

Stricken language would be deleted from and underlined language would be added to present law.
Act 2 of the Second Extraordinary Session

State of Arkansas
90th General Assembly
Second Extraordinary Session, 2016

As Engrossed: S4/7/16
A Bill

Call Item 2
SENATE BILL 1

By: Senators J. Hendren, E. Cheatham, J. Dismang, J. English, J. Hutchinson, B. Pierce, D. Sanders,
Standridge

By: Representatives Collins, Brown, Lowery, Neal, Ratliff, *Baltz*

For An Act To Be Entitled

AN ACT TO AMEND TITLE 23 OF THE ARKANSAS CODE TO
PROVIDE HEALTH INSURANCE TO QUALIFYING INDIVIDUALS;
TO CREATE THE ARKANSAS WORKS PROGRAM; TO DECLARE AN
EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND TITLE 23 OF THE ARKANSAS CODE TO
PROVIDE HEALTH INSURANCE TO QUALIFYING
INDIVIDUALS; TO CREATE THE ARKANSAS WORKS
PROGRAM; AND TO DECLARE AN EMERGENCY.

WHEREAS, the State of Arkansas continues to seek strategies to provide health insurance for low-income and other vulnerable populations in a manner that will encourage employer-based insurance, incentivize program beneficiaries to work or seek work opportunities, promote personal responsibility, and enhance program integrity; and

WHEREAS, the General Assembly affirms its responsibility to safeguard consumers and businesses from federal mandates by asserting local control and implementation of modernized health insurance policies and programs that utilize the private market to improve access to health insurance, enhance the quality of health insurance, and reduce health insurance costs; and

WHEREAS, Arkansas recognizes the need to encourage employment among



beneficiaries of public assistance programs, offer enhanced opportunities for beneficiaries to obtain jobs and job training, and endow beneficiaries with the tools to achieve economic advancement; and

WHEREAS, the Health Care Independence Program will terminate on December 31, 2016; and

WHEREAS, the General Assembly hereby creates the Arkansas Works Act of 2016 to provide health insurance to qualifying individuals,

NOW THEREFORE,

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

SECTION 1. Arkansas Code Title 23, Chapter 61, is amended to create a new subchapter to read as follows:

Subchapter 10 – Arkansas Works Act of 2016

23-61-1001. Title.

This subchapter shall be known and may be cited as the "Arkansas Works Act of 2016".

23-61-1002. Legislative intent.

Notwithstanding any general or specific laws to the contrary, it is the intent of the General Assembly for the Arkansas Works Program to be a fiscally sustainable, cost-effective, and opportunity-driven program that:

(1) Empowers individuals to improve their economic security and achieve self-reliance;

(2) Builds on private insurance market competition and value-based insurance purchasing models;

(3) Strengthens the ability of employers to recruit and retain productive employees; and

(4) Achieves comprehensive and innovative healthcare reform that reduce state and federal obligations for entitlement spending.

23-61-1003. Definitions.

As used in this subchapter:

(1) "Cost-effective" means that the cost of covering employees who are:

(A) Program participants, either individually or together within an employer health insurance coverage, is the same or less than the cost of providing comparable coverage through individual qualified health insurance plans; or

(B) Eligible individuals who are not program participants, either individually or together within an employer health insurance coverage, is the same or less than the cost of providing comparable coverage through a program authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2016;

(2) "Cost sharing" means the portion of the cost of a covered medical service that is required to be paid by or on behalf of an eligible individual;

(3) "Eligible individual" means an individual who is in the eligibility category created by section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a;

(4) "Employer health insurance coverage" means a health insurance benefit plan offered by an employer or, as authorized by this subchapter, an employer self-funded insurance plan governed by the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended;

(5) "Health insurance benefit plan" means a policy, contract, certificate, or agreement offered or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services, but not including excepted benefits as defined under 42 U.S.C. § 300gg-91(c), as it existed on January 1, 2016;

(6) "Health insurance marketplace" means the applicable entities that were designed to help individuals, families, and businesses in Arkansas shop for and select health insurance benefit plans in a way that permits comparison of available plans based upon price, benefits, services, and quality, and refers to either:

(A) The Arkansas Health Insurance Marketplace created under the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq., or a successor entity; or

(B) The federal health insurance marketplace or federal health benefit exchange created under Pub. L. No. 111-148;

(7) "Health insurer" means an insurer authorized by the State Insurance Department to provide health insurance or a health insurance benefit plan in the State of Arkansas, including without limitation:

(A) An insurance company;

(B) A medical services plan;

(C) A hospital plan;

(D) A hospital medical service corporation;

(E) A health maintenance organization;

(F) A fraternal benefits society; or

(G) Any other entity providing health insurance or a health insurance benefit plan subject to state insurance regulation;

(8) "Individual qualified health insurance plan" means an individual health insurance benefit plan offered by a health insurer through the health insurance marketplace that covers only essential health benefits as defined by Arkansas rule and 45 C.F.R. § 156.110 and any federal insurance regulations, as they existed on January 1, 2016;

(9) "Premium" means a monthly fee that is required to be paid to maintain some or all health insurance benefits;

(10) "Program participant" means an eligible individual who:

(A) Is at least nineteen (19) years of age and no more than sixty-four (64) years of age with an income that is equal to or less than one hundred thirty-eight percent (138%) of the federal poverty level;

(B) Is authenticated to be a United States citizen or documented qualified alien according to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193;

(C) Is not eligible for Medicare or advanced premium tax credits through the health insurance marketplace; and

(D) Is not determined to be more effectively covered through the traditional Arkansas Medicaid Program, including without limitation:

(i) An individual who is medically frail; or

(ii) An individual who has exceptional medical needs for whom coverage offered through the health insurance marketplace is determined to be impractical, overly complex, or would undermine continuity or effectiveness of care; and

(11)(A) "Small group plan" means a health insurance benefit plan

for a small employer that employed an average of at least two (2) but no more than fifty (50) employees during the preceding calendar year.

(B) "Small group plan" does not include a grandfathered health insurance plan as defined in 45 C.F.R. § 147.140(a)(1)(i), as it existed on January 1, 2016.

23-61-1004. Administration of Arkansas Works Program.

(a)(1) The Department of Human Services, in coordination with the State Insurance Department and other necessary state agencies, shall:

(A) Provide health insurance or medical assistance under this subchapter to eligible individuals;

(B) Create and administer the Arkansas Works Program;

(C) Submit and apply for any federal waivers, Medicaid state plan amendments, or other authority necessary to implement the Arkansas Works Program in a manner consistent with this subchapter;

(D) Offer incentive benefits to promote personal responsibility; and

(E) Seek a waiver to eliminate retroactive eligibility for an eligible individual under this subchapter.

(2) The Governor shall request the assistance and involvement of other state agencies that he or she deems necessary for the implementation of the Arkansas Works Program.

(b) Health insurance benefits under this subchapter shall be provided through:

(1) Individual premium assistance for enrollment of Arkansas Works Program participants in individual qualified health insurance plans;

(2) Employer-sponsored premium assistance for certain eligible individuals who enroll in employer health insurance coverage; and

(3) Supplemental benefits to incentivize personal responsibility.

(c) The Department of Human Services, the State Insurance Department, the Department of Workforce Services, and other necessary state agencies shall promulgate and administer rules to implement the Arkansas Works Program.

(d)(1) Within thirty (30) days of a reduction in federal medical assistance percentages as described in this section, the Department of Human

Services shall present to the Centers of Medicare and Medicaid Services a plan to terminate the Arkansas Works Program and transition eligible individuals out of the Arkansas Works Program within one hundred twenty (120) days of a reduction in any of the following federal medical assistance percentages:

- (A) Ninety-five percent (95%) in the year 2017;
- (B) Ninety-four percent (94%) in the year 2018;
- (C) Ninety-three percent (93%) in the year 2019; and
- (D) Ninety percent (90%) in the year 2020 or any year

after the year 2020.

(2) An eligible individual shall maintain coverage during the process to implement the plan to terminate the Arkansas Works Program and the transition of eligible individuals out of the Arkansas Works Program.

