

Stricken language would be deleted from and underlined language would be added to present law.  
Act 46 of the Regular Session

State of Arkansas      *As Engrossed: S1/26/15 S1/27/15 H2/4/15*  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 96

By: Senators J. Hendren, Bledsoe, Caldwell, E. Cheatham, A. Clark, J. Dismang, Files, S. Flowers, Hester, Hickey, J. Hutchinson, B. Pierce, B. Sample, D. Sanders, E. Williams  
By: Representatives Farrer, Linck, Baine, Baltz, Bell, Boyd, Bragg, Branscum, Della Rosa, L. Fite, Gillam, Hammer, K. Hendren, Jett, Johnson, Lemons, Love, Lowery, Lundstrum, G. McGill, D. Meeks, Scott, Womack

## For An Act To Be Entitled

AN ACT TO ADDRESS THE HEALTHCARE NEEDS OF INDIVIDUALS SERVED BY THE HEALTH CARE INDEPENDENCE PROGRAM TO BE KNOWN AS THE ARKANSAS HEALTH REFORM ACT OF 2015; TO CREATE THE ARKANSAS HEALTH REFORM LEGISLATIVE TASK FORCE; TO TRANSFORM THE ARKANSAS MEDICAID PROGRAM WITH INNOVATIVE AND COST-EFFECTIVE SOLUTIONS FOR THE PROVISION OF HEALTHCARE SERVICES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

## Subtitle

TO CREATE THE ARKANSAS HEALTH REFORM ACT OF 2015; AND TO DECLARE AN EMERGENCY.

WHEREAS, the federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, requires that Arkansas citizens obtain credible health insurance coverage either through employer mandates or individual action, or face threat of tax penalties; and

WHEREAS, the federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, further jeopardized the Arkansas healthcare system and its clinical providers' ability to meet healthcare needs of citizens by excising new taxes, cutting existing Medicare payments, and imposing new



penalties on clinical providers; and

WHEREAS, the federal Emergency Medical Treatment & Labor Act requires Arkansas hospitals to provide direct health care for Arkansas citizens, including those citizens eligible for the Arkansas Health Care Independence Program, regardless of ability to pay; and

WHEREAS, the Arkansas Health Care Independence Program was the State of Arkansas's initial response to the disruptive challenges of the federal healthcare legislation and regulation in an effort to safeguard Arkansas employers and citizens and healthcare systems; and

WHEREAS, the Arkansas Health Care Independence Program and the federal waiver under which the state operates the Arkansas Health Care Independence Program will terminate on December 31, 2016, which will have the effect of ending eligibility for Medicaid expansion populations in the absence of legislative action by the General Assembly; and

WHEREAS, the State of Arkansas has historically sought state-specific strategies to provide health care for low-income and other vulnerable populations while reducing state and federal obligations to entitlement spending; and

WHEREAS, the State of Arkansas continues to seek out strategies to provide health care for low-income and other vulnerable populations in a manner that will promote accountability, personal responsibility, and transparency; remove disincentives for work and social mobility; encourage and reward healthy outcomes and responsible choices; and promote efficiencies that will deliver value to the taxpayers; and

WHEREAS, the State of Arkansas is recognized as a leader in healthcare finance and delivery system innovation; and

WHEREAS, the State of Arkansas seeks to assert its responsibility for local control and to protect Arkansas consumers and businesses from federal mandates,

NOW THEREFORE,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Arkansas Health Reform Act of 2015".

SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Arkansas Health Reform Legislative Task Force – Creation – Membership – Duties.

(a) There is created the Arkansas Health Reform Legislative Task Force.

(b)(1) The task force shall consist of the following sixteen (16) members of the General Assembly:

(A) The President Pro Tempore of the Senate, or his or her designee who is a member of the Senate;

(B) Five (5) members of the Senate appointed by the President Pro Tempore of the Senate;

(C) The Senate Majority Leader, or his or her designee who is a member of the Senate;

(D) The Senate Minority Leader, or his or her designee who is a member of the Senate;

(E) The Speaker of the House of Representatives, or his or her designee who is a member of the House of Representatives;

(F) Five (5) members of House of Representatives appointed by the Speaker of the House of Representatives;

(G) The House Majority Leader, or his or her designee who is a member of the House of Representatives; and

(H) The House Minority Leader, or his or her designee who is a member of the House of Representatives.

(2) The Surgeon General shall serve as a nonvoting member of the task force.

(3) If a vacancy occurs on the task force, the vacancy shall be filled by the same process as the original appointment.

(4) Legislative members of the task force shall be paid per diem and mileage as authorized by law for attendance at meetings of interim

committees of the General Assembly.

