

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

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1103

By: Representative Sullivan

## For An Act To Be Entitled

AN ACT TO REPEAL THE ARKANSAS HEALTHCARE TRANSPARENCY INITIATIVE ACT OF 2015; TO REPEAL THE ARKANSAS HEALTHCARE TRANSPARENCY INITIATIVE FUND; AND FOR OTHER PURPOSES.

## Subtitle

TO REPEAL THE ARKANSAS HEALTHCARE TRANSPARENCY INITIATIVE ACT OF 2015; AND TO REPEAL THE ARKANSAS HEALTHCARE TRANSPARENCY INITIATIVE FUND.

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

SECTION 1. Arkansas Code § 19-5-1145 is repealed.

~~19-5-1145. Arkansas Healthcare Transparency Initiative 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 Healthcare Transparency Initiative Fund".~~

~~(b)(1) The fund shall be an interest-bearing account and may be invested in the manner permitted by law, with the interest income a proper credit to the fund and which shall not revert to general revenue, unless otherwise designated in law.~~

~~(2) The fund shall be overseen by the State Insurance Department and shall be used to pay all proper costs incurred in implementing the provisions of the Arkansas Healthcare Transparency Initiative Act of 2015, § 23-61-901 et seq.~~

~~(c) The following moneys shall be paid into the fund:~~



~~(1) Penalties imposed on submitting entities pursuant to the Arkansas Healthcare Transparency Initiative Act of 2015, § 23-61-901 et seq., and rules promulgated under the Arkansas Healthcare Transparency Initiative Act of 2015, § 23-61-901 et seq.;~~

~~(2) Appropriations from the General Assembly; and~~

~~(3) All other subscription fees or payments made by third parties to the State Insurance Department for data access.~~

~~(d) Activities of the Arkansas Healthcare Transparency Initiative Board and the availability of data as authorized in § 23-61-905(c)(1) are contingent upon available funding.~~

SECTION 2. Arkansas Code Title 23, Chapter 61, Subchapter 9, is repealed.

~~Subchapter 9—Arkansas Healthcare Transparency Initiative Act of 2015~~

~~23-61-901.—Title.~~

~~This subchapter shall be known and may be cited as the “Arkansas Healthcare Transparency Initiative Act of 2015”.~~

~~23-61-902.—Legislative intent and purpose.~~

~~(a) It is the intent of the General Assembly to create and maintain an informative source of healthcare information to support consumers, researchers, and policymakers in healthcare decisions within the state, including decisions by the State Insurance Department to regulate the business of insurance in this state.~~

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

~~(1) Empower Arkansans to drive, deliver, and seek out value in the healthcare system;~~

~~(2) Create the Arkansas Healthcare Transparency Initiative;~~

~~(3) Establish governance of the Arkansas Healthcare Transparency Initiative;~~

~~(4) Provide authority to collect healthcare information from insurance carriers and other entities; and~~

~~(5) Establish appropriate methods for collecting, maintaining, and reporting healthcare information, including privacy and security safeguards.~~

~~23-61-903. Definitions.~~~~As used in this subchapter:~~

~~(1) "Arkansas Healthcare Transparency Initiative" means an initiative to create a database, including ongoing all-payer claims database projects funded through the State Insurance Department, that receives and stores data from a submitting entity relating to medical, dental, and pharmaceutical and other insurance claims information, unique identifiers, and geographic and demographic information for covered individuals as permitted in this subchapter, and provider files, for the purposes of this subchapter;~~

~~(2) "Arkansas resident" means an individual for whom the submitting entity has identified an Arkansas address as the individual's primary place of residence;~~

~~(3) "Claims data" means information included in an institutional, professional, or pharmacy claim or equivalent information transaction for a covered individual, including the amount paid to a provider of healthcare services plus any amount owed by the covered individual;~~

~~(4) "Covered individual" means a natural person who is an Arkansas resident and is eligible to receive medical, dental, or pharmaceutical benefits under any policy, contract, certificate, evidence of coverage, rider, binder, or endorsement that provides for or describes coverage;~~

