MISSISSIPPI LEGISLATURE REGULAR SESSION 2022

By: Representative Turner

To: Public Health and Human Services

HOUSE BILL NO. 803

AN ACT TO CREATE NEW SECTIONS 83-9-401 THROUGH 83-9-419, MISSISSIPPI CODE OF 1972, TO ENACT THE HEALTHCARE CONTRACTING SIMPLIFICATION ACT; TO PROVIDE DEFINITIONS FOR THE ACT; TO PROHIBIT THE ALL-PRODUCTS CLAUSE; TO PROHIBIT THE MOST FAVORED NATION CLAUSE; TO PROVIDE FURTHER REQUIREMENTS OF HEALTHCARE CONTRACTS; TO PROVIDE THAT THE MISSISSIPPI INSURANCE DEPARTMENT SHALL ENFORCE THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 83-9-401, Mississippi Code of 1972:

83-9-401. This article shall be known and may be cited as the "Healthcare Contracting Simplification Act".

SECTION 2. The following shall be codified as Section 83-9-403, Mississippi Code of 1972:

83-9-403. (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 pursuant to any individual or group policy or contract of insurance against loss resulting from bodily injury, including dental care expenses resulting from sickness or bodily injury as defined in Section 83-9-1.

(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 and such products as described in Section 83-9-1.

(b) "Health benefit plan" includes nonfederal governmental plans as defined in 29 USC Section 1002(32), as it existed on January 1, 2019.

(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 for Workers Compensation;

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

(vii) An accident-only plan;

(viii) A specified disease plan; and

(ix) A long-term-care only plan.

(5) "Healthcare contract" means a contract entered into, materially amended, or renewed between a contracting entity and a healthcare provider for payment of healthcare services provided to enrollees and for the purposes of this act shall also include a manual, policy, fee schedule or procedure (including quality improvement and utilization management policies and procedures) document referenced in the contract.

(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 or managed care organization;

(iii) A hospital and medical service corporation;

(iv) A risk-based provider organization;

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

(vi) A care coordination organization; and

(vii) A provider sponsored health 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) "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.

(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 receive payment for the provision of healthcare services to enrollees from the contracting entity or a healthcare insurer affiliated with the contracting entity.

(12) "Provider network" means a group of participating healthcare providers that are contracted to be paid for the provision of healthcare services to enrollees at contracted rates.

SECTION 3. The following shall be codified as Section 83-9-405, Mississippi Code of 1972:

83-9-405. (1) Except as provided in subsections (2) and (4) of this section, a contracting entity shall not:

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

(b) Enter into a healthcare contract with a healthcare provider that includes an all-products clause; or

(c) 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.

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

(i) 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, as long as the healthcare provider has the option to opt out of any health benefit plan offered; or

(ii) 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, as long as the healthcare provider has the option to opt out of any health benefit plan to be added.

(b) 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 and the details of the various plans and coverage options are made available to the healthcare provider in writing.

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

(i) 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

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

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

SECTION 4. The following shall be codified as Section 83-9-407, Mississippi Code of 1972:

83-9-407. (1) A contracting entity shall not:

(a) Offer to a healthcare provider a healthcare contract that includes a most favored nation clause;

(b) Enter into a healthcare contract with a healthcare provider that includes a most favored nation clause; or

(c) Amend or renew an existing healthcare contract previously entered into with a healthcare provider so that the contract as amended or renewed adds or continues to include a most favored nation clause.

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

SECTION 5. The following shall be codified as Section 83-9-409, Mississippi Code of 1972:

83-9-409. (1) (a) A material amendment to a healthcare contract is not allowed unless a contracting entity provides to a participating healthcare provider the material amendment at least ninety (90) days before the proposed effective date of the material amendment and in writing and the material amendment shall not become effective unless either the amendment has first been

negotiated, agreed to and executed by the healthcare provider or the amendment is required to comply with state or federal law or regulations or any accreditation requirements of a private sector accreditation organization, unless the accreditation organization is affiliated with the contracting entity.

(b) The notice required under paragraph (a) of this subsection shall specify the precise healthcare contract or healthcare contracts to which the material amendment applies and be conspicuously labeled as follows: "Notice of Material Amendment to Healthcare Contract."

