

1 State of Arkansas *As Engrossed: S4/2/13 H4/10/13 H4/17/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

SENATE BILL 1020

4

5 By: Senators J. Dismang, Bookout, D. Sanders, *Irvin*

6 By: Representatives J. Burris, Carter, Biviano

7

8

## For An Act To Be Entitled

9 *AN ACT CONCERNING HEALTH INSURANCE FOR CITIZENS OF*  
10 *THE STATE OF ARKANSAS; TO CREATE THE HEALTH CARE*  
11 *INDEPENDENCE ACT OF 2013; TO DECLARE AN EMERGENCY;*  
12 *AND FOR OTHER PURPOSES.*

13

14

15

## Subtitle

16

*TO CREATE THE HEALTH CARE INDEPENDENCE*  
*ACT OF 2013; AND TO DECLARE AN EMERGENCY.*

17

18

19

20 *WHEREAS, Arkansas has historically addressed state-specific needs to achieve*  
21 *personal responsibility and affordable health care for its citizens such as*  
22 *the ARHealthNetworks partnership between the state and small businesses; and*

23

24 *WHEREAS, Arkansas has initiated nationally recognized and*  
25 *transformative changes in the healthcare delivery system through alignment of*  
26 *payment incentives, health care delivery system improvements, enhanced rural*  
27 *health care access, initiatives to reduce waste, fraud and abuse, policies*  
28 *and plan structures to encourage the proper utilization of the healthcare*  
29 *system, and policies to advance disease prevention and health promotion; and*

30

31 *WHEREAS, Arkansas is uniquely situated to serve as a laboratory of*  
32 *comprehensive and innovative healthcare reform that can reduce the state and*  
33 *federal obligations to entitlement spending; and*

34

35 *WHEREAS, faced with the disruptive challenges from federal legislation*  
36 *and regulations, the General Assembly asserts its responsibility for local*



1 control and innovation to achieve health care access, improved health care  
2 quality, reduce traditional Medicaid enrollment, remove disincentives for  
3 work and social mobility, and required cost-containment; and

4  
5 WHEREAS, the General Assembly hereby creates the Health Care  
6 Independence Act of 2013;

7  
8 NOW THEREFORE,

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

10  
11 SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to create a  
12 new subchapter to read as follows:

13  
14 Subchapter 21 – Health Care Independence Act of 2013

15  
16 20-77-2101. Title.

17 This act shall be known and may be cited as the "Health Care  
18 Independence Act of 2013".

19  
20 20-77-2102. Legislative intent.

21 (a) Notwithstanding any general or specific laws to the contrary, the  
22 Department of Human Services is to explore design options that reform the  
23 Medicaid Program utilizing the Health Care Independence Act of 2013 so that  
24 it is a fiscally sustainable, cost-effective, personally responsible, and  
25 opportunity-driven program utilizing competitive and value-based purchasing  
26 to:

27 (1) Maximize the available service options;

28 (2) Promote accountability, personal responsibility, and  
29 transparency;

30 (3) Encourage and reward healthy outcomes and responsible  
31 choices; and

32 (4) Promote efficiencies that will deliver value to the  
33 taxpayers.

34 (b)(1) It is the intent of the General Assembly that the State of  
35 Arkansas through the Department of Human Services shall utilize a private  
36 insurance option for "low-risk" adults.

1 (2) The Health Care Independence Act of 2013 shall ensure that:

2 (A) Private health care options increase and government-  
3 operated programs such as Medicaid decrease; and

4 (B) Decisions about the design, operation and  
5 implementation of this option, including cost, remain within the purview of  
6 the State of Arkansas and not with Washington, D.C.

7  
8 20-77-2103. Purpose.

9 (a) The purpose of this subchapter is to:

10 (1) Improve access to quality health care;

11 (2) Attract insurance carriers and enhance competition in the  
12 Arkansas insurance marketplace;

13 (3) Promote individually-owned health insurance;

14 (4) Strengthen personal responsibility through cost-sharing;

15 (5) Improve continuity of coverage;

16 (6) Reduce the size of the state-administered Medicaid program;

17 (7) Encourage appropriate care, including early intervention,  
18 prevention, and wellness;

19 (8) Increase quality and delivery system efficiencies;

20 (9) Facilitate Arkansas's continued payment innovation, delivery  
21 system reform, and market-driven improvements;

22 (10) Discourage over-utilization; and

23 (11) Reduce waste, fraud, and abuse.

