

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H4/20/21
A Bill

SENATE BILL 663

By: Senator Irvin

By: Representative Boyd

For An Act To Be Entitled

AN ACT TO MODIFY THE AUTHORITY OF THE DEPARTMENT OF HEALTH; TO DEFER THE AUTHORITY OF THE DEPARTMENT OF HEALTH TO THE CENTERS FOR MEDICARE & MEDICAID SERVICES CONCERNING THE HOSPITALS WITHOUT WALLS PROGRAM; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO MODIFY THE AUTHORITY OF THE DEPARTMENT OF HEALTH DURING A PUBLIC HEALTH EMERGENCY; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code Title 20, Chapter 9, Subchapter 3, is amended to add an additional section to read as follows:

20-9-312. Deferral of authority of Department of Health to Centers for Medicare & Medicaid Services – Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities – Legislative findings and intent – Authority.

(a) The General Assembly finds that:

(1) The Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities allow:

(A) Participating ambulatory surgery centers to convert to licensed hospitals during the period of the coronavirus 2019 (COVID-19)



public health emergency; and

(B) Existing hospitals to provide healthcare services at the patient's home and other selected sites;

(2) In cooperation and in an effort to promote public health, the Department of Health suspended portions of its Rules for Hospitals and Related Institutions according to the Governor's Executive Orders 20-06 and 20-16, and any future executive orders that extend the public health emergency, to allow for the regulatory flexibilities to facilities participating in the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities;

(3) Legislative clarification is necessary to clarify that the department has the regulatory authority necessary to continue the regulatory flexibilities for the duration of the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities for the purpose of promoting public health in this state; and

(4) The Centers for Medicare & Medicaid Services may:

(A) Temporarily modify or waive certain requirements when there is a public health emergency; and

(B) Issue temporary blanket waivers or temporary specific waivers if the temporary waivers are intended to help beneficiaries access care.

(b) It is the intent of the General Assembly, for the benefit of the citizens of this state, that the department have the authority to:

(1) Allow all Centers for Medicare & Medicaid Services-certified facilities participating in the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities to continue to do so until:

(A) The Centers for Medicare & Medicaid Services terminates the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities; or

(B) The national public health emergency is declared over; and

(2) Administer this section.

(c)(1) The department shall have the authority to defer to the Centers for Medicare & Medicaid Services as to when the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities are terminated.

(2) The authority described in subdivision (c)(1) of this section shall include the ability to suspend portions of its Rules for Hospitals and Related Institutions to allow regulatory flexibilities to facilities participating in the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative.

(d) The department shall exercise the authority granted under subsection (c) of this section to suspend portions of its rules for facilities participating in the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities.

(e)(1) This section applies to any future public health emergency if the Centers for Medicare & Medicaid Services implements an initiative similar to the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative or other Centers for Medicare & Medicaid Services-certified facility flexibilities.

(2) Upon the implementation of an initiative described in subdivision (e)(1) of this section, a Centers for Medicare & Medicaid Services-certified facility may seek any applicable waivers to implement a future initiative similar to the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative or other Centers for Medicare & Medicaid Services-certified facility flexibilities during the period of a future public health emergency.

(f)(1) The General Assembly authorizes the department, as a federally authorized state survey agency for the Centers for Medicare & Medicaid Services, to implement temporary licensure waivers and flexibilities during the coronavirus 2019 (COVID-19) public health emergency and any future public health emergency that duplicate or match the Centers for Medicare & Medicaid Services waivers.

(2) The temporary licensure waivers and flexibilities described in subdivision (f)(1) of this section may remain in place until:

(A) The Centers for Medicare & Medicaid Services waiver is terminated by the Centers for Medicare & Medicaid Services; or

(B) The national public health emergency is declared over.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the coronavirus 2019 (COVID-19) pandemic has caused great uncertainty and anxiety in the operation of participating ambulatory surgery centers converted to hospitals under the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities; that by providing legislative clarity concerning the regulatory authority of the Department of Health the uncertainty will resolved and the continued operation of participating ambulatory surgery centers converted to hospitals under the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities can continue; and that this act is immediately necessary to protect the public health and safety in order to provide legislative clarity for the Department of Health's regulatory authority concerning the Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative and other Centers for Medicare & Medicaid Services-certified facility flexibilities. 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/Irvin