

1 State of Arkansas *As Engrossed: S1/26/15 S1/27/15 H2/4/15*

2 90th General Assembly

# A Bill

3 Regular Session, 2015

SENATE BILL 96

4

5 By: Senators J. Hendren, Bledsoe, Caldwell, E. Cheatham, A. Clark, J. Dismang, Files, S. Flowers,

6 Hester, Hickey, J. Hutchinson, B. Pierce, B. Sample, D. Sanders, E. Williams

7 By: Representatives Farrer, Linck, Baine, Baltz, Bell, Boyd, Bragg, Branscum, Della Rosa, L. Fite,

8 Gillam, Hammer, K. Hendren, Jett, Johnson, Lemons, Love, Lowery, Lundstrum, G. McGill, D. Meeks,

9 Scott, Womack

10

11

## For An Act To Be Entitled

12

AN ACT TO ADDRESS THE HEALTHCARE NEEDS OF INDIVIDUALS

13

SERVED BY THE HEALTH CARE INDEPENDENCE PROGRAM TO BE

14

KNOWN AS THE ARKANSAS HEALTH REFORM ACT OF 2015; TO

15

CREATE THE ARKANSAS HEALTH REFORM LEGISLATIVE TASK

16

FORCE; TO TRANSFORM THE ARKANSAS MEDICAID PROGRAM

17

WITH INNOVATIVE AND COST-EFFECTIVE SOLUTIONS FOR THE

18

PROVISION OF HEALTHCARE SERVICES; TO DECLARE AN

19

EMERGENCY; AND FOR OTHER PURPOSES.

20

21

22

## Subtitle

23

TO CREATE THE ARKANSAS HEALTH REFORM ACT

24

OF 2015; AND TO DECLARE AN EMERGENCY.

25

26

27

28

WHEREAS, the federal Patient Protection and Affordable Care Act of

29

2010, Pub. L. No. 111-148, requires that Arkansas citizens obtain credible

30

health insurance coverage either through employer mandates or individual

31

action, or face threat of tax penalties; and

32

33

WHEREAS, the federal Patient Protection and Affordable Care Act of

34

2010, Pub. L. No. 111-148, further jeopardized the Arkansas healthcare system

35

and its clinical providers' ability to meet healthcare needs of citizens by

36

excising new taxes, cutting existing Medicare payments, and imposing new



1 penalties on clinical providers; and

2

3 WHEREAS, the federal Emergency Medical Treatment & Labor Act requires  
4 Arkansas hospitals to provide direct health care for Arkansas citizens,  
5 including those citizens eligible for the Arkansas Health Care Independence  
6 Program, regardless of ability to pay; and

7

8 WHEREAS, the Arkansas Health Care Independence Program was the State of  
9 Arkansas's initial response to the disruptive challenges of the federal  
10 healthcare legislation and regulation in an effort to safeguard Arkansas  
11 employers and citizens and healthcare systems; and

12

13 WHEREAS, the Arkansas Health Care Independence Program and the federal  
14 waiver under which the state operates the Arkansas Health Care Independence  
15 Program will terminate on December 31, 2016, which will have the effect of  
16 ending eligibility for Medicaid expansion populations in the absence of  
17 legislative action by the General Assembly; and

18

19 WHEREAS, the State of Arkansas has historically sought state-specific  
20 strategies to provide health care for low-income and other vulnerable  
21 populations while reducing state and federal obligations to entitlement  
22 spending; and

23

24 WHEREAS, the State of Arkansas continues to seek out strategies to  
25 provide health care for low-income and other vulnerable populations in a  
26 manner that will promote accountability, personal responsibility, and  
27 transparency; remove disincentives for work and social mobility; encourage  
28 and reward healthy outcomes and responsible choices; and promote efficiencies  
29 that will deliver value to the taxpayers; and

30

31 WHEREAS, the State of Arkansas is recognized as a leader in healthcare  
32 finance and delivery system innovation; and

33

34 WHEREAS, the State of Arkansas seeks to assert its responsibility for  
35 local control and to protect Arkansas consumers and businesses from federal  
36 mandates,

1  
2 NOW THEREFORE,

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

4  
5 SECTION 1. DO NOT CODIFY. Title.

6 This act shall be known and may be cited as the "Arkansas Health Reform  
7 Act of 2015".

8  
9 SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Arkansas Health Reform  
10 Legislative Task Force – Creation – Membership – Duties.

