

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: H3/25/99*

# A Bill

HOUSE BILL 2045

5 By: Representative Teague  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO AMEND ACT 292 OF 1997; AND FOR OTHER  
10 PURPOSES. "

### Subtitle

13 "TO AMEND THE COMPREHENSIVE HEALTH  
14 INSURANCE POOL ACT. "

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16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 *Section 1. Arkansas Code 23-79-503 shall be amended to read as follows:*  
20 *"23-79-503. Definitions.*

21 *For the purposes of this subchapter, the following definitions apply:*

22 (a) *'Agent' means any person who is licensed to sell health insurance*  
23 *in this state;*

24 (b) *'Board' means the Board of Directors of the Arkansas Comprehensive*  
25 *Health Insurance Pool;*

26 (c) *'Church plan' has the same meaning given that term in the federal*  
27 *Health Insurance Portability and Accountability Act of 1996;*

28 (d) *'Commissioner' means the Insurance Commissioner for the State of*  
29 *Arkansas;*

30 (e) *'Continuation coverage' means continuation of coverage under a*  
31 *group health plan or other health insurance coverage for former employees or*  
32 *dependents of former employees that would otherwise have terminated under the*  
33 *terms of that coverage pursuant to any continuation provisions under federal*  
34 *or state law, including the Consolidated Omnibus Budget Reconciliation Act of*  
35 *1985 (COBRA), as amended, § 23-86-114 of the Arkansas Insurance Code, or any*  
36 *other similar requirement in another state;*

1           (f) 'Covered person' means a person who is and continues to remain  
2 eligible for pool coverage and is covered under one of the plans offered by  
3 the pool;

4           (g)(1) 'Creditable coverage' means, with respect to a federally  
5 eligible individual, coverage of the individual under any of the following:

6                   (A) A group health plan;

7                   (B) Health insurance coverage (including group health  
8 insurance coverage);

9                   (C) Medicare;

10                  (D) Medical assistance;

11                  (E) Chapter 55 of Title 10, United States Code;

12                  (F) A medical care program of the Indian Health Service or  
13 of a tribal organization;

14                  (G) A state health benefits risk pool;

15                  (H) A health plan offered under Chapter 89 of Title 5,  
16 United States Code;

17                  (I) A public health plan (as defined in regulations  
18 consistent with § 104 of the Health Care Portability and Accountability Act of  
19 1996 that may be promulgated by the Secretary of the U.S. Department of Health  
20 and Human Services);

21                  (J) A health benefit plan under § 5(e) of the Peace Corps  
22 Act, 22 U.S.C. 2504(e);

23           (2) Creditable coverage does not include coverage consisting  
24 solely of coverage of excepted benefits (as defined in § 2791(C) of Title  
25 XXVII of the Public Health Services Act) 42 U.S.C. § 300(gg-91) nor does it  
26 include any period of coverage under any of items (A) through (J) of § 23-79-  
27 503(g)(1) that occurred before a break of more than sixty-three (63) days  
28 during all of which the individual was not covered under any of items (A)  
29 through (J) of § 23-79-503(g)(1). Any period that an individual is in a  
30 waiting period for any coverage under a group health plan (or for group health  
31 insurance coverage) or is in an affiliation period under the terms of health  
32 insurance coverage offered by a health maintenance organization shall not be  
33 taken into account in determining if there has been a break of more than  
34 sixty-three (63) days in any credible coverage;

35           (h) 'Department' means Arkansas Insurance Department;

36           (i) 'Excess or stop-loss coverage' means an arrangement whereby an

1 insurer insures against the risk that any one (1) claim will exceed a specific  
2 dollar amount or that the entire loss of an self-insurance plan will exceed a  
3 specific amount;

4 (j) 'Federally eligible individual' means an individual resident of  
5 Arkansas:

6 (1)(A) For whom, as of the date on which the individual seeks  
7 pool coverage under § 23-79-509, the aggregate of the periods of creditable  
8 coverage is eighteen (18) or more months; and

9 (B) Whose most recent prior creditable coverage was under  
10 group health insurance coverage offered by an insurer, a group health plan, a  
11 governmental plan, or a church plan (or health insurance coverage offered in  
12 connection with any such plans); and

13 (2) Who is not eligible for coverage under:

14 (A) A group health plan;

15 (B) Part A or Part B of Medicare; or

16 (C) Medical assistance, and does not have other health  
17 insurance coverage; and

18 (3) With respect to whom the most recent coverage within the  
19 coverage period described in subdivision (1)(A) of this definition was not  
20 terminated based upon a factor related to nonpayment of premiums or fraud; and

21 (4) If the individual has been offered the option of continuation  
22 coverage under a COBRA continuation provision or under a similar state  
23 program, who elected such coverage; and

24 (5) Who, if the individual elected such continuation coverage,  
25 has exhausted such continuation coverage under such provision or program.

