

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

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

SENATE BILL 621

By: Senator Hester  
By: Representative Gonzales

## For An Act To Be Entitled

AN ACT TO REQUIRE THE ARKANSAS MEDICAID PROGRAM AND  
THE DEPARTMENT OF HUMAN SERVICES TO HAVE ALL CONSENT  
DECREES RECONSIDERED; AND FOR OTHER PURPOSES.

## Subtitle

TO REQUIRE THE ARKANSAS MEDICAID PROGRAM  
AND THE DEPARTMENT OF HUMAN SERVICES TO  
HAVE ALL CONSENT DECREES RECONSIDERED.

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

SECTION 1. DO NOT CODIFY. Reconsideration of consent decrees with the  
Arkansas Medicaid Program.

(a) The General Assembly finds that:

(1) The Arkansas Medicaid Program and the Department of Human  
Services have entered into several consent decrees and have been ordered by  
several court decisions regarding reimbursement rates for Medicaid providers,  
including without limitation:

(A) Easley, et al., v. Arkansas Department of Human  
Services, 645 F. Supp. 1535 (1986);

(B) Ellis v. Arkansas Department of Human Services, 859  
F.2d 52 (1988);

(C) Arkansas Medical Society, Inc. v. Reynolds, 6 F.3d 519  
(1993), which was amended several times regarding physical therapy, private  
duty nursing, physicians, dental services, home health services, physician  
and podiatry services, physical, speech, and occupational therapy, private



duty nursing services, and primary care services;

(D) Dalton v. Little Rock Family Planning Services, 516 U.S. 474 (1996);

(E) Wal-Mart Stores, Inc. v. Knickrehm, 101 F. Supp.2d 749 (2000);

(F) Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services, 293 F.3d 472 (2002);

(G) Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services, 364 F.3d 925 (2004);

(H) Kapable Kids Learning Center v. Arkansas Department of Human Services, 420 F.Supp.2d 956 (2005);

(I) Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services, 444 F.3d 991 (2006);

(J) Arkansas Department of Health v. Ahlborn, 547 U.S. 268 (2006);

(K) United States v. State of Arkansas, 794 F.Supp.2d 935 (2011);

(L) Jackson v. Selig, 2013 WL 1007346 (2013);

(M) Penny v. Arkansas Department of Human Services, 2013 WL 1164857 (2013); and

(N) Jackson v. Selig, 2013 WL 1934008 (2013);

(2) However, the United States Eight Circuit Court has held that consent decrees must "be modified if ... one (1) or more of the obligations placed upon the parties has become impermissible under federal law";

(3)(A) In 2015, the United States Supreme Court held in Armstrong v. Exceptional Child Center, Inc., 135 S. Ct. 1378, that the Supremacy Clause of the United States Constitution does not confer a private right of action and that Medicaid providers cannot sue for injunctive relief requiring compliance with 42 U.S.C. § 1396(a)(30)(A).

(B) This court decision could be interpreted as nullifying the consent decrees entered into by the program and the department;

(4) Since 2015, the program and the department have not moved to modify or nullify the consent decrees or to be released from the consent decrees;

(5) In 2019, Governor Asa Hutchinson issued Executive Order 19-02 which required the program to establish a systemic approach to reviewing

Medicaid rates to providers on a regular cycle;

(6) Since 2019, the program has increased rates to providers and is still working to evaluate more providers; and

(7) The program and the department should have the consent decrees reconsidered by a court based on the systemic approach to reviewing Medicaid rates and the holding in Armstrong v. Exceptional Child Center, Inc., 135 S. Ct. 1378.

(b)(1) On or before December 1, 2021, the program and the department shall have the consent decrees reconsidered by a court to modify or nullify the consent decrees or release the program and the department from the consent decrees based on the systemic approach to reviewing Medicaid rates and the holding in Armstrong v. Exceptional Child Center, Inc., 135 S. Ct. 1378.

(2) The program and department shall report quarterly to the Legislative Council regarding the results of the actions required in subdivision (b)(1) of this section.