24 (b) The State of Arkansas shall take an integrated and market-based  
25 approach to covering low-income Arkansans through offering new coverage  
26 opportunities, stimulating market competition, and offering alternatives to  
27 the existing Medicaid program.

28  
29 20-77-2104. Definitions.

30 As used in this subchapter:

31 (1) "Carrier" means a private entity certified by the State  
32 Insurance Department and offering plans through the Health Insurance  
33 Marketplace;

34 (2) "Cost sharing" means the portion of the cost of a covered  
35 medical service that must be paid by or on behalf of eligible individuals,  
36 consisting of copayments or coinsurance but not deductibles;

1 (3) "Eligible individuals" means individuals who:

2 (A) Are adults between nineteen (19) years of age and  
3 sixty-five (65) years of age with an income that is equal to or less than one  
4 hundred thirty-eight percent (138%) of the federal poverty level, including  
5 without limitation individuals who would not be eligible for Medicaid under  
6 laws and rules in effect on January 1, 2013;

7 (B) Have been authenticated to be a United States citizen  
8 or documented qualified alien according to the federal Personal  
9 Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No.  
10 104-193, as existing on January 1, 2013; and

11 (C) Are not determined to be more effectively covered  
12 through the standard Medicaid program, such as an individual who is  
13 medically frail or other individuals with exceptional medical needs for whom  
14 coverage through the Health Insurance Marketplace is determined to be  
15 impractical, overly complex, or would undermine continuity or effectiveness  
16 of care;

17 (4) "Healthcare coverage" means healthcare benefits as defined  
18 by certification or rules, or both, promulgated by the State Insurance  
19 Department for the Qualified Health Plans or available on the marketplace;

20 (5) "Health Insurance Marketplace" means the vehicle created to  
21 help individuals, families, and small businesses in Arkansas shop for and  
22 select health insurance coverage in a way that permits comparison of  
23 available Qualified Health Plan based upon price, benefits, services, and  
24 quality, regardless of the governance structure of the marketplace;

25 (6) "Premium" means a charge that must be paid as a condition of  
26 enrolling in health care coverage;

27 (7) "Program" means the Health Care Independence Program  
28 established by this subchapter;

29 (8) "Qualified Health Plan" means a State Insurance Department  
30 certified individual health insurance plan offered by a carrier through the  
31 Health Insurance Marketplace; and

32 (9) "Independence account" mean individual financing structures  
33 that operate similar to a health savings account or a medical savings  
34 account.

35 20-77-2105. Administration of the Health Care Independence Program.

36 (a) The Department of Human Services shall:

1 (1) Create and administer the Health Care Independence Program;  
2 and

3 (2)(A) Submit and apply for any:

4 (i) Federal waivers necessary to implement the program in  
5 a manner consistent with this subchapter, including without limitation  
6 approval for a comprehensive waiver under Section 1115 of the Social Security  
7 Act, 42 U.S.C. § 1315; and

8 (ii)(a) Medicaid State Plan Amendments necessary to  
9 implement the program in a manner consistent with this subchapter.

10 (b) The Department of Human Services shall submit  
11 only those Medicaid State Plan Amendments under subdivision (a)(2)(A)(ii)(a)  
12 of this section that are optional and therefore may be revoked by the state  
13 at its discretion.

14 (B)(i) As part of its actions under subdivision (a)(2)(A)  
15 of this section, the Department of Human Services shall confirm that  
16 employers shall not be subject to the penalties, including without limitation  
17 an assessable payment, under Section 1513 of Pub. L. No. 111-148, as existing  
18 on January 1, 2013, concerning shared responsibility, for employees who are  
19 eligible individuals if the employees:

20 (a) Are enrolled in the program; and

21 (b) Enroll in a Qualified Health Plan through  
22 the Health Insurance Marketplace.

23 (ii) If the Department of Human Services is unable  
24 to confirm provisions under subdivision (a)(2)(B)(i) of this section, the  
25 program shall not be implemented.

26 (b)(1) Implementation of the program is conditioned upon the receipt  
27 of necessary federal approvals.

28 (2) If the Department of Human Services does not receive the  
29 necessary federal approvals, the program shall not be implemented.

30 (c) The program shall include premium assistance for eligible  
31 individuals to enable their enrollment in a Qualified Health Plan through the  
32 Health Insurance Marketplace.

33 (d)(1) The Department of Human Services is specifically authorized to  
34 pay premiums and supplemental cost-sharing subsidies directly to the  
35 Qualified Health Plans for enrolled eligible individuals.

