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HOUSE BILL 1821

By: Representatives Murdock, F. Allen, Beck, Blake, Breaux, Burch, Christiansen, Clowney, Coleman, C. Cooper, Crawford, Deffenbaugh, Della Rosa, D. Douglas, Evans, K. Ferguson, C. Fite, V. Flowers, D. Garner, Glover, Godfrey, Hawks, G. Hodges, M. Hodges, Holcomb, Jett, L. Johnson, Love, Lynch, Magie, J. Mayberry, McCullough, Miller, Nicks, Perry, Richardson, Richey, Rushing, Rye, Scott, S. Smith, Walker, Warren, Watson, D. Whitaker, Wooten
By: Senators K. Hammer, Bond, Caldwell, E. Cheatham, A. Clark, B. Davis, Elliott, G. Leding, B. Sample

For An Act To Be Entitled

AN ACT TO PROVIDE FOR MEDICAID REIMBURSEMENT RATES THAT ADDRESS THE MINIMUM WAGE INCREASES; TO PROVIDE FOR IMMEDIATE AND ONGOING REGULAR REVIEWS OF MEDICAID REIMBURSEMENT RATES AND METHODOLOGIES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR MEDICAID REIMBURSEMENT RATES THAT ADDRESS THE MINIMUM WAGE INCREASES; TO PROVIDE FOR IMMEDIATE AND ONGOING REGULAR REVIEWS OF MEDICAID REIMBURSEMENT RATES AND METHODOLOGIES; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to add an additional subchapter to read as follows:

Subchapter 29 — Medicaid Reimbursement Review Act of 2019

20-77-2901. Title.

1 This subchapter shall be known and may be cited as the "Medicaid
2 Reimbursement Review Act of 2019."
3
4 20-77-2902. Legislative findings.
5 The General Assembly finds that:
6 (1) The Arkansas Health Reform Legislative Task Force and Acts
7 2017, No. 802 required the Department of Human Services to achieve eight
8 hundred thirty-five million dollars ($835,000,000) in savings in the Arkansas
9 Medicaid Program over the five-year period of fiscal years 2017 through 2021;
10 (2) According to the fiscal year 2019 second quarter scorecard,
11 the department reported that eight hundred eighty-eight million dollars
12 ($888,000,000) has already been saved, which is six percent (6%) more than
13 the total savings target less than halfway through the five-year measurement
14 period;
15 (3) The target savings amount set by the Arkansas Health Reform
16 Legislative Task Force through the second quarter of fiscal year 2019 is
17 three hundred sixteen million dollars ($316,000,000), meaning Medicaid has
18 spent five hundred seventy-two million dollars ($572,000,000) less than the
19 legislature and the Department of Human Services expected through the second
20 quarter of fiscal year 2019, making funding available for other Medicaid
21 spending;
22 (4) Arkansas voters approved an Initiated Act in the November
23 2018 election that increased the minimum wage from eight dollars and fifty
24 cents ($8.50) per hour to nine dollars and twenty-five cents ($9.25) per hour
25 on January 1, 2019, an increase of eight and eight-tenths percent (8.8%);
26 (5) The approved Initiated Act included two (2) additional
27 minimum wage increases to ten dollars ($10.00) per hour on January 1, 2020,
28 and eleven dollars ($11.00) on January 1, 2021;
29 (6) The minimum wage increases approved in 2018 are in addition
30 staged increases from six dollars and twenty-five cents ($6.25) per hour to
31 eight dollars and fifty cents ($8.50) per hour that were approved by the
32 voters in the November 2014 election;
33 (7) Minimum wage increases affect home and community Medicaid
34 providers, many of whom pay employees the minimum wage or an amount just
35 higher than the minimum wage;
36 (8) Medicaid providers must maintain sufficient wage levels in

1 order to compete with other employers with even higher starting salaries for
2 unskilled, entry-level jobs;
3 (9) The department has not increased rates paid to providers to
4 reflect the past and future increases in the minimum wage;
5 (10) Medicaid providers are required to increase wages provided
6 for by law, and the Medicaid providers want to recognize the difficult and
7 important work their employees do every day caring for some of the state's
8 most vulnerable residents;
9 (11) Medicaid providers cannot continue to meet the increases in
10 the minimum wage and increases in other operating costs, while the Medicaid
11 reimbursement rate remains stagnant; and
12 (12) There is no procedure in place for Medicaid reimbursement
13 rates to be reviewed and updated on a regular basis to reflect changes in the
14 cost of providing services.
15
16 20-77-2903. Minimum wage-based rate increases.
17 (a) The Department of Human Services shall submit all necessary
18 Medicaid state plan amendments, waiver amendments, and Medicaid manual
19 revisions necessary to implement an eight and eight-tenths percent (8.8%)
20 increase to the rates paid for the following services or services provided
21 under a successor program:
22 (1) Early intervention day treatment services;
23 (2) Adult development day treatment services;
24 (3) Personal care services paid by the unit and those paid by a
25 multihour daily rate;
26 (4) Attendant care and respite care services under the ARChoices
27 waiver or its successor; and
28 (5) Substance abuse treatment services.
29 (b)(1) The department shall use best efforts to make the rate
30 increases in subsection (a) of this section effective for services on and
31 after July 1, 2019.
32 (2) The rate increases shall not be implemented until approved
33 by the Centers for Medicare and Medicaid Services if federal approval is
34 required.
35 (c) Effective immediately, person-centered service plans developed
36 under the Community and Employment Supports waiver shall reflect the

