

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

HOUSE BILL 1103

5 By: Representative Sullivan  
6

## For An Act To Be Entitled

8 AN ACT TO REPEAL THE ARKANSAS HEALTHCARE TRANSPARENCY  
9 INITIATIVE ACT OF 2015; TO REPEAL THE ARKANSAS  
10 HEALTHCARE TRANSPARENCY INITIATIVE FUND; AND FOR  
11 OTHER PURPOSES.  
12  
13

## Subtitle

14 TO REPEAL THE ARKANSAS HEALTHCARE  
15 TRANSPARENCY INITIATIVE ACT OF 2015; AND  
16 TO REPEAL THE ARKANSAS HEALTHCARE  
17 TRANSPARENCY INITIATIVE FUND.  
18  
19  
20

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

23 SECTION 1. Arkansas Code § 19-5-1145 is repealed.

24 ~~19-5-1145. Arkansas Healthcare Transparency Initiative Fund.~~

25 ~~(a) There is created on the books of the Treasurer of State, the~~  
26 ~~Auditor of State, and the Chief Fiscal Officer of the State a trust fund to~~  
27 ~~be known as the "Arkansas Healthcare Transparency Initiative Fund".~~

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

32 ~~(2) The fund shall be overseen by the State Insurance Department~~  
33 ~~and shall be used to pay all proper costs incurred in implementing the~~  
34 ~~provisions of the Arkansas Healthcare Transparency Initiative Act of 2015, §~~  
35 ~~23-61-901 et seq.~~

36 ~~(c) The following moneys shall be paid into the fund:~~



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

5           ~~(2) Appropriations from the General Assembly; and~~

6           ~~(3) All other subscription fees or payments made by third~~  
 7 ~~parties to the State Insurance Department for data access.~~

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

11  
 12           SECTION 2. Arkansas Code Title 23, Chapter 61, Subchapter 9, is  
 13 repealed.

14           ~~Subchapter 9—Arkansas Healthcare Transparency Initiative Act of 2015~~

15  
 16           ~~23-61-901.—Title.~~

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

19  
 20           ~~23-61-902.—Legislative intent and purpose.~~

21           ~~(a) It is the intent of the General Assembly to create and maintain an~~  
 22 ~~informative source of healthcare information to support consumers,~~  
 23 ~~researchers, and policymakers in healthcare decisions within the state,~~  
 24 ~~including decisions by the State Insurance Department to regulate the~~  
 25 ~~business of insurance in this state.~~

26           ~~(b) The purpose of this subchapter is to:~~

27           ~~(1) Empower Arkansans to drive, deliver, and seek out value in~~  
 28 ~~the healthcare system;~~

29           ~~(2) Create the Arkansas Healthcare Transparency Initiative;~~

30           ~~(3) Establish governance of the Arkansas Healthcare Transparency~~  
 31 ~~Initiative;~~

32           ~~(4) Provide authority to collect healthcare information from~~  
 33 ~~insurance carriers and other entities; and~~

34           ~~(5) Establish appropriate methods for collecting, maintaining,~~  
 35 ~~and reporting healthcare information, including privacy and security~~  
 36 ~~safeguards.~~

1  
2 ~~23-61-903. Definitions.~~

3 ~~As used in this subchapter:~~

4 ~~(1) "Arkansas Healthcare Transparency Initiative" means an~~  
5 ~~initiative to create a database, including ongoing all-payer claims database~~  
6 ~~projects funded through the State Insurance Department, that receives and~~  
7 ~~stores data from a submitting entity relating to medical, dental, and~~  
8 ~~pharmaceutical and other insurance claims information, unique identifiers,~~  
9 ~~and geographic and demographic information for covered individuals as~~  
10 ~~permitted in this subchapter, and provider files, for the purposes of this~~  
11 ~~subchapter;~~

12 ~~(2) "Arkansas resident" means an individual for whom the~~  
13 ~~submitting entity has identified an Arkansas address as the individual's~~  
14 ~~primary place of residence;~~

15 ~~(3) "Claims data" means information included in an~~  
16 ~~institutional, professional, or pharmacy claim or equivalent information~~  
17 ~~transaction for a covered individual, including the amount paid to a provider~~  
18 ~~of healthcare services plus any amount owed by the covered individual;~~

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

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

28 ~~(B) "Direct personal identifiers" does not include~~  
29 ~~geographic or demographic information that would not allow the identification~~  
30 ~~of a covered individual;~~