(c) The notice shall contain sufficient information about the amendment, including the specific language of the proposed amendment, to allow a healthcare provider to assess the financial and operational impact, if any, of the amendment.

(2) A notice described under paragraph (a) of subsection (1) of this section is not required for a material amendment resulting solely from a change in a fee schedule or code set if:

(a) The fee schedule or code set is published by the federal government, or another third party and adopted by the federal government; and

(b) The terms of the healthcare contract expressly states that the healthcare provider's compensation or claims submission is based on the fee schedule or code set.

(3) (a) Within ten (10) business days of a healthcare provider's request, a contracting entity shall provide to the

healthcare provider a full and complete written copy of each healthcare contract between the contracting entity and the healthcare provider.

(b) A full and complete copy of the healthcare contract shall include any amendments to the healthcare contract.

(4) (a) (i) A healthcare contract shall open for renegotiation and revision at least one (1) time every three (3) years.

(ii) Under subparagraph (i) of this paragraph (a), a party to the healthcare contract is not required to terminate the healthcare contract in order to open the healthcare contract for renegotiation of the terms.

(b) This section does not prohibit a renegotiation of a healthcare contract at any time during the term of the healthcare contract.

(c) In the event that the contracting entity and the healthcare provider cannot agree to a change in the healthcare contract, the healthcare provider may terminate the healthcare contract prior to the implementation of any proposed change.

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

SECTION 6. The following shall be codified as Section 83-9-411, Mississippi Code of 1972:

83-9-411. (1) A contracting entity shall not condition payment to a health care provider based upon the actions or omissions of another healthcare provider.

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

SECTION 7. The following shall be codified as Section 83-9-413, Mississippi Code of 1972:

83-9-413. (1) A contracting entity shall contract with any healthcare provider unless that healthcare provider has a significant history of malpractice claims, licensure or accreditation violations, license suspension or terminations, or has been barred from participation in a federal or state healthcare program and shall not, directly or indirectly, offer or enter into a healthcare contract that:

(a) Prohibits a participating healthcare provider from entering into a healthcare contract with another contracting entity; or

(b) Prohibits a contracting entity from entering into a healthcare contract with another healthcare provider.

(2) If a healthcare provider owns or operates multiple healthcare facilities or employs other healthcare providers, a contracting entity must offer a master healthcare contract to the healthcare provider that encompasses all such facilities or providers. Nothing in this section requires a contracting entity

to, or prohibits a contracting entity from, offering the same terms to all facilities or healthcare providers encompassed in the master healthcare contract.

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

SECTION 8. The following shall be codified as Section 83-9-415, Mississippi Code of 1972:

83-9-415. (1) A contracting entity shall not include a provision in a health benefit plan that would impose a monetary advantage or penalty under a health benefit plan that would affect an enrollee's choice among participating healthcare providers. "Monetary advantage or penalty" includes:

(a) A higher co-payment, co-insurance or deductible;

(b) A lower co-payment, co-insurance or deductible;

(c) A reduction in reimbursement for services;

(d) An increase in reimbursement for services; and

(e) Promotion of one participating healthcare provider over another by these methods.

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

SECTION 9. The following shall be codified as Section 83-9-417, Mississippi Code of 1972:

83-9-417. The Commissioner of Insurance may, after notice and hearing, revoke the authority of a contracting entity or impose an administrative fine, or both, if the contracting entity violates or neglects to comply with any provision in this act. Such administrative fine shall not exceed Five Thousand Dollars ($5,000.00) per violation.

SECTION 10. The following shall be codified as Section 83-9-419, Mississippi Code of 1972:

83-9-419. (1) The Commissioner of Insurance shall promulgate rules necessary to ensure compliance with this article.

(2) When adopting the initial rules to ensure compliance with this article, the final rule shall be filed with the Secretary of State for adoption under the Administrative Procedures Law on or before December 31, 2022.

SECTION 11. This act shall take effect and be in force from and after July 1, 2023, except for Section 10 of this act which shall take effect and be in force from and after July 1, 2022.