

1 State of Arkansas
2 90th General Assembly
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4

A Bill

DRAFT JMB/JMB
SENATE BILL

5 By: Senator J. Hendren
6 By: Representative Collins
7

For An Act To Be Entitled

9 AN ACT TO AMEND TITLE 23 OF THE ARKANSAS CODE TO
10 PROVIDE HEALTH INSURANCE TO QUALIFYING INDIVIDUALS;
11 TO CREATE THE ARKANSAS WORKS PROGRAM; TO DECLARE AN
12 EMERGENCY; AND FOR OTHER PURPOSES.
13

Subtitle

14
15
16 TO AMEND TITLE 23 OF THE ARKANSAS CODE TO
17 PROVIDE HEALTH INSURANCE TO QUALIFYING
18 INDIVIDUALS; TO CREATE THE ARKANSAS WORKS
19 PROGRAM; AND TO DECLARE AN EMERGENCY.
20

21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 WHEREAS, the State of Arkansas continues to seek strategies to provide
25 health insurance for low-income and other vulnerable populations in a manner
26 that will encourage employer-based insurance, incentivize program
27 beneficiaries to work or seek work opportunities, promote personal
28 responsibility, and enhance program integrity; and
29

30 WHEREAS, the General Assembly affirms its responsibility to safeguard
31 consumers and businesses from federal mandates by asserting local control and
32 implementation of modernized health insurance policies and programs that
33 utilize the private market to improve access to health insurance, enhance the
34 quality of health insurance, and reduce health insurance costs; and
35

36 WHEREAS, Arkansas recognizes the need to encourage employment among

1 beneficiaries of public assistance programs, offer enhanced opportunities for
2 beneficiaries to obtain jobs and job training, and endow beneficiaries with
3 the tools to achieve economic advancement; and

4
5 WHEREAS, Arkansas continues to confront the disruptive challenges of
6 federal healthcare legislation and associated regulations despite numerous
7 repeal attempts; and

8
9 WHEREAS, the Health Care Independence Program, Arkansas's initial
10 response to the disruptive challenges, will terminate on December 31, 2016;
11 and

12
13 WHEREAS, the Arkansas General Assembly hereby creates the Arkansas
14 Works Act of 2016 to provide health insurance to qualifying individuals,

15
16 NOW THEREFORE,

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

18
19 SECTION 1. Arkansas Code Title 23, Chapter 61, is amended to create a
20 new subchapter to read as follows:

21
22 Subchapter 10 – Arkansas Works Act of 2016

23
24 23-61-1001. Title.

25 This subchapter shall be known and may be cited as the "Arkansas Works
26 Act of 2016".

27
28 23-61-1002. Legislative intent.

29 Notwithstanding any general or specific laws to the contrary, it is the
30 intent of the General Assembly for the Arkansas Works Program to be a
31 fiscally sustainable, cost-effective, and opportunity-driven program that:

32 (1) Empowers individuals to improve their economic security and
33 achieve self-reliance;

34 (2) Builds on private insurance market competition and value-
35 based insurance purchasing models;

36 (3) Strengthens the ability of employers to recruit and retain

1 productive employees; and

2 (4) Achieves comprehensive and innovative healthcare reform that
3 can reduce state and federal obligations for entitlement spending.

4
5 23-61-1003. Definitions.

6 As used in this subchapter:

7 (1) "Cost-effective" means that the cost of covering employees
8 who are:

9 (A) Program participants, either individually or together
10 within an employer health insurance coverage, is the same or less than
11 providing comparable coverage through individual qualified health insurance
12 plans; or

13 (B) Eligible individuals who are not program participants,
14 either individually or together within an employer health insurance coverage,
15 is the same or less than the cost of providing comparable coverage through a
16 program authorized under Title XIX of the Social Security Act, 42 U.S.C. §
17 1396 et seq., as it existed on January 1, 2016;

18 (2) "Cost sharing" means the portion of the cost of a covered
19 medical service that is required to be paid by or on behalf of an eligible
20 individual;

21 (3) "Eligible individual" means an individual who is in the
22 eligibility category created by section 1902(a)(10)(A)(i)(VIII) of the Social
23 Security Act, 42 U.S.C. § 1396a;

24 (4) "Employer health insurance coverage" means a health
25 insurance benefit plan offered by an employer or, as authorized by this
26 subchapter, an employer self-funded insurance plan governed by the Employee
27 Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended;

28 (5) "Health insurance benefit plan" means a policy, contract,
29 certificate, or agreement offered or issued by a health insurer to provide,
30 deliver, arrange for, pay for, or reimburse any of the costs of healthcare
31 services, but not including excepted benefits as defined under 42 U.S.C. §
32 300gg-91(c), as it existed January 1, 2016;

