

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1414 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S4/6/09

A Bill

SENATE BILL 152

5 By: Joint Budget Committee
6
7

For An Act To Be Entitled

9 AN ACT TO MAKE AN APPROPRIATION FOR PERSONAL
10 SERVICES AND OPERATING EXPENSES FOR THE
11 DEPARTMENT OF HUMAN SERVICES - DIVISION OF
12 MEDICAL SERVICES FOR THE FISCAL YEAR ENDING JUNE
13 30, 2010; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 AN ACT FOR THE DEPARTMENT OF HUMAN
17 SERVICES - DIVISION OF MEDICAL SERVICES
18 APPROPRIATION FOR THE 2009-2010 FISCAL
19 YEAR.
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22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. REGULAR SALARIES - OPERATIONS. There is hereby established for
26 the Department of Human Services - Division of Medical Services for the 2009-
27 2010 fiscal year, the following maximum number of regular employees whose
28 salaries shall be governed by the provisions of the Uniform Classification
29 and Compensation Act (Arkansas Code §§21-5-201 et seq.), or its successor,
30 and all laws amendatory thereto. Provided, however, that any position to
31 which a specific maximum annual salary is set out herein in dollars, shall be
32 exempt from the provisions of said Uniform Classification and Compensation
33 Act. All persons occupying positions authorized herein are hereby governed
34 by the provisions of the Regular Salaries Procedures and Restrictions Act
35 (Arkansas Code §21-5-101), or its successor.



				Maximum	Maximum Annual
				No. of	Salary Rate
	Item	Class			Fiscal Year
	No.	Code	Title	Employees	2009-2010
6	(1)	L016N	REGISTERED PHARMACIST	6	GRADE N911
7	(2)	N022N	DHS DEP DIR MEDICAL SERVICES	1	GRADE N910
8	(3)	N080N	DHS/DMS ASSISTANT DIRECTOR - FISCAL	1	GRADE N907
9	(4)	N099N	DHS/DMS ADD - LONG TERM CARE	1	GRADE N906
10	(5)	N100N	DHS/DMS ADD - MEDICAL SERVICES	2	GRADE N906
11	(6)	D007C	INFORMATION SYSTEMS MANAGER	1	GRADE C128
12	(7)	A016C	DHS DMS BUSINESS OPERATIONS MANAGER	9	GRADE C127
13	(8)	L010C	DHS DMS MEDICAL ASSISTANCE MANAGER	9	GRADE C125
14	(9)	L009C	NURSE MANAGER	5	GRADE C125
15	(10)	B023C	ENGINEER, P.E.	1	GRADE C124
16	(11)	L020C	NURSING SERVICES UNIT MANAGER	2	GRADE C123
17	(12)	L019C	REGISTERED NURSE COORDINATOR	5	GRADE C123
18	(13)	A044C	AUDIT COORDINATOR	1	GRADE C122
19	(14)	G099C	DHS PROGRAM ADMINISTRATOR	15	GRADE C122
20	(15)	L027C	REGISTERED NURSE SUPERVISOR	13	GRADE C122
21	(16)	A056C	DHS FINANCIAL SECTION MANAGER	1	GRADE C120
22	(17)	L040C	DIETARY SERVICES DIRECTOR	1	GRADE C120
23	(18)	L038C	REGISTERED NURSE	74	GRADE C120
24	(19)	E023C	TRAINING PROJECT MANAGER	1	GRADE C120
25	(20)	D063C	COMPUTER SUPPORT SPECIALIST	3	GRADE C119
26	(21)	D062C	DATABASE ANALYST	1	GRADE C119
27	(22)	G152C	DHS PROGRAM MANAGER	11	GRADE C119
28	(23)	G147C	GRANTS COORDINATOR	2	GRADE C119
29	(24)	X067C	HEALTH FACILITIES SURVEYOR	21	GRADE C119
30	(25)	X062C	QUALITY ASSURANCE COORDINATOR	2	GRADE C119
31	(26)	A060C	SENIOR AUDITOR	11	GRADE C119
32	(27)	R024C	ASST PERSONNEL MANAGER	1	GRADE C118
33	(28)	A081C	AUDITOR	2	GRADE C117
34	(29)	R027C	BUDGET SPECIALIST	2	GRADE C117
35	(30)	G183C	DHS PROGRAM COORDINATOR	8	GRADE C117
36	(31)	L055C	DIETICIAN	3	GRADE C117

