

By: Blackmon

To: Insurance

SENATE BILL NO. 2986

1 AN ACT TO PROHIBIT UNFAIR DISCRIMINATION AGAINST SUBJECTS OF
2 ABUSE IN HEALTH BENEFIT PLANS; TO DEFINE CERTAIN TERMS; TO
3 PRESCRIBE UNFAIRLY DISCRIMINATORY ACTS RELATING TO HEALTH BENEFIT
4 PLANS; TO REQUIRE JUSTIFICATION OF ADVERSE INSURANCE DECISIONS
5 WHICH AFFECT AN APPLICANT OR INSURED ON THE BASIS OF A MEDICAL
6 CONDITION THAT THE HEALTH CARRIER KNOWS OR HAS REASON TO KNOW IS
7 ABUSE-RELATED; TO REQUIRE HEALTH CARRIERS TO DEVELOP AND ADHERE TO
8 PROTOCOLS FOR SUBJECTS OF ABUSE; TO AUTHORIZE THE COMMISSIONER OF
9 INSURANCE TO ENFORCE THE PROVISIONS OF THIS ACT; AND FOR RELATED
10 PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 SECTION 1. **Purpose.**

13 The purpose of this act is to prohibit unfair discrimination
14 by health carriers and insurance professionals on the basis of
15 abuse status. Nothing in this act shall be construed to create or
16 imply a private cause of action for a violation of this act.

17 SECTION 2. **Scope.**

18 This act applies to all health carriers and insurance
19 professionals involved in issuing or renewing in this state a
20 policy or certificate of health insurance.

21 SECTION 3. **Definitions.**

22 As used in this act, unless the context clearly indicates
23 otherwise:

24 (a) "Abuse" means the occurrence of one or more of the
25 following acts by a current or former family member, household
26 member, intimate partner or caretaker:

27 (i) Attempting to cause or intentionally,
28 knowingly or recklessly causing another person bodily injury,
29 physical harm, severe emotional distress, psychological trauma,
30 rape, sexual assault or involuntary sexual intercourse;

31 (ii) Knowingly engaging in a course of conduct or
32 repeatedly committing acts toward another person, including
33 following the person or minor child without proper authority,
34 under circumstances that place the person or minor child in
35 reasonable fear of bodily injury or physical harm;

36 (iii) Subjecting another person to false
37 imprisonment; or

38 (iv) Attempting to cause or intentionally,
39 knowingly, or recklessly causing damage to property so as to
40 intimidate or attempt to control the behavior of another person.

41 (b) "Abuse-related medical condition" means a medical
42 condition sustained by a subject of abuse which arises in whole or
43 part out of an act or pattern of abuse.

44 (c) "Abuse status" means the fact or perception that a
45 person is, has been, or may be a subject of abuse, irrespective of
46 whether the person has sustained abuse-related medical conditions.

47 (d) "Commissioner" means the Commissioner of Insurance
48 of the State of Mississippi.

49 (e) "Confidential abuse information" means information
50 about acts of abuse or abuse status of a subject of abuse, a
51 person's medical condition that the carrier knows or has reason to
52 know is abuse-related, the address and telephone number (home and
53 work) of a subject of abuse or the status of an applicant or
54 insured as a family member, employer or associate of, or a person
55 in a relationship with, a subject of abuse.

56 (f) "Health benefit plan" or "plan" means a policy,
57 contract, certificate or agreement offered by a carrier or
58 insurance professional to provide, deliver, arrange for, pay for
59 or reimburse any of the costs of health care services. Health
60 benefit plan includes accident only, credit health, dental,
61 vision, Medicare supplement or long-term care insurance, coverage
62 issued as a supplement to liability insurance, short-term and
63 catastrophic health insurance policies, and a policy that pays on

64 a cost-incurred basis. Health benefit plan does not include
65 workers' compensation or similar insurance.

66 (g) "Health carrier" means an entity subject to the
67 insurance laws and regulations of this state, or subject to the
68 jurisdiction of the commissioner, that contracts or offers to
69 contract to provide, deliver, arrange for, pay for or reimburse
70 any of the costs of health care services, including a sickness and
71 accident insurance company, a health maintenance organization, a
72 nonprofit hospital and health service corporation or any other
73 entity providing a plan of health insurance, health benefits or
74 health services.