33 (6) "Health insurance marketplace" means the applicable entities
34 that were designed to help individuals, families, and businesses in Arkansas
35 shop for and select health insurance benefit plans in a way that permits
36 comparison of available plans based upon price, benefits, services, and

1 quality, and refers to either:

2 (A) The Arkansas Health Insurance Marketplace created
 3 under the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq., or
 4 a successor entity; or

5 (B) The federal health insurance marketplace or federal
 6 health benefit exchange created under Pub. L. No. 111-148;

7 (7) "Health insurer" means an insurer authorized by the State
 8 Insurance Department to provide health insurance or a health insurance
 9 benefit plan in the State of Arkansas, including without limitation:

10 (A) An insurance company;

11 (B) A medical services plan;

12 (C) A hospital plan;

13 (D) A hospital medical service corporation;

14 (E) A health maintenance organization;

15 (F) A fraternal benefits society; or

16 (G) Any other entity providing health insurance or a
 17 health insurance benefit plan subject to state insurance regulation;

18 (8) "Individual qualified health insurance plan" means an
 19 individual health insurance benefit plan offered by a health insurer through
 20 the health insurance marketplace that covers only essential health benefits
 21 as defined by Arkansas rule and 45 C.F.R. § 156.110 and any federal insurance
 22 regulations, as they existed on January 1, 2016;

23 (9) "Premium" means a monthly fee that is required to be paid to
 24 maintain some or all health insurance benefits;

25 (10) "Program participant" means an eligible individual who:

26 (A) Is at least nineteen (19) years of age and no more
 27 than sixty-four (64) years of age with an income that is equal to or less
 28 than one hundred thirty-eight percent (138%) of the federal poverty level;

29 (B) Is authenticated to be a United States citizen or
 30 documented qualified alien according to the Personal Responsibility and Work
 31 Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193;

32 (C) Is not eligible for Medicare or advanced premium tax
 33 credits through the health insurance marketplace; and

34 (D) Is not determined to be more effectively covered
 35 through the traditional Arkansas Medicaid Program, including without
 36 limitation;

1 (i) An individual who is medically frail; or
2 (ii) An individual who has exceptional medical needs
3 for whom coverage offered through the health insurance marketplace is
4 determined to be impractical, overly complex, or would undermine continuity
5 or effectiveness of care; and

6 (11)(A) "Small group plan" means a health insurance benefit plan
7 for a small employer that employed an average of at least two (2) but no more
8 than fifty (50) employees during the preceding calendar year.

9 (B) "Small group plan" does not include a grandfathered
10 health insurance plan as defined in 45 C.F.R. § 147.140(a)(1)(i), as it
11 existed on January 1, 2016.

12
13 23-61-1004. Administration of Arkansas Works Program.

14 (a)(1) The Department of Human Services, in coordination with the
15 State Insurance Department and other necessary state agencies, shall:

16 (A) Provide health insurance or medical assistance under
17 this subchapter to eligible individuals;

18 (B) Create and administer the Arkansas Works Program; and

19 (C) Submit and apply for any federal waivers, Medicaid
20 state plan amendments, or other authority necessary to implement the Arkansas
21 Works Program in a manner consistent with this subchapter;

22 (D) Offer incentive benefits to promote personal
23 responsibility; and

24 (E) Seek a waiver to eliminate retroactive eligibility for
25 an eligible individual under this subchapter.

26 (2) The Governor shall request the assistance and involvement of
27 other state agencies that he or she deems necessary for the implementation of
28 the Arkansas Works Program.

29 (b) Health insurance benefits under this subchapter shall be provided
30 through:

31 (1) Individual premium assistance for enrollment of Arkansas
32 Works Program participants in individual qualified health insurance plans;

33 (2) Employer-sponsored premium assistance for certain eligible
34 individuals who enroll in employer health insurance coverage; and

35 (3) Supplemental benefits to incentivize personal
36 responsibility.

1 (c) The Department of Human Services, the State Insurance Department,
2 the Department of Workforce Services, and other necessary state agencies
3 shall promulgate and administer rules to implement the Arkansas Works
4 Program.

5 (d) Termination of the Arkansas Works Program shall begin within
6 thirty (30) days after a reduction in any of the following federal medical
7 assistance percentages:

8 (1) Ninety-five percent (95%) in the year 2017;

9 (2) Ninety-four percent (94%) in the year 2018;

10 (3) Ninety-three percent (93%) in the year 2019; and

11 (4) Ninety percent (90%) in the year 2020 or any year after the
12 year 2020.