36 (2) The intent of the payments under subdivision (d)(1) of this

1 section is to increase participation and competition in the health insurance  
2 market, intensify price pressures, and reduce costs for both publicly and  
3 privately funded health care.

4 (e) To the extent allowable by law:

5 (1) The Department of Human Services shall pursue strategies  
6 that promote insurance coverage of children in their parents' or caregivers'  
7 plan, including children eligible for the ARKids First Program Act, § 20-77-  
8 1101 et seq., commonly known as the "ARKids B program"; and

9 (2) Upon the receipt of necessary federal approval, during  
10 calendar year 2015 the Department of Human Services shall include and  
11 transition to the Health Insurance Marketplace:

12 (A) Children eligible for the ARKids First Program Act, §  
13 20-77-1101 et seq.; and

14 (B) Populations under Medicaid from zero percent (0%) of  
15 the federal poverty level to seventeen percent (17%) of the federal poverty  
16 level.

17 (3) The Department of Human Services shall develop and implement  
18 a strategy to inform Medicaid recipient populations whose needs would be  
19 reduced or better served through participation in the Health Insurance  
20 Marketplace.

21 (f) The program shall include allowable cost sharing for eligible  
22 individuals that is comparable to that for individuals in the same income  
23 range in the private insurance market and is structured to enhance eligible  
24 individuals' investment in their health care purchasing decisions.

25 (g)(1) The State Insurance Department and Department of Human Services  
26 shall administer and promulgate rules to administer the program authorized  
27 under this subchapter.

28 (2) No less than thirty (30) days before the State Insurance  
29 Department and Department of Human Services begin promulgating a rule under  
30 this subchapter, the proposed rule shall be presented to the Legislative  
31 Council.

32 (h) The program authorized under this subchapter shall terminate  
33 within one hundred twenty (120) days after a reduction in any of the  
34 following federal medical assistance percentages:

35 (1) One hundred percent (100%) in 2014, 2015,  
36 or 2016;

1 (2) Ninety-five percent (95%) in 2017;

2 (3) Ninety-four percent (94%) in 2018;

3 (4) Ninety-three percent (93%) in 2019; and

4 (5) Ninety percent (90%) in 2020 or any year after 2020.

5 (i) An eligible individual enrolled in the program shall affirmatively  
6 acknowledge that:

7 (1) The program is not a perpetual federal or state right or a  
8 guaranteed entitlement;

9 (2) The program is subject to cancellation upon appropriate  
10 notice; and

11 (3) The program is not an entitlement program.

12 (j)(1) The Department of Human Services shall develop a model and seek  
13 from the Center for Medicare and Medicaid Services all necessary waivers and  
14 approvals to allow non-aged, non-disabled program-eligible participants to  
15 enroll in a program that will create and utilize Independence Accounts that  
16 operate similar to a Health Savings Account or Medical Savings Account during  
17 the calendar year 2015.

18 (2) The Independence Accounts shall:

19 (A) Allow a participant to purchase cost-effective high-  
20 deductible health insurance; and

21 (B) Promote independence and self-sufficiency.

22 (3) The state shall implement cost sharing and co-pays and, as a  
23 condition of participation, earnings shall exceed fifty percent (50%) of the  
24 federal poverty level.

25 (4) Participants may receive rewards based on healthy living and  
26 self-sufficiency.

27 (5)(A) At the end of each fiscal year, if there are funds  
28 remaining in the account, a majority of the state's contribution will remain  
29 in the participant's control as a positive incentive for the responsible use  
30 of the health care system and personal responsibility of health maintenance.

31 (B) Uses of the funds may include without limitation  
32 rolling the funds into a private sector health savings account for the  
33 participant according to rules promulgated by the Department of Human  
34 Services.

35 (6) The Department of Human Services shall promulgate rules to  
36 implement this subsection (j).

1 (k)(1) State obligations for uncompensated care shall be projected,  
2 tracked, and reported to identify potential incremental future decreases.

3 (2) The Department of Human Services shall recommend appropriate  
4 adjustments to the General Assembly.

5 (3) Adjustments shall be made by the General Assembly as  
6 appropriate.

7 (1) The Department of Human Services shall track the Hospital  
8 Assessment Fee as defined in § 20-77-1902 and report to the General Assembly  
9 subsequent decreases based upon reduced uncompensated care.