31 ~~(6) "Enrollment data" means demographic information and other~~  
32 ~~identifying information relating to covered individuals, including direct~~  
33 ~~personal identifiers;~~

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

1           ~~(8) “Provider” means an individual or entity licensed by the~~  
2 ~~state to provide healthcare services;~~

3           ~~(9)(A) “Submitting entity” means:~~

4                   ~~(i) An entity that provides health or dental~~  
5 ~~insurance or a health or dental benefit plan in the state, including without~~  
6 ~~limitation an insurance company, medical services plan, managed care~~  
7 ~~organization, hospital plan, hospital medical service corporation, health~~  
8 ~~maintenance organization, or fraternal benefit society, provided that the~~  
9 ~~entity has covered individuals and the entity had at least two thousand~~  
10 ~~(2,000) covered individuals in the previous calendar year;~~

11                   ~~(ii) A health benefit plan offered or administered~~  
12 ~~by or on behalf of the state or an agency or instrumentality of the state,~~  
13 ~~including without limitation benefits administered by a managed care~~  
14 ~~organization whether or not the managed care organization had two thousand~~  
15 ~~(2,000) covered individuals in the previous year;~~

16                   ~~(iii) A health benefit plan offered or administered~~  
17 ~~by or on behalf of the federal government with the agreement of the federal~~  
18 ~~government;~~

19                   ~~(iv) The Workers’ Compensation Commission;~~

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

25                   ~~(vi) A health benefit plan subject to the Employee~~  
26 ~~Retirement Income Security Act of 1974, Pub. L. No. 93-406, and that is fully~~  
27 ~~insured;~~

28                   ~~(vii) A risk-based provider organization licensed by~~  
29 ~~the State Insurance Department; and~~

30                   ~~(viii) An entity that contracts with institutions of~~  
31 ~~the Department of Correction or the Department of Community Correction to~~  
32 ~~provide medical, dental, or pharmaceutical care to inmates.~~

33           ~~(B) “Submitting entity” does not include:~~

34                   ~~(i) An entity that provides health insurance or a~~  
35 ~~health benefit plan that is accident-only, specified disease, hospital~~  
36 ~~indemnity, long-term care, disability income, or other supplemental benefit~~

1 coverage;

2 ~~(ii) An employee of a welfare benefit plan as~~  
 3 ~~defined by federal law that is also a trust established pursuant to~~  
 4 ~~collective bargaining subject to the Labor Management Relations Act, 1947,~~  
 5 ~~Pub. L. No. 80-101; or~~

6 ~~(iii) A health benefit plan subject to the Employee~~  
 7 ~~Retirement Income Security Act of 1974, Pub. L. No. 93-406, that is self-~~  
 8 ~~funded; and~~

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

12  
 13 ~~23-61-904. Arkansas Healthcare Transparency Initiative.~~

14 ~~(a) The Arkansas Healthcare Transparency Initiative is established~~  
 15 ~~with the purpose to create a database, including ongoing all-payer claims~~  
 16 ~~database projects funded through the State Insurance Department, that~~  
 17 ~~receives and stores data from a submitting entity relating to medical,~~  
 18 ~~dental, and pharmaceutical and other insurance claims information, unique~~  
 19 ~~identifiers, and geographic and demographic information for covered~~  
 20 ~~individuals as permitted in this subchapter, and provider files, for the~~  
 21 ~~purposes of this subchapter.~~

22 ~~(b) The Arkansas Healthcare Transparency Initiative shall be governed~~  
 23 ~~by the department and advised by the Arkansas Healthcare Transparency~~  
 24 ~~Initiative Board.~~

25  
 26 ~~23-61-905. Arkansas Healthcare Transparency Initiative Board—~~  
 27 ~~Membership—Duties.~~

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

30 ~~(A) A representative of the Department of Human Services;~~

31 ~~(B) A representative of the Department of Health;~~

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

34 ~~(D) The Surgeon General;~~

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

36 ~~(i) Two (2) representatives from the health~~

~~insurance industry, one (1) of whom shall be a multistate representative and one (1) of whom shall be a domestic representative;~~

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

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

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

~~(v) A representative from a healthcare consumer organization;~~

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

~~(vii) A representative with expertise in health data privacy and security; and~~

~~(F) A representative from the Arkansas Biosciences Institute who shall serve as an ex-officio, nonvoting member.~~

