

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL

4 **By: Representatives Dave Roberts, Ode Maddox,**
5 **and John Dawson**

For An Act To Be Entitled

9 "AN ACT TO ESTABLISH THE ARKANSAS HEALTH INSURANCE POOL;
10 AND TO PRESCRIBE THE OPERATION, POWER AND DUTIES OF THE
11 BOARD OF DIRECTORS AND DUTIES OF THE POOL ADMINISTRATOR;
12 AND TO PRESCRIBE ELIGIBILITY REQUIREMENTS FOR POOL
13 COVERAGE, BENEFITS, PREMIUMS, AND RATES; AND FOR OTHER
14 PURPOSES."

15

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

17

18 SECTION 1. Short title.

19 This act may be cited as the "Arkansas Health Insurance Pool Act."

20

21 SECTION 2. Legislative intent and purpose.

22 (a) Existing Arkansas law does not establish a health insurance pool to
23 provide health insurance to domiciliaries of Arkansas who are not otherwise
24 able to obtain health insurance which meets prescribed criteria.

25 (b) Uninsurable Arkansans, left to face the cost of major medical care
26 without health coverage, must look to charity, or face bankruptcy in the event
27 of severe illness or injury, thereby placing a burden on the people and
28 resources of the State of Arkansas.

29 (c) It is the purpose of the General Assembly in this act to establish
30 a mechanism to ensure the availability of health insurance coverage to those
31 citizens of this state who, because of health conditions, rather than an
32 unwillingness and inability to pay premiums, cannot secure such coverage.

33 (d) The health insurance coverage available from the Arkansas Health
34 Insurance Pool (Pool) is intended to shield such individuals against most
35 catastrophic health costs, up to stated maximum dollar amounts. The coverage

1 is not intended to provide "deluxe" benefits.

2 SECTION 3. Definitions.

3 (a) "Board" means the Board of Directors of the Pool.

4 (b) "Commissioner" means the Arkansas Insurance Commissioner.

5 (c) "Department" means the Arkansas Insurance Department.

6 (d) "Health Insurance" as used in this act means disability
7 insurance as defined in A.C.A. Section 23-62-103, including any hospital and
8 medical expense incurred policy, and health maintenance organization
9 subscriber contract. The term does not include short term medical, accident,
10 fixed indemnity, limited benefit or credit insurance, coverage issued as a
11 supplement to liability insurance, medical payment insurance, or insurance
12 under which benefits are payable without regard to fault and which is
13 statutorily required to be contained in any liability insurance policy or
14 equivalent self-insurance.

15 (e) "Health Maintenance Organization" (HMO) means an organization
16 as defined in A.C.A. Section 23-76-102.

17 (f) "Hospital" means an acute general care hospital, a
18 psychiatric hospital and a rehabilitation hospital licensed as such by the
19 appropriate state agency. It does not include any of the following:
20 hospitals owned or operated by federal agencies, convalescent homes or
21 hospitals, homes for the aged, sanitariums, long-term-care facilities,
22 infirmaries, or any institution operated mainly for treatment of long-term
23 chronic diseases or drug or alcohol abuse.

24 (g) "Insurance arrangement" means any plan, program, contract or
25 any other arrangement under which one (1) or more employers, unions or other
26 organizations provide to their employees or members either directly or
27 indirectly through a trust or third party administrator, health care services
28 or benefits on a self-insured basis. The term shall also include any "self-
29 insurer".

30 (h) "Insured" means any individual resident of Arkansas who is
31 eligible to receive benefits from any insurer as defined in this act.

32 (i) "Insurer" means any insurance company authorized to transact
33 health insurance business in Arkansas, and any HMO providing health care in
34 Arkansas.

35 (j) "Medicare" means coverage under both Part A and B of Title

1 XVIII of the Social Security Act, 42 USC 1395, et seq., as amended.

2 (k) "Member" means all insurers participating in the Pool.

3 (l) "Physician" means a Doctor of Medicine (M.D.) and a Doctor of
4 Osteopathy (D.O.) duly licensed and qualified to practice medicine and perform
5 surgery at the time and place service is rendered. "Physician" also means a
6 licensed Chiropractor (D.C.).

7 (m) "Other provider" means a licensed Doctor of Podiatry
8 (Pod.D.), a licensed Psychologist (Ph.D.), a licensed Oral Surgeon (D.D.S.),
9 and a licensed Optometrist (O.D.).

10 (n) "Plan" means the coverage to be offered by the Pool to
11 eligible persons pursuant to this act.