1	(32)	D068C	INFORMATION SYSTEMS ANALYST	3	GRADE C117
2	(33)	M039C	MEDICAID SERVICES SUPERVISOR	3	GRADE C117
3	(34)	C013C	MEDICAL SERVICES REPRESENTATIVE	4	GRADE C117
4	(35)	G178C	POLICY DEVELOPMENT COORDINATOR	5	GRADE C117
5	(36)	A089C	ACCOUNTANT I	1	GRADE C116
6	(37)	X124C	HEALTH FACILITY REVIEWER	1	GRADE C116
7	(38)	A084C	PROGRAM/FIELD AUDIT SPECIALIST	3	GRADE C116
8	(39)	C037C	ADMINISTRATIVE ANALYST	6	GRADE C115
9	(40)	G210C	DHS PROGRAM SPECIALIST	1	GRADE C115
10	(41)	A091C	FISCAL SUPPORT ANALYST	3	GRADE C115
11	(42)	C050C	ADMINISTRATIVE SUPPORT SUPERVISOR	1	GRADE C113
12	(43)	L070C	HEALTH CARE ANALYST	19	GRADE C113
13	(44)	C056C	ADMINISTRATIVE SPECIALIST III	25	GRADE C112
14	(45)	A098C	FISCAL SUPPORT SPECIALIST	2	GRADE C112
15	(46)	C073C	ADMINISTRATIVE SPECIALIST II	18	GRADE C109
16	(47)	C087C	ADMINISTRATIVE SPECIALIST I	<u>15</u>	GRADE C106
17			MAX. NO. OF EMPLOYEES	<u>326</u>	

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19 SECTION 2. EXTRA HELP - OPERATIONS. There is hereby authorized, for the
 20 Department of Human Services - Division of Medical Services for the 2009-2010
 21 fiscal year, the following maximum number of part-time or temporary
 22 employees, to be known as "Extra Help", payable from funds appropriated
 23 herein for such purposes: seven (7) temporary or part-time employees, when
 24 needed, at rates of pay not to exceed those provided in the Uniform
 25 Classification and Compensation Act, or its successor, or this act for the
 26 appropriate classification.

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28 SECTION 3. APPROPRIATION - OPERATIONS. There is hereby appropriated, to
 29 the Department of Human Services - Division of Medical Services, to be
 30 payable from the paying account as determined by the Chief Fiscal Officer of
 31 the State, for personal services and operating expenses of the Department of
 32 Human Services - Division of Medical Services - Operations for the fiscal
 33 year ending June 30, 2010, the following:

34

35	ITEM	FISCAL YEAR
36	<u>NO.</u>	<u>2009-2010</u>

1	(01) REGULAR SALARIES	\$ 15,397,111
2	(02) EXTRA HELP	126,892
3	(03) PERSONAL SERVICES MATCHING	4,647,573
4	(04) OVERTIME	5,000
5	(05) MAINT. & GEN. OPERATION	
6	(A) OPER. EXPENSE	3,446,243
7	(B) CONF. & TRAVEL	246,340
8	(C) PROF. FEES	355,132
9	(D) CAP. OUTLAY	195,000
10	(E) DATA PROC.	0
11	(06) DATA PROCESSING SERVICES	299,600
12	(07) AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009	<u>458,025</u>
13	TOTAL AMOUNT APPROPRIATED	<u>\$ 25,176,916</u>

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15 SECTION 4. APPROPRIATION - GRANTS. There is hereby appropriated, to the
 16 Department of Human Services - Division of Medical Services, to be payable
 17 from the paying account as determined by the Chief Fiscal Officer of the
 18 State, for grant payments of the Department of Human Services - Division of
 19 Medical Services - Grants for the fiscal year ending June 30, 2010, the
 20 following:

21

22	ITEM	FISCAL YEAR
23	<u>NO.</u>	<u>2009-2010</u>
24	(01) PRIVATE NURSING HOME CARE	\$ 592,888,856
25	(02) INFANT INFIRMARY	27,450,775
26	(03) PUBLIC NURSING HOME CARE	221,068,656
27	(04) PRESCRIPTION DRUGS	444,995,868
28	(05) HOSPITAL AND MEDICAL SERVICES	3,321,028,598
29	(06) CHILD AND FAMILY LIFE INSTITUTE	2,100,000
30	(07) ARKIDS B PROGRAM	156,402,779
31	(08) PRIVATE NURSING HOME CARE - ARRA OF 2009	134,694,759
32	(09) INFANT INFIRMARY - ARRA OF 2009	4,901,102
33	(10) PUBLIC NURSING HOME CARE - ARRA OF 2009	40,875,288
34	(11) PRESCRIPTION DRUGS - ARRA OF 2009	94,544,574
35	(12) HOSPITAL AND MEDICAL SERVICES - ARRA OF 2009	646,455,077
36	(13) ARKIDS B PROGRAM - ARRA OF 2009	<u>27,377,439</u>

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SECTION 8. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. Arkansas Code § 19-5-306 (10) (A), concerning the Department of Human Services Grants Fund Account, is amended to read as follows:

DEPARTMENT OF HUMAN SERVICES GRANTS FUND ACCOUNT. The Department of Human Services Grants Fund Account shall be used for the following grant programs to consist of general revenues and any other nonfederal funds, as may be appropriated by the General Assembly:

- (i) Children's Medical Services;
- (ii) Food Stamp Employment and Training Program;
- (iii) Aid to the Aged, Blind, and Disabled;
- (iv) Transitional Employment Assistance Program;
- (v) Private nursing home care;
- (vi) Infant Infirmary - nursing home care;
- (vii) Public Nursing Home Care;
- (viii) Prescription Drugs;
- (ix) Hospital and Medical Services;
- (x) Child and Family Life Institute;
- (xi) Community Services Block Grant;
- (xii) ARKIDSFIRST;
- (xiii) Child Health Management Services; and
- (xiv) Child Care Grant; ~~and~~
- ~~(xv) Prescription Drug Elderly.~~

27 SECTION 9. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS
28 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL
29 SERVICES - CHILD AND FAMILY LIFE INSTITUTE. The Child Health and Family Life
30 Institute shall be administered under the direction of Arkansas Children's
31 Hospital. Arkansas Children's Hospital shall enter into a cooperative
32 agreement and/or contract with the University of Arkansas for Medical
33 Sciences - Department of Pediatrics for services required in delivering the
34 programs of the Child Health and Family Life Institute. Utilizing a
35 multidisciplinary collaboration of professionals, the Child Health and Family
36 Life Institute shall provide a statewide effort to explore, develop and

1 evaluate new and better ways to address medically, socially and economically
2 interrelated health and developmental needs of children with special health
3 care needs and their families. The Child Health and Family Life Institute's
4 priorities shall include, but are not limited to, wellness and prevention,
5 screen and diagnosis, treatment and intervention, training and education and
6 research and evaluation.

7 Arkansas Children's Hospital and the University of Arkansas for Medical
8 Sciences - Department of Pediatrics shall make annual reports to the Arkansas
9 Legislative Council on all matters of funding, existing programs and services
10 offered through the Child Health and Family Life Institute.

11 The provisions of this section shall be in effect only from July 1, ~~2007~~
12 2009 through June 30, ~~2009~~ 2010.

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14 SECTION 10. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS
15 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL
16 SERVICES - PHARMACEUTICAL DISPENSING FEE SURVEY. No more than two years prior
17 to making any changes to the current pharmaceutical dispensing fee, the State
18 shall conduct an independent survey utilizing generally accepted accounting
19 principles, to determine the cost of dispensing a prescription by pharmacists
20 in Arkansas. Only factors relative to the cost of dispensing shall be
21 surveyed. These factors shall not include actual acquisition costs or average
22 profit or any combination of actual acquisition costs or average profit. The
23 survey results shall be the basis for establishing the dispensing fee paid to
24 participating pharmacies in the Medicaid prescription drug program in
25 accordance with Federal requirements. The dispensing fee shall be no lower
26 than the cost of dispensing as determined by the survey. Nothing in this
27 section shall be construed to prohibit the State from increasing the
28 dispensing fee at any time.