26 (k) 'Group health plan' has the same meaning given that term in the  
27 federal Health Insurance Portability and Accountability Act of 1996;

28 (l) 'Governmental plan' has the same meaning given that term in the  
29 federal Health Insurance Portability and Accountability Act of 1996;

30 (m) 'Health insurance' means any hospital and medical -expense incurred  
31 policy, certificate, or contract, provided by an insurer, hospital or medical  
32 service corporation, health maintenance organization, or any other health care  
33 plan or arrangement that pays for or furnishes medical or health care services  
34 whether by insurance or otherwise. The term does not include long-term care,  
35 disability income, short-term, accident, dental -only, vision -only, fixed  
36 indemnity, limited-benefit or credit insurance, coverage issued as a

1 supplement to liability insurance, insurance arising out of workers'  
2 compensation or similar law, automobile medical-payment insurance, or  
3 insurance under which benefits are payable with or without regard to fault and  
4 which is statutorily required to be contained in any liability insurance  
5 policy or equivalent self-insurance;

6 (n) 'Health maintenance organization' shall have the same meaning as  
7 defined in §23-76-102;

8 (o) 'Hospital' shall have the same meaning as defined in §20-9-201;

9 ~~(n)~~(p) 'Individual health insurance coverage' means health insurance  
10 coverage offered to individuals in the individual market, but does not include  
11 short-term, limited-duration insurance;

12 ~~(o)~~(q) 'Insurer' means any entity that provides health insurance,  
13 including excess or stop-loss health insurance in the State of Arkansas. For  
14 the purposes of this subchapter, insurer includes an insurance company,  
15 medical services plans, hospital plans, hospital medical service corporations,  
16 health maintenance organizations, fraternal benefits society, or any other  
17 entity providing a plan of health insurance or health benefits subject to  
18 state insurance regulation;

19 ~~(p)~~(r) 'Medical assistance' means the state medical assistance program  
20 provided under Title XIX of the Social Security Act or under any similar  
21 program of health care benefits in a state other than Arkansas;

22 ~~(q)~~(s) 'Medically necessary' means that a service, drug, supply, or  
23 article is necessary and appropriate for the diagnosis or treatment of an  
24 illness or injury in accord with generally accepted standards of medical  
25 practice at the time the service, drug, or supply is provided. When  
26 specifically applied to a confinement it further means the diagnosis or  
27 treatment of the covered person's medical symptoms or condition cannot be  
28 safely provided to that person as an outpatient. A service, drug, supply or  
29 article shall not be medically necessary if it: (i) is investigational,  
30 experimental, or for research purposes; or (ii) is provided solely for the  
31 convenience of the patient, the patient's family, physician, hospital, or any  
32 other provider; or (iii) exceeds in scope, duration, or intensity that level  
33 of care that is needed to provide safe, adequate and appropriate diagnosis or  
34 treatment; or (iv) could have been omitted without adversely affecting the  
35 covered person's condition or the quality of medical care; or (v) involves the  
36 use of a medical device, drug, or substance not formally approved by the

1 United States Food and Drug Administration;

2 ~~(r)~~(t) 'Medicare' means coverage under Part A and Part B of the Title  
3 XVII of the Social Security Act, 42 U.S.C. § 1395, et seq.;

4 ~~(s)~~(u) 'Physician' means a person licensed to practice medicine as duly  
5 licensed by the State of Arkansas;

6 ~~(t)~~(v) 'Plan' means the comprehensive health insurance plan as adopted  
7 by the board of the Arkansas Comprehensive Health Insurance Pool or by rule;

8 ~~(u)~~(w) 'Plan Administrator' means the insurer designated under § 23-79-  
9 508 to carry out the provisions of the plan of operation;

10 ~~(v)~~(x) 'Plan of operation' means the plan of operation of the pool,  
11 including articles, bylaws and operating rules, adopted by the board pursuant  
12 to this subchapter;

13 ~~(w)~~(y) 'Provider' means any hospital, skilled nursing facility,  
14 hospice, home health agency, physician, pharmacist, or any other person or  
15 entity licensed in Arkansas to furnish medical care, articles supplies;

16 ~~(x)~~(z) 'Qualified high risk pool' has the same meaning given that term  
17 in the federal Health Insurance Portability and Accountability Act of 1996;

18 and

19 ~~(y)~~(aa) 'Resident eligible person' means a person who:

20 (1) has Has been legally domiciled in the State of Arkansas for a  
21 period of at least thirty (30) days and continues to be domiciled in  
22 Arkansas-; and

23 (2) Is not eligible for coverage under:

24 (A) A group health plan;

25 (B) Part A or Part B of Medicare; or

26 (C) Medical assistance, as defined in this section, and does  
27 not have other health insurance coverage, as defined in this section."