12 (o) "Plan of Operation" means the plan of operation of the Pool,
13 including articles, bylaws and operating rules, adopted by the Board pursuant
14 to this act.

15 (p) "Pool" means the Arkansas Health Insurance Pool as created by
16 this act.

17 (q) "Self-insurer" means one who provides health care services or
18 reimbursement for all or any part of the costs of health care for its
19 employees or participants in this state other than through an insurer.

20

21 SECTION 4. Creation and operation of the Pool.

22 (a) There is hereby created a nonprofit entity to be known as the
23 Arkansas Health Insurance Pool. All insurers issuing health insurance in
24 Arkansas on and after the effective date of this act shall be members of the
25 Pool. Insurance arrangements are hereby excluded from membership in the Pool.

26 (b) The initial Board of Directors shall consist of nine (9)
27 members, and shall select, in accordance with the procedure in Section 8, an
28 insurer or third party administrator to serve as administrator. The selection
29 of the administrator shall be subject to approval by the Commissioner.

30 (c) The Pool shall operate subject to the supervision and
31 approval of a Board of Directors. All Boards shall be composed of nine (9)
32 members, serving staggered terms of three (3) years each. Provided, however,
33 that of the initial Board, three (3) members shall serve terms of one (1)
34 year, three (3) members shall serve terms of two (2) years, and three (3)
35 members shall serve terms of three (3) years. The Board shall appoint

1 qualified persons to fill vacancies on the Board for the balance of any
2 unexpired term. Board members may succeed themselves.

3 (d) The initial and subsequent Boards shall consist of the
4 following members, subject to the approval of the Commissioner:

5 (1) The Commissioner, or his or her representative; and

6 (2) Three (3) representatives of domestic health insurers; and

7 (3) One (1) representative of foreign health insurers doing
8 business in Arkansas; and

9 (4) One (1) representative of the hospital industry, selected
10 from a list of three (3) or more persons nominated by the Arkansas Hospital
11 Association, or its successor; and

12 (5) One (1) representative of the registered domestic third party
13 administrators which administer health benefits in Arkansas; and

14 (6) One (1) representative of Arkansas business generally which
15 provides health coverage to its employees, selected from a list of three (3)
16 or more persons nominated by the Arkansas State Chamber of Commerce, or its
17 successor; and

18 (7) One (1) representative of the practicing physicians in
19 Arkansas, selected from a list of three (3) or more persons nominated by the
20 Arkansas Medical Society, or its successor.

21 (e) The Commissioner shall be Chairman of the Board.

22 (f) Members of the Board shall be reimbursed from the Pool at
23 reasonable rates for mileage and per diem, as is provided in law for Boards
24 and Commissions generally, and shall receive no other compensation,
25 perquisite, or allowance.

26 (g) The Board shall submit to the Commissioner a plan of
27 operation for the Pool and any amendments thereto necessary or suitable to
28 assure the fair, reasonable, and equitable administration of the Pool. The
29 Commissioner shall, after notice and hearing, approve the plan of operation
30 provided such as determined to be suitable to assure the fair, reasonable, and
31 equitable administration of the Pool. Gains shall be held at interest and
32 used to offset future losses or reduce Pool policy rates. The plan of
33 operation shall become effective upon approval in writing by the Commissioner.

34 (h) If the Pool fails to submit a suitable plan of operation
35 within one hundred eighty (180) days after the appointment of the Board of

1 Directors, or at any time thereafter fails to submit suitable amendments to
2 the plan, the Commissioner shall, after notice and hearing, adopt and
3 promulgate such reasonable rules as are necessary or advisable to effectuate
4 the provisions of this act. Such rules shall continue in force until modified
5 by the Commissioner or superseded by a plan submitted by the Pool and approved
6 by the Commissioner.

7

8 SECTION 5. Pool Plan of Operation.

9 The plan of operation submitted by the Board of the Commissioner
10 shall:

11 (a) Establish procedures for the handling and accounting of
12 assets and money of the Pool.

13 (b) Establish regular times and places for meetings of the Board
14 of Directors.

15 (c) Establish procedures for records to be kept of all financial
16 transactions and for an annual fiscal report to the Commissioner.

17 (d) Contain additional provisions necessary and proper for the
18 execution of the power and duties of the Pool.

19 (e) Establish procedures for the collection of premiums and
20 earmarked tax revenues to provide for claims paid under the plan and for
21 administrative expenses incurred or estimated to be incurred during the
22 period.

23 (f) Select an administrator in accordance with this act.

