

Stricken language will be deleted and underlined language will be added.

State of Arkansas  
94th General Assembly  
Regular Session, 2023

As Engrossed: S3/27/23

# A Bill

SENATE BILL 53

By: Joint Budget Committee

## For An Act To Be Entitled

AN ACT TO MAKE AN APPROPRIATION FOR PERSONAL SERVICES AND OPERATING EXPENSES FOR THE DEPARTMENT OF HUMAN SERVICES - DIVISION OF MEDICAL SERVICES FOR THE FISCAL YEAR ENDING JUNE 30, 2024; AND FOR OTHER PURPOSES.

## Subtitle

AN ACT FOR THE DEPARTMENT OF HUMAN SERVICES - DIVISION OF MEDICAL SERVICES APPROPRIATION FOR THE 2023-2024 FISCAL YEAR.

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

SECTION 1. REGULAR SALARIES - OPERATIONS. There is hereby established for the Department of Human Services - Division of Medical Services for the 2023-2024 fiscal year, the following maximum number of regular employees.

Item No.	Class Code	Title	Maximum No. of Employees	Maximum Annual Salary Rate Fiscal Year 2023-2024
(1)	N249N	DHS DIVISION DIRECTOR	1	GRADE SE02
(2)	N027N	DHS DEPUTY DIRECTOR ADULT SERVICES	1	GRADE SE01
(3)	L016N	REGISTERED PHARMACIST	4	GRADE MP05
(4)	L009C	NURSE MANAGER	1	GRADE MP03
(5)	L027C	REGISTERED NURSE SUPERVISOR	3	GRADE MP02



(6)	L038C REGISTERED NURSE	9	GRADE MP01
(7)	D006N STATE SYSTEMS ARCHITECT	1	GRADE IT10
(8)	D007C INFORMATION SYSTEMS MANAGER	2	GRADE IT08
(9)	D030C INFORMATION SYSTEMS COORDINATOR	1	GRADE IT07
(10)	D038C SENIOR SOFTWARE SUPPORT ANALYST	1	GRADE IT06
(11)	D061C INFORMATION SYSTEMS COORDINATION SPEC	1	GRADE IT05
(12)	D058C COMPUTER OPERATIONS COORDINATOR	1	GRADE IT04
(13)	D068C INFORMATION SYSTEMS ANALYST	1	GRADE IT04
(14)	A019N DHS DEP CHIEF FIN OFFICER-MEDICAL SVCS	1	GRADE GS15
(15)	G286C DMS DEPUTY DIRECTOR	1	GRADE GS15
(16)	P077C DHS COMM & COMMUNITY ENGAGEMENT OFCR	1	GRADE GS14
(17)	N100N DHS/DMS ADD - MEDICAL SERVICES	1	GRADE GS14
(18)	N110N DHS ASST DIR CONTRACT MONITORING UNIT	1	GRADE GS13
(19)	N128N DHS ASST DIR QUALITY ASSURANCE	1	GRADE GS13
<del>(20)</del>	<del>D026N DHS ELIGIBILITY SYSTEM PROGRAM MGR</del>	<del>1</del>	<del>GRADE GS13</del>
(21)	G025C ATTORNEY SUPERVISOR	1	GRADE GS12
(22)	N168N DHS DIR HOME & COMMUNITY BASED SVCS	1	GRADE GS12
(23)	A016C DHS DMS BUSINESS OPERATIONS MANAGER	8	GRADE GS12
(24)	G073C ATTORNEY	1	GRADE GS10
(25)	L010C DHS DMS MEDICAL ASSISTANCE MANAGER	4	GRADE GS10
(26)	G099C DHS PROGRAM ADMINISTRATOR	17	GRADE GS09
(27)	R021C BUDGET ANALYST	1	GRADE GS08
(28)	G152C DHS PROGRAM MANAGER	8	GRADE GS08
(29)	A081C AUDITOR	1	GRADE GS07
(30)	G183C DHS PROGRAM COORDINATOR	7	GRADE GS07
(31)	C037C ADMINISTRATIVE ANALYST	2	GRADE GS06
(32)	R027C BUDGET SPECIALIST	1	GRADE GS06
(33)	C013C MEDICAL SERVICES REPRESENTATIVE	1	GRADE GS06
(34)	C036C ADMINISTRATIVE REVIEW ANALYST	1	GRADE GS05
(35)	L070C HEALTH CARE ANALYST	4	GRADE GS05
(36)	C056C ADMINISTRATIVE SPECIALIST III	4	GRADE GS04
(37)	A098C FISCAL SUPPORT SPECIALIST	<u>1</u>	GRADE GS04
	MAX. NO. OF EMPLOYEES	96	

SECTION 2. EXTRA HELP - OPERATIONS. There is hereby authorized, for the Department of Human Services - Division of Medical Services for the 2023-

2024 fiscal year, the following maximum number of part-time or temporary employees, to be known as "Extra Help", payable from funds appropriated herein for such purposes: ten (10) temporary or part-time employees, when needed, at rates of pay not to exceed those provided in the Uniform Classification and Compensation Act, or its successor, or this act for the appropriate classification.

