

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1181

By: Representative Copeland

For An Act To Be Entitled

AN ACT TO CREATE THE HEALTH CARE INDEPENDENCE ACT
EXPANSION REPEAL AND PHASE-OUT ACT OF 2015; TO REPEAL
THE HEALTH CARE INDEPENDENCE ACT OF 2013; TO PROVIDE
A TEMPORARY PHASE-OUT PERIOD FOR EXISTING HEALTH CARE
INDEPENDENCE ACT ENROLLEES; TO DECLARE AN EMERGENCY;
AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE HEALTH CARE INDEPENDENCE
ACT EXPANSION REPEAL AND PHASE-OUT ACT OF
2015; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. There is created the Health Care
Independence Expansion Repeal and Phase-Out Act of 2015.

SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. The Department of
Human Services shall amend the Arkansas Medicaid Program to eliminate all
eligibility categories created under the Health Care Independence Act of
2013, § 20-77-2401 et seq., or authorized under Section
1902(a)(10)(A)(i)(VIII) of the Social Security Act, effective on and after
July 1, 2015.

SECTION 3. TEMPORARY LANGUAGE. DO NOT CODIFY. Phase-out period.
(a)(1) The Department of Human Services may negotiate a temporary
waiver or waiver amendment with the federal Centers for Medicare and Medicaid



Services in order to provide temporary coverage for all eligibility categories created under the Health Care Independence Act of 2013, § 20-77-2401 et seq., or authorized under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, as of June 30, 2015.

(2) A person shall not be granted eligibility or be enrolled in the temporary coverage created under this section unless he or she is enrolled in an eligibility category created under the Health Care Independence Act of 2013, § 20-77-2401 et seq., or authorized under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, as of June 30, 2015.

(3) A person granted eligibility for the temporary coverage created under this section shall continue to meet the eligibility requirements of the Health Care Independence Act of 2013, § 20-77-2401 et seq., or authorized under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, as it existed on June 30, 2015.

(4) A person who no longer meets eligibility requirements of the Health Care Independence Act of 2013, § 20-77-2401 et seq., or authorized under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, as it existed on June 30, 2015, shall be disenrolled immediately from the temporary coverage created under this section.

(5) A person who is disenrolled from the temporary coverage created under this section shall be ineligible to reenroll in the temporary coverage.

(b)(1) Ninety (90) days after the effective date of this act, the department shall notify all persons enrolled in the Health Care Independence Program as of the effective date of this act that:

(A) The program shall end on December 31, 2015; and

(B) The coverage provided by the program shall expire on December 31, 2015.

(2) The department shall notify a person enrolled in the Health Care Independence Program on or after the effective date of this act that:

(A) The program shall end on December 31, 2015; and

(B) The coverage provided by the program shall expire on December 31, 2015.

(c) Federal funds shall cover one hundred percent (100%) of the cost of the temporary coverage created under this section.

(d) State funds shall not be used to pay costs associated with the Health Care Independence Act of 2013, § 20-77-2401 et seq., or authorized under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, or the temporary coverage created under this section.

(e) The temporary coverage created under this section shall be implemented only if federal approval for the temporary coverage is received by the state and approval is consistent with this section.

(f) The temporary coverage created under this section shall end no later than December 31, 2015.

SECTION 4. Arkansas Code Title 20, Chapter 77, Subchapter 24, is repealed.

~~Subchapter 24 — Health Care Independence Act of 2013~~

~~20-77-2401. Title.~~

~~This act shall be known and may be cited as the “Health Care Independence Act of 2013”.~~

~~20-77-2402. Legislative intent.~~

~~(a) Notwithstanding any general or specific laws to the contrary, the Department of Human Services is to explore design options that reform the Medicaid program utilizing this subchapter so that it is a fiscally sustainable, cost-effective, personally responsible, and opportunity-driven program utilizing competitive and value-based purchasing to:~~

- ~~(1) Maximize the available service options;~~
- ~~(2) Promote accountability, personal responsibility, and transparency;~~
- ~~(3) Encourage and reward healthy outcomes and responsible choices; and~~
- ~~(4) Promote efficiencies that will deliver value to the taxpayers.~~