(c)(1) The President Pro Tempore of the Senate shall designate one (1) member of the task force to call the first meeting of the task force within thirty (30) days of the effective date of this act and serve as chair of the task force at the first meeting.

(2) At the first meeting of the task force, the members of the task force shall elect from its membership a chair and other officers as needed for the transaction of its business.

(3)(A) The task force shall conduct its meetings in Pulaski County at the State Capitol or another site with teleconferencing capabilities.

(B) Meetings of the task force shall be held at least one (1) time every two (2) months but may occur more often at the call of the chair.

(4) The task force shall establish rules and procedures for conducting its business.

(5)(A) A majority of the voting members of the task force shall constitute a quorum for transacting business of the task force.

(B) An affirmative vote of a majority of a quorum present shall be required for the passage of a motion or other task force action.

(6) The Bureau of Legislative Research shall provide staff for the task force.

(d)(1) The purpose of the task force is to:

(A) Recommend an alternative healthcare coverage model and legislative framework to ensure the continued availability of healthcare services for vulnerable populations covered by the Health Care Independence Program established by the Health Care Independence Act of 2013, §§ 20-77-2401 et seq., upon program termination; and

(B) Explore and recommend options to modernize Medicaid programs serving the indigent, aged, and disabled.

(2) To achieve this purpose, the task force shall:

(A) Identify resources and funding necessary to ensure an effective and efficient transition from the Health Care Independence Program, while minimizing or eliminating any need for the General Assembly to raise additional state general revenue;

(B) Identify the populations eligible for and

participating in the Health Care Independence Program, including both:

(i) Individuals newly eligible for health coverage under the program; and

(ii) Individuals previously eligible for Medicaid before the effective date of the program, whether under a Medicaid waiver or some other eligibility criteria;

(C) Study the healthcare needs and other relevant characteristics of those populations served by the Health Care Independence Program;

(D) Recommend measures and options to preserve access to quality health care for those populations served by the Health Care Independence Program;

(E) Structure any recommended measures and options in a manner that achieves the following:

(i) Protection of Arkansas workers and employers from federal mandates and regulations by limiting the role of the federal government in defining the healthcare choices and coverage available in the Arkansas health insurance market;

(ii) Maximum flexibility for the state and limitations on federal restrictions on the state's ability to efficiently and effectively manage the Arkansas Medicaid Program;

(iii) Opportunities to limit the size of the traditional Medicaid program by serving healthier beneficiaries in the private market;

(iv) Strengthening of the employer-sponsored health insurance market;

(v) Increased employment of able-bodied recipients of taxpayer-funded healthcare services;

(vi) Healthier behaviors, increased accountability, and personal responsibility for beneficiaries;

(vii) Enlistment of enough providers so that care and services are available at least to the extent that such care and services are available under the Health Care Independence Program;

(viii) Access to health services in rural areas of the state;

(ix) Continuity of coverage for eligible individuals

as their income or life circumstances change; and

(x)(a) Continued payment innovation, delivery system reform, and market driven improvement, including without limitation the Arkansas Health Care Payment Improvement Initiative, for which current federal grant support will expire on or before December 31, 2016.

(b) The task force shall review the Arkansas Health Care Payment Improvement Initiative and recommend continuation, suspension, termination, or other actions the task force deems appropriate to the Governor.

(F) Estimate the impact of the Health Care Independence Program and of its termination on the state's economy as a whole and on the state's general revenue budget;

(G) Recommend procedures to optimize and streamline the legislative review and approval process for state plan amendments and other Medicaid rules, so as to promote efficiency, ensure agency responsiveness to changing market conditions, encourage transparency, and protect against undue influence by special interests; and

(H) If the task force determines necessary, contract with the consultants to assist the task force with the study.

(3)(A) On or before December 31, 2015, the task force shall file with the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate a written report of the task force's activities, findings, and recommendations.

(B) The task force may file with the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate a final written report on or before December 30, 2016.

(e) The task force expires December 31, 2016.

SECTION 3. TEMPORARY LANGUAGE. DO NOT CODIFY. Efforts to transform the Arkansas Medicaid Program – Federal waivers or authorities.

(a)(1) Notwithstanding any other rule, regulation, or law to the contrary, the Department of Human Services may submit and apply for any federal waivers or authority necessary to transform the Arkansas Medicaid Program into a program with maximum state flexibility in the use of the funds for innovative and cost-effective solutions for the provision of healthcare services.

(2) Under no circumstances may Medicaid eligibility be extended past December 31, 2016, for the current Medicaid expansion population under the Health Care Independence Program, commonly referred to as the "Private Option," including the current Medicaid expansion population in the eligibility category created by Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, without express legislative approval through a proper enactment of law by the General Assembly.

