

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

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

As Engrossed: S4/22/21  
**A Bill**

HOUSE BILL 1907

By: Representative Lowery  
By: Senator K. Hammer

### **For An Act To Be Entitled**

AN ACT TO ENABLE HEALTHCARE PROVIDERS TO MAKE APPROPRIATE BILLING DECISIONS THAT ARE IN THE BEST INTEREST OF PATIENTS; TO ESTABLISH THE BILLING IN THE BEST INTEREST OF PATIENTS ACT; AND FOR OTHER PURPOSES.

### **Subtitle**

TO ENABLE HEALTHCARE PROVIDERS TO MAKE APPROPRIATE BILLING DECISIONS THAT ARE IN THE BEST INTEREST OF PATIENTS; AND TO ESTABLISH THE BILLING IN THE BEST INTEREST OF PATIENTS ACT.

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

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

Subchapter 14 – Billing in the Best Interest of Patients Act

23-99-1401. Title.

This subchapter shall be known and may be cited as the "Billing in the Best Interest of Patients Act".

23-99-1402. Definitions.

As used in this subchapter:

(1) "Enrollee" means an individual who is entitled to receive



healthcare services under the terms of a health benefit plan;

(2)(A) "Health benefit plan" means an individual, blanket, or group plan, policy, or contract for healthcare services issued, renewed, delivered, or extended in this state by a healthcare payor in this state.

(B) "Health benefit plan" includes:

(i) Indemnity and managed care plans; and

(ii) Plans providing health benefits to state and public school employees under § 21-5-401 et seq.

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

(i) A plan that provides only dental benefits or eye and vision care benefits;

(ii) A disability income plan;

(iii) A credit insurance plan;

(iv) Insurance coverage issued as a supplement to liability insurance;

(v) Medical payments under an automobile or homeowners' insurance plan;

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

(vii) A plan that provides only indemnity for hospital confinement;

(viii) An accident-only plan; or

(ix) A specified disease plan;

(3)(A) "Healthcare payor" means:

(A) A health insurance company;

(B) A health maintenance organization;

(C) A hospital and medical services corporation; and

(D) An entity that provides or administers a self-funded health benefit plan, including a governmental plan.

(B) "Healthcare payor" does not include an entity that provides only dental benefits or eye and vision care benefits;

(4) "Healthcare provider" means individuals or entities licensed by the State of Arkansas to provide healthcare services, limited to the following:

(A) Advanced practice nurses;

- (B) Athletic trainers;
  - (C) Audiologists;
  - (D) Certified behavioral health providers;
  - (E) Certified orthotists;
  - (F) Chiropractors;
  - (G) Community mental health centers or clinics;
  - (H) Dentists;
  - (I) Home health care;
  - (J) Hospice care;
  - (K) Hospital-based services;
  - (L) Hospitals;
  - (M) Licensed ambulatory surgery centers;
  - (N) Licensed certified social workers;
  - (O) Licensed dieticians;
  - (P) Licensed intellectual and developmental disabilities service providers;
  - (Q) Licensed professional counselors;
  - (R) Licensed psychological examiners;
  - (S) Long-term care facilities;
  - (T) Occupational therapists;
  - (U) Optometrists;
  - (V) Pharmacists;
  - (W) Physical therapists;
  - (X) Physicians and surgeons (M.D. and D.O.);
  - (Y) Podiatrists;
  - (Z) Prosthetists;
  - (AA) Psychologists;
  - (BB) Respiratory therapists;
  - (CC) Rural health clinics; and
  - (DD) Speech pathologists;
- (5) "Healthcare services" means services and products, including prescription medication, provided by a healthcare provider within the scope of the healthcare provider's license; and
- (6) "Prescription medication" means a drug or biologic that is prescribed by a healthcare provider to a patient for the purpose of alleviating, curing, preventing, or healing illness, injury, or physical

disability.

23-99-1403. Determination of best interest for enrollee – Billing decision.

(a) A healthcare provider who provides healthcare services and prescribes prescription medication to an enrollee may make a determination that is in the best interest of the enrollee to bill the enrollee's:

- (1) Healthcare payor; or
- (2) Pharmacy benefits carrier.

(b) Every health benefit plan that is issued, renewed, delivered, or extended in this state and every group health benefit plan that is issued, renewed, delivered, or extended outside this state, for an enrollee who is a resident of this state that provides coverage for prescription medication shall allow a healthcare provider to make any appropriate billing decisions concerning healthcare services and administering of prescription medication that is in the best interest of the enrollee.

(c) A healthcare payor shall not require an enrollee to self-administer prescription medication if a healthcare provider determines it is in the best interest of the enrollee for a prescription medication to be administered by a healthcare provider regardless of the formulation or benefit category determination by the health benefit plan.

(d)(1) If a determination is made by a healthcare provider that it is in the enrollee's best interest for the healthcare provider to administer any prescription medication that is ordinarily covered by the healthcare payor regardless of the benefit category determination by the health benefit plan, then a healthcare payor shall reimburse for the cost and administration of the prescription medication through the medical benefit or pharmacy benefit based on the decision of the healthcare provider in consultation with the enrollee.

(2) The healthcare payor shall not impose financial penalties, copayments, coinsurance, or deductibles beyond the ordinary terms required through the enrollee's medical benefit or pharmacy benefit.

(3) This subsection does not apply to:

(A) A risk-based provider organization as established under the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq.; or

(B) An individual qualified health insurance plan under

the Arkansas Health and Opportunity for Me Act of 2021, § 23-61-1001 et seq.

(e) This section applies to an enrollee who is being evaluated or treated for:

(1) A hematology diagnosis;

(2) An oncology diagnosis; or

(3) Additional disease states or diagnoses that the Insurance Commissioner may include through the promulgation of rules.

(f) This section shall not:

(1) Interfere with the ability of a healthcare payor to create, modify, or maintain a prescription medication formulary; or

(2) Apply to a solid oral dosages form of a prescription medication unless the medication:

(A) Is an oral anticancer prescription medication;

(B) An oral antiemetic prescription medication that is given with chemotherapy treatment; or

(C) Possesses a safety label from the United States Food and Drug Administration that indicates the relevant drug interactions, warnings and precautions, or adverse reactions of the prescription medication that are clinically applicable to the enrollee and determined by a healthcare provider to require supervision during administration of the prescription medication.

23-99-1404. Rules.

The Insurance Commissioner shall develop and promulgate rules for the implementation and administration of this subchapter.

/s/Lowery