

1 State of Arkansas *As Engrossed: S3/19/15 S3/25/15*

2 90th General Assembly

# A Bill

3 Regular Session, 2015

SENATE BILL 956

4

5 By: Senator D. Sanders

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## For An Act To Be Entitled

8 AN ACT CONCERNING THE HEALTHCARE SYSTEM TRANSPARENCY  
9 FOR THE CITIZENS OF THE STATE OF ARKANSAS; TO CREATE  
10 THE ARKANSAS HEALTHCARE TRANSPARENCY INITIATIVE OF  
11 2015; TO DECLARE AN EMERGENCY; AND FOR OTHER  
12 PURPOSES.

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## Subtitle

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WHEREAS, Arkansas has consistently received failing grades from independent national organizations that rate states' healthcare quality and price transparency laws; and

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WHEREAS, Arkansans face a challenge finding reliable, consumer-friendly information on healthcare utilization, quality, and pricing; and

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WHEREAS, greater transparency of healthcare utilization, quality, and price information leads to more informed, engaged, activated consumers; and

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WHEREAS, Arkansas has taken significant steps to advance system-wide payment reform, and optimizing the state's efforts requires transforming our healthcare system into a more transparent, more informed, consumer-driven enterprise; and

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WHEREAS, the Arkansas Health Care Reform Act of 2015 creates a task force to assess cost-effective opportunities to provide coverage to Health



1 Care Independence Program participants upon its termination, as well as  
2 opportunities to reform the Arkansas Medicaid Program and create a more  
3 transparent healthcare system; and

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5 WHEREAS, information about healthcare utilization, quality, and pricing  
6 allows policymakers to evaluate health programs and monitor the success and  
7 efficiency of efforts to enhance access, reduce healthcare costs, and improve  
8 both healthcare quality and population health; and

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10 WHEREAS, the availability and integration of healthcare information for  
11 legitimate research purposes to qualified researchers supports the pursuits  
12 of the state's academic institutions and the continued study of the evolving  
13 landscape of the state's health and healthcare system; and

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15 WHEREAS, comparative healthcare information supports efforts to design  
16 targeted quality-improvement initiatives and to compare provider performance  
17 with that of other provider peers; and

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19 WHEREAS, other states have learned the value of integrating healthcare  
20 data and transforming it into useful information to the benefit of their  
21 citizens while protecting the privacy rights of all individuals; and

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23 WHEREAS, demands for information to support program evaluation and  
24 healthcare reform and its impact on consumers, businesses, and the state  
25 constitute an emergency; and

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27 WHEREAS, the General Assembly hereby creates the Arkansas Healthcare  
28 Transparency Initiative,

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30 NOW THEREFORE,

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

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33 SECTION 1. Arkansas Code Title 23, Chapter 61, is amended to add an  
34 additional subchapter to read as follows:

35 Subchapter 9 – Arkansas Healthcare Transparency Initiative Act of 2015

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1 23-61-901. Title.

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

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5 23-61-902. Legislative intent and purpose.

6 (a) It is the intent of the General Assembly to create and maintain an  
7 informative source of healthcare information to support consumers,  
8 researchers, and policymakers in healthcare decisions within the state.

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

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

12 (2) Create the Arkansas Healthcare Transparency Initiative;

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

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

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

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21 23-61-903. Definitions.

22 As used in this subchapter:

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

31 (2) “Arkansas resident” means an individual for whom the  
32 submitting entity has identified an Arkansas address as the individual’s  
33 primary place of residence;

34 (3) “Claims data” means information included in an  
35 institutional, professional, or pharmacy claim or equivalent information  
36 transaction for a covered individual, including the amount paid to a provider

1 of healthcare services plus any amount owed by the covered individual;

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

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

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

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

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

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

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

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

30 (ii) A health benefit plan offered or administered  
31 by or on behalf of the state or an agency or instrumentality of the state;

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

35  
36 (iv) The Workers' Compensation Commission;

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

6 (vi) A health benefit plan subject to the Employee  
7 Retirement Income Security Act of 1974, Pub. L. No. 93-406, as permitted by  
8 federal law, provided that the health benefit plan does not include an  
9 employee welfare benefit plan, as defined by federal law, as amended from  
10 time to time, that is also a trust established pursuant to collective  
11 bargaining subject to the Labor Management Relations Act of 1947, 29 U.S.C.  
12 §§ 401 – 531; and

13 (vii) An entity that contracts with institutions of  
14 the Department of Correction or Department of Community Correction to provide  
15 medical, dental, or pharmaceutical care to inmates.

16 (B) "Submitting entity" does not include an entity that  
17 provides health insurance or a health benefit plan that is accident-only,  
18 specified disease, hospital indemnity, long-term care, disability income, or  
19 other supplemental benefit coverage; and

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

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24 23-61-904. Arkansas Healthcare Transparency Initiative.

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

33 (b) The Arkansas Healthcare Transparency Initiative shall be governed  
34 by the State Insurance Department and advised by the Arkansas Healthcare  
35 Transparency Initiative Board.

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1 23-61-905. Arkansas Healthcare Transparency Initiative Board –  
2 Membership – Duties.