~~(5)(A) "Direct personal identifiers" means information relating to a covered individual that contains primary or obvious identifiers, such as the individual's name, street address, e-mail address, telephone number, and Social Security number.~~

~~(B) "Direct personal identifiers" does not include geographic or demographic information that would not allow the identification of a covered individual;~~

~~(6) "Enrollment data" means demographic information and other identifying information relating to covered individuals, including direct personal identifiers;~~

~~(7) "Protected health information" means health information as protected by the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as it existed on January 1, 2015;~~

~~(8) "Provider" means an individual or entity licensed by the state to provide healthcare services;~~

~~(9)(A) "Submitting entity" means:~~

~~(i) An entity that provides health or dental insurance or a health or dental benefit plan in the state, including without limitation an insurance company, medical services plan, managed care organization, hospital plan, hospital medical service corporation, health maintenance organization, or fraternal benefit society, provided that the entity has covered individuals and the entity had at least two thousand (2,000) covered individuals in the previous calendar year;~~

~~(ii) A health benefit plan offered or administered by or on behalf of the state or an agency or instrumentality of the state, including without limitation benefits administered by a managed care organization whether or not the managed care organization had two thousand (2,000) covered individuals in the previous year;~~

~~(iii) A health benefit plan offered or administered by or on behalf of the federal government with the agreement of the federal government;~~

~~(iv) The Workers' Compensation Commission;~~

~~(v) Any other entity providing a plan of health insurance or health benefits subject to state insurance regulation, a third-party administrator, or a pharmacy benefits manager, provided that the entity has covered individuals and the entity had at least two thousand (2,000) covered individuals in the previous calendar year;~~

~~(vi) A health benefit plan subject to the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, and that is fully insured;~~

~~(vii) A risk-based provider organization licensed by the State Insurance Department; and~~

~~(viii) An entity that contracts with institutions of the Department of Correction or the Department of Community Correction to provide medical, dental, or pharmaceutical care to inmates.~~

~~(B) "Submitting entity" does not include:~~

~~(i) An entity that provides health insurance or a health benefit plan that is accident-only, specified disease, hospital indemnity, long-term care, disability income, or other supplemental benefit~~

coverage;

~~(ii) An employee of a welfare benefit plan as defined by federal law that is also a trust established pursuant to collective bargaining subject to the Labor Management Relations Act, 1947, Pub. L. No. 80-101; or~~

~~(iii) A health benefit plan subject to the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, that is self-funded; and~~

~~(10) "Unique identifier" means any identifier that is guaranteed to be unique among all identifiers for covered individuals but does not include direct personal identifiers.~~

~~23-61-904.—Arkansas Healthcare Transparency Initiative.~~

~~(a) The Arkansas Healthcare Transparency Initiative is established with the purpose to create a database, including ongoing all-payer claims database projects funded through the State Insurance Department, that receives and stores data from a submitting entity relating to medical, dental, and pharmaceutical and other insurance claims information, unique identifiers, and geographic and demographic information for covered individuals as permitted in this subchapter, and provider files, for the purposes of this subchapter.~~

~~(b) The Arkansas Healthcare Transparency Initiative shall be governed by the department and advised by the Arkansas Healthcare Transparency Initiative Board.~~

~~23-61-905.—Arkansas Healthcare Transparency Initiative Board—Membership—Duties.~~

~~(a)(1) There is created the Arkansas Healthcare Transparency Initiative Board, which shall be composed of the following members:~~

- ~~(A) A representative of the Department of Human Services;~~
- ~~(B) A representative of the Department of Health;~~
- ~~(C) A representative of the Office of Health Information Technology or its successor entity as provided by state law;~~
- ~~(D) The Surgeon General;~~
- ~~(E) Nine (9) members appointed by the Governor as follows:~~
  - ~~(i) Two (2) representatives from the health~~