29 The provisions of this section shall be in effect only from July 1, ~~2007~~
30 2009 through June 30, ~~2009~~ 2010.

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32 SECTION 11. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS
33 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL
34 SERVICES - GENERAL MEDICAID RATE METHODOLOGY PROVISIONS.

35 (a) Rates established by the Division of Medical Services for the services or
36 programs covered by this Act shall be calculated by the methodologies

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

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

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

26 The provisions of this section shall be in effect only from July 1, ~~2007~~
27 2009 through June 30, ~~2009~~ 2010.

28
29 SECTION 12. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS
30 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. FUND
31 USAGE AUTHORIZED. The Arkansas Children's Hospital may request the Department
32 of ~~Health and~~ Human Services - Division of Medical Services to retain in the
33 Department of Human Services Grant Fund account an amount not to exceed
34 \$2,100,000 each fiscal year from funds made available by this Act for the
35 Child and Family Life Institute, Section 4, item number 06 to be used to
36 match federal funds used for supplemental Medicaid payments to Arkansas

1 Children's Hospital. These retained funds shall not be recovered to transfer
2 to the General Revenue Allotment Reserve Fund.

3
4 SECTION 13. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS
5 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. STATE
6 PLAN. The State Plan must include the provision of EPSDT services as those
7 services are defined in §1396d(r). See §§ 1396a(a)(10)(A), 1396d(a)(4)(B);
8 see also 1396a(a)(43). Section 1396d(r) lists in detail the screening
9 services, vision services, dental services, and hearing services that the
10 State Plan must expressly include, but with regard to treatment services, it
11 states that EPSDT means "[s]uch other necessary health care, diagnostic
12 services, treatment, and other measures described in subsection (a) of this
13 section to correct or ameliorate defects and physical and mental illnesses
14 and conditions discovered by the screening services, whether or not such
15 services are covered under the State plan." 42 U.S.C. § 1396d(r)(5) (emphasis
16 added). Reading §1396a, § 1396d(a), and § 1396d(r) together, we believe that
17 the State Plan need not specifically list every treatment service conceivably
18 available under the EPSDT mandate.

19 The State Plan, however, must pay part or all of the cost of treatments to
20 ameliorate conditions discovered by the screening process when those
21 treatments meet the definitions set forth in § 1396a. See §1396d(r)(5); see
22 also §§1396a(a)(10), 1396a (a)(43), and 1396d(a)(4)(B). The Arkansas State
23 Plan states that the "State will provide other health care described in [42
24 U.S.C. 1396d(a)] that is found to be medically necessary to correct or
25 ameliorate defects and physical and mental illnesses and conditions
26 discovered by the screening services, even when such health care is not
27 otherwise covered under the State Plan." See State Plan Under Title XIX of
28 the Social Security Act Medical Assistance Program, State Of Arkansas at
29 §4.b. This provision Meets the EPSDT mandate of the Medicaid Act.

30 We affirm the district court's decision to the extent that it holds that a
31 Medicaid-Eligible individual has a federal right to early intervention day
32 treatment when a physician recommends such treatment. Section 1396d(r)(5)
33 states that EPSDT includes any treatments or measures outlined in §1396d(a).
34 There are twenty-seven sub-parts to §1396d(a), and we find that sub-part
35 (a)(13), in particular, when read with the other sections of the Medicaid Act
36 listed above, mandates that early intervention day treatment be provided when

