

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

SENATE BILL 196

5 By: Joint Budget Committee  
6

## For An Act To Be Entitled

8 AN ACT TO MAKE AN APPROPRIATION FOR PERSONAL SERVICES  
9 AND OPERATING EXPENSES FOR THE DEPARTMENT OF HUMAN  
10 SERVICES - DIVISION OF MEDICAL SERVICES FOR THE  
11 FISCAL YEAR ENDING JUNE 30, 2018; AND FOR OTHER  
12 PURPOSES.  
13  
14

## Subtitle

15 AN ACT FOR THE DEPARTMENT OF HUMAN  
16 SERVICES - DIVISION OF MEDICAL SERVICES  
17 APPROPRIATION FOR THE 2017-2018 FISCAL  
18 YEAR.  
19  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. REGULAR SALARIES - OPERATIONS. There is hereby established  
25 for the Department of Human Services - Division of Medical Services for the  
26 2017-2018 fiscal year, the following maximum number of regular employees.  
27

Item No.	Class Code	Title	Maximum No. of Employees	Maximum Annual Salary Rate Fiscal Year 2017-2018
32	(1) N181N	DIRECTOR OF MEDICAL SERVICES	1	GRADE N915
33	(2) L016N	REGISTERED PHARMACIST	6	GRADE N911
34	(3) N189N	DHS/DMS DEPUTY DIRECTOR	1	GRADE N908
35	(4) N080N	DHS/DMS ASSISTANT DIRECTOR - FISCAL	1	GRADE N907
36	(5) N099N	DHS/DMS ADD - LONG TERM CARE	1	GRADE N906



1	(6)	N167N	DHS POLICY & RESEARCH DIRECTOR	1	GRADE N901
2	(7)	A010C	AGENCY CONTROLLER II	1	GRADE C128
3	(8)	D007C	INFORMATION SYSTEMS MANAGER	2	GRADE C128
4	(9)	A016C	DHS DMS BUSINESS OPERATIONS MANAGER	9	GRADE C127
5	(10)	L010C	DHS DMS MEDICAL ASSISTANCE MANAGER	3	GRADE C125
6	(11)	L009C	NURSE MANAGER	4	GRADE C125
7	(12)	S094C	ADC CONSTRUCTION/MAINTENANCE COORD	1	GRADE C124
8	(13)	G076C	ADMINISTRATIVE SERVICES MANAGER	1	GRADE C124
9	(14)	D030C	INFORMATION SYSTEMS COORDINATOR	2	GRADE C124
10	(15)	L020C	NURSING SERVICES UNIT MANAGER	2	GRADE C123
11	(16)	L019C	REGISTERED NURSE COORDINATOR	5	GRADE C123
12	(17)	D038C	SENIOR SOFTWARE SUPPORT ANALYST	1	GRADE C123
13	(18)	A044C	AUDIT COORDINATOR	1	GRADE C122
14	(19)	G099C	DHS PROGRAM ADMINISTRATOR	18	GRADE C122
15	(20)	L027C	REGISTERED NURSE SUPERVISOR	10	GRADE C122
16	(21)	D058C	COMPUTER OPERATIONS COORDINATOR	1	GRADE C120
17	(22)	L040C	DIETARY SERVICES DIRECTOR	1	GRADE C120
18	(23)	P013C	PUBLIC INFORMATION COORDINATOR	1	GRADE C120
19	(24)	L038C	REGISTERED NURSE	68	GRADE C120
20	(25)	E023C	TRAINING PROJECT MANAGER	1	GRADE C120
21	(26)	D063C	COMPUTER SUPPORT SPECIALIST	2	GRADE C119
22	(27)	G152C	DHS PROGRAM MANAGER	13	GRADE C119
23	(28)	X067C	HEALTH FACILITIES SURVEYOR	21	GRADE C119
24	(29)	D061C	INFORMATION SYSTEMS COORDINATION SPEC	2	GRADE C119
25	(30)	A081C	AUDITOR	2	GRADE C117
26	(31)	R027C	BUDGET SPECIALIST	2	GRADE C117
27	(32)	G183C	DHS PROGRAM COORDINATOR	10	GRADE C117
28	(33)	G180C	GRANTS ANALYST	1	GRADE C117
29	(34)	R025C	HUMAN RESOURCES ANALYST	1	GRADE C117
30	(35)	D068C	INFORMATION SYSTEMS ANALYST	2	GRADE C117
31	(36)	M039C	MEDICAID SERVICES SUPERVISOR	2	GRADE C117
32	(37)	C013C	MEDICAL SERVICES REPRESENTATIVE	1	GRADE C117
33	(38)	G178C	POLICY DEVELOPMENT COORDINATOR	2	GRADE C117
34	(39)	G198C	DHS/DAAS PROGRAM SPECIALIST	1	GRADE C116
35	(40)	X124C	HEALTH FACILITY REVIEWER	1	GRADE C116
36	(41)	C037C	ADMINISTRATIVE ANALYST	6	GRADE C115