~~insurance industry, one (1) of whom shall be a multistate representative and one (1) of whom shall be a domestic representative;~~

~~(ii) Two (2) representatives from the healthcare provider community;~~

~~(iii) A representative from a self-insured employer;~~

~~(iv) A representative from an employer of fewer than one hundred (100) full-time employees that provides healthcare coverage to employees through a fully-insured product;~~

~~(v) A representative from a healthcare consumer organization;~~

~~(vi) A representative from the academic research community with expertise in healthcare claims data analysis; and~~

~~(vii) A representative with expertise in health data privacy and security; and~~

~~(F) A representative from the Arkansas Biosciences Institute who shall serve as an ex-officio, nonvoting member.~~

~~(2) A Governor-appointed member of the board in subdivision (a)(1)(E) of this section shall serve for a term of three (3) years.~~

~~(3) The board shall appoint one (1) member as Chair of the Arkansas Healthcare Transparency Initiative Board and determine the qualifications, duties, and the term of office of the chair.~~

~~(4) Seven (7) members present constitute a quorum.~~

~~(5) The board shall hold its first meeting no later than July 1, 2015.~~

~~(b) The State Insurance Department shall:~~

~~(1) Have the authority to:~~

~~(A) Collect, validate, analyze, and present health data, including claims data;~~

~~(B) Assess penalties for noncompliance with this subchapter; and~~

~~(C) Establish and convene additional subcommittees to carry out the purposes of this subchapter;~~

~~(2) Designate the Arkansas Center for Health Improvement as the Administrator of the Arkansas Healthcare Transparency Initiative, which shall be responsible for development and implementation of a sustainability plan subject to data use and disclosure requirements of this subchapter and any~~

~~rules promulgated under this subchapter;~~

~~(3) With the assistance of the Administrator of the Arkansas Healthcare Transparency Initiative, establish and convene the following subcommittees:~~

~~(A) The Data Oversight Subcommittee of the Arkansas Healthcare Transparency Initiative, which shall:~~

~~(i) Consist of:~~

~~(a) Three (3) Governor-appointed board members; and~~

~~(b) One (1) individual healthcare consumer; and~~

~~(ii) Review and make recommendations to the State Insurance Department regarding:~~

~~(a) Data requests for consistency with the intent and purpose of this subchapter, including whether the data request contains the minimum required information; and~~

~~(b) Reports and publications generated from data requests to ensure compliance with this subchapter; and~~

~~(B) The Scientific Advisory Subcommittee of the Arkansas Healthcare Transparency Initiative, which shall:~~

~~(i) Consist of:~~

~~(a) The Governor-appointed member of the board from the academic research community; and~~

~~(b) Two (2) nonmembers of the board who are academic researchers; and~~

~~(ii) Serve as peer review for academic researchers and provide advice regarding data requests for academic proposals and the scientific rigor of analytic work; and~~

~~(4) Adopt any rules necessary to implement this subchapter under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(c) In consultation with the board, the State Insurance Department shall exercise its powers and duties under this subchapter to:~~

~~(1) Establish policies and procedures necessary for the administration and oversight of the Arkansas Healthcare Transparency Initiative, including procedures for the collection, processing, storage, analysis, use, and release of data;~~

~~(2) Identify and explore the key healthcare issues, questions, and problems that may be improved through more transparent information, including without limitation data required to be disclosed to patients related to provider relationships or affiliations with payers and providers, financial interests in healthcare businesses, and payments or items of any value given to providers from pharmaceutical or medical device manufacturers or agents thereof; and~~

~~(3) Provide a biennial report to the General Assembly on the operations of the Arkansas Healthcare Transparency Initiative.~~

~~23-61-906.—Data submission.~~

~~(a) Except as provided in subsection (d) of this section, no later than January 1, 2016, and every quarter thereafter, a submitting entity shall submit health and dental claims data, unique identifiers, and geographic and demographic information for covered individuals as permitted in this subchapter, and provider files to the Arkansas Healthcare Transparency Initiative in accordance with standards and procedures adopted by the State Insurance Department.~~

