

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 142

By: Senator Irvin
By: Representative D. Ferguson

For An Act To Be Entitled

AN ACT TO AMEND THE HEALTHCARE CONTRACTING
SIMPLIFICATION ACT; TO REGULATE NETWORK LEASING UNDER
THE HEALTHCARE CONTRACTING SIMPLIFICATION ACT; AND
FOR OTHER PURPOSES.

Subtitle

TO AMEND THE HEALTHCARE CONTRACTING
SIMPLIFICATION ACT; AND TO REGULATE
NETWORK LEASING UNDER THE HEALTHCARE
CONTRACTING SIMPLIFICATION ACT.

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

SECTION 1. Arkansas Code § 23-99-1202 is amended to read as follows:
23-99-1202. Definitions.

As used in this subchapter:

(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:

(A) Serve in another provider network utilized by the contracting entity or a healthcare insurer affiliated with the contracting entity; or

(B) Provide healthcare services under another health benefit plan or product offered by a contracting entity or a healthcare insurer affiliated with the contracting entity;

(2) "Contracting entity" means a healthcare insurer or a



subcontractor, affiliate, or other entity that contracts directly or indirectly with a healthcare provider for the delivery of healthcare services to enrollees;

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

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

(B) "Health benefit plan" includes:

(i) A nonfederal governmental ~~plans~~ plan as defined in 29 U.S.C. § 1002(32), as it existed on January 1, 2019; and

(ii) A contract for providing benefits for dental care whether or not the contract is pursuant to:

(a) A healthcare insurance policy or certificate;

(b) A dental-only plan;

(c) A health maintenance organization provider contract; or

(d) A managed healthcare plan.

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

(i) A disability income plan;

(ii) A credit insurance plan;

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

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

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

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

(vii) An accident-only plan;

(viii) A specified disease plan;

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

~~(x) A dental-only plan; or~~

~~(xi) A vision-only plan;~~

(5) "Healthcare contract" means a contract entered into, materially amended, or renewed between a contracting entity and a healthcare provider that specifies the rights and responsibilities of the contracting entity and provides for the delivery of and payment for healthcare services to enrollees;

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

(B) "Healthcare insurer" includes:

(i) An insurance company;

(ii) A health maintenance organization;

(iii) A hospital and medical service corporation;

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

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

(vi) A dental-only plan;

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

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

(B) "Healthcare services" includes services for the diagnosis, prevention, treatment, or cure of a dental condition, illness, injury, or disease;

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

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

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

(C) A new or revised coding guideline;

(D) A new or revised payment rule; or

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

(10) "Most favored nation clause" means a provision in a

healthcare contract that:

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

(B) Requires or grants a contracting entity an option to require a participating healthcare provider to accept a lower payment in the event the participating healthcare provider agrees to provide healthcare services to another contracting entity at a lower price;

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

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

(11) “Participating healthcare provider” means a healthcare provider that has a healthcare contract with a contracting entity to provide healthcare services to enrollees with the expectation of receiving payment from the contracting entity or a healthcare insurer affiliated with the contracting entity; ~~and~~

(12) “Provider network” means a group of healthcare providers that are contracted to provide healthcare services to enrollees at contracted rates; and

(13) "Third party" means an individual or entity that enters into a contract with a contracting entity or with another third party to gain access to the services or contractual discounts of a healthcare contract through leasing the network.

SECTION 2. Arkansas Code § 23-99-1203 is amended to read as follows:
23-99-1203. All-products clause – Prohibition – Network leasing.

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

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

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

that includes an all-products clause; or

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

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

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

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

(C) Requiring a healthcare provider to accept multiple health benefit plans that do not differ in reimbursement rates or other financial terms for the healthcare provider.

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

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

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

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

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

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

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

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

(d) A contracting entity may require a healthcare provider to participate in the State and Public School Life and Health Insurance Program as a condition of contracting or continuing to contract with the healthcare

provider for healthcare services under another health benefit plan, if:

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

(2) The rates offered to the healthcare provider for healthcare services to program enrollees are no lower than the rates paid to the healthcare provider under the other health benefit plan.

(e)(1) A healthcare contract, renewal, or amendment offered by a healthcare insurer pertaining to granting access to a provider network for a third party that otherwise complies with the requirements of this section shall allow a healthcare provider to:

(A) Choose not to participate in any contract provisions that provide third-party access to the contract; or

(B) Enter into a healthcare contract directly with the healthcare insurer.

(2) A healthcare insurer shall not cancel or otherwise terminate or deny a contractual relationship with a healthcare provider because the healthcare provider exercises its rights as provided in subdivision (e)(1) of this section.

(3) This subsection applies only to a dentist licensed under the Arkansas Dental Practice Act, § 17-82-101 et seq.