(e) State obligations for uncompensated care shall be tracked and reported to identify potential incremental future decreases.

(f) The Department of Human Services shall track the hospital assessment fee imposed by § 20-77-1902 and report to the General Assembly subsequent decreases based upon reduced uncompensated care.

(g)(1) On a quarterly basis, the Department of Human Services, the State Insurance Department, the Department of Workforce Services, and other necessary state agencies shall report to the Legislative Council, or to the Joint Budget Committee if the General Assembly is in session, available information regarding the overall Arkansas Works Program, including without limitation:

- (A) Eligibility and enrollment;
- (B) Utilization;
- (C) Premium and cost sharing reduction costs;
- (D) Health insurer participation and competition;
- (E) Avoided uncompensated care; and
- (F) Participation in job training and job search programs.

(2)(A) A health insurer who is providing an individual qualified health insurance plan or employer health insurance coverage for an eligible individual shall submit claims and enrollment data to the State Insurance Department to facilitate reporting required under this subchapter or other state or federally required reporting or evaluation activities.

- (B) A health insurer may utilize existing mechanisms with

supplemental enrollment information to fulfill requirements under this subchapter, including without limitation the state's all-payer claims database established under the Arkansas Healthcare Transparency Initiative Act of 2015, § 23-61-901 et seq., for claims and enrollment data submission.

(h) The Governor shall request a block grant under relevant federal law and regulations for the funding of the Arkansas Medicaid Program as soon as practical if the federal law or regulations change to allow the approval of a block grant for this purpose.

23-61-1005. Requirements for eligible individuals.

(a)(1) To promote health, wellness, and healthcare education about appropriate healthcare-seeking behaviors, an eligible individual shall receive a wellness visit from a primary care provider within:

(A) The first year of enrollment in health insurance coverage for an eligible individual who is not a program participant and is enrolled in employer health insurance coverage; and

(B) The first year of, and thereafter annually:

(i) Enrollment in an individual qualified health insurance plan or employer health insurance coverage for a program participant; or

(ii) Notice of eligibility determination for an eligible individual who is not a program participant and is not enrolled in employer health insurance coverage.

(2) Failure to meet the requirement in subdivision (a)(1) of this section shall result in the loss of incentive benefits for a period of up to one (1) year, as incentive benefits are defined by the Department of Human Services in consultation with the State Insurance Department.

(b)(1) An eligible individual who has up to fifty percent (50%) of the federal poverty level at the time of an eligibility determination shall be referred to the Department of Workforce Services to:

(A) Incentivize and increase work and work training opportunities; and

(B) Participate in job training and job search programs.

(2) The Department of Human Services, or its designee, shall provide work training opportunities, outreach, and education about work and work training opportunities through the Department of Workforce Services to

all eligible individuals regardless of income at the time of an eligibility determination.

(c) An eligible individual shall receive notice that:

(1) The Arkansas Works Program is not a perpetual federal or state right or a guaranteed entitlement;

(2) The Arkansas Works Program is subject to cancellation upon appropriate notice; and

(3) The Arkansas Works Program is not an entitlement program.

23-61-1006. Requirements for program participants.

(a) A program participant who is twenty-one (21) years of age or older shall enroll in employer health insurance coverage if the employer health insurance coverage meets the standards in § 23-61-1008(a).

(b)(1) A program participant who has income of at least one hundred percent (100%) of the federal poverty level shall pay a premium of no more than two percent (2%) of the income to a health insurer.

(2) Failure by the program participant to meet the requirement in subdivision (b)(1) of this section may result in:

(A) The accrual of a debt to the State of Arkansas; and

(B)(i) The loss of incentive benefits in the event of failure to pay premiums for three (3) consecutive months, as incentive benefits are defined by the Department of Human Services in consultation with the State Insurance Department.

(ii) However, incentive benefits shall be restored if a program participant pays all premiums owed.

23-61-1007. Insurance standards for individual qualified health insurance plans.

(a) Insurance coverage for a program participant enrolled in an individual qualified health insurance plan shall be obtained through silver-level metallic plans as provided in 42 U.S.C. § 18022(d) and § 18071, as they existed on January 1, 2016, that restrict out-of-pocket costs to amounts that do not exceed applicable out-of-pocket cost limitations.

