

By: Senator(s) Blackmon

To: Insurance

SENATE BILL NO. 2977

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 plan 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 to  
236 all other authority of the commissioner.

237 SECTION 8. This act is effective July 1, 2001, 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.