SECTION 3. APPROPRIATION - OPERATIONS. There is hereby appropriated, to the Department of Human Services, to be payable from the paying account as determined by the Chief Fiscal Officer of the State, for personal services and operating expenses of the Department of Human Services - Division of Medical Services for the fiscal year ending June 30, 2024, the following:

ITEM NO.	FISCAL YEAR 2023-2024
(01) REGULAR SALARIES	\$6,527,589
(02) EXTRA HELP	201,892
(03) PERSONAL SERVICES MATCHING	2,257,092
(04) OVERTIME	2,241
(05) MAINT. & GEN. OPERATION	
(A) OPER. EXPENSE	1,813,290
(B) CONF. & TRAVEL	40,099
(C) PROF. FEES	700,000
(D) CAP. OUTLAY	0
(E) DATA PROC.	0
(06) DATA PROCESSING SERVICES	<u>1,299,600</u>
TOTAL AMOUNT APPROPRIATED	<u>\$12,841,803</u>

SECTION 4. APPROPRIATION - GRANTS. There is hereby appropriated, to the Department of Human Services, to be payable from the paying account as determined by the Chief Fiscal Officer of the State, for grant payments of the Department of Human Services - Division of Medical Services for the fiscal year ending June 30, 2024, the following:

ITEM NO.	FISCAL YEAR 2023-2024
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(01) ARKIDS B PROGRAM	\$207,222,020
(02) HOSPITAL AND MEDICAL SERVICES	8,034,125,877
(03) PRESCRIPTION DRUGS	509,386,547
(04) PRIVATE NURSING HOME CARE	957,142,061
(05) CHILD AND FAMILY LIFE INSTITUTE	2,100,000
(06) INFANT INFIRMARY	2,588,441
(07) PUBLIC NURSING HOME CARE	<u>217,529,350</u>
TOTAL AMOUNT APPROPRIATED	<u>\$9,930,094,296</u>

SECTION 5. APPROPRIATION - NURSING HOME CLOSURE COSTS. There is hereby appropriated, to the Department of Human Services - Division of Medical Services, to be payable from the Long-Term Care Trust Fund, for the payment of relocation costs of residents in long-term care facilities, maintenance and operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost for the fiscal year ending June 30, 2024, the following:

ITEM	FISCAL YEAR
<u>NO.</u>	<u>2023-2024</u>
(01) EXPENSES	<u>\$4,500,000</u>

SECTION 6. APPROPRIATION - LONG-TERM CARE FACILITY RECEIVERSHIP. There is hereby appropriated, to the Department of Human Services, to be payable from the Long Term Care Facility Receivership Fund Account, for the payment of expenses of long-term care facility receivers as authorized by law of the Department of Human Services - Division of Medical Services - Long-Term Care Facility Receivership for the fiscal year ending June 30, 2024, the following:

ITEM	FISCAL YEAR
<u>NO.</u>	<u>2023-2024</u>
(01) EXPENSES	<u>\$100,000</u>

SECTION 7. APPROPRIATION - NURSING HOME QUALITY GRANTS. There is hereby appropriated, to the Department of Human Services, to be payable from the Long-Term Care Trust Fund, for Nursing Home Quality Care Grants of the

Department of Human Services - Division of Medical Services - Nursing Home Quality Grants for the fiscal year ending June 30, 2024, the following:

ITEM NO.	FISCAL YEAR 2023-2024
(01) NURSING HOME QUALITY GRANTS AND AID	<u>\$4,000,000</u>

SECTION 8. SPECIAL LANGUAGE – CODE AMENDMENT. Arkansas Code Title 20, Chapter 77, Subchapter 4, is amended to add an additional section to codify special language in appropriation acts to read as follows:

20-77-407. Pharmaceutical dispensing fee survey.

(a) No more than two (2) years before making any changes to the current pharmaceutical dispensing fee, the Department of Human Services shall conduct an independent survey utilizing generally accepted accounting principles to determine the cost of dispensing a prescription by pharmacists in Arkansas.

(b)(1) Only factors relative to the cost of dispensing shall be surveyed under subsection (a) of this section.

(2) The factors surveyed under subsection (a) of this section shall not include actual acquisition costs, average profit, or any combination of actual acquisition costs or average profit.