1	(42)	C050C	ADMINISTRATIVE SUPPORT SUPERVISOR	1	GRADE C113
2	(43)	L070C	HEALTH CARE ANALYST	15	GRADE C113
3	(44)	C056C	ADMINISTRATIVE SPECIALIST III	24	GRADE C112
4	(45)	C073C	ADMINISTRATIVE SPECIALIST II	8	GRADE C109
5	(46)	C087C	ADMINISTRATIVE SPECIALIST I	<u>3</u>	GRADE C106
6			MAX. NO. OF EMPLOYEES	263	

7

8 SECTION 2. EXTRA HELP - OPERATIONS. There is hereby authorized, for

9 the Department of Human Services - Division of Medical Services for the 2017-

10 2018 fiscal year, the following maximum number of part-time or temporary

11 employees, to be known as "Extra Help", payable from funds appropriated

12 herein for such purposes: eight (8) temporary or part-time employees, when

13 needed, at rates of pay not to exceed those provided in the Uniform

14 Classification and Compensation Act, or its successor, or this act for the

15 appropriate classification.

16

17 SECTION 3. APPROPRIATION - OPERATIONS. There is hereby appropriated,

18 to the Department of Human Services - Division of Medical Services, to be

19 payable from the paying account as determined by the Chief Fiscal Officer of

20 the State, for personal services and operating expenses of the Department of

21 Human Services - Division of Medical Services - Operations for the fiscal

22 year ending June 30, 2018, the following:

24	ITEM	FISCAL YEAR
25	<u>NO.</u>	<u>2017-2018</u>
26	(01) REGULAR SALARIES	\$12,975,326
27	(02) EXTRA HELP	201,892
28	(03) PERSONAL SERVICES MATCHING	4,426,208
29	(04) OVERTIME	5,000
30	(05) MAINT. & GEN. OPERATION	
31	(A) OPER. EXPENSE	4,045,031
32	(B) CONF. & TRAVEL	223,298
33	(C) PROF. FEES	755,132
34	(D) CAP. OUTLAY	0
35	(E) DATA PROC.	0
36	(06) DATA PROCESSING SERVICES	<u>1,499,600</u>

1 TOTAL AMOUNT APPROPRIATED \$24,131,487

2

3 SECTION 4. APPROPRIATION - GRANTS. There is hereby appropriated, to  
4 the Department of Human Services - Division of Medical Services, to be  
5 payable from the paying account as determined by the Chief Fiscal Officer of  
6 the State, for grant payments of the Department of Human Services - Division  
7 of Medical Services for the fiscal year ending June 30, 2018, the following:

8

9 ITEM	FISCAL YEAR
10 <u>NO.</u>	<u>2017-2018</u>
11 (01) ARKIDS B PROGRAM	\$132,222,020
12 (02) HOSPITAL AND MEDICAL SERVICES	6,660,893,014
13 (03) PRESCRIPTION DRUGS	517,701,197
14 (04) PRIVATE NURSING HOME CARE	703,607,064
15 (05) CHILD AND FAMILY LIFE INSTITUTE	2,100,000
16 (06) INFANT INFIRMARY	28,453,344
17 (07) PUBLIC NURSING HOME	<u>211,265,379</u>
18 TOTAL AMOUNT APPROPRIATED	<u>\$8,256,242,018</u>

19

20 SECTION 5. APPROPRIATION - NURSING HOME CLOSURE COSTS. There is hereby  
21 appropriated, to the Department of Human Services - Division of Medical  
22 Services, to be payable from the Long-Term Care Trust Fund, for the payment  
23 of relocation costs of residents in long-term care facilities, maintenance  
24 and operation of a facility pending correction of deficiencies or closure,  
25 and reimbursement of residents for personal funds lost for the fiscal year  
26 ending June 30, 2018, the following:

27

28 ITEM	FISCAL YEAR
29 <u>NO.</u>	<u>2017-2018</u>
30 (01) EXPENSES	<u>\$50,000</u>

31

32 SECTION 6. APPROPRIATION - LONG-TERM CARE FACILITY RECEIVERSHIP. There  
33 is hereby appropriated, to the Department of Human Services - Division of  
34 Medical Services, to be payable from the Long Term Care Facility Receivership  
35 Fund Account, for the payment of expenses of long-term care facility  
36 receivers as authorized by law of the Department of Human Services - Division

1 of Medical Services - Long-Term Care Facility Receivership for the fiscal  
2 year ending June 30, 2018, the following:

3		
4	ITEM	FISCAL YEAR
5	<u>NO.</u>	<u>2017-2018</u>
6	(01) EXPENSES	<u>\$100,000</u>
7		

8 SECTION 7. APPROPRIATION - NURSING HOME QUALITY GRANTS. There is  
9 hereby appropriated, to the Department of Human Services - Division of  
10 Medical Services, to be payable from the Long-Term Care Trust Fund, for  
11 Nursing Home Quality Care Grants of the Department of Human Services -  
12 Division of Medical Services - Nursing Home Quality Grants for the fiscal  
13 year ending June 30, 2018, the following:

14		
15	ITEM	FISCAL YEAR
16	<u>NO.</u>	<u>2017-2018</u>
17	(01) NURSING HOME QUALITY GRANTS AND AID	<u>\$1,000,000</u>
18		

19 SECTION 8. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
20 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL  
21 SERVICES - PHARMACEUTICAL DISPENSING FEE SURVEY. No more than two years prior  
22 to making any changes to the current pharmaceutical dispensing fee, the State  
23 shall conduct an independent survey utilizing generally accepted accounting  
24 principles, to determine the cost of dispensing a prescription by pharmacists  
25 in Arkansas. Only factors relative to the cost of dispensing shall be  
26 surveyed. These factors shall not include actual acquisition costs or average  
27 profit or any combination of actual acquisition costs or average profit. The  
28 survey results shall be the basis for establishing the dispensing fee paid to  
29 participating pharmacies in the Medicaid prescription drug program in  
30 accordance with Federal requirements. The dispensing fee shall be no lower  
31 than the cost of dispensing as determined by the survey. Nothing in this  
32 section shall be construed to prohibit the State from increasing the  
33 dispensing fee at any time.

34 The provisions of this section shall be in effect only from July 1, ~~2016~~  
35 2017 through June 30, ~~2017~~ 2018.

36

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

4 (a) Rates established by the Division of Medical Services for the services  
5 or programs covered by this Act shall be calculated by the methodologies  
6 approved by the Centers for Medicare and Medicaid Services (CMS). The  
7 Division of Medical Services shall have the authority to reduce or increase  
8 rates based on the approved methodology. Further, the Division of Medical  
9 Services shall have the authority to increase or decrease rates for good  
10 cause including, but not limited to: (1) Identification of provider(s) who  
11 can render needed services of equal quality at rates less than traditionally  
12 charged and who meet the applicable federal and state laws, rules and  
13 regulations pertaining to the provision of a particular service;  
14 (2) Identification that a provider or group of providers has consistently  
15 charged rates to the Arkansas Medicaid Program greater than to other  
16 purchasers of medical services of similar size;  
17 (3) The Division determines that there has been significant changes in the  
18 technology or process by which services are provided by a provider or group  
19 of providers which has affected the costs of providing services, or;  
20 (4) A severe economic downturn in the Arkansas economy which has affected the  
21 overall state budget of the Division of Medical Services.

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

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

31 Determining the maximum number of employees and the maximum amount of  
32 appropriation and general revenue funding for a state agency each fiscal year  
33 is the prerogative of the General Assembly. This is usually accomplished by  
34 delineating such maximums in the appropriation act(s) for a state agency and  
35 the general revenue allocations authorized for each fund and fund account by  
36 amendment to the Revenue Stabilization law. Further, the General Assembly has

1 determined that the Department of Human Services – Division of Medical  
2 Services may operate more efficiently if some flexibility is provided to the  
3 Department of Human Services – Division of Medical Services authorizing broad  
4 powers under this section. Therefore, it is both necessary and appropriate  
5 that the General Assembly maintain oversight by requiring prior approval of  
6 the Legislative Council or Joint Budget Committee as provided by this  
7 section. The requirement of approval by the Legislative Council or Joint  
8 Budget Committee is not a severable part of this section. If the requirement  
9 of approval by the Legislative Council or Joint Budget Committee is ruled  
10 unconstitutional by a court of competent jurisdiction, this entire section is  
11 void.