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

~~(3) The board shall appoint one (1) member as Chair of the Arkansas Healthcare Transparency Initiative Board and determine the qualifications, duties, and the term of office of the chair.~~

~~(4) Seven (7) members present constitute a quorum.~~

~~(5) The board shall hold its first meeting no later than July 1, 2015.~~

~~(b) The State Insurance Department shall:~~

~~(1) Have the authority to:~~

~~(A) Collect, validate, analyze, and present health data, including claims data;~~

~~(B) Assess penalties for noncompliance with this subchapter; and~~

~~(C) Establish and convene additional subcommittees to carry out the purposes of this subchapter;~~

~~(2) Designate the Arkansas Center for Health Improvement as the Administrator of the Arkansas Healthcare Transparency Initiative, which shall be responsible for development and implementation of a sustainability plan subject to data use and disclosure requirements of this subchapter and any~~

1 ~~rules promulgated under this subchapter;~~

2 ~~(3) With the assistance of the Administrator of the Arkansas~~  
 3 ~~Healthcare Transparency Initiative, establish and convene the following~~  
 4 ~~subcommittees:~~

5 ~~(A) The Data Oversight Subcommittee of the Arkansas~~  
 6 ~~Healthcare Transparency Initiative, which shall:~~

7 ~~(i) Consist of:~~

8 ~~(a) Three (3) Governor-appointed board~~  
 9 ~~members; and~~

10 ~~(b) One (1) individual healthcare consumer;~~

11 ~~and~~

12 ~~(ii) Review and make recommendations to the State~~  
 13 ~~Insurance Department regarding:~~

14 ~~(a) Data requests for consistency with the~~  
 15 ~~intent and purpose of this subchapter, including whether the data request~~  
 16 ~~contains the minimum required information; and~~

17 ~~(b) Reports and publications generated from~~  
 18 ~~data requests to ensure compliance with this subchapter; and~~

19 ~~(B) The Scientific Advisory Subcommittee of the Arkansas~~  
 20 ~~Healthcare Transparency Initiative, which shall:~~

21 ~~(i) Consist of:~~

22 ~~(a) The Governor-appointed member of the board~~  
 23 ~~from the academic research community; and~~

24 ~~(b) Two (2) nonmembers of the board who are~~  
 25 ~~academic researchers; and~~

26 ~~(ii) Serve as peer review for academic researchers~~  
 27 ~~and provide advice regarding data requests for academic proposals and the~~  
 28 ~~scientific rigor of analytic work; and~~

29 ~~(4) Adopt any rules necessary to implement this subchapter under~~  
 30 ~~the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

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

33 ~~(1) Establish policies and procedures necessary for the~~  
 34 ~~administration and oversight of the Arkansas Healthcare Transparency~~  
 35 ~~Initiative, including procedures for the collection, processing, storage,~~  
 36 ~~analysis, use, and release of data;~~

1           ~~(2) Identify and explore the key healthcare issues, questions,~~  
 2 ~~and problems that may be improved through more transparent information,~~  
 3 ~~including without limitation data required to be disclosed to patients~~  
 4 ~~related to provider relationships or affiliations with payers and providers,~~  
 5 ~~financial interests in healthcare businesses, and payments or items of any~~  
 6 ~~value given to providers from pharmaceutical or medical device manufacturers~~  
 7 ~~or agents thereof; and~~

8           ~~(3) Provide a biennial report to the General Assembly on the~~  
 9 ~~operations of the Arkansas Healthcare Transparency Initiative.~~

10  
 11           ~~23-61-906. Data submission.~~

12           ~~(a) Except as provided in subsection (d) of this section, no later~~  
 13 ~~than January 1, 2016, and every quarter thereafter, a submitting entity shall~~  
 14 ~~submit health and dental claims data, unique identifiers, and geographic and~~  
 15 ~~demographic information for covered individuals as permitted in this~~  
 16 ~~subchapter, and provider files to the Arkansas Healthcare Transparency~~  
 17 ~~Initiative in accordance with standards and procedures adopted by the State~~  
 18 ~~Insurance Department.~~

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

23           ~~(c) The collection, storage, and release of data and other information~~  
 24 ~~under this section is subject to applicable state and federal data privacy~~  
 25 ~~and security law.~~