24 (g) Develop and implement a program to publicize the existence of
25 the Pool, the eligibility requirements and procedures for enrollment in the
26 plan, and to maintain public awareness of the Pool and the plan.

27 (h) Establish procedures under which applicants and participants
28 may have grievances reviewed by an impartial body and reported to the Board.

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30 SECTION 6. Board power and duties.

31 The Board shall have the general powers and authority granted
32 under the laws of Arkansas to insurance companies licensed to transact health
33 insurance business. In addition, the Board shall have the specific authority
34 to:

35 (a) Contract with an outside independent actuarial firm to assess

1 the solvency of the Pool and for consultation as to the sufficiency of the
2 funding of the Pool.

3 (b) Close enrollment in the benefits plan at any time upon a
4 determination by the outside independent actuarial firm that funds the Pool
5 are insufficient to support the enrollment of additional persons.

6 (c) Enter into contracts as are necessary or proper to carry out
7 the provisions and purposes of this act.

8 (d) Require the establishment and maintenance of health care cost
9 containment programs as are necessary or proper in the discretion of the Board
10 to establish the most cost efficient levels of coverage as may be provided.

11 (e) Manage and invest reserve or other funds held by the Pool.

12 (f) Sue or be sued, including taking any legal actions as
13 necessary or proper on behalf of, or against, Pool members.

14 (g) Take such legal action as necessary to avoid the payment of
15 improper claims against the plan or the coverage provided by or through the
16 plan.

17 (h) Establish appropriate rates, rate schedules, rate
18 adjustments, expense allowances, claim reserve formulas and any other
19 actuarial functions appropriate to the operation of the Pool. Rates and rate
20 schedules may be adjusted for appropriate risk factors such as age and area
21 variation in claim costs and shall take into consideration appropriate risk
22 factors in accordance with established actuarial underwriting practices.
23 Provided, however, that rates and rate schedules shall be subject to the same
24 procedural and regulatory requirements of filing with the Department and
25 approval by the Commissioner as are policies of disability insurance.

26 (i) Issue policies of insurance in accordance with the
27 requirements of this act.

28 (j) Appoint appropriate legal, actuarial, and other committees as
29 necessary to provide technical assistance in the operation of the Pool,
30 policy, and other contract design and any other function within the authority
31 of the Pool.

32 (k) Borrow money to effect the purposes of this act. Any notes
33 or other evidence of indebtedness of the Pool not in default shall be legal
34 investments for insurers and may be carried as admitted assets.

35 (l) Establish rules, conditions and procedures for reinsuring

1 risks under this act.

2

3 SECTION 7. Examination.

4 The Pool shall be subject to and responsible for examination by
5 the Commissioner. The Board shall submit to the Commissioner an audited
6 financial report for the preceding calendar year in a form and by the date
7 approved by the Commissioner.

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9 SECTION 8. Administrator.

10 (a) The Board shall select an administrator through a competitive
11 bidding process to administer the Pool. The Board shall evaluate bids
12 submitted based on criteria established by the Board which shall include:

13 (1) The administrator's proven ability to handle health
14 insurance; and

15 (2) The efficiency of the administrator's claim paying
16 procedures; and

17 (3) An estimate of total charges for administering the plan; and

18 (4) The administrator's ability to administer the Pool in a cost
19 efficient manner; and

20 (5) Ability to contain health care benefit costs in terms of
21 Program Funds and patient out-of-pocket expenses.

22 (b) The initial administrator shall serve for a period of two (2)
23 years subject to removal for cause. At least six (6) months prior to the
24 expiration of the administrator's contract, the Board shall invite all
25 interested parties, including the current administrator, to submit bids to
26 serve as the administrator for the succeeding three (3) year period.

27 Selection of the subsequent administrators for succeeding periods shall be
28 made at least four (4) months prior to the end of the current period.

29 (c) The administrator shall perform all eligibility and
30 administrative claims payment functions relating to the plan including:

31 (1) Establishing, subject to Board approval, a premium
32 billing procedure for collection of premiums from insured persons. Billings
33 shall be made on a periodic basis as determined by the Board, which shall not
34 be more frequent than a monthly billing;

35 (2) Performing all necessary functions to assure timely

1 payment of benefits, including;

2 (a) Making available instructions relating to the
3 proper manner of submitting a claim for benefits to the Pool, and distributing
4 claim forms upon which submission shall be made;

5 (b) Evaluating the eligibility of each claim for
6 payment by the Pool.

7 (c) Notifying each claimant in a timely manner after
8 receiving a properly completed and executed proof of loss as to whether the
9 claim is accepted, rejected, or compromised.