11 (a) There is created the Arkansas Health Reform Legislative Task  
12 Force.

13 (b)(1) The task force shall consist of the following sixteen (16)  
14 members of the General Assembly:

15 (A) The President Pro Tempore of the Senate, or his or her  
16 designee who is a member of the Senate;

17 (B) Five (5) members of the Senate appointed by the  
18 President Pro Tempore of the Senate;

19 (C) The Senate Majority Leader, or his or her designee who  
20 is a member of the Senate;

21 (D) The Senate Minority Leader, or his or her designee who  
22 is a member of the Senate;

23 (E) The Speaker of the House of Representatives, or his or  
24 her designee who is a member of the House of Representatives;

25 (F) Five (5) members of House of Representatives appointed  
26 by the Speaker of the House of Representatives;

27 (G) The House Majority Leader, or his or her designee who  
28 is a member of the House of Representatives; and

29 (H) The House Minority Leader, or his or her designee who  
30 is a member of the House of Representatives.

31 (2) The Surgeon General shall serve as a nonvoting member of the  
32 task force.

33 (3) If a vacancy occurs on the task force, the vacancy shall be  
34 filled by the same process as the original appointment.

35 (4) Legislative members of the task force shall be paid per diem  
36 and mileage as authorized by law for attendance at meetings of interim

1 committees of the General Assembly.

2 (c)(1) The President Pro Tempore of the Senate shall designate one (1)  
3 member of the task force to call the first meeting of the task force within  
4 thirty (30) days of the effective date of this act and serve as chair of the  
5 task force at the first meeting.

6 (2) At the first meeting of the task force, the members of the  
7 task force shall elect from its membership a chair and other officers as  
8 needed for the transaction of its business.

9 (3)(A) The task force shall conduct its meetings in Pulaski  
10 County at the State Capitol or another site with teleconferencing  
11 capabilities.

12 (B) Meetings of the task force shall be held at least one  
13 (1) time every two (2) months but may occur more often at the call of the  
14 chair.

15 (4) The task force shall establish rules and procedures for  
16 conducting its business.

17 (5)(A) A majority of the voting members of the task force shall  
18 constitute a quorum for transacting business of the task force.

19 (B) An affirmative vote of a majority of a quorum present  
20 shall be required for the passage of a motion or other task force action.

21 (6) The Bureau of Legislative Research shall provide staff for  
22 the task force.

23 (d)(1) The purpose of the task force is to:

24 (A) Recommend an alternative healthcare coverage model and  
25 legislative framework to ensure the continued availability of healthcare  
26 services for vulnerable populations covered by the Health Care Independence  
27 Program established by the Health Care Independence Act of 2013, §§ 20-77-  
28 2401 et seq., upon program termination; and

29 (B) Explore and recommend options to modernize Medicaid  
30 programs serving the indigent, aged, and disabled.

31 (2) To achieve this purpose, the task force shall:

32 (A) Identify resources and funding necessary to ensure an  
33 effective and efficient transition from the Health Care Independence Program,  
34 while minimizing or eliminating any need for the General Assembly to raise  
35 additional state general revenue;

36 (B) Identify the populations eligible for and

1 participating in the Health Care Independence Program, including both:

2 (i) Individuals newly eligible for health coverage  
3 under the program; and

4 (ii) Individuals previously eligible for Medicaid  
5 before the effective date of the program, whether under a Medicaid waiver or  
6 some other eligibility criteria;

7 (C) Study the healthcare needs and other relevant  
8 characteristics of those populations served by the Health Care Independence  
9 Program;

10 (D) Recommend measures and options to preserve access to  
11 quality health care for those populations served by the Health Care  
12 Independence Program;

13 (E) Structure any recommended measures and options in a  
14 manner that achieves the following:

15 (i) Protection of Arkansas workers and employers  
16 from federal mandates and regulations by limiting the role of the federal  
17 government in defining the healthcare choices and coverage available in the  
18 Arkansas health insurance market;

19 (ii) Maximum flexibility for the state and  
20 limitations on federal restrictions on the state's ability to efficiently and  
21 effectively manage the Arkansas Medicaid Program;

22 (iii) Opportunities to limit the size of the  
23 traditional Medicaid program by serving healthier beneficiaries in the  
24 private market;

