SECOND REGULAR SESSION

# HOUSE BILL NO. 1974

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MORRIS (140).

4649H.01I DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To amend chapter 376, RSMo, by adding thereto one new section relating to the Missouri any willing provider act.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 376, RSMo, is amended by adding thereto one new section, to be known as section 376.2024, to read as follows:

**376.2024. 1. This section may be referred to and cited as the "Missouri Any Willing Provider Act".**

**2. As used under this section, the following terms mean:**

**(1) "Co-payment", a type of cost-sharing whereby insured or covered persons pay a specified, predetermined amount per unit of service or percentage of health care costs with their insurer paying the remainder of the charge. Further:**

**(a) The co-payment is incurred at the time the service is rendered; and**

**(b) The co-payment may be a fixed or variable amount;**

**(2) "Gatekeeper system", a system of administration used by any health benefit plan in which a primary care provider furnishes basic patient care and coordinates diagnostic testing, indicated treatment, and specialist referrals for persons covered by the health benefit plan;**

**(3) "Health benefit plan", any entity or program that provides reimbursement, including, but not limited to, capitation, for health care services;**

**(4) "Health care insurer", any entity including, but not limited to:**

**(a) Insurance companies;**

**(b) Hospital and medical service corporations;**

EXPLANATION — Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

**(c) Health maintenance organizations;**

**(d) Preferred provider organizations;**

**(e) Physician-hospital organizations;**

**(f) Third-party administrators; and**

**(g) Prescription benefit management companies authorized to administer, offer, or provide health benefit plans.**

**(5) "Health care provider", those entities or institutions licensed by this state to provide health care, limited to the following:**

**(a) Community mental health centers or clinics;**

**(b) Hospitals;**

**(c) Licensed ambulatory surgery centers; and**

**(d) Rural health clinics;**

**(6) "Health care services", services and products provided by a health care provider within the scope of the provider's license.**

**3. A health care insurer shall not, directly or indirectly:**

**(1) Impose a monetary advantage or penalty under a health benefit plan that would affect the ability of a beneficiary to select among those health care providers participating in the health benefit plan according to the terms offered. "Monetary advantage" or "penalty" includes:**

**(a) A higher co-payment;**

**(b) A reduction in reimbursement for services; or**

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

**(2) Impose upon a beneficiary of health care services under a health benefit plan any co-payment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or co-payment level under that health benefit plan if the beneficiary is receiving services from a participating health care provider under that health benefit plan; or**

**(3) Prohibit or limit a health care provider that 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.**

**4. Nothing in this section 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.**

**5. The Missouri any willing provider act shall not be construed to:**

**(1) Require all providers or a percentage of providers in the state or a political subdivision of the state to participate in the provision of services for a health maintenance organization; or**

**(2) Take away the authority of health maintenance organizations that provide coverage of physician services to set the terms and conditions for participation by institutes, though health maintenance organizations shall apply the terms and conditions in a nondiscriminatory manner.**

**6. The Missouri any willing provider act shall apply to:**

**(1) All health insurers, regardless of whether they are providing coverage, including, but not limited to, prepaid coverage, or administering or contracting to provide provider networks; and**

**(2) All multiple-employer welfare arrangements and multiple-employer trusts.**

**Subdivisions (1) and (2) of subsection 6 of this section shall apply only to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sections 1001 to 1461.**

**7. (1) Nothing under this section shall be construed to cover or regulate health care provider networks offered by noninsurers.**

**(2) If an employer sponsoring a self-insured health benefit plan contracts directly with providers or contracts for a health care provider network, this section shall not apply.**

**(3) (a) If a health insurer subcontracts with a noninsurer whose health care network does not meet the requirements of this section, then the noninsurer may create a separate health care provider network that meets the requirements of this section.**

**(b) If the noninsurer chooses not to create the separate health care provider network, then the responsibility for compliance with this section shall be the obligation of the health insurer to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended.**

**8. Notwithstanding the provisions of subdivisions (1) to (3) of subsection 7 of this section, this section shall apply to the Missouri consolidated health care plan as defined under section 103.005, regardless of whether the benefit plan is self-funded or insured.**

**9. It is a violation of this section for any health care insurer or other person or entity to offer any health benefit plan providing health care services to residents of this state that does not conform to this section, but nothing in this section shall constitute a violation on the basis of actions taken by the health benefit plan to maintain quality, enforce utilization regulations, and control costs.**

**10. To the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, any provider adversely affected by a violation of this section may sue in district court only for injunctive relief against the health care insurer, but not for damages. The prevailing party shall be allowed reasonable attorney's fees and expenses.**

**11. To avoid impairment of existing contracts, this section shall only apply to contracts issued or renewed after August 28, 2020. Any provision in a health benefit plan that is executed, delivered, renewed, or otherwise contracts for provision of services in this state that is contrary to this section shall, to the extent of the conflict, be void.**

**12. The provisions of this section shall not apply to self-funded or other health benefit plans that are exempt from state regulation by virtue of the Employee Retirement Income Security Act of 1974, as amended.**

**13. The director of the department of commerce and insurance may promulgate all necessary rules and regulations for the administration of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2020, shall be invalid and void.**

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