(c)(1) The survey results obtained under this section shall be the basis for establishing the dispensing fee paid to participating pharmacies in the Medicaid prescription drug program in accordance with federal requirements.

(2) The dispensing fee shall be no lower than the cost of dispensing as determined by the survey conducted under this section.

(d) This section does not prohibit the department from increasing the dispensing fee at any time.

SECTION 9. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL SERVICES - GENERAL MEDICAID RATE METHODOLOGY PROVISIONS.

(a) Rates established by the Division of Medical Services for the services or programs covered by this Act shall be calculated by the methodologies approved by the Centers for Medicare and Medicaid Services (CMS). The

Division of Medical Services shall have the authority to reduce or increase rates based on the approved methodology. Further, the Division of Medical Services shall have the authority to increase or decrease rates for good cause including, but not limited to: (1) Identification of provider(s) who can render needed services of equal quality at rates less than traditionally charged and who meet the applicable federal and state laws, rules and regulations pertaining to the provision of a particular service;

(2) Identification that a provider or group of providers has consistently charged rates to the Arkansas Medicaid Program greater than to other purchasers of medical services of similar size;

(3) The Division determines that there has been significant changes in the technology or process by which services are provided by a provider or group of providers which has affected the costs of providing services, or;

(4) A severe economic downturn in the Arkansas economy which has affected the overall state budget of the Division of Medical Services.

The Division of Medical Services shall make available to requesting providers, the CMS's inflationary forecasts (CMS Market Basket Index). Rates established with cost of living increases based on the CMS Market Basket Index or other indices will be adjusted annually except when the state budget does not provide sufficient appropriation and funding to affect the change or portion thereof.

(b) Any rate methodology changes proposed by the Division of Medical Services both of a general and specific nature, shall be subject to prior approval by the Legislative Council or Joint Budget Committee.

Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Human Services – Division of Medical Services may operate more efficiently if some flexibility is provided to the Department of Human Services – Division of Medical Services authorizing broad powers under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this

section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

The provisions of this section shall be in effect only from July 1, ~~2022~~ 2023 through June 30, ~~2023~~ 2024.

SECTION 10. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. FUND USAGE AUTHORIZED. The Arkansas Children's Hospital may request the Department of Human Services - Division of Medical Services to retain in the Department of Human Services Grant Fund account an amount not to exceed \$2,100,000 from funds made available by this Act in the Child and Family Life Institute line item of the Grants appropriation to be used to match federal funds used for supplemental Medicaid payments to Arkansas Children's Hospital. These retained funds shall not be recovered to transfer to the General Revenue Allotment Reserve Fund.

The provisions of this section shall be in effect only from July 1, ~~2022~~ 2023 through June 30, ~~2023~~ 2024.

SECTION 11. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. ARKANSAS HEALTH AND OPPORTUNITY FOR ME AND ARKANSAS HEALTH INSURANCE MARKETPLACE RESTRICTIONS. (a) As used in this section, "Arkansas Health and Opportunity for Me" means Arkansas Health and Opportunity for Me established under the Arkansas Health and Opportunity for Me Act of 2021, Arkansas Code § 23-61-1001 et seq.

(b)(1) Determining the maximum number of employees, the maximum amount of appropriation, for what purposes an appropriation is authorized, and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly.

(2) The purposes of subdivision (b)(1) of this section are typically accomplished by:

- (A) Identifying the purpose in the appropriation act;
- (B) Delineating such maximums in the appropriation act for

a state agency; and

(C) Delineating the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law, Arkansas Code § 19-5-101 et seq.

(3) It is both necessary and appropriate that the General Assembly restrict the use of appropriations authorized in this act.

(c)(1) Except as provided in this subsection, the Department of Human Services shall not allocate, budget, expend, or utilize any appropriation authorized by the General Assembly for the purpose of advertisement, promotion, or other activities designed to promote or encourage enrollment in the Arkansas Health Insurance Marketplace or Arkansas Health and Opportunity for Me, including without limitation:

(A) Unsolicited communications mailed to potential recipients;

(B) Television, radio, or online commercials;

(C) Billboard or mobile billboard advertising;

(D) Advertisements printed in newspapers, magazines, or other print media; and

(E) Internet websites and electronic media.

(2) This subsection does not prohibit the department from:

(A) Direct communications with:

(i) Licensed insurance agents; and

(ii) Persons licensed by the department;

(B) Solicited communications with potential recipients;

(C)(i) Responding to an inquiry regarding the coverage for which a potential recipient might be eligible, including without limitation providing educational materials or information regarding any coverage for which the individual might qualify.