1 it is prescribed by a physician. See 42 U.S.C. §1396d(a)(13) (defining
2 medical assistance reimbursable by Medicaid as "other diagnostic, screening,
3 preventive, and rehabilitative services, including any medical or remedial
4 services recommended by a physician...for the maximum reduction of physical
5 and mental disability and restoration of an individual to the best possible
6 functional level"). Therefore, after CHMS clinic staff perform a diagnostic
7 evaluation of an eligible child, if the CHMS physician prescribes early
8 intervention day treatment as a service that would lead to the maximum
9 reduction of medical and physical disabilities and restoration of the child
10 to his or her best possible functional level, the Arkansas State Plan must
11 reimburse the treatment. Because CHMS clinics are the only providers of early
12 intervention day treatment, Arkansas must reimburse those clinics.

13
14 SECTION 14. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS
15 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. MEDICAL
16 SERVICES - STATE MEDICAID PROGRAM/PERSONAL CARE PROGRAM.

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

23 (b) For the purposes of this section, "private care agencies" are defined
24 as those providers licensed by the Department of Labor, certified as
25 ElderChoices Providers and who furnish in home staffing services for
26 respite, chore services, and homemaker services, and are covered by liability
27 insurance of not less than one million dollars (\$1,000,000) covering their
28 employees and independent contractors while they are engaged in providing
29 services, such as personal care, respite, chore services, and homemaker
30 services.

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

36 (d) The availability of providers shall not require the Department of Human

1 Services to reimburse for twenty-four (24) hours per day of personal care
2 services.

3 (e) The Arkansas Department of Human Services, Medical Services Division
4 shall take such action as required by the Centers for Medicare and Medicaid
5 Services to amend the Arkansas Medicaid manual to include, private care
6 agencies, as qualified entities to provide Medicaid reimbursed personal care
7 services.

8 (f) The private care agencies shall comply with rules and regulations
9 promulgated by the Arkansas Department of Health which shall establish a
10 separate licensure category for the private care agencies for the provision
11 of Medicaid reimbursable personal care services seven (7) days a week.

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

14 (h) The purpose of this section is to insure the care provided by the
15 private care agencies, is consistent with the rules and regulations of the
16 Arkansas Department of Health.

17 The provisions of this section shall be in effect only from July 1, 2009
18 through June 30, 2010.

19
20 SECTION 15. COMPLIANCE WITH OTHER LAWS. Disbursement of funds authorized
21 by this act shall be limited to the appropriation for such agency and funds
22 made available by law for the support of such appropriations; and the
23 restrictions of the State Procurement Law, the General Accounting and
24 Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary
25 Procedures and Restrictions Act, or their successors, and other fiscal
26 control laws of this State, where applicable, and regulations promulgated by
27 the Department of Finance and Administration, as authorized by law, shall be
28 strictly complied with in disbursement of said funds.

29
30 SECTION 16. LEGISLATIVE INTENT. It is the intent of the General Assembly
31 that any funds disbursed under the authority of the appropriations contained
32 in this act shall be in compliance with the stated reasons for which this act
33 was adopted, as evidenced by the Agency Requests, Executive Recommendations
34 and Legislative Recommendations contained in the budget manuals prepared by
35 the Department of Finance and Administration, letters, or summarized oral
36 testimony in the official minutes of the Arkansas Legislative Council or

1 Joint Budget Committee which relate to its passage and adoption.

2
3 SECTION 17. EMERGENCY CLAUSE. It is found and determined by the General
4 Assembly, that the Constitution of the State of Arkansas prohibits the
5 appropriation of funds for more than a one (1) year period; that the
6 effectiveness of this Act on July 1, 2009 is essential to the operation of
7 the agency for which the appropriations in this Act are provided, and that in
8 the event of an extension of the Regular Session, the delay in the effective
9 date of this Act beyond July 1, 2009 could work irreparable harm upon the
10 proper administration and provision of essential governmental programs.
11 Therefore, an emergency is hereby declared to exist and this Act being
12 necessary for the immediate preservation of the public peace, health and
13 safety shall be in full force and effect from and after July 1, 2009.

14
15 */s/ Joint Budget Committee*

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17 **APPROVED: 4/9/2009**