12 The provisions of this section shall be in effect only from July 1, ~~2016~~  
13 2017 through June 30, ~~2017~~ 2018.

14

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

25 The provisions of this section shall be in effect only from July 1, ~~2016~~  
26 2017 through June 30, ~~2017~~ 2018.

27

28 SECTION 11. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
29 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. STATE  
30 PLAN. The State Plan must include the provision of EPSDT services as those  
31 services are defined in 42 U.S.C. §1396d(r). See 42 U.S.C. §§  
32 1396a(a)(10)(A), 1396d(a)(4)(B); see also 1396a(a)(43). Section 1396d(r)  
33 lists in detail the screening services, vision services, dental services, and  
34 hearing services that the State Plan must expressly include, but with regard  
35 to treatment services, it states that EPSDT means "[s]uch other necessary  
36 health care, diagnostic services, treatment, and other measures described in

1 subsection (a) of this section to correct or ameliorate defects and physical  
2 and mental illnesses and conditions discovered by the screening services,  
3 whether or not such services are covered under the State Plan." 42 U.S.C. §  
4 1396d(r)(5) (emphasis added). Reading 42 U.S.C. § 1396a, 42 U.S.C. §  
5 1396d(a), and 42 U.S.C. § 1396d(r) together, we believe that the State Plan  
6 need not specifically list every treatment service conceivably available  
7 under the EPSDT mandate.

8 The State Plan, however, must pay part or all of the cost of treatments to  
9 ameliorate conditions discovered by the screening process when those  
10 treatments meet the definitions set forth in 42 U.S.C. § 1396a. See 42 U.S.C.  
11 § 1396d(r)(5); see also 42 U.S.C. §§ 1396a(a)(10), 1396a(a)(43), and  
12 1396d(a)(4)(B). The Arkansas State Plan states that the "State will provide  
13 other health care described in [42 U.S.C. 1396d(a)] that is found to be  
14 medically necessary to correct or ameliorate defects and physical and mental  
15 illnesses and conditions discovered by the screening services, even when such  
16 health care is not otherwise covered under the State Plan." See State Plan  
17 Under Title XIX of the Social Security Act, State Of Arkansas at §4.b. This  
18 provision meets the EPSDT mandate of the Medicaid Act.

19 We affirm the district court's decision to the extent that it holds that a  
20 Medicaid-Eligible individual has a federal right to early intervention day  
21 treatment when a physician recommends such treatment. Section 1396d(r)(5)  
22 states that EPSDT includes any treatments or measures outlined in 42 U.S.C.  
23 §1396d(a). There are twenty-seven sub-parts to 42 U.S.C. §1396d(a), and we  
24 find that sub-part (a)(13), in particular, when read with the other sections  
25 of the Medicaid Act listed above, mandates that early intervention day  
26 treatment be provided when it is prescribed by a physician. See 42 U.S.C.  
27 §1396d(a)(13) (defining medical assistance reimbursable by Medicaid as "other  
28 diagnostic, screening, preventive, and rehabilitative services, including any  
29 medical or remedial services recommended by a physician...for the maximum  
30 reduction of physical and mental disability and restoration of an individual  
31 to the best possible functional level"). Therefore, after CHMS clinic staff  
32 perform a diagnostic evaluation of an eligible child, if the CHMS physician  
33 prescribes early intervention day treatment as a service that would lead to  
34 the maximum reduction of medical and physical disabilities and restoration of  
35 the child to his or her best possible functional level, the Arkansas State  
36 Plan must reimburse the treatment. Because CHMS clinics are the only



1 providers of early intervention day treatment, Arkansas must reimburse those  
 2 clinics.

3 The provisions of this section shall be in effect only from July 1, ~~2016~~  
 4 2017 through June 30, ~~2017~~ 2018.

5

6 SECTION 12. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
 7 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL  
 8 SERVICES - STATE MEDICAID PROGRAM/PERSONAL CARE PROGRAM.

9 (a) It is the legislative intent that the Department of Human Services in  
 10 its administration of the Arkansas Medicaid Program set forth Medicaid  
 11 provider participation requirements for "personal care providers" that will  
 12 insure sufficient available providers to meet the required needs of all  
 13 eligible recipients, to include insuring available in home services twenty-  
 14 four (24) hours a day and seven (7) days a week for personal care.

