MISSISSIPPI LEGISLATURE REGULAR SESSION 2006

By: Senator(s) Burton

To: Insurance; Appropriations

SENATE BILL NO. 2182

AN ACT ENTITLED THE "MISSISSIPPI PATIENT PROTECTION ACT OF 2006"; TO PROVIDE DEFINITIONS; TO DEFINE A PATIENT'S RIGHT TO CHOOSE A HEALTH CARE PROVIDER; TO PROVIDE THAT A HEALTH INSURER SHALL NOT DISCRIMINATE AGAINST ANY PROVIDER WHO IS LOCATED WITHIN THE GEOGRAPHIC COVERAGE AREA OF A HEALTH BENEFIT PLAN AND WHO IS WILLING TO MEET THE TERMS AND CONDITIONS FOR PARTICIPATION ESTABLISHED BY THE HEALTH INSURER; TO DEFINE THOSE HEALTH INSURANCE AND HEALTH CARE PROGRAMS SUBJECT TO THE REQUIREMENTS OF THIS ACT; TO PRESCRIBE CERTAIN TERMS FOR HEALTH BENEFIT PLANS; TO PROVIDE FOR ENFORCEMENT OF THE PATIENT PROTECTION ACT PROVISIONS; TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS OF THIS ACT; TO AMEND SECTIONS 83-41-407 AND 83-41-409, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the "Mississippi Patient Protection Act of 2006."

SECTION 2. The Legislature finds that a patient should be given the opportunity to see the health care provider of his or her choice. In order to assure the citizens of the State of Mississippi the right to choose a provider of their choice, it is the intent of the Legislature to provide the opportunity for providers to participate in health benefit plans.

SECTION 3. As used in this act:

(a) "Department" means the Mississippi Department of Insurance;

(b) "ERISA" means the federal Employee Retirement Income Security Act of 1974, as amended, 29 USC, Section 1001 et seq.;

(c) "Health benefit plan" means (i) any health insurance policy or certificate, health maintenance organization contract, hospital and medical service corporation contract or certificate, self-insured plan or plan provided by a multiple

employer welfare arrangement, to the extent permitted by ERISA; or (ii) any health benefit plan that affects the rights of a Mississippi insured and bears a reasonable relation to the State of Mississippi, whether delivered or issued for delivery in the state; or (iii) the Mississippi State and School Employees Health Insurance Plan; or (iv) the Mississippi Medicaid Program established in Section 43-13-101 et seq. Health insurance benefit plan shall not include insurance arising out of a worker's compensation claim;

(d) "Health care provider" or "provider" means an individual or entity licensed by the State of Mississippi to provide health care services, limited to the following type of providers:

(i) Physicians and surgeons (M.D. and D.O.);

(ii) Podiatrists;

(iii) Chiropractors;

(iv) Physical therapists;

(v) Speech pathologists;

(vi) Audiologists;

(vii) Dentists;

(viii) Optometrists;

(ix) Hospitals;

(x) Hospital-based services;

(xi) Psychologists;

(xii) Licensed professional counselors;

(xiii) Respiratory therapists;

(xiv) Pharmacists;

(xv) Occupational therapists;

(xvi) Long-term care facilities;

(xvii) Home health care providers;

(xviii) Hospice care providers;

(xix) Licensed ambulatory surgery centers;

(xx) Rural health clinics;

(xxi) Licensed certified social workers;

(xxii) Licensed psychological examiners;

(xxiii) Advanced practice nurses;

(xxiv) Licensed dieticians;

(xxv) Community mental health centers or clinics;

(xxvi) Certified orthotists;

(xxvii) Prosthetists;

(xxviii) Licensed durable medical equipment providers; and

(xxix) Other health care practitioners as determined by the department in rules promulgated under the Mississippi Administrative Procedures Law, Section 25-43-1 et seq.;

(e) "Health insurer" or "health care insurer" means any entity that is authorized by the State of Mississippi to offer or provide health benefit plans, policies, subscriber contracts or any other contracts of similar nature which indemnify or compensate health care providers for the provision of health care services;

(f) "Any willing provider law" means a law that prohibits discrimination against a provider willing to meet the terms and conditions for participation established by a health insurer or that otherwise precludes an insurer from prohibiting or limiting participation by a provider who is willing to accept a health insurer's terms and conditions for participation in the provision of services through a health benefit plan;

(g) "Health insurer" or "health care insurer" means any entity that is authorized by the State of Mississippi to offer or provide health benefit plans, policies, subscriber contracts or any other contracts of similar nature which indemnify or compensate health care providers for the provision of health care services;

(h) "Noninsurer" means an entity that is not required to obtain authorization from the department to do business as a health insurer but that does have a provider network; and

(i) "Self-insured" includes self-funded and vice versa.

SECTION 4. A health insurer shall not discriminate against any provider who is located within the geographic coverage area of the health benefit plan and who is willing to meet the terms and conditions for participation established by the health insurer.

SECTION 5. Nothing in this act shall be construed to require or prohibit the same reimbursement to different types of providers whose licensed scope of practice differs nor shall anything in this act be construed to require or prohibit coverage of the services of any particular type of provider.

SECTION 6. (1) A health care insurer shall not, directly or indirectly:

(a) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice among those health care providers who participate in the health benefit plan according to the terms offered.