13 (e) State obligations for uncompensated care shall be tracked and
14 reported to identify potential incremental future decreases.

15 (f) The Department of Human Services shall track the hospital
16 assessment fee imposed by § 20-77-1902 and report to the General Assembly
17 subsequent decreases based upon reduced uncompensated care.

18 (g)(1) On a quarterly basis, the Department of Human Services, the
19 State Insurance Department, the Department of Workforce Services, and other
20 necessary state agencies shall report to the Legislative Council, or to the
21 Joint Budget Committee if the General Assembly is in session, available
22 information regarding the overall Arkansas Works Program, including without
23 limitation:

24 (A) Eligibility and enrollment;

25 (B) Utilization;

26 (C) Premium and cost sharing reduction costs;

27 (D) Health insurer participation and competition;

28 (E) Avoided uncompensated care; and

29 (F) Participation in job training and job search programs.

30 (2)(A) A health insurer who is providing an individual qualified
31 health insurance plan or employer health insurance coverage for an eligible
32 individual shall submit claims and enrollment data to the State Insurance
33 Department to facilitate reporting required under this subchapter or other
34 state or federally required reporting or evaluation activities.

35 (B) A health insurer may utilize existing mechanisms with
36 supplemental enrollment information to fulfill requirements under this

1 subchapter, including without limitation the state's all-payer claims
2 database, established under the Arkansas Healthcare Transparency Initiative
3 Act of 2015, § 23-61-901 et seq., for claims and enrollment data submission.
4

5 23-61-1005. Requirements for eligible individuals.

6 (a)(1) To promote health, wellness, and healthcare education about
7 appropriate healthcare-seeking behaviors, an eligible individual shall
8 receive a wellness visit from a primary care provider within:

9 (A) The first year of enrollment in health insurance
10 coverage for an eligible individual who is not a program participant and is
11 enrolled in employer health insurance coverage; and

12 (B) The first year of, and thereafter annually:

13 (i) Enrollment in an individual qualified health
14 insurance plan or employer health insurance coverage for a program
15 participant; or

16 (ii) Notice of eligibility determination for an
17 eligible individual who is not a program participant and is not enrolled in
18 employer health insurance coverage.

19 (2) Failure to meet the requirement in subdivision (a)(1) of
20 this section shall result in the loss of incentive benefits for a period of
21 up to one (1) year, as incentive benefits are defined by the Department of
22 Human Services in consultation with the State Insurance Department.

23 (b)(1) An eligible individual who has no income at an eligibility
24 determination shall be referred to the Department of Workforce Services to:

25 (A) Incentivize and increase work and work training
26 opportunities; and

27 (B) Participate in job training and job search programs.

28 (2) The Department of Human Services, or its designee, shall
29 provide work training opportunities, outreach, and education about work and
30 work training opportunities through the Department of Workforce Services to
31 all eligible individuals regardless of income at an eligibility
32 determination.

33 (c) An eligible individual shall receive notice that:

34 (1) The Arkansas Works Program is not a perpetual federal or
35 state right or a guaranteed entitlement;

36 (2) The Arkansas Works Program is subject to cancellation upon

1 appropriate notice; and

2 (3) The Arkansas Works Program is not an entitlement program.

3
4 23-61-1006. Requirements for program participants.

5 (a) A program participant who is twenty-one (21) years of age or older
6 shall enroll in employer health insurance coverage if the employer health
7 insurance coverage meets the standards in § 23-61-1008(a).

8 (b)(1) A program participant who has income of at least one hundred
9 percent (100%) of the federal poverty level shall pay a premium of no more
10 than two percent (2%) of the income.

11 (2) Failure by the program participant to meet the requirement
12 in subdivision (b)(1) of this section may result in:

13 (A) The accrual of a debt to the State of Arkansas; and

14 (B)(i) The loss of incentive benefits in the event of
15 failure to pay premiums for three (3) consecutive months, as incentive
16 benefits are defined by the Department of Human Services in consultation with
17 the State Insurance Department.

18 (ii) However, incentive benefits shall be restored
19 if a program participant pays all premiums owed.

20
21 23-61-1007. Insurance standards for individual qualified health
22 insurance plans.

23 (a) Insurance coverage for a program participant enrolled in an
24 individual qualified health insurance plan shall be obtained through silver-
25 level metallic plans as provided in 42 U.S.C. §§ 18022(d) and 18071, as they
26 existed on January 1, 2016, that restrict out-of-pocket costs to amounts that
27 do not exceed applicable out-of-pocket cost limitations.