15 (b) For the purposes of this section, "private care agencies" are defined  
 16 as those providers licensed by the Department of Labor, certified as  
 17 ElderChoices Providers and who furnish in home staffing services for respite,  
 18 chore services, and homemaker services, and are covered by liability  
 19 insurance of not less than one million dollars (\$1,000,000) covering their  
 20 employees and independent contractors while they are engaged in providing  
 21 services, such as personal care, respite, chore services, and homemaker  
 22 services.

23 (c) The purpose of this section is to allow the private care agencies  
 24 defined herein to be eligible to provide Medicaid reimbursed personal care  
 25 services seven (7) days a week, and does not supercede Department of Human  
 26 Services rules establishing monthly benefit limits and prior authorization  
 27 requirements.

28 (d) The availability of providers shall not require the Department of  
 29 Human Services to reimburse for twenty-four (24) hours per day of personal  
 30 care services.

31 (e) The Arkansas Department of Human Services, Medical Services Division  
 32 shall take such action as required by the Centers for Medicare and Medicaid  
 33 Services to amend the Arkansas Medicaid manual to include private care  
 34 agencies as qualified entities to provide Medicaid reimbursed personal care  
 35 services.

36 (f) The private care agencies shall comply with rules and regulations

1 promulgated by the Arkansas Department of Health which shall establish a  
 2 separate licensure category for the private care agencies for the provision  
 3 of Medicaid reimbursable personal care services seven (7) days a week.

4 (g) The Arkansas Department of Health shall supervise the conduct of the  
 5 personal care agencies defined herein.

6 (h) The purpose of this section is to insure the care provided by the  
 7 private care agencies is consistent with the rules and regulations of the  
 8 Arkansas Department of Health.

9 The provisions of this section shall be in effect only from July 1, ~~2016~~  
 10 2017 through June 30, ~~2017~~ 2018.

11  
 12 SECTION 13. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
 13 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. REVIEW OF  
 14 RULES IMPACTING STATE MEDICAID COSTS. (a) In light of the rapidly rising  
 15 potential costs to the State attributable to the Medicaid program and the  
 16 importance of Medicaid expenditures to the health and welfare of the citizens  
 17 of this State, the General Assembly finds it desirable to exercise more  
 18 thorough review of future proposed changes to rules that might impact those  
 19 costs or expenditures.

20 (b) As used in this section, "rule impacting state Medicaid costs" means  
 21 a proposed rule, as defined by § 25-15-202(9) or a proposed amendment to an  
 22 existing rule, as defined by § 25-15-202(9) that would, if adopted, adjust  
 23 Medicaid reimbursement rates, Medicaid eligibility criteria, or Medicaid  
 24 benefits, including without limitation a proposed rule or a proposed  
 25 amendment to an existing rule seeking to accomplish the following:

- 26 (1) Reduce the number of individuals covered by Arkansas Medicaid;
- 27 (2) Limit the types of services covered by Arkansas Medicaid;
- 28 (3) Reduce the utilization of services covered by Arkansas Medicaid;
- 29 (4) Reduce provider reimbursement;
- 30 (5) Increase consumer cost-sharing;
- 31 (6) Reduce the cost of administering Arkansas Medicaid;
- 32 (7) Increase Arkansas Medicaid revenues;
- 33 (8) Reduce fraud and abuse in the Arkansas Medicaid program;
- 34 (9) Change any of the methodologies used for reimbursement of  
 35 providers;
- 36 (10) Seek a new waiver or modification of an existing waiver of any

1 provision under Title XIX of the Social Security Act, 42 U.S.C. § 1396-1 et.  
2 seq., including a waiver that would allow a demonstration project;

3 (11) Participate or seek to participate in the waiver authority of  
4 Section 1115(a)(1) of the Social Security Act, 42 U.S.C. § 1396-1(a)(1) that  
5 would allow operation of a demonstration project or program;

6 (12) Participate or seek to participate in a request under Section  
7 1115(a)(2) of the Social Security Act, 42 U.S.C. § 1396-1(a)(2) for the  
8 Secretary of the Department of Health and Human Services to provide federal  
9 financial participation for costs associated with a demonstration project or  
10 program;

11 (13) Implement managed care provisions under Section 1932 of the Social  
12 Security Act, 42 U.S.C. § 1396 u-2; or

13 (14) Participate or seek to participate in the Centers for Medicare and  
14 Medicaid Services Innovation projects or programs.