~~(b)(1) It is the intent of the General Assembly that the State of Arkansas through the Department of Human Services utilize a private insurance option for “low-risk” adults.~~

~~(2) This subchapter shall ensure that:~~

~~(A) Private healthcare options increase and government-~~

~~operated programs such as Medicaid decrease; and~~

~~(B) Decisions about the design, operation, and implementation of this option, including cost, remain within the purview of the State of Arkansas and not with Washington, D.C.~~

~~20-77-2403. Purpose.~~

~~(a) The purpose of this subchapter is to:~~

- ~~(1) Improve access to quality health care;~~
- ~~(2) Attract insurance carriers and enhance competition in the Arkansas insurance marketplace;~~
- ~~(3) Promote individually-owned health insurance;~~
- ~~(4) Strengthen personal responsibility through cost sharing;~~
- ~~(5) Improve continuity of coverage;~~
- ~~(6) Reduce the size of the state-administered Medicaid program;~~
- ~~(7) Encourage appropriate care, including early intervention, prevention, and wellness;~~
- ~~(8) Increase quality and delivery system efficiencies;~~
- ~~(9) Facilitate Arkansas's continued payment innovation, delivery system reform, and market-driven improvements;~~
- ~~(10) Discourage over-utilization; and~~
- ~~(11) Reduce waste, fraud, and abuse.~~

~~(b) The State of Arkansas shall take an integrated and market-based approach to covering low-income Arkansans through offering new coverage opportunities, stimulating market competition, and offering alternatives to the existing Medicaid program.~~

~~20-77-2404. Definitions.~~

~~As used in this subchapter:~~

- ~~(1) "Carrier" means a private entity certified by the State Insurance Department and offering plans through the Arkansas Health Insurance Marketplace;~~
- ~~(2) "Cost sharing" means the portion of the cost of a covered medical service that must be paid by or on behalf of eligible individuals, consisting of copayments or coinsurance but not deductibles;~~
- ~~(3) "Eligible individuals" means individuals who:~~
 - ~~(A) Are adults between nineteen (19) years of age and~~

~~sixty five (65) years of age with an income that is equal to or less than one hundred thirty eight percent (138%) of the federal poverty level, including without limitation individuals who would not be eligible for Medicaid under laws and rules in effect on January 1, 2013;~~

~~(B) Have been authenticated to be United States citizens or documented qualified aliens according to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, as existing on January 1, 2013; and~~

~~(C) Are not determined to be more effectively covered through the standard Medicaid program, such as an individual who is medically frail or other individuals with exceptional medical needs for whom coverage through the Arkansas Health Insurance Marketplace is determined to be impractical or overly complex, or would undermine continuity or effectiveness of care;~~

~~(4) "Healthcare coverage" means healthcare benefits as defined by certification or rules, or both, promulgated by the State Insurance Department for the Qualified Health Plans or available on the marketplace;~~

~~(5) "Arkansas Health Insurance Marketplace" means the vehicle created to help individuals, families, and small businesses in Arkansas shop for and select health insurance coverage in a way that permits comparison of available Qualified Health Plans based upon price, benefits, services, and quality, regardless of the governance structure of the marketplace;~~

~~(6) "Independence accounts" means individual financing structures that operate similar to a health savings account or a medical savings account;~~

~~(7) "Premium" means a charge that must be paid as a condition of enrolling in healthcare coverage;~~

~~(8) "Program" means the Health Care Independence Program established by this subchapter; and~~

~~(9) "Qualified Health Plan" means a State Insurance Department-certified individual health insurance plan offered by a carrier through the Arkansas Health Insurance Marketplace.~~

~~20-77-2405. Administration of Health Care Independence Program.~~

~~(a) The Department of Human Services shall:~~

~~(1) Create and administer the Health Care Independence Program;~~

and

~~(2)(A) — Submit and apply for any:~~

~~(i) — Federal waivers necessary to implement the program in a manner consistent with this subchapter, including without limitation approval for a comprehensive waiver under section 1115 of the Social Security Act, 42 U.S.C. § 1315; and~~