(b) The Department of Human Services shall pay premiums and supplemental cost sharing reductions directly to a health insurer for a program participant enrolled in an individual qualified health insurance

plan.

(c) All participating health insurers offering individual qualified health insurance plans in the health insurance marketplace shall:

(1)(A) Offer individual qualified health insurance plans conforming to the requirements of this section and applicable insurance rules.

(B) The individual qualified health insurance plans shall be approved by the State Insurance Department; and

(2) Maintain a medical-loss ratio of at least eighty percent (80%) for an individual qualified health insurance plan as required under 45 C.F.R. § 158.210(c), as it existed on January 1, 2016, or rebate the difference to the Department of Human Services for program participants.

(d) The State of Arkansas shall assure that at least two (2) individual qualified health insurance plans are offered in each county in the state.

(e) A health insurer offering individual qualified health insurance plans for program participants shall participate in the Arkansas Patient-Centered Medical Home Program, including:

(1) Attributing enrollees in individual qualified health insurance plans, including program participants, to a primary care physician;

(2) Providing financial support to patient-centered medical homes to meet practice transformation milestones; and

(3) Supplying clinical performance data to patient-centered medical homes, including data to enable patient-centered medical homes to assess the relative cost and quality of healthcare providers to whom patient-centered medical homes refer patients.

(f) On or before January 1, 2017, the State Insurance Department and the Department of Human Services may implement through certification requirements or rule, or both, the applicable provisions of this section.

23-61-1008. Insurance standards for employer health insurance coverage.

(a) A program participant shall enroll in employer health insurance coverage if:

(1) The employer of the program participant elects to participate;

(2) Except as authorized under subsection (c) of this section, the employer health insurance coverage is a small group plan that provides essential health benefits as defined by 45 C.F.R. § 156.110, as it existed on January 1, 2016, and has no less than a seventy percent (70%) actuarial value;

(3) The employer health insurance coverage is deemed cost-effective; and

(4) The employer and health insurer providing the employer health insurance coverage are willing to meet the reporting obligations under § 23-61-1004(g)(2).

(b) The Department of Human Services may pay premiums and supplemental cost sharing reductions for employer health insurance coverage meeting the standards in subsection (a) of this section.

(c) The Department of Human Services, in coordination with the State Insurance Department and the Arkansas Health Insurance Marketplace, shall explore and seek any necessary waivers or other authority necessary to:

(1) Offer incentives for employers of program participants who enroll in employer health insurance coverage; and

(2) Expand opportunities for eligible individuals to obtain employer health insurance coverage providing coverage through:

(A) The fully insured large group insurance market; or

(B) Employers with self-funded insurance plans.

(d) The Department of Human Services, in coordination with the State Insurance Department and the Arkansas Health Insurance Marketplace, shall develop methods to ensure the continuation of health insurance coverage for a program participant with employer health insurance coverage if the program participant:

(1) Loses employment with an employer who is offering the employer health insurance coverage; or

(2) Switches employment to a different employer who does not offer employer health insurance coverage that meets the standards in subsection (a) of this section.

(e) This subchapter does not:

(1) Modify the authority of the Department of Human Services to enroll eligible individuals who are not program participants in employer health insurance coverage where cost-effective;

(2) Preclude the state from exploring the expanded utility and functionality of the state-administered small business health options program created by the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq.; or

(3) Exempt any plans offered in the small group insurance market, large group insurance market, or individual insurance market from complying with state and federal requirements regarding medical loss ratio.

(e) On or before January 1, 2017, the State Insurance Department, the Department of Human Services, and other necessary state agencies may implement the applicable provisions of this section through certification requirements or rule, or both.

23-61-1009. Sunset.

This subchapter shall expire on December 31, 2021.

SECTION 2. Arkansas Code § 20-77-2408 is amended to read as follows:
20-77-2408. Effective Date.