25 (iv) Strengthening of the employer-sponsored health  
26 insurance market;

27 (v) Increased employment of able-bodied recipients  
28 of taxpayer-funded healthcare services;

29 (vi) Healthier behaviors, increased accountability,  
30 and personal responsibility for beneficiaries;

31 (vii) Enlistment of enough providers so that care  
32 and services are available at least to the extent that such care and services  
33 are available under the Health Care Independence Program;

34 (viii) Access to health services in rural areas of  
35 the state;

36 (ix) Continuity of coverage for eligible individuals

1 as their income or life circumstances change; and

2 (x)(a) Continued payment innovation, delivery system  
3 reform, and market driven improvement, including without limitation the  
4 Arkansas Health Care Payment Improvement Initiative, for which current  
5 federal grant support will expire on or before December 31, 2016.

6 (b) The task force shall review the Arkansas  
7 Health Care Payment Improvement Initiative and recommend continuation,  
8 suspension, termination, or other actions the task force deems appropriate to  
9 the Governor.

10 (F) Estimate the impact of the Health Care Independence  
11 Program and of its termination on the state's economy as a whole and on the  
12 state's general revenue budget;

13 (G) Recommend procedures to optimize and streamline  
14 the legislative review and approval process for state plan amendments  
15 and other Medicaid rules, so as to promote efficiency, ensure agency  
16 responsiveness to changing market conditions, encourage transparency,  
17 and protect against undue influence by special interests; and

18 (H) If the task force determines necessary, contract with  
19 the consultants to assist the task force with the study.

20 (3)(A) On or before December 31, 2015, the task force shall file  
21 with the Governor, the Speaker of the House of Representatives, and the  
22 President Pro Tempore of the Senate a written report of the task force's  
23 activities, findings, and recommendations.

24 (B) The task force may file with the Governor, the Speaker  
25 of the House of Representatives, and the President Pro Tempore of the Senate  
26 a final written report on or before December 30, 2016.

27 (e) The task force expires December 31, 2016.

28  
29 SECTION 3. TEMPORARY LANGUAGE. DO NOT CODIFY. Efforts to transform  
30 the Arkansas Medicaid Program – Federal waivers or authorities.

31 (a)(1) Notwithstanding any other rule, regulation, or law to the  
32 contrary, the Department of Human Services may submit and apply for any  
33 federal waivers or authority necessary to transform the Arkansas Medicaid  
34 Program into a program with maximum state flexibility in the use of the funds  
35 for innovative and cost-effective solutions for the provision of healthcare  
36 services.

1           (2) Under no circumstances may Medicaid eligibility be extended  
2 past December 31, 2016, for the current Medicaid expansion population under  
3 the Health Care Independence Program, commonly referred to as the "Private  
4 Option," including the current Medicaid expansion population in the  
5 eligibility category created by Section 1902(a)(10)(A)(i)(VIII) of the Social  
6 Security Act, 42 U.S.C. § 1396a, without express legislative approval through  
7 a proper enactment of law by the General Assembly.

8           (3) The options pursued as part of this effort may include  
9 without limitation:

10           (A) A block grant or global budget cap program in which  
11 the federal government provides the state with a defined annual lump sum,  
12 calculated on the basis of past and existing Medicaid funding levels,  
13 adjusted annually for healthcare inflation; and

14           (B) Innovative measures and options such as capitated  
15 payment models, including without limitation managed care programs for  
16 specific high-need populations such as people with serious mental illness or  
17 elders with frailty.

18           (b) The solutions pursued through this effort shall aim to sustain and  
19 improve the following:

20           (1) Appropriate care and improved outcomes through early  
21 intervention, prevention, and wellness programs, including the reduction of  
22 rates of obesity and tobacco use;

23           (2) Services in the most cost-effective settings;

24           (3) Enhanced injury prevention;

25           (4) Optimized use of telemedicine;

26           (5) Transparency in healthcare price, quality, and utilization  
27 for consumers, taxpayers, and policymakers;

28           (6) Discouraged over-utilization and reduced waste, fraud, and  
29 abuse; and

30           (7) Other efficiencies that will deliver value to the taxpayers.