(ii) Educational materials and information distributed under subdivision (c)(2)(C)(i) of this section shall contain only factual information and shall not contain subjective statements regarding the coverage for which the potential recipient might be eligible; and

(D) Using an Internet website for the exclusive purpose of enrolling individuals in the Arkansas Health Insurance Marketplace or Arkansas Health and Opportunity for Me.

(d) The Department of Human Services shall not apply for or accept any

funds, including without limitation federal funds, for the purpose of advertisement, promotion, or other activities designed to promote or encourage enrollment in the Arkansas Health Insurance Marketplace or Arkansas Health and Opportunity for Me.

(e)(1) Except as provided in subdivision (e)(2) of this section, the Department of Human Services shall not:

(A)(i) Except as provided in subdivision (e)(1)(A)(ii) of this section, allocate, budget, expend, or utilize an appropriation authorized by the General Assembly for the purpose of funding activities of navigators, guides, certified application counselors, and certified licensed producers under the Arkansas Health Insurance Marketplace Navigator, Guide, and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

(ii) Subdivision (e)(1)(A)(i) of this section does not apply to regulatory and training responsibilities related to navigators, guides, certified application counselors, and certified licensed producers; and

(B) Apply for or accept any funds, including without limitation federal funds, for the purpose of funding activities of navigators, guides, certified application counselors, and certified licensed producers under the Arkansas Health Insurance Marketplace Navigator, Guide, and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

(2) Subdivision (e)(1) of this section does not apply to certified application counselors at health related institutions, including without limitation the University of Arkansas for Medical Sciences.

(f) An appropriation authorized by the General Assembly shall not be subject to the provisions allowed through reallocation of resources or transfer of appropriation authority for the purpose of transferring an appropriation to any other appropriation authorized for the Department of Human Services to be allocated, budgeted, expended, or utilized in a manner prohibited by this section.

(g) The provisions of this section are severable, and the invalidity of any subsection or subdivision of this section shall not affect other provisions of the section that can be given effect without the invalid provision.

(h) This section expires on June 30, ~~2023~~ 2024.

SECTION 12. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL SERVICES – COMMUNITY AND EMPLOYMENT SUPPORTS MEDICAID WAIVER.

(a) Of the funding allocated to the Department of Human Services Grants Fund Account under § 19-5-402, the first thirty-seven million six hundred thousand dollars (\$37,600,000) shall be set aside in its own subfund by the Department of Human Services and shall be used only for home and community-based services to individuals with intellectual and developmental disabilities under the Community and Employment Supports Medicaid Waiver Program or a successor Medicaid Waiver program that provides home and community-based services to individuals with intellectual and developmental disabilities.

(b) At the close of the fiscal year ending June 30, ~~2023~~ 2024, any unexpended balance of monies set aside as established in subsection (a) herein shall be transferred forward and made available for the same purpose for the fiscal year ending June 30, ~~2024~~ 2025.

(c) The provisions of this section shall be in effect only from July 1, ~~2022~~ 2023 through June 30, ~~2023~~ 2024.

SECTION 13. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. ASSISTED LIVING FACILITY REIMBURSEMENT - ACCOUNTING OF HOME AND COMMUNITY-BASED FUNDS.

(a)(1) The Department of Human Services shall take the necessary action to submit a waiver application to the Centers for Medicare and Medicaid Services to increase reimbursement rates for assisted living facilities under the Living Choices Assisted Living Waiver.

(2) The department shall study and explore methods to increase the reimbursement rates for assisted living facilities under the Living Choices Assisted Living Waiver, including without limitation setting the reimbursement rate for assisted living facilities under the Living Choices Assisted Living Waiver as a percentage of the reimbursement rate for nursing home facilities.

(b) The department shall provide an accounting of funds allocated to qualifying entities under home and community-based services to the Legislative Council.

(c)(1) The Secretary of the Department of Human Services shall provide, in person, a monthly update to the Legislative Council on the status of the actions listed in subsections (a) and (b) of this section until the conclusion or resolution of these actions.

(2) If the General Assembly is in session, the secretary shall provide the updates described in subdivision (c)(1) of this section to the Joint Budget Committee.

SECTION 14. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. SEVERABILITY. If any provisions of this act or the application of this act to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 15. COMPLIANCE WITH OTHER LAWS. Disbursement of funds authorized by this act shall be limited to the appropriation for such agency and funds made available by law for the support of such appropriations; and the restrictions of the State Procurement Law, the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of this State, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of said funds.

SECTION 16. LEGISLATIVE INTENT. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations contained in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by the Agency Requests, Executive Recommendations and Legislative Recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption.

SECTION 17. EMERGENCY CLAUSE. It is found and determined by the

General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2023 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2023 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2023.

*/s/Joint Budget Committee*