcare providers on the staff of the original health system employing the healthcare provider;

(2) Any compensation received by a healthcare provider for private practice services are deducted from that healthcare provider's annual salary in proportion to his or her employment status as determined by the original health system employing the healthcare provider;

(3) Clinical or coverage services provided do not interfere with the healthcare provider's teaching or other academic responsibilities at the University of Arkansas for Medical Sciences;

(4) No referrals to or continued treatment of care by a healthcare provider at the University of Arkansas for Medical Sciences may be made for a patient who was originally evaluated or treated at another health system; and

(5) A healthcare provider shall not use any reference to an

affiliation of the healthcare provider with the University of Arkansas for Medical Sciences.

4-75-1307. Contracts.

A contract subject to this subchapter shall be transparent, fair, and equitable.

4-75-1308. Applicability – Construction.

This subchapter:

(1) Applies to any contract entered into, renewed, modified, or extended on or after January 1, 2020; and

(2) Does not amend or repeal any portion of the Medical Corporation Act, § 4-29-301 et seq., or the Dental Corporation Act, § 4-29-401 et seq.