26           ~~(d) No later than July 1, 2015, a submitting entity shall submit~~  
 27 ~~health and dental claims data, unique identifiers, and geographic and~~  
 28 ~~demographic information for covered individuals as permitted in this~~  
 29 ~~subchapter to the Arkansas Healthcare Transparency Initiative to support~~  
 30 ~~deliberations of the Arkansas Health Reform Legislative Task Force.~~

31  
 32           ~~23-61-907. Data release.~~

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

34           ~~(1) To the extent authorized by the State Insurance Department,~~  
 35 ~~be available:~~

36           ~~(A) When disclosed in a form and manner that ensures the~~

1 ~~privacy and security of protected health information as required by state and~~  
 2 ~~federal laws, as a resource to insurers, employers, purchasers of health~~  
 3 ~~care, researchers, state agencies, and healthcare providers to allow for~~  
 4 ~~assessment of healthcare utilization, expenditures, and performance in this~~  
 5 ~~state, including without limitation as a resource for hospital community~~  
 6 ~~health needs assessments; and~~

7 ~~(B) To state programs regarding healthcare quality and~~  
 8 ~~costs for use in improving health care in the state, subject to rules~~  
 9 ~~prescribed by the department conforming to state and federal privacy laws or~~  
 10 ~~limiting access to limited-use data sets; and~~

11 ~~(2) Not be used to:~~

12 ~~(A) Disclose trade secrets of submitting entities;~~

13 ~~(B) Reidentify or attempt to reidentify an individual who~~  
 14 ~~is the subject of any submitted data without obtaining the individual's~~  
 15 ~~consent; or~~

16 ~~(C) Create or augment data contained in a national claims~~  
 17 ~~database.~~

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

22  
 23 ~~23-61-908. Penalties for failure to submit data.~~

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

27 ~~(b) The department shall adopt a schedule of penalties not to exceed~~  
 28 ~~one thousand dollars (\$1,000) per day of violation, determined by the~~  
 29 ~~severity of the violation.~~

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

33 ~~(d) A penalty remitted under this section shall be used for Arkansas~~  
 34 ~~Healthcare Transparency Initiative operations.~~

35  
 36 ~~23-61-909. Data collected under State Health Data Clearinghouse Act.~~

1           ~~(a) The Department of Health shall submit data collected under the~~  
 2 ~~State Health Data Clearinghouse Act, § 20-7-301 et seq., to the Arkansas~~  
 3 ~~Healthcare Transparency Initiative for integration into the Arkansas~~  
 4 ~~Healthcare Transparency Initiative database created under § 23-61-904.~~

5           ~~(b) The data submitted under subsection (a) of this section:~~

6                 ~~(1) Shall be assigned a unique identifier as defined in § 23-61-~~  
 7 ~~903; and~~

8                 ~~(2) May be used in accordance with the purposes of the Arkansas~~  
 9 ~~Healthcare Transparency Initiative and the rules promulgated under this~~  
 10 ~~subchapter.~~

11  
 12           ~~23-61-910. Data collected regarding hospital discharge and emergency~~  
 13 ~~department records.~~

14           ~~(a) The Department of Health shall submit data collected regarding~~  
 15 ~~hospital discharge and emergency department records for the uninsured, birth~~  
 16 ~~and death records, and disease registry data under the State Health Data~~  
 17 ~~Clearinghouse Act, § 20-7-301 et seq., § 20-15-201 et seq., and § 20-18-201,~~  
 18 ~~to the Arkansas Healthcare Transparency Initiative Board for integration into~~  
 19 ~~the Arkansas Healthcare Transparency Initiative database created under § 23-~~  
 20 ~~61-904.~~

21           ~~(b) The data submitted under subsection (a) of this section:~~

22                 ~~(1) Shall be assigned a unique identifier as defined in § 23-61-~~  
 23 ~~903; and~~

24                 ~~(2) May be used in accordance with the purposes of the Arkansas~~  
 25 ~~Healthcare Transparency Initiative and the rules promulgated under this~~  
 26 ~~subchapter.~~

27  
 28           SECTION 3. Arkansas Code § 23-61-1004(g)(2)(B), concerning the  
 29 administration of the Arkansas Works Program, is amended to read as follows:

30                 (B) A health insurer may utilize existing mechanisms with  
 31 supplemental enrollment information to fulfill requirements under this  
 32 subchapter, ~~including without limitation the state's all-payer claims~~  
 33 ~~database established under the Arkansas Healthcare Transparency Initiative~~  
 34 ~~Act of 2015, § 23-61-901 et seq., for claims and enrollment data submission.~~