1 additional staff costs resulting from the increases in the minimum wage of
2 Arkansas.
3 (d) The department shall:
4 (1) Provide copies of all state plan amendments, waiver
5 amendments, manual revisions, documentation, and correspondence submitted to
6 or received from the Centers for Medicare and Medicaid Services in regard to
7 this section to:
8 (A) The Administrative Rules Subcommittee of the
9 Legislative Council;
10 (B) The affected Medicaid providers; and
11 (C) The public; and
12 (2) Work jointly with provider representatives in obtaining and
13 maintaining approval for any amendments required to effectuate the increases
14 in this section.
15
16 20-77-2904. Designation of schedule of review of rates and
17 reimbursement methodologies.
18 (a) The Department of Human Services shall establish a schedule, by
19 rule, that will result in the review of the Medicaid rates and reimbursement
20 methodology for each healthcare provider type at least once every three (3)
21 years.
22 (b) In establishing the schedule of provider types for review, the
23 department shall, to the greatest extent possible, provide for the review of
24 provider types constituting approximately one-third (1/3) of the fee-for-
25 service Medicaid budget each year.
26
27 20-77-2905. Review of rates and reimbursement methodologies.
28 (a) The Department of Human Services shall review Medicaid rates and
29 reimbursement methodologies on the schedule provided for in § 20-77-2904.
30 (b) The department shall utilize the services of an independent
31 consulting firm with experience in evaluating and designing healthcare
32 reimbursement methodologies to assist in the review of rates and
33 reimbursement methodologies.
34 (c) The department shall consider the following factors in the review:
35 (1) The extent to which existing rates or reimbursement
36 methodologies allow providers to operate on a solvent basis;

1 (2) The average percent of provider costs covered by existing
2 rates or reimbursement methodologies;
3 (3) The allocation of provider costs among direct services,
4 administrative costs, and overhead;
5 (4) The extent and amount of uncompensated care delivered by
6 providers;
7 (5) The level of and changes in wages paid by providers to
8 employees and their ability to attract and retain a high quality workforce;
9 (6) The capital infrastructure needs of Medicaid providers;
10 (7) Any incentives or disincentives for the provision of high
11 quality care incorporated in the existing rates or reimbursement
12 methodologies;
13 (8) Any incentives for quality care that could be incorporated
14 into rates or reimbursement methodologies;
15 (9) A comparison of current Medicaid rates to the rates paid by
16 Medicare and other payors;
17 (10) The availability of other non-Medicaid state or federal
18 funding for the services provided;
19 (11) The impact of state and federal regulatory mandates on the
20 cost of providing services and the extent to which provider costs could be
21 reduced by elimination of any of those mandates;
22 (12) The factors of economy, efficiency, quality of care, and
23 equal access required by the Centers for Medicare and Medicaid Services under
24 42 U.S.C. § 1396a(a)(30)(A), as existing on January 1, 2019, and in federal
25 regulations at 42 C.F.R. Part 447, as existing on January 1, 2019,; and
26 (13) Any other factors that are relevant in reviewing the
27 Medicaid rates and reimbursement methodologies.
28 (d) The department shall provide opportunity for meaningful input from
29 interested parties regarding the Medicaid reimbursement methodologies under
30 review each year, including receiving written comments and holding at least
31 one (1) public hearing for comment before the recommendations of the
32 department are finalized.
33 (e)(1) In order to ensure that provider input and expertise is
34 utilized, the department shall consult with representatives of any provider
35 group whose reimbursement is being reviewed from the initiation of the review
36 through completion of the final recommendations.

1 (2) Provider input and expertise shall include without
2 limitation:
3 (A) Review of underlying data used by the department in
4 the review of rates and reimbursement methodologies;
5 (B) The opportunity to propose alternative reimbursement
6 methodologies for the consideration of the department; and
7 (C) The opportunity to provide comment on the
8 recommendations of the department before the recommendations or rates are
9 finalized.
10
11 20-77-2906. Report.
12 (a) No later than October 31 of each year, the Department of Human
13 Services shall issue a report containing its recommendations for changes to
14 the Medicaid rates or reimbursement methodologies reviewed during that year.
15 (b) In addition to recommendations for changes in rates and
16 reimbursement methodologies, the report shall include:
17 (1) For each provider type reviewed, the manner and extent to
18 which each of the factors in § 20-77-2905(c) was considered in the review and
19 recommendations;
20 (2) A summary of comments received at any public hearings or in
21 writing and the response of the department to those comments; and
22 (3) Comments provided by provider representatives under § 20-77-
23 2905(e)(2)(C) and the response of the department to the comments.
24
25 20-77-2907. Legislative review.
26 (a) The report of the Department of Human Services shall be submitted
27 to the Legislative Council, which shall assign the report to the
28 Administrative Rules Subcommittee of the Legislative Council for review.
29 (b)(1) Each recommendation for changes to any rates or reimbursement
30 methodologies included in the report shall be considered approved unless a
31 majority of a quorum present request that the Administrative Rules
32 Subcommittee vote on the question of approving the specific recommendation.
33 (2) If the Administrative Rules Subcommittee votes on a specific
34 recommendation in the report, the recommendation shall be approved unless a
35 majority of a quorum present vote for the recommendation to not be approved.
36 (c)(1) Each recommendation in the report that is approved by the