10 (m) On a quarterly basis, the Department of Human Services and the  
11 State Insurance Department shall report to the Legislative Council or to the  
12 Joint Budget Committee if the General Assembly is in session, available  
13 information regarding:

14 (1) Program enrollment;

15 (2) Patient experience;

16 (3) Economic impact including enrollment distribution;

17 (4) Carrier competition; and

18 (5) Avoided uncompensated care.

19  
20 20-77-2106. Standards of healthcare coverage through the Health  
21 Insurance Marketplace.

22 (a) Healthcare coverage shall be achieved through a qualified health  
23 plan at the silver level as provided in 42 U.S.C. §§ 18022 and 18071, as  
24 existing on January 1, 2013, that restricts cost sharing to amounts that do  
25 not exceed Medicaid cost-sharing limitations.

26 (b)(1) All participating carriers in the Health Insurance Marketplace  
27 shall offer healthcare coverage conforming to the requirements of this  
28 subchapter.

29 (2) A participating carrier in the Health Insurance Marketplace  
30 shall maintain a medical loss ratio of at least eighty percent (80%) for an  
31 individual and small group market policy and at least eighty-five percent  
32 (85%) for a large group market policy as required under Pub. L. No. 111-148,  
33 as existing on January 1, 2013.

34 (c) To assure price competitive choice among healthcare coverage  
35 options, the State Insurance Department shall assure that at least two (2)  
36 qualified health plans are offered in each county in the state.



1 (d) Health insurance carriers offering health care coverage for  
2 program eligible individuals shall participate in Arkansas Payment  
3 Improvement Initiatives including:

4 (1) Assignment of primary care clinician;

5 (2) Support for patient-centered medical home; and

6 (3) Access of clinical performance data for providers.

7 (e) On or before July 1, 2013, the State Insurance Department shall  
8 implement through certification requirements, rule, or both the applicable  
9 provisions of this subchapter.

10  
11 20-77-2107. Enrollment.

12 (a) The General Assembly shall assure that a mechanism within the  
13 Health Insurance Marketplace is established and operated to facilitate  
14 enrollment of eligible individuals.

15 (b) The enrollment mechanism shall include an automatic verification  
16 system to guard against waste, fraud, and abuse in the program.

17  
18 20-77-2108. Effective date.

19 This subchapter shall be in effect until June 30, 2017, unless amended  
20 or extended by the General Assembly.

21  
22 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 11, is  
23 amended to add an additional section to read as follows:

24 19-5-1140. Health Care Independence Program Trust 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 "Health Care Independence Program Trust Fund".

28 (b)(1) The Health Care Independence Program Trust Fund may consist of  
29 moneys saved and accrued under the Health Care Independence Act of 2013, §  
30 20-77-2101 et seq., including without limitation:

31 (A) Increases in premium tax collections;

32 (B) Reductions in uncompensated care; and

33 (C) Other spending reductions resulting from the Health  
34 Care Independence Act of 2013, § 20-77-2101 et seq.

35 (2) The fund shall also consist of other revenues and funds  
36 authorized by law.

1           (c) The fund may be used by the Department of Human Services to pay  
2 for future obligations under the Health Care Independence Program created by  
3 the Health Care Independence Act of 2013, § 20-77-2101 et seq.

4  
5           SECTION 3. NOT TO BE CODIFIED. (a) The implementation of this act is  
6 suspended until an appropriation for the implementation of this act is passed  
7 by a three-fourths vote of both houses of the Eighty-Ninth General Assembly.

8           (b) If an appropriation for the implementation of this act is  
9 not passed by the Eighty-Ninth General Assembly, this act is void.

10  
11           SECTION 4. NOT TO BE CODIFIED. The enactment and adoption of this act  
12 shall supersede Section 21 of HB1219 of the Eighty-Ninth General Assembly, if  
13 Section 21 of HB1219 of the Eighty-Ninth General Assembly is enacted and  
14 adopted by the Eighty-Ninth General Assembly.

15  
16           SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
17 General Assembly of the State of Arkansas that the Health Care Independence  
18 Program requires private insurance companies to create, present to the  
19 Department of Human Services for approval, implement, and market a new kind  
20 of insurance policy; and that the private insurance companies need certainty  
21 about the law creating the Health Care Independence Program before fully  
22 investing time, funds, personnel, and other resources to the development of  
23 the new insurance policies. Therefore, an emergency is declared to exist,  
24 and this act being immediately necessary for the preservation of the public  
25 peace, health, and safety shall become effective on:

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

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

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

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34  
35   /s/J. Dismang