15 (c)(1) In addition to filing requirements under the Arkansas  
16 Administrative Procedure Act, § 25-15-201 et seq., and § 10-3-309, the  
17 Department of Human Services shall, at least thirty (30) days before the  
18 expiration of the period for public comment, file a proposed rule impacting  
19 state Medicaid costs or a proposed amendment to an existing rule impacting  
20 state Medicaid costs with the Senate Interim Committee on Public Health,  
21 Welfare, and Labor and the House Interim Committee on Public Health, Welfare,  
22 and Labor, or, when the General Assembly is in session, with the Senate  
23 Committee on Public Health, Welfare, and Labor and the House Committee on  
24 Public Health, Welfare and Labor.

25 (2) Any review of the proposed rule or proposed amendment to an  
26 existing rule by the Senate and House Interim Committees on Public Health,  
27 Welfare and Labor or the Senate and House Committees on Public Health,  
28 Welfare, and Labor shall occur within forty-five (45) days of the date the  
29 proposed rule or proposed amendment to an existing rule is filed with the  
30 committees.

31 (d)(1) If adopting an emergency rule impacting state Medicaid costs,  
32 in addition to the filing requirements under the Arkansas Administrative  
33 Procedure Act, § 25-15-201 et seq. and § 10-3-309, the Department of Human  
34 Services shall notify the Speaker of the House of Representatives, the  
35 President Pro Tempore of the Senate, the chair of the Senate Committee on  
36 Public Health, Welfare, and Labor, and the chair of the House Committee on

1 Public Health, Welfare and Labor of the emergency rule and provide each of  
2 them a copy of the rule on the first day the emergency rule is effective.

3 (2) Any review of the emergency rule by the Senate and House  
4 Interim Committees on Public Health, Welfare and Labor or the Senate and  
5 House Committees on Public Health, Welfare, and Labor shall occur within  
6 forty-five (45) days of the date the emergency rule is provided to the  
7 chairs.

8 (e) This section expires on June 30, ~~2017~~ 2018.

9  
10 SECTION 14. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
11 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. ~~HEALTH~~  
12 ~~CARE INDEPENDENCE PROGRAM~~ ARKANSAS WORKS AND ARKANSAS HEALTH INSURANCE  
13 MARKETPLACE RESTRICTIONS. (a) As used in this section, "~~Health Care~~  
14 ~~Independence Program~~ Arkansas Works" means ~~the Health Care Independence~~  
15 ~~Program~~ Arkansas Works established under the ~~Health Care Independence Act of~~  
16 ~~2013, Arkansas Code § 20-77-2401 et seq.~~ Arkansas Works Act of 2016, Arkansas  
17 Code § 23-61-1001 et seq.

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

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

24 (A) Identifying the purpose in the appropriation act;

25 (B) Delineating such maximums in the appropriation act for  
26 a state agency; and

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

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

32 (c)(1) Except as provided in this subsection, the Department of Human  
33 Services shall not allocate, budget, expend, or utilize any appropriation  
34 authorized by the General Assembly for the purpose of advertisement,  
35 promotion, or other activities designed to promote or encourage enrollment in  
36 the Arkansas Health Insurance Marketplace or ~~the Health Care Independence~~

1 ~~Program~~ Arkansas Works, including without limitation:

- 2 (A) Unsolicited communications mailed to potential  
3 recipients;
- 4 (B) Television, radio, or online commercials;
- 5 (C) Billboard or mobile billboard advertising;
- 6 (D) Advertisements printed in newspapers, magazines, or  
7 other print media; and
- 8 (E) Internet websites and electronic media.

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

- 10 (A) Direct communications with:
- 11 (i) Licensed insurance agents; and
- 12 (ii) Persons licensed by the department;
- 13 (B) Solicited communications with potential recipients;
- 14 (C)(i) Responding to an inquiry regarding the coverage for  
15 which a potential recipient might be eligible, including without limitation  
16 providing educational materials or information regarding any coverage for  
17 which the individual might qualify.

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

22 (D) Using an Internet website for the exclusive purpose of  
23 enrolling individuals in the Arkansas Health Insurance Marketplace or ~~the~~  
24 ~~Health Care Independence Program~~ Arkansas Works.

25 (d) The Department of Human Services shall not apply for or accept any  
26 funds, including without limitation federal funds, for the purpose of  
27 advertisement, promotion, or other activities designed to promote or  
28 encourage enrollment in the Arkansas Health Insurance Marketplace or ~~the~~  
29 ~~Health Care Independence Program~~ Arkansas Works.

