

By: Representative Turner

To: Insurance

HOUSE BILL NO. 820

1 AN ACT TO CREATE AN INDEPENDENT DISPUTE RESOLUTION PROCESS
 2 FOR SITUATIONS WHEN A LARGE HEALTH INSURER AND A LARGE HEALTH
 3 SYSTEM ENTER INTO CONTRACT NEGOTIATIONS, AND THOSE NEGOTIATIONS
 4 RESULT IN THE LARGE HEALTH SYSTEM NO LONGER BEING WITHIN THE LARGE
 5 HEALTH INSURER'S NETWORK, AND THE COMMISSIONER OF INSURANCE FINDS
 6 THAT SUCH EXCLUSION WILL RESULT IN A LARGE NUMBER OF COVERED
 7 PERSONS NOT HAVING ACCESSIBLE HEALTH CARE SERVICES WITHIN A
 8 GEOGRAPHIC AREA, OR A LARGE NUMBER OF COVERED PERSONS NOT HAVING
 9 REASONABLE ACCESS TO COVERED BENEFITS RESULTING IN THE COVERED
 10 PERSONS HAVING TO RECEIVE THOSE SERVICES OUT OF THEIR GEOGRAPHIC
 11 AREA, OR THE LARGE HEALTH SYSTEM IS CONSIDERED AN ESSENTIAL
 12 COMMUNITY PROVIDER AND THE EXCLUSION OF THE LARGE HEALTH SYSTEM
 13 WILL RESULT IN SIGNIFICANT HARM TO MISSISSIPPI CITIZENS; TO
 14 PROVIDE DEFINITION; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO
 15 ORDER THE PARTIES TO ATTEMPT TO RESOLVE THE DISPUTE THROUGH
 16 MEDIATION; TO PROVIDE THE PROCEDURE FOR THE MEDIATION; TO PROVIDE
 17 THAT IF THE MEDIATION IS UNSUCCESSFUL, THE GOVERNOR MAY ORDER THAT
 18 THE DISPUTE BE DETERMINED BY BINDING ARBITRATION; TO PROVIDE THE
 19 PROCEDURE FOR THE ARBITRATION; AND FOR RELATED PURPOSES.

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

21 **SECTION 1.** For purposes of this act, the following words and
 22 phrases shall have the meanings as defined in this section unless
 23 the context clearly indicates otherwise:

24 (a) "Arbitration" means the hearing and determination
 25 of a disputed case by an arbitrator.



26 (b) "Arbitrator" means a person with power to decide a
27 dispute in an independent dispute resolution process.

28 (c) "Commissioner" means the Commissioner of Insurance.

29 (d) "Covered benefits" or "benefits" means those health
30 care services to which a covered person is entitled under the
31 terms of a health benefit plan.

32 (e) "Covered person" means a policyholder, subscriber,
33 enrollee or other individual participating in a health benefit
34 plan.

35 (f) "Essential community provider" means a provider
36 that serves predominantly low-income, medically underserved
37 individuals.

38 (g) "Facility" means an institution providing health
39 care services or a health care setting including, but not limited
40 to, hospitals and other licensed inpatient centers, ambulatory
41 surgical or treatment centers, skilled nursing centers,
42 residential treatment centers, diagnostic, laboratory and imaging
43 centers, and rehabilitation and other therapeutic health settings.

44 (h) "Governor" means the Governor of the State of
45 Mississippi.

46 (i) "Health benefit plan" means a policy, contract,
47 certificate or agreement entered into, offered or issued by a
48 health carrier to provide, deliver, arrange for, pay for or
49 reimburse any of the costs of health care services.



50 (j) "Health care provider" means a health care
51 professional or a facility.

52 (k) "Health care services" means services for the
53 diagnosis, prevention, treatment, cure or relief of a health
54 condition, illness, injury or disease.

55 (l) "Health insurance coverage" or "health benefits"
56 means a policy, contract, certificate or agreements entered into,
57 offered or issued by a health insurer to provide, deliver, arrange
58 for, pay for or reimburse any of the costs of health care
59 services.

60 (m) "Health insurer" means an insurance company,
61 nonprofit health care services plan, fraternal benefit society,
62 health maintenance organization, to the extent consistent with
63 federal law any self-insurance arrangement covered by the Employee
64 Retirement Income Security Act of 1974, as amended, that provides
65 health care benefits in this state, or any other entity providing
66 a plan of health insurance coverage or health benefits subject to
67 state insurance regulation.

68 (n) "Independent dispute resolution" means a forum,
69 either arbitration or mediation, for resolving a dispute that
70 exists outside the judicial system.

71 (o) "Large health insurer" means a health insurer who
72 holds fifty percent (50%) or more of the market share of covered
73 persons in this state.



