

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: S3/23/11

A Bill

SENATE BILL 916

5 By: Senator G. Baker
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH A LEGISLATIVE OVERSIGHT COMMITTEE
9 TO REVIEW CHANGES TO THE STATE MEDICAID PROGRAM; TO
10 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
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Subtitle

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13 TO ESTABLISH A LEGISLATIVE OVERSIGHT
14 COMMITTEE TO REVIEW CHANGES TO THE STATE
15 MEDICAID PROGRAM AND TO DECLARE AN
16 EMERGENCY.
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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. Arkansas State Medicaid Program Oversight
23 Committee.

24 (a) There is created the Arkansas State Medicaid Program Oversight
25 Committee to be composed of the following members:

26 (1) The Cochairs of the Joint Budget Committee;

27 (2) The minority and majority leadership of the House of
28 Representatives and the Senate;

29 (3) The Chair of the Senate Committee on Public Health, Welfare,
30 and Labor and the Chair of the House Committee on Public Health, Welfare, and
31 Labor;

32 (4) The Speaker of the House of Representatives or his or her
33 designee;

34 (5) The President Pro Tempore of the Senate or his or her
35 designee; and

36 (6) The Cochairs of the Hospital and Medicaid Study Subcommittee



1 of the Legislative Council.

2 (b)(1) The Arkansas State Medicaid Program Oversight Committee shall
3 perform the function of the Legislative Council required by law for the
4 review of a proposed rule or proposed change to a rule promulgated by a state
5 agency pertaining to the state Medicaid program.

6 (2) A review of a proposed rule shall occur within forty-five
7 (45) days of the date the proposed rule is filed with the Arkansas State
8 Medicaid Program Oversight Committee.

9 (c) Before the adoption, amendment, or repeal of any rule under this
10 section, the state agency shall:

11 (1)(A)(i) Give at least forty-five (45) days' notice of its
12 intended action.

13 (ii) The forty-five-day period shall begin on the
14 first day of the publication of notice.

15 (B) The notice shall include a statement of the terms or
16 substance of the intended action or a description of the subjects and issues
17 involved and the time, the place where, and the manner in which interested
18 persons may present their views on the intended action or the subjects and
19 issues involved.

20 (C) The notice shall be mailed to:

21 (i) Any person specified by law;

22 (ii) All persons who have requested advance notice
23 of rule-making proceedings; and

24 (iii) The Cochairs of the Arkansas State Medicaid
25 Program Oversight Committee.

26 (D)(i) Unless otherwise provided by law, the notice shall
27 be published in a newspaper of general daily circulation for three (3)
28 consecutive days and, when appropriate, in those trade, industry, or
29 professional publications that the state agency may select.

30 (ii) The notice shall be published by the Secretary
31 of State on the Internet for thirty (30) days in accordance with § 25-15-218;

32 (2)(A) Afford all interested persons reasonable opportunity to
33 submit data, views, or arguments in writing.

34 (B) The state agency shall fully consider all written
35 submissions respecting the proposed rule before finalizing the language of
36 the proposed rule and filing the proposed rule as required by subsection (d)

1 of this section.

2 (C) Upon adoption of a rule, the state agency, if
3 requested to do so by an interested person either before adoption or within
4 thirty (30) days thereafter, shall issue a concise statement of the principal
5 reasons for and against its adoption, incorporating therein its reasons for
6 overruling the considerations urged against its adoption;

7 (3)(A) Hold an oral hearing.

8 (B) When rules are required by law to be made on the
9 record after opportunity for a state agency hearing, the provisions of that
10 law shall apply in place of subdivision (a)(2) of this section; and

11 (4) Comply with § 25-15-301 et seq.

12 (d)(1) If a state agency finds that imminent peril to the public
13 health, safety, or welfare or compliance with federal laws or regulations
14 requires adoption of a rule upon less than forty-five (45) days' notice and
15 states in writing its reasons for that finding, it may proceed without prior
16 notice or hearing, or upon any abbreviated notice and hearing that it may
17 choose, to adopt an emergency rule.

18 (2)(A) The rule shall not be effective for longer than forty-
19 five (45) days.

20 (B) A rule shall not be promulgated more than two (2)
21 times as an emergency rule.

22 (e)(1) Every state agency shall grant any person the right to petition
23 for the issuance, amendment, or repeal of any rule.

24 (2) Within forty-five (45) days after submission of a petition,
25 the state agency shall:

26 (A) Deny the petition, stating in writing its reasons for
27 the denial; or

28 (B) Initiate rule-making proceedings.

29 (f)(1)(A) Every state agency, including those exempted under § 25-15-
30 202, shall file with the Arkansas State Medicaid Program Oversight Committee
31 a copy of each rule adopted by it and a statement of financial impact for the
32 rule.

33 (B) Rules shall be filed in compliance with this section
34 and with §§ 25-15-218 and 10-3-309.

35 (2) The Secretary of State shall keep a register of the rules
36 open to public inspection, and it shall be a permanent register.

1 (3)(A) The scope of the financial impact statement shall be
2 determined by the state agency but at a minimum shall include the estimated
3 cost of complying with the rule and the estimated cost for the state agency
4 to implement the rule.

5 (B) Except as provided in § 6-11-132, if the state agency
6 has reason to believe that the development of a financial impact statement
7 will be so speculative as to be cost prohibitive, the state agency shall
8 submit a statement and explanation to that effect.

9 (C) If the purpose of a state agency rule is to implement
10 a federal rule or regulation, the financial impact statement shall be limited
11 to any incremental additional cost of the state rule, as opposed to the
12 federal rule or regulation.

13 (g)(1) Each rule adopted by a state agency is effective thirty (30)
14 days after filing unless a later date is specified by law or in the rule
15 itself.

16 (2)(A)(i) However, an emergency rule may become effective
17 immediately upon filing or at a stated time less than ten (10) days after
18 filing if the state agency finds that this effective date is necessary
19 because of imminent peril to the public health, safety, or welfare.

20 (ii) The state agency's finding and a brief
21 statement of the reasons for the finding shall be filed with the rule.

22 (B) The state agency shall take appropriate measures to
23 make emergency rules known to the persons who may be affected by the
24 emergency rules.

25 (h)(1) In a proceeding brought that questions the existence of
26 imminent peril to the public health, safety, or welfare, a written finding by
27 a state agency that adoption of any emergency rule was necessary to avoid the
28 loss of federal funding or certification establishes a prima facie case of
29 the existence of imminent peril to the public health, safety, or welfare.

30 (2) The burden of proof shifts to the challenger to rebut the
31 existence of the condition by a preponderance of the evidence.

32 (i) This section expires on December 31, 2013.

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34 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
35 General Assembly of the State of Arkansas that changes to the state Medicaid
36 program are necessary to comply with federal laws; that it is important that

1 the public and the General Assembly have the opportunity to comment on the
2 proposed rules; and that this act is immediately necessary to ensure that the
3 citizens of the State of Arkansas are knowledgeable about proposed changes to
4 the state Medicaid program. Therefore, an emergency is declared to exist and
5 this act being immediately necessary for the preservation of the public
6 peace, health, and safety shall become effective on:

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

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

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

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14 /s/G. Baker
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