10 (d) The administrator shall submit regular reports to
11 the Board regarding the operation of the Pool. The frequency, content, and
12 form of the report shall be determined by the Board.

13 (e) Following the close of each calendar year, the
14 administrator shall determine premiums, other sources of income, the expense
15 of administration and the paid and incurred losses for the year and report
16 this information to the Board and the Commissioner on a form prescribed by the
17 Commissioner.

18 (f) The administrator shall be paid as provided in
19 the plan of operation for its expenses incurred in the performance of
20 services.

21 (g) The agreement with the administrator shall
22 contain provisions for liquidated damages or other appropriate monetary
23 penalties for failure to meet start-up dates or accuracy or other service
24 standards.

25

26 SECTION 9. Eligibility.

27 (a) Any individual person, who has been domiciled in Arkansas for
28 six (6) consecutive months shall be eligible for plan coverage if evidence is
29 provided of:

30 (1) A rejection or refusal to issue health insurance for health
31 reasons by an insurer; or

32 (2) A refusal by an insurer to issue health insurance except with
33 a rider reducing or excluding coverage for a pre-existing health condition; or

34 (3) A health condition or conditions found on a list promulgated
35 by the Board which is of such a nature that the applicant would not be

1 required to show rejection by other health insurers pursuant to subparts (1)
2 and (2) of Subsection (a) of this Section.

3 (b) A person shall not be eligible for coverage under the Pool
4 if:

5 (1) He or she is, on the effective date of coverage by the Pool
6 or at any time thereafter, eligible for coverage or is currently covered under
7 health and accident insurance offered by an insurer or insurance arrangement.

8 A person shall be considered eligible for coverage by an insurer or insurance
9 arrangement if he or she:

10 (a) meets the criteria for eligibility under any group
11 health benefits plan provided by his or her employer, union, or the
12 organization of which he or she is a member, whether or not the person is
13 actually covered under such plan; or

14 (b) By exercise of his or her rights under a state or
15 federal law or regulation providing for continuation of coverage under any
16 such group health benefits plan, could have been covered by such plan.

17 (2) He or she is at the time of application for coverage under
18 the Pool eligible for health care benefits under the Medicaid laws of
19 Arkansas; or

20 (3) He or she has terminated coverage in the Pool or his or her
21 coverage has been terminated by the Pool unless twelve (12) months have
22 elapsed since such termination; or

23 (4) The Pool has paid out two hundred fifty thousand dollars
24 (\$250,000) in benefits on his or her behalf; or

25 (5) He or she is an inmate of a public institution or is eligible
26 for public programs for which medical care is being provided, including
27 Medicare.

28 (c) No insurer, insurance agent, broker, employer, or insurance
29 arrangement may refer an individual employee to the Pool, or pay such
30 employees premium for Pool coverage, or otherwise encourage or arrange for an
31 individual employee to apply for Pool coverage if that individual is currently
32 covered by his employer's group health plan or is eligible for such coverage,
33 be it through insurance or an insurance arrangement. In the event that an
34 individual receives coverage by the Pool in contravention of this Subsection,
35 the Pool may terminate coverage and maintain a cause of action against the

1 offender or offenders for a total amount not to exceed double the amount of
2 any claims paid on behalf of the individual whenever made, without limitation
3 on time, plus ten thousand dollars (\$10,000) for each such offense, plus such
4 interest and attorney fees as the trier of fact may find reasonable.

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6 SECTION 10. Policy Benefits.

7 (a) The Pool shall offer in an annually renewable policy major
8 medical expense coverage to every eligible person. Policy benefits, including
9 covered expenses, policy exclusions and limitations, deductibles, coinsurance
10 and policy limits shall be established by the Board of Directors.

11 (b) The Board shall design and employ cost containment measures
12 and requirements such as but not limited to, pre-admission certification and
13 concurrent inpatient review which may make the Pool more cost effective.

14 (c) Payments under any plan policy shall be limited to those
15 expenditures which are medically necessary for the care and treatment of such
16 illness and injury as is covered under the policy.

17 (d) No policy shall go into effect prior to January 1, 1992.

18 (e) No insurer, insurance agent or broker, employer, or insurance
19 arrangement, may refer an individual employee to the Pool, or arrange for an
20 individual employee to apply for the program, for the purpose of separating
21 such employee from a group health benefits plan provided in connection with
22 the employee's employment. The same shall apply to a segment of a group
23 currently covered by group insurance or an insurance arrangement. In the
24 event an individual or a segment of a group receives coverage by the Pool in
25 contravention of this Subsection, the Pool may terminate coverage and maintain
26 a cause of action against the offender for double the amount of any claims
27 paid on behalf of the individual or group, whenever made, without limitation
28 on time, plus interest and attorney's fees as may be reasonable.