74 (p) "Large health system" means an organization that
75 owns and operates a network of at least five (5) or more
76 healthcare facilities, one (1) of which is a hospital, and
77 includes at least one (1) group of physicians who provide
78 comprehensive care that are connected with each other and the
79 healthcare facility either through common ownership or joint
80 management, which provides health care services to a large number
81 of covered persons within a geographic area, and is a
82 participating provider.

83 (q) "Market share" means the portion of a market
84 controlled by a particular health insurer.

85 (r) "Mediation" means the act or process of intervening
86 between conflicting parties to promote settlement.

87 (s) "Mediator" means one that mediates between parties
88 in an independent dispute resolution process.

89 (t) "Network" means the group of participating
90 providers providing services to covered persons through a network
91 plan that either requires a covered person to use, or creates
92 incentives, including financial incentives, for a covered person
93 to use, participating providers, managed, owned, under contract
94 with or employed by the health insurer.

95 (u) "Participating provider" means a facility or health
96 care professional who, under a contract with the health insurer or
97 with its contractor or subcontractor, has agreed to provide health
98 care services to covered persons with an expectation of receiving



99 payments, other than coinsurance, copayments or deductibles,
100 directly or indirectly from the health insurer.

101 (v) "Person" means an individual, corporation,
102 partnership association, joint venture, joint stock company, a
103 trust, an unincorporated organization, any similar entity or any
104 combination of the foregoing.

105 **SECTION 2.** When a large health insurer and a large health
106 system enter into contract negotiations, and those negotiations
107 result in the large health system no longer being within the large
108 health insurer's network, the parties may be directed to enter
109 into an independent dispute resolution process, as provided in
110 Section 4 of this act, if the Commissioner finds that such
111 exclusion will result in the following:

112 (a) A large number of covered persons not having
113 accessible health care services within a geographic area;

114 (b) A large number of covered persons not having
115 reasonable access to covered benefits resulting in the covered
116 persons having to receive those services out of their geographic
117 area; or

118 (c) The large health system is considered an essential
119 community provider, and the exclusion of the large health system
120 will result in significant harm to Mississippi citizens.

121 **SECTION 3.** (1) Upon a finding by the Commissioner that the
122 criteria has been met to call an independent dispute resolution,



123 the Commissioner shall first order the parties to attempt to
124 resolve the dispute through mediation in the following manner:

125 (a) Within fifteen (15) calendar days of the order to
126 mediate, the parties shall select a mutually acceptable mediation
127 provider mediator who is a licensed attorney with knowledge of
128 health insurance and health insurance networks, and who certifies
129 in writing that he or she has no ongoing business relationship
130 with either party;

131 (b) The mediator shall conduct the mediation in
132 accordance with the Court Annexed Mediation Rules for Civil
133 Litigation;

134 (c) The parties shall discuss the dispute in good faith
135 and attempt to reach an amicable resolution of the dispute;

136 (d) The mediation shall be treated as a settlement
137 discussion and shall be confidential and may not be used against
138 either party in any later proceeding relating to the dispute;

139 (e) The mediator may not testify for either party in
140 any later proceeding relating to the dispute;

141 (f) Each party shall treat information received from
142 the other party pursuant to the mediation that is appropriately
143 marked as confidential as confidential information; and

144 (g) Each party shall share equally in the fees and
145 expenses of the mediator.

146 (2) If, within thirty (30) days after the beginning of the
147 mediation and any extension of such periods as mutually agreed to



148 by the parties and the Commissioner, the matter has not been
149 resolved, the mediator shall report to the Commissioner and the
150 Governor that the mediation has been unsuccessful.

151 (3) If mediation has been unsuccessful, the Governor may
152 order that the dispute shall be determined by binding arbitration
153 as provided in the following manner:

154 (a) The matter will be heard and decided by three (3)
155 arbitrators. The Governor shall select one (1) arbitrator, the
156 large health insurer shall select one (1) arbitrator, and the
157 large health system shall select one (1) arbitrator. The
158 arbitrators shall be licensed attorneys with knowledge of health
159 insurance and health insurance networks. No arbitrator chosen
160 shall have a conflict of interest regarding the dispute;

161 (b) The arbitration shall be conducted pursuant to the
162 provisions of Sections 11-15-1 through 11-15-37;

163 (c) Each party shall pay for its own attorneys' fees
164 and an equal share of the costs of arbitration;

165 (d) The arbitrators shall enter a decision within
166 thirty (30) days of the hearing;

167 (e) The decision of the arbitrators shall be binding
168 upon the parties involved; and

169 (f) The decision shall not be subject to judicial
170 review.

171 **SECTION 4.** This act shall take effect and be in force from
172 and after its passage.