31           (c) The programs and populations in this effort may include without  
32 limitation:

33           (1) The traditional Medicaid program;

34           (2) Existing Medicaid waiver programs, including without  
35 limitation those waivers authorized or required by Arkansas law; and

36           (3) Individuals eligible for the Health Care Independence

1 Program authorized under § 20-77-2401 et seq.

2 (d) The department, in consultation with the Arkansas Health Reform  
3 Legislative Task Force, shall submit the necessary waiver requests to the  
4 Centers for Medicare and Medicaid Services no later than July 1, 2016, for a  
5 waiver term of up to five (5) years.

6 (e) The department may promulgate rules to administer and implement  
7 this section.

8  
9 SECTION 4. TEMPORARY LANGUAGE. DO NOT CODIFY. Suspension of certain  
10 changes to the Health Care Independence Program.

11 (a) The Department of Human Services shall suspend, as of the  
12 effective date of this act and notwithstanding any other rules, regulations,  
13 or provisions of law to the contrary, any further inclusion or transition of  
14 Medicaid-eligible recipient populations to the Arkansas Health Insurance  
15 Marketplace, including without limitation:

16 (1) Children eligible for the ARKids First Program Act, § 20-77-  
17 1101 et seq., commonly known as the “ARKids B program”; and

18 (2) Populations under Medicaid from zero percent (0%) of the  
19 federal poverty level to seventeen percent (17%) of the federal poverty  
20 level.

21 (b) Notwithstanding any other rule, regulation, or law to the  
22 contrary, the department shall suspend, as of the effective date of this act,  
23 the application of any additional cost sharing requirements to go into effect  
24 on or after January 31, 2015, under the Health Care Independence Program to  
25 Medicaid beneficiaries with incomes below one hundred percent (100%) of the  
26 federal poverty level.

27 (c) The purpose of this section is to:

28 (1) Ensure a focus on future improvements; and

29 (2) Limit the state’s exposure to additional costs.

30 (d) This section shall expire at the earliest of:

31 (1) The effective date of the termination of the Health Care  
32 Independence Program; or

33 (2) December 31, 2016.

34  
35 SECTION 5. TEMPORARY LANGUAGE. DO NOT CODIFY. Modification of  
36 Medicaid State Plan.



1 (a) The Department of Human Services shall amend the Medicaid State  
2 Plan to eliminate all eligibility categories authorized by Section  
3 1902(a)(10)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a,  
4 by December 31, 2016.

5 (b) The department shall submit and make effective the Medicaid State  
6 Plan amendments required by this section prior to the date on which the  
7 federal waivers actually terminate.

8 (c) This section does not require modification of any Medicaid  
9 eligibility categories that were in effect on or before December 31, 2013.

10 (d) The purpose of this section is to ensure that Medicaid eligibility  
11 does not continue past December 31, 2016, for the current Medicaid expansion  
12 population under the Health Care Independence Program, commonly referred to  
13 as the "Private Option," including the current Medicaid expansion population  
14 in the eligibility category created by Section 1902(a)(10)(A)(i)(VIII) of the  
15 Social Security Act, 42 U.S.C. § 1396a, without express approval through a  
16 proper enactment of law by the General Assembly.

17  
18 SECTION 6. DO NOT CODIFY. Expiration of Health Care Independence  
19 Program.

20 Eligibility, enrollment and participation in Medicaid for the current  
21 Medicaid expansion population under the Health Care Independence Program  
22 authorized under § 20-77-2401 et seq., including the current Medicaid  
23 expansion population in the eligibility category created by Section  
24 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, shall  
25 cease and terminate effective January 1, 2017, in the absence of legislative  
26 action by the General Assembly.

27  
28 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the  
29 General Assembly of the State of Arkansas that without legislative action,  
30 the Health Care Independence Program will terminate before reductions in  
31 federal medical assistance percentages require the expenditure of additional  
32 state general revenues; that an urgent need exists to develop contingency  
33 plans for the termination of the Health Care Independence Program and to  
34 ensure continued healthcare access for eligible individuals; that to ensure  
35 efficient use of taxpayer dollars and continued healthcare coverage for the  
36 state's most vulnerable citizens, it is immediately necessary to transform

1 the Arkansas Medicaid Program; and that this act is immediately necessary to  
2 initiate reforms of the state's healthcare system. Therefore, an emergency is  
3 declared to exist, and this act is immediately necessary for the preservation  
4 of the public peace, health, and safety, and shall become effective on:

5 (1) The date of this act's approval by the Governor;

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

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

11  
12 */s/J. Hendren*  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36