1 Administrative Rules Subcommittee under subdivision (b)(1) or (2) of this
2 section shall be considered approved by the Legislative Council unless a
3 majority of a quorum present request that the Legislative Council vote on the
4 issue of approving the specific recommendation.
5 (2) If the Legislative Council votes on the issue of approving a
6 specific recommendation in the report, the recommendation shall be approved
7 unless a majority of a quorum present vote for the specific recommendation to
8 not be approved.
9
10 20-77-2908. Implementation.
11 For every change to a Medicaid rate or reimbursement methodology
12 included in the report that is not disapproved by the Legislative Council,
13 the Department of Human Services shall submit any necessary state plan
14 amendment, waiver, or waiver amendment to the Centers for Medicare and
15 Medicaid Services to implement such change on or before July 1 of the
16 following year.
17
18 20-77-2909. Medicaid provider-led organized care.
19 (a)(1) The Department of Human Services shall direct its contracted
20 actuaries to recalculate the capitated rates as established for 2019 for the
21 risk-based provider organization under the Medicaid Provider-Led Organized
22 Care Act, § 20-77-2701 et seq., to ensure that the capitated rates account
23 for the reimbursement changes in § 20-77-2903, including adjustments to
24 reflect minimum wage increases as specified under § 20-77-2903(c).
25 (2) The department shall increase the capitated rates as
26 established for 2019 in accordance with the recalculation required in
27 subdivision (a)(1) of this section.
28 (b) If the department or an actuary of the department revises the
29 capitated rates for the risk-based provider organization, the department
30 shall consider or direct the actuary to explicitly consider the factors
31 listed in § 20-77-2905(c) and provide a written explanation of the manner and
32 extent that each of the factors was considered in the calculation of the new
33 capitated rates.
34 (c)(1) The department may not submit any proposed capitation rates of
35 the risk-based provider organization to the Centers for Medicare and Medicaid
36 Services until the department demonstrates that the department or an actuary

1 of the department has considered the factors in § 20-77-2905(c) in
2 development of the capitated rates.
3 (2) The requirement under subdivision (c)(1) of this section
4 includes the revised capitated rates resulting from the reimbursement changes
5 in § 20-77-2903.
6
7 20-77-2910. Remedies.
8 A Medicaid provider or beneficiary may bring an action for equitable
9 relief in any court of competent jurisdiction against the Department of Human
10 Services or any successor state agency for failure to perform the actions
11 required by this subchapter.
12
13 SECTION 2. Arkansas Code § 10-3-309(f), regarding the reasons why a
14 legislative committee may vote not to approve a rule, is amended to read as
15 follows:
16 (f)(1) ~~A~~ Except as provided in subdivision (f)(4) of this section, a
17 committee or subcommittee under this section may vote to not approve a rule
18 under this section only if the rule is inconsistent with:
19 (A) State or federal law; or
20 (B) Legislative intent.
21 (2) A committee or subcommittee under this section voting not to
22 approve a rule under this section shall state the grounds under subdivision
23 (f)(1) of this section when not approving a rule.
24 (3) A committee or subcommittee under this section considering a
25 rule submitted in accordance with § 20-7-604(d)(2)(D), concerning exemptions
26 from the Prescription Drug Monitoring Program, is not required to state the
27 grounds required under subdivision (f)(1) of this section when not approving
28 a rule.
29 (4) A committee or subcommittee under this section considering a
30 recommendation submitted by the Department of Human Services under the
31 Medicaid Reimbursement Review Act of 2019, § 20-77-2901 et seq., is not
32 subject to subdivisions (f)(1) and (2) of this section.
33
34 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
35 General Assembly of the State of Arkansas that increases in the minimum wage
36 have put Medicaid providers at risk of being unable to continue to provide

healthcare services with current Medicaid reimbursement rates; that a rate increase in response to the increases in the minimum wage should be implemented as soon as possible in order to allow Medicaid providers to continue to provide services to Medicaid beneficiaries; that this act requires the Department of Human Services to implement a rate review methodology and procedure; that this act may require that the Department of Human Services submit a state plan amendment or waiver, or both, to the Centers for Medicare and Medicaid Services; that the state plan amendment or waiver, or both, impacts healthcare providers and certain individuals enrolled in the Arkansas Medicaid Program; and that this act is immediately necessary because the Department of Human Services needs to be able to make the state plan amendment request or waiver request, or both, at the earliest possible date to ensure certainty in the reimbursement rates of the Arkansas Medicaid Program. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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