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

32 (A)(i) Except as provided in subdivision (e)(1)(A)(ii) of  
33 this section, allocate, budget, expend, or utilize an appropriation  
34 authorized by the General Assembly for the purpose of funding activities of  
35 navigators, guides, certified application counselors, and certified licensed  
36 producers under the Arkansas Health Insurance Marketplace Navigator, Guide,

1 and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

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

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

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

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

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

24 (h) This section expires on June 30, ~~2017~~ 2018.

25  
26 SECTION 15. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
27 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAID  
28 PRIMARY CARE CASE MANAGEMENT PROGRAM.

29 (a) The General Assembly finds that:

30 (1) The Arkansas Delta is an area that is medically underserved  
31 and has some of the worst health outcomes in our state, with a large number  
32 of recipients who are in the top quartile of costs;

33 (2)(A) There has been much success in other states, particularly  
34 in the Louisiana Delta with improvements in health outcomes and saving money  
35 through the use of an intensive care-coordination, shared-savings model of  
36 care.

1 (B) This success has come through contracting with private  
2 companies that specialize in working with those individuals who meet certain  
3 criteria and are at a minimum in the top quartile of costs to the Medicaid  
4 program;

5 (3) Medicaid is one of the largest percentage expenditures of  
6 Arkansas tax dollars, and there is a need for reforming approaches to the use  
7 of these dollars; and

8 (4) The approach created in this section to dealing with this  
9 population has never been implemented in Arkansas.

10 (b)(1)(A) The Department of Human Services shall contract with an  
11 experienced vendor to implement a two-year Medicaid Primary Care Case  
12 Management shared-savings pilot program in the Arkansas Delta region to begin  
13 January 1, 2014.

14 (B) The department shall give preference to a vendor that:

15 (i) Demonstrates experience with the type of model  
16 established under this section in the type of geographic area specified in  
17 subsection (e) of this section;

18 (ii) Has demonstrated customer satisfaction as  
19 documented through independent Consumer Assessment of Healthcare Providers  
20 and Systems survey; and

21 (iii) Maintains a Utilization Review Accreditation  
22 Commission accreditation for its Health Utilization Management and Case  
23 Management programs.

24 (2) The pilot program shall encompass a minimum of five thousand  
25 (5,000) recipients who:

26 (A) Are not currently in the Arkansas Patient-Centered  
27 Medical Home Program, the federal Comprehensive Primary Care Initiative, or a  
28 similar home health program;

29 (B)(i) Have catastrophic or chronic conditions as defined  
30 by the Johns Hopkins Adjusted Clinical Groups System; or

31 (ii) Are women with a history of past high-risk  
32 pregnancies, poor birth outcomes or preterm deliveries; and

33 (C) Whose estimated costs are in the top quartile for  
34 their defined population.

35 (c) The vendor shall recruit an adequate number of primary care  
36 clinics to initiate the program.

1 (d) The Medicaid Primary Care Case Management shared savings pilot  
2 program shall exclude the Alternatives for Persons with Disabilities, the  
3 Division of Developmental Disabilities Services Alternative Community  
4 Services, ElderChoices, Living Choices Assisted Living waivers, and members  
5 of the Program of All-Inclusive Care for the Elderly.

6 (e) The Medicaid Primary Care Case Management program shared savings  
7 pilot program shall include without limitation the following Arkansas delta  
8 counties:

- 9 (1) Arkansas;
- 10 (2) Ashley;
- 11 (3) Baxter;
- 12 (4) Bradley;
- 13 (5) Calhoun;
- 14 (6) Chicot;
- 15 (7) Clay;
- 16 (8) Cleveland;
- 17 (9) Crittenden;
- 18 (10) Cross;
- 19 (11) Dallas;
- 20 (12) Desha;
- 21 (13) Drew;
- 22 (14) Fulton;
- 23 (15) Grant;
- 24 (16) Greene;
- 25 (17) Independence;
- 26 (18) Izard;
- 27 (19) Jackson;
- 28 (20) Jefferson;
- 29 (21) Lawrence;
- 30 (22) Lee;
- 31 (23) Lincoln;
- 32 (24) Lonoke;
- 33 (25) Marion;
- 34 (26) Mississippi;
- 35 (27) Monroe;
- 36 (28) Ouachita;



- 1 (29) Phillips;  
2 (30) Poinsett;  
3 (31) Prairie;  
4 (32) Randolph;  
5 (33) Searcy;  
6 (34) Sharp;  
7 (35) St. Francis;  
8 (36) Stone;  
9 (37) Union;  
10 (38) Van Buren; and  
11 (39) Woodruff.