28

29 SECTION 2. Arkansas Code 23-79-506 is amended to read as follows:

30 "23-79-506. Powers.

31 (a) The pool shall have the general powers and authority granted under  
32 the laws of the State of Arkansas to health insurers and in addition thereto,  
33 the specific authority to:

34 (1) Enter into contracts as are necessary or proper to carry out  
35 the provisions and purposes of this subchapter;

36 (2) Sue or be sued, including taking any legal actions necessary

1 or proper;

2 (3) Take such legal action as necessary, including but not  
3 limited to:

4 (A) To avoid the payment of improper claims against the  
5 pool or the coverage provided by or through the pool;

6 (B) To recover any amounts erroneously or improperly paid  
7 by the pool;

8 (C) To recover any amounts paid by the pool as a result of  
9 mistake of fact or law;

10 (D) To recover other amounts due the pool; or

11 (E) To coordinate legal action with the commissioner to  
12 enforce the provisions of this subchapter.

13 (4) Establish and modify from time to time as appropriate, rates,  
14 rate schedules, rate adjustments, expense allowances, agent referral fees,  
15 claim reserve formulas, deductibles, copayments, coinsurance, and any other  
16 actuarial function appropriate to the operation of the pool. Rates and rate  
17 schedules may be adjusted for appropriate factors such as age, sex and  
18 geographical variation in claim costs and shall take into consideration  
19 appropriate factors in accordance with established actuarial and underwriting  
20 practices;

21 (5) Issue policies of insurance in accordance with the  
22 requirements of this subchapter. All policy forms shall be subject to the  
23 approval of the commissioner;

24 (6) Authorize the plan administrator to prepare and distribute  
25 certificate of eligibility forms and enrollment instruction forms to agents  
26 and to the general public;

27 (7) Provide for and employ cost-containment measures and  
28 requirements including, but not limited to, preadmission screening, second  
29 surgical opinion, concurrent utilization review, and individual case  
30 management for the purposes of making the plan more cost effective;

31 (8) Design, utilize, contract or otherwise arrange for the  
32 delivery of cost effective health care services, including establishing or  
33 contracting directly or through the plan administrator with preferred provider  
34 organizations, health maintenance organizations, physician hospital  
35 organizations, or other limited network provider arrangements;

36 (9) Borrow money to effect the purposes of the pool. Any notes

1 or other evidence of indebtedness of the pool not in default shall be legal  
2 investments for insurers and may be carried as admitted assets;

3 (10) Pledge, assign and grant a security interest in any of the  
4 assessments authorized by this subchapter or other assets of the pool in order  
5 to secure any notes or other evidences of indebtedness of the pool;

6 (11) Provide for reinsurance of risks incurred by the pool;

7 (12) Provide additional types of plans to provide optional  
8 coverages, including medicare supplement health insurance;

9 (13) Enter into reciprocal agreements with other comparable state plans  
10 in order to provide coverage for persons who move between states and are  
11 covered by such other states' plans;

12 (14) In addition to the other powers granted by the Arkansas  
13 Insurance Code, the commissioner may, after notice and hearing in accordance  
14 with the provisions of the Arkansas Insurance Code, impose a monetary penalty  
15 upon any insurer, or suspend or revoke the Certificate of Authority to  
16 transact insurance in the State of Arkansas of any insurer, who fails to pay  
17 an assessment or otherwise file any report or furnish information required to  
18 be filed with the board pursuant to the board's direction that the board  
19 believes is necessary in order for the board to perform its duties under this  
20 subchapter.

21 (b) All outstanding contracts executed by the board of directors of the  
22 State Comprehensive Health Insurance Pool created by Act 1339 of 1995, shall  
23 be deemed continuing obligations of the board created by this subchapter.

24 (c) As provided for in §23-79-502, any health insurance benefit not  
25 provided for in this chapter shall be deemed to be in conflict with and  
26 therefore inapplicable to the provisions of this chapter."

