

By: Representatives Stevens, Masterson

To: Insurance

HOUSE BILL NO. 662

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

17 SECTION 2. This act applies to all health carriers and
18 insurance professionals involved in issuing or renewing in this
19 state a policy or certificate of health insurance.

20 SECTION 3. As used in this act, unless the context clearly
21 indicates otherwise:

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

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

29 (ii) Knowingly engaging in a course of conduct or
30 repeatedly committing acts toward another person, including
31 following the person or minor child without proper authority,



32 under circumstances that place the person or minor child in
33 reasonable fear of bodily injury or physical harm;

34 (iii) Subjecting another person to false
35 imprisonment; or

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

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

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

45 (d) "Commissioner" means the Commissioner of Insurance
46 of the State of Mississippi.

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

54 (f) "Health benefit plan" or "plan" means a policy,
55 contract, certificate or agreement offered by a carrier or
56 insurance professional to provide, deliver, arrange for, pay for
57 or reimburse any of the costs of health care services. Health
58 benefit plan includes accident only, credit health, dental,
59 vision, Medicare supplement or long-term care insurance, coverage
60 issued as a supplement to liability insurance, short-term and
61 catastrophic health insurance policies and a policy that pays on a
62 cost-incurred basis. Health benefit plan does not include
63 workers' compensation or similar insurance.



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

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

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

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

87 SECTION 4. (1) It is unfairly discriminatory to:

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

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



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

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

105 (b) To a health care provider for the direct provision
106 of health care services;

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

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

111 (e) When necessary for a valid business purpose to
112 transfer information that includes confidential abuse information
113 that cannot reasonably be segregated without undue hardship.

114 Confidential abuse information may be disclosed only if the
115 recipient has executed a written agreement to be bound by the
116 prohibitions of this act in all respects and to be subject to the
117 enforcement of this act by the courts of this state for the
118 benefit of the applicant or the insured and only to the following
119 persons:

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

124 (ii) A party to a proposed or consummated sale,
125 transfer, merger or consolidation of all or part of the business
126 of the health carrier or insurance professional;

127 (iii) Medical or claims personnel contracting
128 with the health carrier or insurance professional, only where



129 necessary to process an application or perform the health
130 carrier's or insurance professional's duties under the policy or
131 to protect the safety or privacy of a subject of abuse (also
132 includes parent or affiliate companies of the health carrier or
133 insurance professional that have service agreements with the
134 health carrier or insurance professional); or

135 (iv) With respect to address and telephone number,
136 to entities with whom the health carrier or insurance professional
137 transacts business when the business cannot be transacted without
138 the address and telephone number;

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

147 (g) To the policy owner or assignee, in the course of
148 delivery of the policy, if the policy contains information about
149 abuse status; or

150 (h) To any other entities deemed appropriate by the
151 commissioner.

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

157 (4) It is unfairly discriminatory to terminate group
158 coverage for a subject of abuse because coverage was originally
159 issued in the name of the abuser and the abuser has divorced,
160 separated from or lost custody of the subject of abuse or the
161 abuser's coverage has terminated voluntarily or involuntarily.



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

177 (5) Subsection (2) of this section does not preclude a
178 subject of abuse from obtaining his or her insurance records.

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

187 SECTION 5. A health carrier or insurance professional that
188 takes an action that adversely affects an applicant or insured on
189 the basis of a medical condition that the health carrier or
190 insurance professional knows or has reason to know is
191 abuse-related shall explain the reason for its action to the
192 applicant or insured in writing and shall be able to demonstrate
193 that its action, and any applicable plan provision:



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

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

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

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

207 SECTION 6. Health carriers shall develop and adhere to
208 written policies specifying procedures to be followed by employees
209 and by insurance professionals they contract with for the purpose
210 of protecting the safety and privacy of a subject of abuse and
211 shall otherwise implement the provisions of this act when taking
212 an application, investigating a claim, pursuing subrogation or
213 taking any other action relating to a policy or claim involving a
214 subject of abuse. Insurers shall distribute their written
215 policies to employees and insurance professionals.

216 SECTION 7. The commissioner shall conduct a reasonable
217 investigation based on a written and signed complaint received by
218 the commissioner and shall issue a prompt determination as to
219 whether a violation of this act may have occurred. If the
220 commissioner finds from the investigation that a violation of this
221 act may have occurred, the commissioner shall promptly begin an
222 adjudicatory proceeding. The commissioner may address a violation
223 through means appropriate to the nature and extent of the
224 violation, which may include suspension or revocation of
225 certificates of authority or licenses, imposition of civil
226 penalties, issuance of cease and desist orders, injunctive relief,



227 a requirement for restitution, referral to prosecutorial
228 authorities or any combination of these. The powers and duties
229 set forth in this section are in addition to all other authority
230 of the commissioner.

231 SECTION 8. This act applies to all actions taken on or after
232 the effective date, except where otherwise explicitly stated.
233 Nothing in this act shall require a health carrier or insurance
234 professional to conduct a comprehensive search of its contract
235 files existing on the effective date solely to determine which
236 applicants or insureds are subjects of abuse.

237 SECTION 9. This act shall take effect and be in force from
238 and after July 1, 2001.