28 (b) The Department of Human Services shall pay premiums and
29 supplemental cost sharing reductions directly to a health insurer for a
30 program participant enrolled in an individual qualified health insurance
31 plan.

32 (c) All participating health insurers offering individual qualified
33 health insurance plans in the health insurance marketplace shall:

34 (1)(A) Offer individual qualified health insurance plans
35 conforming to the requirements of this section and applicable insurance
36 rules.

1 (B) The individual qualified health insurance plans shall
2 be approved by the State Insurance Department; and

3 (2) Maintain a medical-loss ratio of at least eighty percent
4 (80%) for an individual qualified health insurance plan as required under 45
5 C.F.R. § 158.210(c), as it existed on January 1, 2016, or rebate the
6 difference to the Department of Human Services for program participants.

7 (d) The State of Arkansas shall assure that at least two (2)
8 individual qualified health insurance plans are offered in each county in the
9 state.

10 (e) A health insurer offering individual qualified health insurance
11 plans for program participants shall participate in the Arkansas Patient-
12 Centered Medical Home Program, including:

13 (1) Attributing enrollees in individual qualified health
14 insurance plans, including program participants, to a primary care physician;

15 (2) Providing financial support to patient-centered medical
16 homes to meet practice transformation milestones; and

17 (3) Supplying clinical performance data to patient-centered
18 medical homes, including data to enable patient-centered medical homes to
19 assess the relative cost and quality of healthcare providers to whom patient-
20 centered medical homes refer patients.

21 (f) On or before January 1, 2017, the State Insurance Department and
22 the Department of Human Services may implement through certification
23 requirements or rule, or both, the applicable provisions of this section.

24
25 23-61-1008. Insurance standards for employer health insurance
26 coverage.

27 (a) A program participant shall enroll in employer health insurance
28 coverage if:

29 (1) The employer of the program participant elects to
30 participate;

31 (2) Except as authorized under subsection (c) of this section,
32 the employer health insurance coverage is a small group plan that provides
33 essential health benefits as defined by 45 C.F.R. § 156.110, as it existed on
34 January 1, 2016, and has no less than a seventy percent (70%) actuarial
35 value;

36 (3) The employer health insurance coverage is deemed cost-

1 effective; and

2 (4) The employer and health insurer providing the employer
 3 health insurance coverage are willing to meet the reporting obligations under
 4 § 23-61-1004(g)(2).

5 (b) The Department of Human Services may to pay premiums and
 6 supplemental cost sharing reductions for employer health insurance coverage
 7 meeting standards in subsection (a) of this section.

8 (c) The Department of Human Services, in coordination with the State
 9 Insurance Department and the Arkansas Health Insurance Marketplace, shall
 10 explore and seek any necessary waivers or other authority necessary to:

11 (1) Offer incentives for employers of program participants who
 12 enroll in employer health insurance coverage; and

13 (2) Expand opportunities for eligible individuals to obtain
 14 employer health insurance coverage providing coverage through:

15 (A) The fully insured large group insurance market; or

16 (B) Employers with self-funded insurance plans.

17 (d) This subchapter does not:

18 (1) Modify the authority of the Department of Human Services to
 19 enroll eligible individuals who are not program participants in employer
 20 health insurance coverage where cost-effective; or

21 (2) Preclude the state from exploring the expanded utility and
 22 functionality of the state-administered small business health options program
 23 created by the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq.

24 (e) On or before January 1, 2017, the State Insurance Department, the
 25 Department of Human Services, and other necessary state agencies may
 26 implement the applicable provisions of this section through certification
 27 requirements or rule, or both.

28
 29 SECTION 2. Arkansas Code § 20-77-2408 is amended to read as follows:
 30 20-77-2408. Effective Date.

31 This subchapter shall be in effect until ~~June 30, 2017, unless amended~~
 32 ~~or extended by the General Assembly December 31, 2016, upon which date the~~
 33 Health Care Independence Program established by the Health Care Independence
 34 Act of 2013, § 20-77-2401 et seq., shall terminate, provided however that the
 35 Department of Human Services shall cease collection of contributions to
 36 independence accounts no later than July 1, 2016.

1
2 SECTION 3. Arkansas Code § 23-61-805(b), concerning an offset of an
3 assessment fee within the Arkansas Health Insurance Marketplace, is repealed.