~~(b) Data submitted under this subchapter shall be treated as confidential and are exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., and are not subject to subpoena, except to the extent provided in § 23-61-205.~~

~~(c) The collection, storage, and release of data and other information under this section is subject to applicable state and federal data privacy and security law.~~

~~(d) No later than July 1, 2015, a submitting entity shall submit health and dental claims data, unique identifiers, and geographic and demographic information for covered individuals as permitted in this subchapter to the Arkansas Healthcare Transparency Initiative to support deliberations of the Arkansas Health Reform Legislative Task Force.~~

~~23-61-907.—Data release.~~

~~(a) Data in the Arkansas Healthcare Transparency Initiative shall:~~

~~(1) To the extent authorized by the State Insurance Department, be available:~~

~~(A) When disclosed in a form and manner that ensures the~~

~~privacy and security of protected health information as required by state and federal laws, as a resource to insurers, employers, purchasers of health care, researchers, state agencies, and healthcare providers to allow for assessment of healthcare utilization, expenditures, and performance in this state, including without limitation as a resource for hospital community health needs assessments; and~~

~~(B) To state programs regarding healthcare quality and costs for use in improving health care in the state, subject to rules prescribed by the department conforming to state and federal privacy laws or limiting access to limited-use data sets; and~~

~~(2) Not be used to:~~

~~(A) Disclose trade secrets of submitting entities;~~

~~(B) Reidentify or attempt to reidentify an individual who is the subject of any submitted data without obtaining the individual's consent; or~~

~~(C) Create or augment data contained in a national claims database.~~

~~(b) Notwithstanding the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, or any other provision of law, the Arkansas Healthcare Transparency Initiative shall not publicly disclose any data that contains direct personal identifiers.~~

~~23-61-908. Penalties for failure to submit data.~~

~~(a) Except for state or federal agencies that are submitting entities, a submitting entity that fails to submit data as required by this subchapter or the rules of the State Insurance Department may be subject to a penalty.~~

~~(b) The department shall adopt a schedule of penalties not to exceed one thousand dollars (\$1,000) per day of violation, determined by the severity of the violation.~~

~~(c) A penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the department considers proper and consistent with the public health and safety.~~

~~(d) A penalty remitted under this section shall be used for Arkansas Healthcare Transparency Initiative operations.~~

~~23-61-909. Data collected under State Health Data Clearinghouse Act.~~

~~(a) The Department of Health shall submit data collected under the State Health Data Clearinghouse Act, § 20-7-301 et seq., to the Arkansas Healthcare Transparency Initiative for integration into the Arkansas Healthcare Transparency Initiative database created under § 23-61-904.~~

~~(b) The data submitted under subsection (a) of this section:~~

~~(1) Shall be assigned a unique identifier as defined in § 23-61-903; and~~

~~(2) May be used in accordance with the purposes of the Arkansas Healthcare Transparency Initiative and the rules promulgated under this subchapter.~~

~~23-61-910. Data collected regarding hospital discharge and emergency department records.~~

~~(a) The Department of Health shall submit data collected regarding hospital discharge and emergency department records for the uninsured, birth and death records, and disease registry data under the State Health Data Clearinghouse Act, § 20-7-301 et seq., § 20-15-201 et seq., and § 20-18-201, to the Arkansas Healthcare Transparency Initiative Board for integration into the Arkansas Healthcare Transparency Initiative database created under § 23-61-904.~~

~~(b) The data submitted under subsection (a) of this section:~~

~~(1) Shall be assigned a unique identifier as defined in § 23-61-903; and~~

~~(2) May be used in accordance with the purposes of the Arkansas Healthcare Transparency Initiative and the rules promulgated under this subchapter.~~

SECTION 3. Arkansas Code § 23-61-1004(g)(2)(B), concerning the administration of the Arkansas Works Program, is amended to read as follows:

(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.