

1 State of Arkansas  
2 90th General Assembly  
3 Second Extraordinary Session, 2016  
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.  
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14

## Subtitle

15 TO AMEND TITLE 23 OF THE ARKANSAS CODE TO  
16 PROVIDE HEALTH INSURANCE TO QUALIFYING  
17 INDIVIDUALS; TO CREATE THE ARKANSAS WORKS  
18 PROGRAM; AND TO DECLARE AN EMERGENCY.  
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23 WHEREAS, the State of Arkansas continues to seek strategies to provide  
24 health insurance for low-income and other vulnerable populations in a manner  
25 that will encourage employer-based insurance, incentivize program  
26 beneficiaries to work or seek work opportunities, promote personal  
27 responsibility, and enhance program integrity; and  
28

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

35 WHEREAS, Arkansas recognizes the need to encourage employment among  
36 beneficiaries of public assistance programs, offer enhanced opportunities for

1 beneficiaries to obtain jobs and job training, and endow beneficiaries with  
2 the tools to achieve economic advancement; and

3  
4 WHEREAS, the Health Care Independence Program will terminate on  
5 December 31, 2016; and

6  
7 WHEREAS, the General Assembly hereby creates the Arkansas Works Act of  
8 2016 to provide health insurance to qualifying individuals,

9  
10 NOW THEREFORE,

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

12  
13 SECTION 1. Arkansas Code Title 23, Chapter 61, is amended to create a  
14 new subchapter to read as follows:

15 Subchapter 10 – Arkansas Works Act of 2016

16  
17 23-61-1001. Title.

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

20  
21 23-61-1002. Legislative intent.

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

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

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

29 (3) Strengthens the ability of employers to recruit and retain  
30 productive employees; and

31 (4) Achieves comprehensive and innovative healthcare reform that  
32 reduce state and federal obligations for entitlement spending.

33  
34 23-61-1003. Definitions.

35 As used in this subchapter:

36 (1) "Cost-effective" means that the cost of covering employees

1 who are:

2 (A) Program participants, either individually or together  
3 within an employer health insurance coverage, is the same or less than the  
4 cost of providing comparable coverage through individual qualified health  
5 insurance plans; or

6 (B) Eligible individuals who are not program participants,  
7 either individually or together within an employer health insurance coverage,  
8 is the same or less than the cost of providing comparable coverage through a  
9 program authorized under Title XIX of the Social Security Act, 42 U.S.C. §  
10 1396 et seq., as it existed on January 1, 2016;

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

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

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

21 (5) "Health insurance benefit plan" means a policy, contract,  
22 certificate, or agreement offered or issued by a health insurer to provide,  
23 deliver, arrange for, pay for, or reimburse any of the costs of healthcare  
24 services, but not including excepted benefits as defined under 42 U.S.C. §  
25 300gg-91(c), as it existed on January 1, 2016;

26 (6) "Health insurance marketplace" means the applicable entities  
27 that were designed to help individuals, families, and businesses in Arkansas  
28 shop for and select health insurance benefit plans in a way that permits  
29 comparison of available plans based upon price, benefits, services, and  
30 quality, and refers to either:

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

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

36 (7) "Health insurer" means an insurer authorized by the State

1 Insurance Department to provide health insurance or a health insurance  
2 benefit plan in the State of Arkansas, including without limitation:

3 (A) An insurance company;

4 (B) A medical services plan;

5 (C) A hospital plan;

6 (D) A hospital medical service corporation;

7 (E) A health maintenance organization;

8 (F) A fraternal benefits society; or

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

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

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

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

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

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

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

27 (D) Is not determined to be more effectively covered  
28 through the traditional Arkansas Medicaid Program, including without  
29 limitation:

30 (i) An individual who is medically frail; or

31 (ii) An individual who has exceptional medical needs  
32 for whom coverage offered through the health insurance marketplace is  
33 determined to be impractical, overly complex, or would undermine continuity  
34 or effectiveness of care; and

35 (11)(A) "Small group plan" means a health insurance benefit plan  
36 for a small employer that employed an average of at least two (2) but no more

1 than fifty (50) employees during the preceding calendar year.

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

5  
6 23-61-1004. Administration of Arkansas Works Program.

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

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

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

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

15 (D) Offer incentive benefits to promote personal  
16 responsibility; and

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

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

22 (b) Health insurance benefits under this subchapter shall be provided  
23 through:

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

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

28 (3) Supplemental benefits to incentivize personal  
29 responsibility.

30 (c) The Department of Human Services, the State Insurance Department,  
31 the Department of Workforce Services, and other necessary state agencies  
32 shall promulgate and administer rules to implement the Arkansas Works  
33 Program.

34 (d) The Department of Human Services shall present to the Centers of  
35 Medicare and Medicaid Services a plan to terminate the program within thirty  
36 (30) days of a reduction in any of the following federal medical assistance

1 percentages:

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

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

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

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

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

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

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

18 (A) Eligibility and enrollment;

19 (B) Utilization;

20 (C) Premium and cost sharing reduction costs;

21 (D) Health insurer participation and competition;

22 (E) Avoided uncompensated care; and

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

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

29 (B) A health insurer may utilize existing mechanisms with  
30 supplemental enrollment information to fulfill requirements under this  
31 subchapter, including without limitation the state's all-payer claims  
32 database established under the Arkansas Healthcare Transparency Initiative  
33 Act of 2015, § 23-61-901 et seq., for claims and enrollment data submission.