29

30 SECTION 11. Premiums.

31 (a) Premiums charged for coverage issued by the plan may not be
32 unreasonable in relation to the benefits provided, the risk experience and the
33 reasonable expenses of providing the coverage.

34 (b) Separate schedules of premium rates based on sex, age and
35 geographical location may apply for individual risks.

1 (c) The Pool shall determine the standard risk rate by using
2 reasonable actuarial techniques and shall reflect anticipated experience and
3 expenses for such coverage. Rates for Pool coverage shall not be less than
4 one hundred fifty percent (150%) nor greater than two hundred percent (200%)
5 of rates established as applicable for standard risks. The Pool, when
6 establishing rates, shall consider the expected costs of claims including
7 recovery of prior losses, expenses of operation, investment income of claim
8 reserves, and any other cost factors subject to the limitations described
9 herein.

10 (d) The maximum lifetime benefit per covered individual is two
11 hundred fifty thousand dollars (\$250,000).

12

13 SECTION 12. Pre-existing conditions.

14 (a) Pool coverage shall exclude charges or expenses incurred
15 during the first six (6) months following the effective date of coverage as to
16 any condition if:

17 (1) The condition had manifested itself within the six (6) month
18 period immediately preceding the effective date of coverage in such a manner
19 as would cause an ordinarily prudent person to seek diagnosis, care or
20 treatment; or

21 (2) Medical advice, care or treatment was recommended or received
22 within the six (6) month period immediately preceding the effective date of
23 coverage.

24 (b) Such pre-existing exclusions shall be waived to the extent to
25 which similar exclusions have been satisfied under any prior health insurance
26 coverage which was involuntarily terminated if the application for Pool
27 coverage is made not later than thirty-one (31) days following the involuntary
28 termination. In such a case, coverage in the Pool shall be effective from the
29 date on which such prior coverage was terminated.

30

31 SECTION 13. Nonduplication of benefits.

32 (a) Benefits otherwise payable under the plan shall be reduced by
33 all amounts paid or payable through any other health insurance and by all
34 hospital and medical expense benefits paid or payable under any worker's
35 compensation coverage, automobile medical payment or liability insurance

1 whether provided on the basis of fault or nofault, and by any hospital or
2 medical benefits paid or payable under or provided pursuant to any state or
3 federal law or program.

4 (b) The plan shall have a cause of action against an eligible
5 person for the recovery of the amount of benefits paid which are not for
6 covered expenses. Benefits due from the plan may be reduced or refused as a
7 setoff against any amount recoverable under this subsection.

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9 SECTION 14. Pool policy.

10 (a) A policy offered under this act shall contain provisions
11 under which the Pool is obligated to renew the contract until the first day on
12 which the individual on whose name the contract is issued first becomes
13 eligible for coverage under Medicare, Medicaid, or an insurance arrangement.

14 (b) No policy issued by the Pool shall become effective before
15 January 1, 1992, and no payments shall be made for claims incurred prior to
16 January 1, 1992.

17

18 SECTION 15. Rules.

19 The Board of Directors shall adopt rules that implement the
20 provisions of this act and adopt any other rules deemed necessary in order to
21 carry out the provisions of this act.

22

23 SECTION 16. Notice of Pool.

24 Commencing on the effective date of this act, every insurer or
25 third party administrator conducting health insurance business within the
26 State of Arkansas shall provide a notice in a form as prescribed by the Board,
27 to any person who receives a rejection of coverage for health insurance or
28 health care services.

29

30 SECTION 17. Collective action.

31 Neither the participation by carriers or members in the Pool, the
32 establishment of rates, forms or procedures for coverage issued by the Pool,
33 nor any joint or collective action requirement by this act shall be the basis
34 of any legal civil action, or criminal liability against the Pool or members
35 of it either jointly or separately.

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SECTION 18. Taxation.

The Pool established pursuant to this act shall be exempt from any and all taxes levied by Arkansas or any of its political subdivisions.

SECTION 19. Effective date.

This act shall become effective on July 1, 1991.

SECTION 20. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revisions Commission shall incorporate the same in the Code.

SECTION 21. If any provision of this act or the application thereof 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 22. All laws and parts of law in conflict with this act are hereby repealed.

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