~~(ii)(a) — Medicaid State Plan Amendments necessary to implement the program in a manner consistent with this subchapter.~~

~~(b) — The Department of Human Services shall submit only those Medicaid State Plan Amendments under subdivision (a)(2)(A)(ii)(a) of this section that are optional and therefore may be revoked by the state at its discretion.~~

~~(B)(i) — As part of its actions under subdivision (a)(2)(A) of this section, the Department of Human Services shall confirm that employers shall not be subject to the penalties, including without limitation an assessable payment, under section 1513 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as existing on January 1, 2013, concerning shared responsibility, for employees who are eligible individuals if the employees:~~

~~(a) — Are enrolled in the program; and~~

~~(b) — Enroll in a Qualified Health Plan through the Arkansas Health Insurance Marketplace.~~

~~(ii) — If the Department of Human Services is unable to confirm provisions under subdivision (a)(2)(B)(i) of this section, the program shall not be implemented.~~

~~(b)(1) — Implementation of the program is conditioned upon the receipt of necessary federal approvals.~~

~~(2) — If the Department of Human Services does not receive the necessary federal approvals, the program shall not be implemented.~~

~~(c) — The program shall include premium assistance for eligible individuals to enable their enrollment in a Qualified Health Plan through the Arkansas Health Insurance Marketplace.~~

~~(d)(1) — The Department of Human Services is specifically authorized to pay premiums and supplemental cost-sharing subsidies directly to the Qualified Health Plan for enrolled eligible individuals.~~

~~(2) — The intent of the payments under subdivision (d)(1) of this~~

~~section is to increase participation and competition in the Health Insurance Marketplace, intensify price pressures, and reduce costs for both publicly and privately funded health care.~~

~~(e) To the extent allowable by law:~~

~~(1) The Department of Human Services shall pursue strategies that promote insurance coverage of children in their parents' or caregivers' plan, including children eligible for the ARKids First Program Act, § 20-77-1101 et seq., commonly known as the "ARKids B program";~~

~~(2) Upon the receipt of necessary federal approval, during calendar year 2015 the Department of Human Services shall include and transition to the Arkansas Health Insurance Marketplace:~~

~~(A) Children eligible for the ARKids First Program Act, § 20-77-1101 et seq.; and~~

~~(B) Populations under Medicaid from zero percent (0%) of the federal poverty level to seventeen percent (17%) of the federal poverty level; and~~

~~(3) The Department of Human Services shall develop and implement a strategy to inform Medicaid recipient populations whose needs would be reduced or better served through participation in the Arkansas Health Insurance Marketplace.~~

~~(f) The program shall include allowable cost sharing for eligible individuals that is comparable to that for individuals in the same income range in the private insurance market and is structured to enhance eligible individuals' investment in their healthcare purchasing decisions.~~

~~(g)(1) The State Insurance Department and the Department of Human Services shall administer and promulgate rules to administer the program authorized under this subchapter.~~

~~(2) No less than thirty (30) days before the State Insurance Department and the Department of Human Services begin promulgating a rule under this subchapter, the proposed rule shall be presented to the Legislative Council.~~

~~(h) The program authorized under this subchapter shall terminate within one hundred twenty (120) days after a reduction in any of the following federal medical assistance percentages:~~

~~(1) One hundred percent (100%) in 2014, 2015, or 2016;~~

~~(2) Ninety five percent (95%) in 2017;~~

~~(3) Ninety four percent (94%) in 2018;~~

~~(4) Ninety three percent (93%) in 2019; and~~

~~(5) Ninety percent (90%) in 2020 or any year after 2020.~~

~~(i) An eligible individual enrolled in the program shall affirmatively acknowledge that:~~

~~(1) The program is not a perpetual federal or state right or a guaranteed entitlement;~~

~~(2) The program is subject to cancellation upon appropriate notice; and~~

~~(3) The program is not an entitlement program.~~

~~(j)(1) The Department of Human Services shall develop a model and seek from the Centers for Medicare and Medicaid Services all necessary waivers and approvals to allow non-aged, non-disabled program-eligible participants to enroll in a program that will create and utilize independence accounts that operate similarly to a health savings account or medical savings account during the calendar year 2015.~~

