

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: H4/20/21

# A Bill

SENATE BILL 663

5 By: Senator Irvin  
6 By: Representative Boyd  
7

## For An Act To Be Entitled

9 AN ACT TO MODIFY THE AUTHORITY OF THE DEPARTMENT OF  
10 HEALTH; TO DEFER THE AUTHORITY OF THE DEPARTMENT OF  
11 HEALTH TO THE CENTERS FOR MEDICARE & MEDICAID  
12 SERVICES CONCERNING THE HOSPITALS WITHOUT WALLS  
13 PROGRAM; TO DECLARE AN EMERGENCY; AND FOR OTHER  
14 PURPOSES.

## Subtitle

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18 TO MODIFY THE AUTHORITY OF THE DEPARTMENT  
19 OF HEALTH DURING A PUBLIC HEALTH  
20 EMERGENCY; AND TO DECLARE AN EMERGENCY.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code Title 20, Chapter 9, Subchapter 3, is amended  
26 to add an additional section to read as follows:

27 20-9-312. Deferral of authority of Department of Health to Centers for  
28 Medicare & Medicaid Services – Hospitals Without Walls initiative and other  
29 Centers for Medicare & Medicaid Services-certified facility flexibilities –  
30 Legislative findings and intent – Authority.

31 (a) The General Assembly finds that:

32 (1) The Centers for Medicare & Medicaid Services' Hospitals  
33 Without Walls initiative and other Centers for Medicare & Medicaid Services-  
34 certified facility flexibilities allow:

35 (A) Participating ambulatory surgery centers to convert to  
36 licensed hospitals during the period of the coronavirus 2019 (COVID-19)



1 public health emergency; and

2 (B) Existing hospitals to provide healthcare services at  
3 the patient's home and other selected sites;

4 (2) In cooperation and in an effort to promote public health,  
5 the Department of Health suspended portions of its Rules for Hospitals and  
6 Related Institutions according to the Governor's Executive Orders 20-06 and  
7 20-16, and any future executive orders that extend the public health  
8 emergency, to allow for the regulatory flexibilities to facilities  
9 participating in the Centers for Medicare & Medicaid Services' Hospitals  
10 Without Walls initiative and other Centers for Medicare & Medicaid Services-  
11 certified facility flexibilities;

12 (3) Legislative clarification is necessary to clarify that the  
13 department has the regulatory authority necessary to continue the regulatory  
14 flexibilities for the duration of the Centers for Medicare & Medicaid  
15 Services' Hospitals Without Walls initiative and other Centers for Medicare &  
16 Medicaid Services-certified facility flexibilities for the purpose of  
17 promoting public health in this state; and

18 (4) The Centers for Medicare & Medicaid Services may:

19 (A) Temporarily modify or waive certain requirements when  
20 there is a public health emergency; and

21 (B) Issue temporary blanket waivers or temporary specific  
22 waivers if the temporary waivers are intended to help beneficiaries access  
23 care.

24 (b) It is the intent of the General Assembly, for the benefit of the  
25 citizens of this state, that the department have the authority to:

26 (1) Allow all Centers for Medicare & Medicaid Services-certified  
27 facilities participating in the Centers for Medicare & Medicaid Services'  
28 Hospitals Without Walls initiative and other Centers for Medicare & Medicaid  
29 Services-certified facility flexibilities to continue to do so until:

30 (A) The Centers for Medicare & Medicaid Services  
31 terminates the Centers for Medicare & Medicaid Services' Hospitals Without  
32 Walls initiative and other Centers for Medicare & Medicaid Services-certified  
33 facility flexibilities; or

34 (B) The national public health emergency is declared over;  
35 and

36 (2) Administer this section.

1           (c)(1) The department shall have the authority to defer to the Centers  
2 for Medicare & Medicaid Services as to when the Centers for Medicare &  
3 Medicaid Services' Hospitals Without Walls initiative and other Centers for  
4 Medicare & Medicaid Services-certified facility flexibilities are terminated.

5           (2) The authority described in subdivision (c)(1) of this  
6 section shall include the ability to suspend portions of its Rules for  
7 Hospitals and Related Institutions to allow regulatory flexibilities to  
8 facilities participating in the Centers for Medicare & Medicaid Services'  
9 Hospitals Without Walls initiative.

10           (d) The department shall exercise the authority granted under  
11 subsection (c) of this section to suspend portions of its rules for  
12 facilities participating in the Centers for Medicare & Medicaid Services'  
13 Hospitals Without Walls initiative and other Centers for Medicare & Medicaid  
14 Services-certified facility flexibilities.

15           (e)(1) This section applies to any future public health emergency if  
16 the Centers for Medicare & Medicaid Services implements an initiative similar  
17 to the Centers for Medicare & Medicaid Services' Hospitals Without Walls  
18 initiative or other Centers for Medicare & Medicaid Services-certified  
19 facility flexibilities.

20           (2) Upon the implementation of an initiative described in  
21 subdivision (e)(1) of this section, a Centers for Medicare & Medicaid  
22 Services-certified facility may seek any applicable waivers to implement a  
23 future initiative similar to the Centers for Medicare & Medicaid Services'  
24 Hospitals Without Walls initiative or other Centers for Medicare & Medicaid  
25 Services-certified facility flexibilities during the period of a future  
26 public health emergency.

27           (f)(1) The General Assembly authorizes the department, as a federally  
28 authorized state survey agency for the Centers for Medicare & Medicaid  
29 Services, to implement temporary licensure waivers and flexibilities during  
30 the coronavirus 2019 (COVID-19) public health emergency and any future public  
31 health emergency that duplicate or match the Centers for Medicare & Medicaid  
32 Services waivers.

33           (2) The temporary licensure waivers and flexibilities described  
34 in subdivision (f)(1) of this section may remain in place until:

35           (A) The Centers for Medicare & Medicaid Services waiver is  
36 terminated by the Centers for Medicare & Medicaid Services; or

1 (B) The national public health emergency is declared over.

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3 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
4 General Assembly of the State of Arkansas that the coronavirus 2019 (COVID-  
5 19) pandemic has caused great uncertainty and anxiety in the operation of  
6 participating ambulatory surgery centers converted to hospitals under the  
7 Centers for Medicare & Medicaid Services' Hospitals Without Walls initiative  
8 and other Centers for Medicare & Medicaid Services-certified facility  
9 flexibilities; that by providing legislative clarity concerning the  
10 regulatory authority of the Department of Health the uncertainty will  
11 resolved and the continued operation of participating ambulatory surgery  
12 centers converted to hospitals under the Centers for Medicare & Medicaid  
13 Services' Hospitals Without Walls initiative and other Centers for Medicare &  
14 Medicaid Services-certified facility flexibilities can continue; and that  
15 this act is immediately necessary to protect the public health and safety in  
16 order to provide legislative clarity for the Department of Health's  
17 regulatory authority concerning the Centers for Medicare & Medicaid Services'  
18 Hospitals Without Walls initiative and other Centers for Medicare & Medicaid  
19 Services-certified facility flexibilities. Therefore, an emergency is  
20 declared to exist, and this act being immediately necessary for the  
21 preservation of the public peace, health, and safety shall become effective  
22 on:

23 (1) The date of its approval by the Governor;

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

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

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30 /s/Irvin

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33 **APPROVED: 4/29/21**