75 (h) "Insurance professional" means an agent, broker,
76 adjuster or third party administrator as defined in the insurance
77 laws of this state.

78 (i) "Insured" means a party named on a health benefit
79 plans as the person with legal rights to the benefits provided by
80 the health benefit plan. For group plans, "insured" includes a
81 person who is a beneficiary covered by a group health benefit
82 plan.

83 (j) "Subject of abuse" means a person against whom an
84 act of abuse has been directed; who has current or prior injuries,
85 illnesses or disorders that resulted from abuse; or who seeks, may
86 have sought, or had reason to seek medical or psychological
87 treatment for abuse; or protection, court-ordered protection or
88 shelter from abuse.

89 **SECTION 4. Unfairly Discriminatory Acts Relating to**
90 **Health Benefit Plans.**

91 (1) It is unfairly discriminatory to:

92 (a) Deny, refuse to issue, renew or reissue, cancel or
93 otherwise terminate a health benefit plan, or restrict or exclude
94 health benefit plan coverage or add a premium differential to any
95 health benefit plan on the basis of the applicant's or insured's
96 abuse status; or

97 (b) Exclude or limit coverage for losses or deny a
98 claim incurred by an insured on the basis of the insured's abuse
99 status;

100 (2) When the health carrier or insurance professional has
101 information in its possession that clearly indicates that the
102 insured or applicant is a subject of abuse, the disclosure or
103 transfer of the confidential abuse information, as defined in this
104 act, by a person employed by or contracting with a health carrier
105 or insurance professional for any purpose or to any person is
106 unfairly discriminatory, except:

107 (a) To the subject of abuse or an individual
108 specifically designated in writing by the subject of abuse;

109 (b) To a health care provider for the direct provision
110 of health care services;

111 (c) To a licensed physician identified and designated
112 by the subject of abuse;

113 (d) When ordered by the commissioner or a court of
114 competent jurisdiction or otherwise required by law; or

115 (e) When necessary for a valid business purpose to
116 transfer information that includes confidential abuse information
117 that cannot reasonably be segregated without undue hardship.
118 Confidential abuse information may be disclosed only if the
119 recipient has executed a written agreement to be bound by the
120 prohibitions of this act in all respects and to be subject to the
121 enforcement of this act by the courts of this state for the
122 benefit of the applicant or the insured, and only to the following
123 persons:

124 (i) A reinsurer that seeks to indemnify or
125 indemnifies all or any part of a policy covering a subject of
126 abuse and that cannot underwrite or satisfy its obligations under
127 the reinsurance agreement without that disclosure;

128 (ii) A party to a proposed or consummated sale,
129 transfer, merger or consolidation of all or part of the business

130 of the health carrier or insurance professional;

131 (iii) Medical or claims personnel contracting
132 with the health carrier or insurance professional, only where
133 necessary to process an application or perform the health
134 carrier's or insurance professional's duties under the policy or
135 to protect the safety or privacy of a subject of abuse (also
136 includes parent or affiliate companies of the health carrier or
137 insurance professional that have service agreements with the
138 health carrier or insurance professional); or

139 (iv) With respect to address and telephone number,
140 to entities with whom the health carrier or insurance professional
141 transacts business when the business cannot be transacted without
142 the address and telephone number;

143 (f) To an attorney who needs the information to
144 represent the health carrier or insurance professional
145 effectively, provided the health carrier or insurance professional
146 notifies the attorney of its obligations under this act and
147 requests that the attorney exercise due diligence to protect the
148 confidential abuse information consistent with the attorney's
149 obligation to represent the health carrier or insurance
150 professional;

151 (g) To the policyowner or assignee, in the course of
152 delivery of the policy, if the policy contains information about
153 abuse status; or

154 (h) To any other entities deemed appropriate by the
155 commissioner.

156 (3) It is unfairly discriminatory to request information
157 relating to acts of abuse or an applicant's or insured's abuse
158 status, or make use of that information, however obtained, except
159 for the limited purposes of complying with legal obligations or
160 verifying a person's claim to be a subject of abuse.