34 (h) The Governor shall request a block grant under relevant federal  
35 law and regulations for the funding of the Arkansas Medicaid Program as soon  
36 as practical if the federal law or regulations change to allow the approval

1 of a block grant for this purpose.

2  
3 23-61-1005. Requirements for eligible individuals.

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

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

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

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

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

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

21 (b)(1) An eligible individual who has up to fifty percent (50%) of the  
22 federal poverty level at the time of an eligibility determination shall be  
23 referred to the Department of Workforce Services to:

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

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

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

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

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

35 (2) The Arkansas Works Program is subject to cancellation upon  
36 appropriate notice; and

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

2  
3           23-61-1006. Requirements for program participants.

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

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

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

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

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

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

19  
20           23-61-1007. Insurance standards for individual qualified health  
21 insurance plans.

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

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

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

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

36                   (B) The individual qualified health insurance plans shall



1 be approved by the State Insurance Department; and

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

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

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

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

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

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

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

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

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

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

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

35 (3) The employer health insurance coverage is deemed cost-  
36 effective; and

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

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

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

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

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

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

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

16           (d) This subchapter does not:

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

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

24           (3) Exempt any plans offered in the small group insurance  
25 market, large group insurance market, or individual insurance market from  
26 complying with state and federal requirements regarding medical loss ratio.

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

31  
32           23-61-1009. Sunset.

33           This subchapter shall expire on December 31, 2021.

34  
35           SECTION 2. Arkansas Code § 20-77-2408 is amended to read as follows:  
36           20-77-2408. Effective Date.

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

7  
 8           SECTION 3. Arkansas Code § 23-61-805(b), concerning an offset of an  
 9 assessment fee within the Arkansas Health Insurance Marketplace, is repealed.

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

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

15  
 16           SECTION 4. Arkansas Code § 26-57-604(a)(1)(B)(ii), concerning the  
 17 allowance of a credit to be applied against the insurance premium tax, is  
 18 amended to read as follows:

19           (ii) However, the credit shall not be applied as an  
 20 offset against the premium tax on collections resulting from an eligible  
 21 individual insured under the Health Care Independence Act of 2013, § 20-77-  
 22 2401 et seq., ~~or the Arkansas Health Insurance Marketplace Act, § 23-61-801~~  
 23 ~~et seq.,~~ the Arkansas Works Act of 2016, § 23-61-1001 et seq., the Arkansas  
 24 Health Insurance Marketplace Act, § 23-61-801 et seq., or individual  
 25 qualified health insurance plans, including without limitation stand-alone  
 26 dental plans, issued through the health insurance marketplace as defined by §  
 27 23-61-1003.

28  
 29           SECTION 5. Arkansas Code § 26-57-610(b)(2), concerning the disposition  
 30 of the insurance premium tax, is amended to read as follows:

31           (2) The taxes based on premiums collected under the Health Care  
 32 Independence Act of 2013, § 20-77-2401 et seq., ~~and the Arkansas Health~~  
 33 ~~Insurance Marketplace Act, § 23-61-801 et seq.,~~ the Arkansas Works Act of  
 34 2016, § 23-61-1001 et seq., the Arkansas Health Insurance Marketplace Act, §  
 35 23-61-801 et seq., or individual qualified health insurance plans, including  
 36 without limitation stand-alone dental plans, issued through the health

1 insurance marketplace as defined by § 23-61-1003 shall be:

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

5 (B)(i) ~~Transferred~~ On or before December 31, 2016,  
6 transferred to the Health Care Independence Program Trust Fund and used as  
7 provided by § 19-5-1141; and

8 (ii) On and after January 1, 2017, transferred to  
9 the Arkansas Works Program Trust Fund and used as required by the Arkansas  
10 Works Program Trust Fund;

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

14 19-5-1146. Arkansas Works Program Trust Fund.

15 (a) There is created on the books of the Treasurer of State, the  
16 Auditor of State, and the Chief Fiscal Officer of the State a trust fund to  
17 be known as the “Arkansas Works Program Trust Fund”.

18 (b) The fund shall consist of:

19 (1) Moneys saved and accrued under the Arkansas Works Act of  
20 2016, § 23-61-1001 et seq., including without limitation:

21 (A) Increases in premium tax collections; and

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

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

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

28  
29 SECTION 7. Arkansas Code § 19-5-1141, concerning the Health Care  
30 Independence Program Trust Fund, is amended to add an additional subsection  
31 to read as follows:

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

34 (2) Any balance in the Health Care Independence Program Trust  
35 Fund on January 1, 2017, shall be transferred by the Chief Fiscal Officer of  
36 the State on his or her books and the books of the Treasurer of State and the

1 Auditor of the State to the Arkansas Works Program Trust Fund.

2  
3       SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
4 General Assembly of the State of Arkansas that the federal laws established  
5 by Pub. L. No. 111-148, have caused disruptive challenges to the State of  
6 Arkansas in the health insurance industry and the medical assistance  
7 industry; that the Arkansas Works Program utilizes the private insurance  
8 market to improve access to health insurance, enhances quality of health  
9 insurance, and reduces health insurance and medical assistance costs; that  
10 the Arkansas Works Program requires private insurance companies and employers  
11 to create, present, implement, and market a new type of health insurance  
12 policy; and that this act is immediately necessary because the private  
13 insurance companies and employers need certainty about the law creating the  
14 Arkansas Works Program before fully investing time, funds, personnel, and  
15 other resources into the development of new health insurance policies.  
16 Therefore, an emergency is declared to exist, and this act being immediately  
17 necessary for the preservation of the public peace, health, and safety shall  
18 become effective on:

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

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

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

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