4 ~~(b)(1) An assessment may be offset in an amount equal to the amount of~~
5 ~~the assessment paid to the Arkansas Health Insurance Marketplace against the~~
6 ~~premium tax payable for the year in which the assessment is levied.~~

7 ~~(2) An offset shall not be allowed for a penalty assessed under~~
8 ~~subsection (c) of this section.~~

9
10 SECTION 4. Arkansas Code § 26-57-604(a)(1)(B)(ii), concerning the
11 allowance of a credit to be applied against the insurance premium tax, is
12 amended to read as follows:

13 (ii) However, the credit shall not be applied as an
14 offset against the premium tax on collections resulting from an eligible
15 individual insured under the Health Care Independence Act of 2013, § 20-77-
16 2401 et seq., ~~or the Arkansas Health Insurance Marketplace Act, § 23-61-801~~
17 ~~et seq.,~~ the Arkansas Works Act of 2016, § 23-61-1001 et seq., the Arkansas
18 Health Insurance Marketplace Act, § 23-61-801 et seq., or individual
19 qualified health insurance plans, including without limitation stand-alone
20 dental plans, issued through the health insurance marketplace as defined by §
21 23-61-1003.

22
23 SECTION 5. Arkansas Code § 26-57-610(b)(2), concerning the disposition
24 of the insurance premium tax, is amended to read as follows:

25 (2) The taxes based on premiums collected under the Health Care
26 Independence Act of 2013, § 20-77-2401 et seq., ~~and the Arkansas Health~~
27 ~~Insurance Marketplace Act, § 23-61-801 et seq.,~~ the Arkansas Works Act of
28 2016, § 23-61-1001 et seq., the Arkansas Health Insurance Marketplace Act, §
29 23-61-801 et seq., or individual qualified health insurance plans, including
30 without limitation stand-alone dental plans, issued through the health
31 insurance marketplace as defined by § 23-61-1003 shall be:

32 (A) At the time of deposit, separately certified by the
33 commissioner to the Treasurer of State for classification and distribution
34 under this section; and

35 (B)(i) ~~Transferred~~ On or before December 31, 2016,
36 transferred to the Health Care Independence Program Trust Fund and used as

1 provided by § 19-5-1141; and

2 (ii) On and after January 1, 2017, transferred to
 3 the Arkansas Works Program Trust Fund and used as required by the Arkansas
 4 Works Program Trust Fund;

5
 6 SECTION 6. Arkansas Code Title 19, Chapter 5, Subchapter 11, is
 7 amended to add an additional section to read as follows:

8 19-5-1146. Arkansas Works Program Trust Fund.

9 (a) There is created on the books of the Treasurer of State, the
 10 Auditor of State, and the Chief Fiscal Officer of the State a trust fund to
 11 be known as the "Arkansas Works Program Trust Fund".

12 (b) The fund shall consist of:

13 (1) Moneys saved and accrued under the Arkansas Works Act of
 14 2016, § 23-61-1001 et seq., including without limitation:

15 (A) Increases in premium tax collections;

16 (B) Reductions in uncompensated care; and

17 (C) Other spending reductions resulting from the Arkansas
 18 Works Act of 2016, § 23-61-1001 et seq.; and

19 (2) Other revenues and funds authorized by law.

20 (c) The Department of Human Services shall use the fund to pay for
 21 future obligations under the Arkansas Works Program created by the Arkansas
 22 Works Act of 2016, § 23-61-1001 et seq.

23
 24 SECTION 7. Arkansas Code § 19-5-1141, concerning the Health Care
 25 Independence Program Trust Fund, is amended to add an additional subsection
 26 to read as follows:

27 (d)(1) The Health Care Independence Program Trust Fund expires on
 28 January 1, 2017.

29 (2) Any balance in the Health Care Independence Program Trust
 30 Fund on January 1, 2017, shall be transferred by the Chief Fiscal Officer of
 31 the State on his or her books and the books of the Treasurer of State and the
 32 Auditor of the State to the Arkansas Works Program Trust Fund.

33
 34 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
 35 General Assembly of the State of Arkansas that the federal laws established
 36 by Pub. L. No. 111-148 have caused disruptive challenges to the State of

1 Arkansas in the health insurance industry and the medical assistance
2 industry; that the Arkansas Works Program utilizes the private insurance
3 market to improve access to health insurance, enhances quality of health
4 insurance, and reduces health insurance and medical assistance costs; that
5 the Arkansas Works Program requires private insurance companies and employers
6 to create, present, implement, and market a new type of health insurance
7 policy; and that this act is immediately necessary because the private
8 insurance companies and employers need certainty about the law creating the
9 Arkansas Works Program before fully investing time, funds, personnel, and
10 other resources into the development of new health insurance policies.
11 Therefore, an emergency is declared to exist, and this act being immediately
12 necessary for the preservation of the public peace, health, and safety shall
13 become effective on:

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

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

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

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