27  
28 SECTION 3. Arkansas Code 23-79-509(a) is amended to read as follows:

29 "(a) Resident eligible person.

30 The following requirements apply to a resident eligible person in order  
31 for such person to be eligible for plan coverage:

32 (1) Except as provided in subsection (a)(2) or (b) of this  
33 section any individual person who meets the definition of resident eligible  
34 person as defined by §23-79-503(aa), and is either a citizen of the United  
35 States or an alien lawfully admitted for permanent residence and who has been  
36 legally domiciled in the State of Arkansas for a period of at least thirty

1 ~~(30) days and continues to be domiciled in the State of Arkansas who continues~~  
 2 to be a resident of this state shall be eligible for plan coverage if evidence  
 3 is provided of:

4 (A) A notice of rejection or refusal by an insurer to issue  
 5 substantially similar individual health insurance coverage by reason of the  
 6 existence or history of a medical condition or upon such other evidence the  
 7 board deems sufficient in order to verify that the applicant is unable to  
 8 obtain such coverage from an insurer due to the existence or history of a  
 9 medical condition; or

10 (B) A refusal by an insurer to issue individual health  
 11 insurance coverage except at a rate which the board determines is  
 12 substantially in excess of the applicable plan rate;

13 A rejection or refusal by a group health plan or insurer offering only  
 14 stop-loss or excess-of-loss insurance or contracts, agreements, or other  
 15 arrangements for reinsurance coverage with respect to the applicant shall not  
 16 be sufficient evidence under this subsection;

17 (2) A person shall not be eligible for coverage under the plan  
 18 if:

19 (A) The person has or obtains health insurance coverage  
 20 substantially similar to or more comprehensive than a plan policy, or would be  
 21 eligible to have coverage if the person elected to obtain it, except that:

22 (i) A person may maintain other coverage for the  
 23 period of time the person is satisfying any preexisting-condition waiting  
 24 period under a plan policy; and

25 (ii) A person may maintain plan coverage for the  
 26 period of time the person is satisfying a preexisting-condition waiting period  
 27 under another health insurance policy intended to replace the plan policy.

28 (B) The person is determined to be eligible for health care  
 29 benefits under Title XIX of the Social Security Act as amended.

30 ~~(B)(C)~~ The person has previously terminated plan coverage  
 31 unless twelve (12) months have elapsed since termination of coverage;

32 ~~(C)(D)~~ The person fails to pay the required premium under  
 33 the covered person's terms of enrollment and participation, in which event the  
 34 liability of the plan shall be limited to benefits incurred under the plan for  
 35 the same period for which premiums had been paid and the covered person  
 36 remained eligible for plan coverage;

1                   ~~(D)~~(E) The plan has paid a total of one million dollars  
2 (\$1,000,000) in benefits on behalf of the covered person;

3                   ~~(E)~~(F) The person is a resident of a public institution;

4                   ~~(F)~~(G) The person's premium is paid for or reimbursed under  
5 any government-sponsored program or by any government agency or health care  
6 provider, except as a otherwise qualifying full-time employee, or dependent of  
7 such employee, of a government agency or health care provider;

8                   (3) The board or the plan administrator shall require  
9 verification of residency and may require any additional information,  
10 documentation, or statements under oath, whenever necessary to determine plan  
11 eligibility or residency;

12                   (4) Coverage shall cease

13                   (i) on the date a person is no longer a resident of the  
14 State of Arkansas;

15                   (ii) on the date a person requests coverage to end;

16                   (iii) on the death of the covered person;

17                   (iv) on the date state law requires cancellation of the  
18 policy, or

19                   (v) at the plan's option, thirty (30) days after the plan  
20 makes any written inquiry concerning a person's eligibility or place of  
21 residence to which the person does not reply;

22                   (5) Except under the conditions set forth in subdivision (a)(4)  
23 of this section, the coverage of any person who ceases to meet the eligibility  
24 requirements of this section shall be terminated at the end of the current  
25 policy period for which the necessary premiums have been paid."

26  
27                   SECTION 4. All provisions of this act of a general and permanent nature  
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
29 Revision Commission shall incorporate the same in the Code.

30  
31                   SECTION 5. If any provision of this act or the application thereof to  
32 any person or circumstance is held invalid, such invalidity shall not affect  
33 other provisions or applications of the act which can be given effect without  
34 the invalid provision or application, and to this end the provisions of this  
35 act are declared to be severable.

36