(3) The options pursued as part of this effort may include without limitation:

(A) A block grant or global budget cap program in which the federal government provides the state with a defined annual lump sum, calculated on the basis of past and existing Medicaid funding levels, adjusted annually for healthcare inflation; and

(B) Innovative measures and options such as capitated payment models, including without limitation managed care programs for specific high-need populations such as people with serious mental illness or elders with frailty.

(b) The solutions pursued through this effort shall aim to sustain and improve the following:

(1) Appropriate care and improved outcomes through early intervention, prevention, and wellness programs, including the reduction of rates of obesity and tobacco use;

(2) Services in the most cost-effective settings;

(3) Enhanced injury prevention;

(4) Optimized use of telemedicine;

(5) Transparency in healthcare price, quality, and utilization for consumers, taxpayers, and policymakers;

(6) Discouraged over-utilization and reduced waste, fraud, and abuse; and

(7) Other efficiencies that will deliver value to the taxpayers.

(c) The programs and populations in this effort may include without limitation:

(1) The traditional Medicaid program;

(2) Existing Medicaid waiver programs, including without limitation those waivers authorized or required by Arkansas law; and

(3) Individuals eligible for the Health Care Independence

Program authorized under § 20-77-2401 et seq.

(d) The department, in consultation with the Arkansas Health Reform Legislative Task Force, shall submit the necessary waiver requests to the Centers for Medicare and Medicaid Services no later than July 1, 2016, for a waiver term of up to five (5) years.

(e) The department may promulgate rules to administer and implement this section.

SECTION 4. TEMPORARY LANGUAGE. DO NOT CODIFY. Suspension of certain changes to the Health Care Independence Program.

(a) The Department of Human Services shall suspend, as of the effective date of this act and notwithstanding any other rules, regulations, or provisions of law to the contrary, any further inclusion or transition of Medicaid-eligible recipient populations to the Arkansas Health Insurance Marketplace, including without limitation:

(1) Children eligible for the ARKids First Program Act, § 20-77-1101 et seq., commonly known as the “ARKids B program”; and

(2) Populations under Medicaid from zero percent (0%) of the federal poverty level to seventeen percent (17%) of the federal poverty level.

(b) Notwithstanding any other rule, regulation, or law to the contrary, the department shall suspend, as of the effective date of this act, the application of any additional cost sharing requirements to go into effect on or after January 31, 2015, under the Health Care Independence Program to Medicaid beneficiaries with incomes below one hundred percent (100%) of the federal poverty level.

(c) The purpose of this section is to:

(1) Ensure a focus on future improvements; and

(2) Limit the state’s exposure to additional costs.

(d) This section shall expire at the earliest of:

(1) The effective date of the termination of the Health Care Independence Program; or

(2) December 31, 2016.

SECTION 5. TEMPORARY LANGUAGE. DO NOT CODIFY. Modification of Medicaid State Plan.

(a) The Department of Human Services shall amend the Medicaid State Plan to eliminate all eligibility categories authorized by Section 1902(a)(10)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, by December 31, 2016.

(b) The department shall submit and make effective the Medicaid State Plan amendments required by this section prior to the date on which the federal waivers actually terminate.

(c) This section does not require modification of any Medicaid eligibility categories that were in effect on or before December 31, 2013.

(d) The purpose of this section is to ensure that Medicaid eligibility does not continue past December 31, 2016, for the current Medicaid expansion population under the Health Care Independence Program, commonly referred to as the "Private Option," including the current Medicaid expansion population in the eligibility category created by Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, without express approval through a proper enactment of law by the General Assembly.

SECTION 6. DO NOT CODIFY. Expiration of Health Care Independence Program.

Eligibility, enrollment and participation in Medicaid for the current Medicaid expansion population under the Health Care Independence Program authorized under § 20-77-2401 et seq., including the current Medicaid expansion population in the eligibility category created by Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, shall cease and terminate effective January 1, 2017, in the absence of legislative action by the General Assembly.

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that without legislative action, the Health Care Independence Program will terminate before reductions in federal medical assistance percentages require the expenditure of additional state general revenues; that an urgent need exists to develop contingency plans for the termination of the Health Care Independence Program and to ensure continued healthcare access for eligible individuals; that to ensure efficient use of taxpayer dollars and continued healthcare coverage for the state's most vulnerable citizens, it is immediately necessary to transform

the Arkansas Medicaid Program; and that this act is immediately necessary to initiate reforms of the state's healthcare system. Therefore, an emergency is declared to exist, and this act is immediately necessary for the preservation of the public peace, health, and safety, and shall become effective on:

(1) The date of this act's approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

*/s/J. Hendren*

**APPROVED: 02/11/2015**