12 (f) The department shall require that a contracting vendor generate  
13 savings in comparison to a risk-adjusted Arkansas Fee-For-Service benchmark.

14 (g) The per-member monthly fee paid to the vendor shall not decrease  
15 the current primary care case management fee paid to the primary care  
16 providers.

17 (h)(1) Savings realized under the Medicaid Primary Care Case  
18 Management program shall be shared:

19 (A) Thirty-four percent (34%) with the department; and

20 (B)(i) Sixty-six percent (66%) with the Medicaid Primary  
21 Care Case Management shared-savings pilot program vendor up to a maximum  
22 sharing cap of five percent (5%) of the total cost of administrative and  
23 health service expenditures as defined by the Centers for Medicare and  
24 Medicaid Service.

25 (ii) Further, fifty percent (50%) of savings  
26 received by the vendor shall be shared with eligible contracted network  
27 primary care providers based upon meeting agreed upon performance standards.

28 (2) Twenty five percent (25%) of the Medicaid Primary Care Case  
29 Management shared-savings pilot program vendor's administrative per member  
30 per month fee shall be at risk and shall be paid back to the state if savings  
31 are not realized.

32 (i)(1) After the Medicaid Primary Care Case Management shared-savings  
33 pilot program has operated for fifteen (15) months, the department shall  
34 utilize an agreed upon savings algorithm to calculate savings based on the  
35 first twelve (12) months of operations, allowing three (3) months of run-out.

36 (2)(A) Savings shall be disbursed within thirty (30) calendar

1 days of final calculation.

2 (B) After the initial year of operation, savings shall be  
3 calculated on a quarterly basis.

4 (j) This section does not conflict with or reduce the Medicaid  
5 hospital access payments under section § 20-77-1901 et seq.

6 (k)(1) This section does not require a physician to participate in the  
7 pilot program created under this section.

8 (2) A physician has the right to refuse to contract under the  
9 pilot program created under this section or to terminate the contract at any  
10 time without penalty.

11 (l) If requested, the vendor shall agree to support any contracted  
12 physician in meeting the requirements of the Arkansas Patient-Centered  
13 Medical Home model.

14 The provisions of this section shall be in effect only from July 1, ~~2016~~  
15 2017 through June 30, ~~2017~~ 2018.

16

17 SECTION 16. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
18 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW.  
19 SEVERABILITY. If any provisions of this act or the application of this act  
20 to any person or circumstance is held invalid, such invalidity shall not  
21 affect other provisions or applications of the act which can be given effect  
22 without the invalid provision or application, and to this end the provisions  
23 of this act are declared to be severable.

24

25 SECTION 17. COMPLIANCE WITH OTHER LAWS. Disbursement of funds  
26 authorized by this act shall be limited to the appropriation for such agency  
27 and funds made available by law for the support of such appropriations; and  
28 the restrictions of the State Procurement Law, the General Accounting and  
29 Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary  
30 Procedures and Restrictions Act, or their successors, and other fiscal  
31 control laws of this State, where applicable, and regulations promulgated by  
32 the Department of Finance and Administration, as authorized by law, shall be  
33 strictly complied with in disbursement of said funds.

34

35 SECTION 18. LEGISLATIVE INTENT. It is the intent of the General  
36 Assembly that any funds disbursed under the authority of the appropriations

1 contained in this act shall be in compliance with the stated reasons for  
2 which this act was adopted, as evidenced by the Agency Requests, Executive  
3 Recommendations and Legislative Recommendations contained in the budget  
4 manuals prepared by the Department of Finance and Administration, letters, or  
5 summarized oral testimony in the official minutes of the Arkansas Legislative  
6 Council or Joint Budget Committee which relate to its passage and adoption.  
7

8 SECTION 19. EMERGENCY CLAUSE. It is found and determined by the  
9 General Assembly, that the Constitution of the State of Arkansas prohibits  
10 the appropriation of funds for more than a one (1) year period; that the  
11 effectiveness of this Act on July 1, 2017 is essential to the operation of  
12 the agency for which the appropriations in this Act are provided, and that in  
13 the event of an extension of the legislative session, the delay in the  
14 effective date of this Act beyond July 1, 2017 could work irreparable harm  
15 upon the proper administration and provision of essential governmental  
16 programs. Therefore, an emergency is hereby declared to exist and this Act  
17 being necessary for the immediate preservation of the public peace, health  
18 and safety shall be in full force and effect from and after July 1, 2017.  
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