"Monetary advantage or penalty" includes:

(i) A higher copayment;

(ii) A reduction in reimbursement for services; or

(iii) Promotion of one health care provider over another by these methods;

(b) Impose upon a beneficiary of health care services under a health benefit plan any copayment, fee or condition that is not equally imposed upon all beneficiaries in the same benefit category, class or copayment level under that health benefit plan when the beneficiary is receiving services from a participating health care provider pursuant to that health benefit plan; or

(c) Prohibit or limit a health care provider that is qualified under this act and is willing to accept the health benefit plan's operating terms and conditions, schedule of fees,

covered expenses and utilization regulations and quality standards, from the opportunity to participate in that plan.

(2) Nothing in this act shall prevent a health benefit plan from instituting measures designed to maintain quality and to control costs, including, but not limited to, the utilization of a gatekeeper system, as long as such measures are imposed equally on all providers in the same class.

SECTION 7. To the extent permitted by ERISA, the federal Employees Retirement Income Security Act of 1974, as amended, 29 USC, Section 1001 et seq., any person adversely affected by a violation of the Patient Protection Act of 2006 may sue in a court of competent jurisdiction for injunctive relief against the health insurer and, upon prevailing, shall, in addition to injunctive relief recover damages of not less than One Thousand Dollars ($1,000.00), attorney's fees and costs.

SECTION 8. (1) A health benefit plan delivered or issued for delivery to any person in this state in violation of the Patient Protection Act of 2006 but otherwise binding on the health insurer, shall be held valid, but shall be construed as provided in the Patient Protection Act of 2006.

(2) Any health benefit plan or related policy, rider or endorsement issued and otherwise valid that contains any condition, omission or provision not in compliance with the requirements of the Patient Protection Act of 2006 shall not be rendered invalid because of the noncompliance, but shall be construed and applied in accordance with, such condition, omission or provision as would have applied if it had been in full compliance with the Patient Protection Act of 2006.

SECTION 9. The Mississippi Insurance Commissioner acting through the department, shall:

(a) Enforce the state's any willing provider laws using powers granted to the commissioner in the Mississippi Insurance Code.

(b) Be entitled to seek an injunction against a health insurer in a court of competent jurisdiction.

SECTION 10. (1) The state's any willing provider laws shall not be construed:

(a) To require all physicians or a percentage of physicians in the state or a locale to participate in the provision of services for a health insurance organization; or

(b) To take away the authority of health maintenance organizations that provide coverage of physician services to set the terms and conditions for participation by physicians, though health maintenance organizations shall apply such terms and conditions in a nondiscriminatory manner.

(2) The state's any willing provider laws shall apply to:

(a) All health insurers, regardless of whether they are providing insurance, including pre-paid coverage, or administering or contracting to provide provider networks; and

(b) All multiple employer welfare arrangements and multiple employer trusts, to the extent permitted by ERISA.

(3) Nothing in the state's any willing provider laws shall be construed to cover or regulate health care provider networks offered by noninsurers. If an employer sponsoring a self-insured health benefit plan contracts directly with providers or contracts for a health care provider network through a noninsurer, then the any willing provider law does not apply. If a health insurer subcontracts with a noninsurer whose health care network does not meet the requirements of the any willing provider law, then the noninsurer may, but is not required to, create a separate health care provider network that meets the requirements of the any willing provider law. If the noninsurer chooses not to create the separate health care provider network, then the responsibility for compliance with the any willing provider law is the obligation of the health insurer to the extent permitted by ERISA.

SECTION 11. The department shall adopt regulations to implement the provisions of the Patient Protection Act of 2006 and may obtain any information from health benefit plans that is necessary to determine if such plan should be certified or enjoined.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 13. Section 83-41-407, Mississippi Code of 1972, is amended as follows:

83-41-407. The department shall establish a fee to cover the costs of issuing and renewing the certifications authorized by this article and the fees shall be used solely for the administration of this article, and for the administration of the Patient Protection Act of 2006, Senate Bill No. ____, 2006 Regular Session.

SECTION 14. Section 83-41-409, Mississippi Code of 1972, is amended as follows:

83-41-409. In order to be certified and recertified under this article, a managed care plan shall:

(a) Provide enrollees or other applicants with written information on the terms and conditions of coverage in easily understandable language including, but not limited to, information on the following:

(i) Coverage provisions, benefits, limitations, exclusions and restrictions on the use of any providers of care;

(ii) Summary of utilization review and quality assurance policies; and

(iii) Enrollee financial responsibility for copayments, deductibles and payments for out-of-plan services or supplies;

(b) Demonstrate that its provider network has providers of sufficient number throughout the service area to assure reasonable access to care with minimum inconvenience by plan enrollees;

(c) File a summary of the plan credentialing criteria and process and policies with the State Department of Insurance to be available upon request;

(d) Provide a participating provider with a copy of his/her individual profile if economic or practice profiles, or both, are used in the credentialing process upon request;

(e) When any provider application for participation is denied or contract is terminated, the reasons for denial or termination shall be reviewed by the managed care plan upon the request of the provider; * * *

(f) Establish procedures to ensure that all applicable state and federal laws designed to protect the confidentiality of medical records are followed; and

(g) Comply with all requirements of the Mississippi Patient Protection Act of 2006, Senate Bill No. ____, 2006 Regular Session.

SECTION 15. This act shall take effect and be in force from and after July 1, 2006.