This subchapter shall be in effect until ~~June 30, 2017, unless amended or extended by the General Assembly~~ December 31, 2016, upon which date the Health Care Independence Program established by the Health Care Independence Act of 2013, § 20-77-2401 et seq., shall terminate, provided however that the Department of Human Services shall cease collection of contributions to independence accounts no later than July 1, 2016.

SECTION 3. Arkansas Code § 23-61-805(b), concerning an offset of an assessment fee within the Arkansas Health Insurance Marketplace, is repealed.

~~(b)(1) An assessment may be offset in an amount equal to the amount of the assessment paid to the Arkansas Health Insurance Marketplace against the premium tax payable for the year in which the assessment is levied.~~

~~(2) An offset shall not be allowed for a penalty assessed under subsection (c) of this section.~~

SECTION 4. Arkansas Code § 26-57-604(a)(1)(B)(ii), concerning the allowance of a credit to be applied against the insurance premium tax, is amended to read as follows:

(ii) However, the credit shall not be applied as an

offset against the premium tax on collections resulting from an eligible individual insured under the Health Care Independence Act of 2013, § 20-77-2401 et seq., ~~or the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq.~~ the Arkansas Works Act of 2016, § 23-61-1001 et seq., the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq., or individual qualified health insurance plans, including without limitation stand-alone dental plans, issued through the health insurance marketplace as defined by § 23-61-1003.

SECTION 5. Arkansas Code § 26-57-610(b)(2), concerning the disposition of the insurance premium tax, is amended to read as follows:

(2) The taxes based on premiums collected under the Health Care Independence Act of 2013, § 20-77-2401 et seq., ~~and the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq.~~ the Arkansas Works Act of 2016, § 23-61-1001 et seq., the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq., or individual qualified health insurance plans, including without limitation stand-alone dental plans, issued through the health insurance marketplace as defined by § 23-61-1003 shall be:

(A) At the time of deposit, separately certified by the commissioner to the Treasurer of State for classification and distribution under this section; and

(B)(i) ~~Transferred~~ On or before December 31, 2016, transferred to the Health Care Independence Program Trust Fund and used as provided by § 19-5-1141; and

(ii) On and after January 1, 2017, transferred to the Arkansas Works Program Trust Fund and used as required by the Arkansas Works Program Trust Fund;

SECTION 6. Arkansas Code Title 19, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

19-5-1146. Arkansas Works Program Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Arkansas Works Program Trust Fund".

(b) The fund shall consist of:

(1) Moneys saved and accrued under the Arkansas Works Act of

2016, § 23-61-1001 et seq., including without limitation:

(A) Increases in premium tax collections; and

(B) Other spending reductions resulting from the Arkansas Works Act of 2016, § 23-61-1001 et seq.; and

(2) Other revenues and funds authorized by law.

(c) The Department of Human Services shall use the fund to pay for future obligations under the Arkansas Works Program created by the Arkansas Works Act of 2016, § 23-61-1001 et seq.

SECTION 7. Arkansas Code § 19-5-1141, concerning the Health Care Independence Program Trust Fund, is amended to add an additional subsection to read as follows:

(d)(1) The Health Care Independence Program Trust Fund expires on January 1, 2017.

(2) Any balance in the Health Care Independence Program Trust Fund on January 1, 2017, shall be transferred by the Chief Fiscal Officer of the State on his or her books and the books of the Treasurer of State and the Auditor of the State to the Arkansas Works Program Trust Fund.

SECTION 8. EFFECTIVE DATE.

Section 3 and Section 4 of this act are effective on and after January 1, 2017.

SECTION 9. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the federal laws established by Pub. L. No. 111-148, have caused disruptive challenges to the State of Arkansas in the health insurance industry and the medical assistance industry; that the Arkansas Works Program utilizes the private insurance market to improve access to health insurance, enhances quality of health insurance, and reduces health insurance and medical assistance costs; that the Arkansas Works Program requires private insurance companies and employers to create, present, implement, and market a new type of health insurance policy; and that this act is immediately necessary because the private insurance companies and employers need certainty about the law creating the Arkansas Works Program before fully investing time, funds, personnel, and other resources into the development of new health insurance policies.

Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its 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: 4/8/2016