~~(2) The independence accounts shall:~~

~~(A) Allow a participant to purchase cost-effective high-deductible health insurance; and~~

~~(B) Promote independence and self-sufficiency.~~

~~(3) The state shall implement cost sharing and copays and, as a condition of participation, earnings shall exceed fifty percent (50%) of the federal poverty level.~~

~~(4) Participants may receive rewards based on healthy living and self-sufficiency.~~

~~(5)(A) At the end of each fiscal year, if there are funds remaining in the account, a majority of the state's contribution will remain in the participant's control as a positive incentive for the responsible use of the healthcare system and personal responsibility of health maintenance.~~

~~(B) Uses of the funds may include without limitation rolling the funds into a private sector health savings account for the participant according to rules promulgated by the Department of Human Services.~~

~~(6) The Department of Human Services shall promulgate rules to implement this subsection.~~

~~(k)(1) State obligations for uncompensated care shall be projected,~~

~~tracked, and reported to identify potential incremental future decreases.~~

~~(2) The Department of Human Services shall recommend appropriate adjustments to the General Assembly.~~

~~(3) Adjustments shall be made by the General Assembly as appropriate.~~

~~(1) The Department of Human Services shall track the hospital assessment under § 20-77-1902 and report to the General Assembly subsequent decreases based upon reduced uncompensated care.~~

~~(m) On a quarterly basis, the Department of Human Services and the State Insurance Department shall report to the Legislative Council, or to the Joint Budget Committee if the General Assembly is in session, available information regarding:~~

~~(1) Program enrollment;~~

~~(2) Patient experience;~~

~~(3) Economic impact including enrollment distribution;~~

~~(4) Carrier competition; and~~

~~(5) Avoided uncompensated care.~~

~~20-77-2406. Standards of healthcare coverage through Arkansas Health Insurance Marketplace.~~

~~(a) Healthcare coverage shall be achieved through a qualified health plan at the silver level as provided in 42 U.S.C. §§ 18022 and 18071, as existing on January 1, 2013, that restricts cost sharing to amounts that do not exceed Medicaid cost sharing limitations.~~

~~(b)(1) All participating carriers in the Arkansas Health Insurance Marketplace shall offer healthcare coverage conforming to the requirements of this subchapter.~~

~~(2) A participating carrier in the Arkansas Health Insurance Marketplace shall maintain a medical loss ratio of at least eighty percent (80%) for an individual and small group market policy and at least eighty-five percent (85%) for a large group market policy as required under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as existing on January 1, 2013.~~

~~(c) To assure price competitive choice among healthcare coverage options, the State Insurance Department shall assure that at least two (2) qualified health plans are offered in each county in the state.~~

~~(d) Health insurance carriers offering healthcare coverage for program eligible individuals shall participate in the Health Care Payment Improvement Initiative including:~~

- ~~(1) Assignment of primary care clinician;~~
- ~~(2) Support for patient centered medical home; and~~
- ~~(3) Access of clinical performance data for providers.~~

~~(e) On or before July 1, 2013, the State Insurance Department shall implement through certification requirements or rules, or both, the applicable provisions of this subchapter.~~

~~20-77-2407. Enrollment.~~

~~(a) The General Assembly shall assure that a mechanism within the Arkansas Health Insurance Marketplace is established and operated to facilitate enrollment of eligible individuals.~~

~~(b) The enrollment mechanism shall include an automatic verification system to guard against waste, fraud, and abuse in the program.~~

~~20-77-2408. Effective date.~~

~~This subchapter shall be in effect until June 30, 2017, unless amended or extended by the General Assembly.~~

SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Health Care Independence Program should be terminated as soon as reasonably possible; that defunding the program would have the effect of terminating the program on July 1, 2015, but would not allow a phase-out period; that this act creates both a speedy repeal and a phase-out period; that this act is immediately necessary to assist the Department of Human Services to more efficiently conduct its duties under this act. 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.