

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

A Bill

SENATE BILL 621

5 By: Senator Hester
6 By: Representative Gonzales
7

For An Act To Be Entitled

9 AN ACT TO REQUIRE THE ARKANSAS MEDICAID PROGRAM AND
10 THE DEPARTMENT OF HUMAN SERVICES TO HAVE ALL CONSENT
11 DECREES RECONSIDERED; AND FOR OTHER PURPOSES.
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Subtitle

15 TO REQUIRE THE ARKANSAS MEDICAID PROGRAM
16 AND THE DEPARTMENT OF HUMAN SERVICES TO
17 HAVE ALL CONSENT DECREES RECONSIDERED.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. DO NOT CODIFY. Reconsideration of consent decrees with the
23 Arkansas Medicaid Program.

24 (a) The General Assembly finds that:

25 (1) The Arkansas Medicaid Program and the Department of Human
26 Services have entered into several consent decrees and have been ordered by
27 several court decisions regarding reimbursement rates for Medicaid providers,
28 including without limitation:

29 (A) Easley, et al., v. Arkansas Department of Human
30 Services, 645 F. Supp. 1535 (1986);

31 (B) Ellis v. Arkansas Department of Human Services, 859
32 F.2d 52 (1988);

33 (C) Arkansas Medical Society, Inc. v. Reynolds, 6 F.3d 519
34 (1993), which was amended several times regarding physical therapy, private
35 duty nursing, physicians, dental services, home health services, physician
36 and podiatry services, physical, speech, and occupational therapy, private



1 duty nursing services, and primary care services;

2 (D) Dalton v. Little Rock Family Planning Services, 516
3 U.S. 474 (1996);

4 (E) Wal-Mart Stores, Inc. v. Knickrehm, 101 F. Supp.2d 749
5 (2000);

6 (F) Pediatric Specialty Care, Inc. v. Arkansas Department
7 of Human Services, 293 F.3d 472 (2002);

8 (G) Pediatric Specialty Care, Inc. v. Arkansas Department
9 of Human Services, 364 F.3d 925 (2004);

10 (H) Kapable Kids Learning Center v. Arkansas Department of
11 Human Services, 420 F.Supp.2d 956 (2005);

12 (I) Pediatric Specialty Care, Inc. v. Arkansas Department
13 of Human Services, 444 F.3d 991 (2006);

14 (J) Arkansas Department of Health v. Ahlborn, 547 U.S. 268
15 (2006);

16 (K) United States v. State of Arkansas, 794 F.Supp.2d 935
17 (2011);

18 (L) Jackson v. Selig, 2013 WL 1007346 (2013);

19 (M) Penny v. Arkansas Department of Human Services, 2013
20 WL 1164857 (2013); and

21 (N) Jackson v. Selig, 2013 WL 1934008 (2013);

22 (2) However, the United States Eight Circuit Court has held that
23 consent decrees must "be modified if ... one (1) or more of the obligations
24 placed upon the parties has become impermissible under federal law";

25 (3)(A) In 2015, the United States Supreme Court held in
26 Armstrong v. Exceptional Child Center, Inc., 135 S. Ct. 1378, that the
27 Supremacy Clause of the United States Constitution does not confer a private
28 right of action and that Medicaid providers cannot sue for injunctive relief
29 requiring compliance with 42 U.S.C. § 1396(a)(30)(A).

30 (B) This court decision could be interpreted as nullifying
31 the consent decrees entered into by the program and the department;

32 (4) Since 2015, the program and the department have not moved to
33 modify or nullify the consent decrees or to be released from the consent
34 decrees;

35 (5) In 2019, Governor Asa Hutchinson issued Executive Order 19-
36 02 which required the program to establish a systemic approach to reviewing

1 Medicaid rates to providers on a regular cycle;

2 (6) Since 2019, the program has increased rates to providers and
3 is still working to evaluate more providers; and

4 (7) The program and the department should have the consent
5 decrees reconsidered by a court based on the systemic approach to reviewing
6 Medicaid rates and the holding in Armstrong v. Exceptional Child Center,
7 Inc., 135 S. Ct. 1378.

8 (b)(1) On or before December 1, 2021, the program and the department
9 shall have the consent decrees reconsidered by a court to modify or nullify
10 the consent decrees or release the program and the department from the
11 consent decrees based on the systemic approach to reviewing Medicaid rates
12 and the holding in Armstrong v. Exceptional Child Center, Inc., 135 S. Ct.
13 1378.

14 (2) The program and department shall report quarterly to the
15 Legislative Council regarding the results of the actions required in
16 subdivision (b)(1) of this section.

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