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

5 (A) A representative of the Department of Human Services;

6 (B) A representative of the Department of Health;

7 (C) A representative of the Office of Health Information  
8 Technology or its successor entity as provided by state law;

9 (D) The Surgeon General; and

10 (E) Nine (9) members appointed by the Governor as follows:

11 (i) Two (2) representatives from the health  
12 insurance industry, one (1) of whom shall be a multistate representative and  
13 one (1) of whom shall be a domestic representative;

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

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

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

20 (v) A representative from a healthcare consumer  
21 organization;

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

24 (vii) A representative with expertise in health data  
25 privacy and security.

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

28 (3) The board shall appoint one (1) member as a chair and  
29 determine the qualifications, duties, and the term of office of the chair.

30 (4) Seven (7) members present constitutes a quorum.

31 (5) The Arkansas Healthcare Transparency Initiative Board shall  
32 hold its first meeting no later than July 1, 2015.

33 (b) The State Insurance Department shall:

34 (A) Have the authority to:

35 (i) Collect, validate, analyze, and present health  
36 data including claims data;

1 (ii) Assess penalties for noncompliance with this  
2 subchapter; and

3 (iii) Establish and convene additional subcommittees  
4 to carry out the purposes of this subchapter;

5 (B) Designate the Arkansas Center for Health Improvement  
6 as the administrator of the Arkansas Healthcare Transparency Initiative,  
7 which shall be responsible for development and implementation of a  
8 sustainability plan subject to data use and disclosure requirements of this  
9 subchapter and any rules promulgated under this subchapter;

10 (C) With the assistance of the administrator of the  
11 Arkansas Healthcare Transparency Initiative, establish and convene the  
12 following subcommittees:

13 (i) The Data Oversight Subcommittee of the Arkansas  
14 Healthcare Transparency Initiative, which shall:

15 (a) Consist of:

16 (1) Three (3) Governor-appointed board  
17 members; and

18 (2) One (1) individual healthcare  
19 consumer; and

20 (b) Review and make recommendations to the  
21 State Insurance Department regarding:

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

25 (2) Reports and publications generated  
26 from data requests to ensure compliance with this subchapter;

27 (ii) The Scientific Advisory Subcommittee of the  
28 Arkansas Healthcare Transparency Initiative, which shall:

29 (a) Consist of:

30 (1) The Governor-appointed member of the  
31 board from the academic research community; and

32 (2) Two (2) nonmembers of the board who  
33 are academic researchers; and

34 (b) Serve as peer review for academic  
35 researchers and provide advice regarding data requests for academic proposals  
36 and the scientific rigor of analytic work; and

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

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

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

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

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

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19 23-61-906. Data submission.

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

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

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

34 (d) No later than July 1, 2015, a submitting entity shall submit  
35 health and dental claims data, unique identifiers, and geographic and  
36 demographic information for covered individuals as permitted in this



1 subchapter to the Arkansas Healthcare Transparency Initiative to support  
2 deliberations of the Arkansas Health Reform Legislative Task Force.

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4 23-61-907. Data release.

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

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

8 (A) When disclosed in a form and manner that ensures the  
9 privacy and security of protected health information as required by state and  
10 federal laws, as a resource to insurers, employers, purchasers of health  
11 care, researchers, state agencies, and healthcare providers to allow for  
12 assessment of healthcare utilization, expenditures, and performance in this  
13 state, including without limitation as a resource for hospital community  
14 health needs assessments; and

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

19 (2) Not be used to:

20 (A) Disclose trade secrets of submitting entities;

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

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

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

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31 23-61-908. Penalties for failure to submit data.

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

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

1 severity of the violation.

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

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

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8 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 11, is  
9 amended to add an additional section to read as follows:

10 19-5-1142. Arkansas Healthcare Transparency Initiative Fund.

11 (a) There is created on the books of the Treasurer of State, the  
12 Auditor of State, and the Chief Fiscal Officer of the Stat a trust fund to be  
13 known as the "Arkansas Healthcare Transparency Initiative Fund".

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

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

22 (c) The following moneys shall be paid into this fund:

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

27 (2) Funds received from the federal government;

28 (3) Appropriations from the General Assembly; and

29 (4) All other payments, gifts, grants, bequests, or income from  
30 any source.

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

34  
35 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General  
36 Assembly of the State of Arkansas that there is a lack of available

1 information to support the required evaluation of state programs and the  
2 deliberations of policymakers within the timeframe required by the Health  
3 Care Reform Act of 2015, and that there is an immediate need to collect data  
4 to support these activities so that policymakers may make more informed  
5 decisions about the cost-effectiveness of current programs and the future of  
6 the state's healthcare system. Therefore, an emergency is declared to exist,  
7 and this act being immediately necessary for the preservation of the public  
8 peace, health, and safety shall become effective on:

9 (1) The date of its approval by the Governor;

10 (2) If the bill is neither approved nor vetoed by the Governor,  
11 the expiration of the period of time during which the Governor may veto the  
12 bill; or

13 (3) If the bill is vetoed by the Governor and the veto is  
14 overridden, the date the last house overrides the veto.

15  
16 */s/D. Sanders*

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19 **APPROVED: 04/07/2015**  
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