161 (4) It is unfairly discriminatory to terminate group coverage for
162 a subject of abuse because coverage was originally issued in the

163 name of the abuser and the abuser has divorced, separated from, or
164 lost custody of the subject of abuse, or the abuser's coverage has
165 terminated voluntarily or involuntarily. Nothing in this
166 subsection prohibits the health carrier or insurance professional
167 from requiring the subject of abuse to pay the full premium for
168 coverage under the health plan or from requiring as a condition of
169 coverage that the subject of abuse reside or work within its
170 service area, if the requirements are applied to all insureds of
171 the health carrier or insurance professional. The health carrier
172 or insurance professional may terminate group coverage after the
173 continuation coverage required by this subsection has been in
174 force for eighteen (18) months, if it offers conversion to an
175 equivalent individual plan. The continuation coverage required by
176 this section shall be satisfied by coverage required under P.L.
177 99-272, the Consolidated Omnibus Budget Reconciliation Act (COBRA)
178 of 1985, provided to a subject of abuse and is not intended to be
179 in addition to coverage provided under COBRA.

180 (5) Subsection (2) does not preclude a subject of abuse from
181 obtaining his or her insurance records.

182 (6) Subsection (3) does not prohibit a health carrier or
183 insurance professional from asking about a medical condition or
184 from using medical information to underwrite or to carry out its
185 duties under the policy, even if the medical information is
186 related to a medical condition that the insurer or insurance
187 professional knows or has reason to know is abuse-related, to the
188 extent otherwise permitted under this act and other applicable
189 law.

190 **SECTION 5. Justification of Adverse Insurance Decisions.**

191 A health carrier or insurance professional that takes an
192 action that adversely affects an applicant or insured on the basis
193 of a medical condition that the health carrier or insurance
194 professional knows or has reason to know is abuse-related shall
195 explain the reason for its action to the applicant or insured in

196 writing and shall be able to demonstrate that its action, and any
197 applicable plan provision:

198 (a) Does not have the purpose or effect of treating
199 abuse status as a medical condition or underwriting criterion;

200 (b) Is not based upon any actual or perceived
201 correlation between a medical condition and abuse;

202 (c) Is otherwise permissible by law and applies in the
203 same manner and to the same extent to all applicants and insureds
204 with a similar medical condition without regard to whether the
205 condition or claim is abuse-related; and

206 (d) Except for claim actions, is based on a
207 determination, made in conformance with sound actuarial principles
208 and supported by reasonable statistical evidence, that there is a
209 correlation between the medical condition and a material increase
210 in insurance risk.

211 **SECTION 6. Insurance Protocols for Subjects of Abuse.**

212 Health carriers shall develop and adhere to written policies
213 specifying procedures to be followed by employees and by insurance
214 professionals they contract with, for the purpose of protecting
215 the safety and privacy of a subject of abuse and shall otherwise
216 implement the provisions of this act when taking an application,
217 investigating a claim, pursuing subrogation or taking any other
218 action relating to a policy or claim involving a subject of abuse.

219 Insurers shall distribute their written policies to employees and
220 insurance professionals.

221 **SECTION 7. Enforcement.**

222 The commissioner shall conduct a reasonable investigation
223 based on a written and signed [add any means by which the
224 commissioner receives complaints] complaint received by the
225 commissioner and issue a prompt determination as to whether a
226 violation of this act may have occurred. If the commissioner
227 finds from the investigation that a violation of this act may have
228 occurred, the commissioner shall promptly begin an adjudicatory

229 proceeding. The commissioner may address a violation through
230 means appropriate to the nature and extent of the violation, which
231 may include suspension or revocation of certificates of authority
232 or licenses, imposition of civil penalties, issuance of cease and
233 desist orders, injunctive relief, a requirement for restitution,
234 referral to prosecutorial authorities or any combination of these.

235 The powers and duties set forth in this section are in addition
236 to all other authority of the commissioner.

237 SECTION 8. This act is effective July 1, 2000, and applies
238 to all actions taken on or after the effective date, except where
239 otherwise explicitly stated. Nothing in this act shall require a
240 health carrier or insurance professional to conduct a
241 comprehensive search of its contract files existing on the
242 effective date solely to determine which applicants or insureds
243 are subjects of abuse.