

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1428

5 By: Representatives Miller, Bentley, Payton
6 By: Senator D. Sullivan
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE MEDICAID EXPANSION EFFICIENCY
10 ACT OF 2021; TO MAINTAIN EFFICIENCY AND REIMBURSEMENT
11 FAIRNESS IN THE ARKANSAS MEDICAID PROGRAM BY
12 DISCONTINUING THE USE OF QUALIFIED HEALTH BENEFIT
13 PLANS OR PRIVATE INSURANCE PLANS FOR THE MEDICAID
14 EXPANSION POPULATION; TO SHIFT THE CURRENT MEDICAID
15 EXPANSION POPULATION INTO THE FEE-FOR-SERVICE
16 ARKANSAS MEDICAID PROGRAM; TO DECLARE AN EMERGENCY;
17 AND FOR OTHER PURPOSES.
18
19

Subtitle

20
21 TO CREATE THE MEDICAID EXPANSION
22 EFFICIENCY ACT OF 2021; AND TO DECLARE AN
23 EMERGENCY.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. DO NOT CODIFY. Title.

29 This act shall be known and may be cited as the "Medicaid Expansion
30 Efficiency Act of 2021".
31

32 SECTION 2. Arkansas Code Title 20, Chapter 77, Subchapter 1, is
33 amended to add an additional section to read as follows:

34 20-77-141. Legislative findings and intent – Coverage for Medicaid
35 Expansion.

36 (a) The General Assembly finds that:



1 (1) Hundreds of thousands of residents of Arkansas rely on the
2 Arkansas Medicaid Program for healthcare coverage;

3 (2) The state has an obligation to preserve as many tax dollars
4 as possible to care for needy residents of Arkansas while ensuring
5 appropriate access and quality of care; and

6 (3) Individual premium assistance for individuals who are in the
7 eligibility category created by section 1902(a)(10)(A)(i)(VIII) of the Social
8 Security Act, 42 U.S.C. § 1396a is not cost-efficient.

9 (b) It is the intent of the General Assembly to end premium assistance
10 for individuals who are in the eligibility category created by section
11 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a.

12 (c)(1) The Department of Human Services shall provide medical
13 assistance for individuals in the eligibility category created by section
14 1902(a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. § 1396a, who
15 are currently authorized to receive coverage under a federal demonstration
16 waiver, through the traditional fee-for-service Arkansas Medicaid Program.

17 (2) However, the Arkansas Medicaid Program shall not pay
18 individual premium assistance for qualified health benefit plans on the
19 Arkansas Health Insurance Marketplace.

20 (3) The Department of Human Services shall ensure that an
21 eligible individual shall maintain coverage during the process to implement
22 the plan to terminate the coverage and the transition of eligible individuals
23 to the fee-for-service Arkansas Medicaid Program.

24 (d) On or before January 1, 2022, the Department of Human Services
25 shall:

26 (1) Submit and apply for any federal waivers, Medicaid state
27 plan amendments, federal waiver amendments, or other authority necessary to
28 implement this section; and

29 (2) Transfer all funds in the Arkansas Works Program Trust Fund
30 to the Arkansas Medicaid Program Trust Fund.

31 (e) Within thirty (30) days of a reduction in federal medical
32 assistance percentages as described in this section, the Department of Human
33 Services shall present to the Centers for Medicare and Medicaid Services a
34 plan to terminate the coverage of individuals under this section and
35 transition eligible individuals out of the fee-for-service Arkansas Medicaid
36 Program within one hundred twenty (120) days of a reduction in the federal

1 medical assistance percentages of ninety percent (90%) in the year 2020 or
 2 any year after the year 2020.

3 (f)(1) The Department of Human Services shall transfer all persons
 4 enrolled in the Arkansas Works Program or any person enrolled in the Arkansas
 5 Works Program to coverage under the traditional fee-for-service Arkansas
 6 Medicaid Program on and after January 1, 2022.

7 (2) The Department of Human Services shall not prohibit new
 8 enrollees in the Arkansas Works Program on and after the effective date of
 9 this section.

10 (3) This section does not prohibit the payment of expenses
 11 incurred before January 1, 2022, by a person participating in the Arkansas
 12 Works Program.

13 (g) The Governor shall request a block grant under relevant federal
 14 law and regulations for the funding of the Arkansas Medicaid Program as soon
 15 as practical if the federal law or regulations change to allow the approval
 16 of a block grant for this purpose.

17
 18 SECTION 3. Arkansas Code Title 23, Chapter 61, Subchapter 10, is
 19 repealed.

20 ~~Subchapter 10—Arkansas Works Act of 2016~~

21
 22 ~~23-61-1001.—Title.~~

23 ~~This subchapter shall be known and may be cited as the “Arkansas Works~~
 24 ~~Act of 2016”.~~

25
 26 ~~23-61-1002.—Legislative intent.~~

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

30 ~~(1) Empowers individuals to improve their economic security and~~
 31 ~~achieve self-reliance;~~

32 ~~(2) Builds on private insurance market competition and value-~~
 33 ~~based insurance purchasing models;~~

34 ~~(3) Strengthens the ability of employers to recruit and retain~~
 35 ~~productive employees; and~~

36 ~~(4) Achieves comprehensive and innovative healthcare reform that~~

~~reduces state and federal obligations for entitlement spending.~~

~~23-61-1003. Definitions.~~

~~As used in this subchapter:~~

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

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

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

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

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

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

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

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

~~(A) The Arkansas Health Insurance Marketplace created~~

1 under the Arkansas Health Insurance Marketplace Act, § 23-61-801 et seq., or
 2 a successor entity; or

3 (B) The federal health insurance marketplace or federal
 4 health benefit exchange created under the Patient Protection and Affordable
 5 Care Act, Pub. L. No. 111-148;

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

9 (A) An insurance company;

10 (B) A medical services plan;

11 (C) A hospital plan;

12 (D) A hospital medical service corporation;

13 (E) A health maintenance organization;

14 (F) A fraternal benefits society; or

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

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

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

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

25 (A) Is at least nineteen (19) years of age and no more
 26 than sixty-four (64) years of age with an income that meets the income
 27 eligibility standards established by rule of the Department of Human
 28 Services;

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;~~

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 ~~and~~

34 ~~(2) Supplemental benefits to incentivize personal~~
 35 ~~responsibility.~~

36 ~~(c) The Department of Human Services, the State Insurance Department,~~

~~the Division of Workforce Services, and other necessary state agencies shall promulgate and administer rules to implement the Arkansas Works Program.~~

~~(d)(1) Within thirty (30) days of a reduction in federal medical assistance percentages as described in this section, the Department of Human Services shall present to the Centers for Medicare and Medicaid Services a plan to terminate the Arkansas Works Program and transition eligible individuals out of the Arkansas Works Program within one hundred twenty (120) days of a reduction in any of the following federal medical assistance percentages:~~

- ~~(A) Ninety five percent (95%) in the year 2017;~~
- ~~(B) Ninety four percent (94%) in the year 2018;~~
- ~~(C) Ninety three percent (93%) in the year 2019; and~~
- ~~(D) Ninety percent (90%) in the year 2020 or any year~~

~~after the year 2020.~~

~~(2) An eligible individual shall maintain coverage during the process to implement the plan to terminate the Arkansas Works Program and the transition of eligible individuals out of the Arkansas Works Program.~~

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

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

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

- ~~(A) Eligibility and enrollment;~~
- ~~(B) Utilization;~~
- ~~(C) Premium and cost sharing reduction costs;~~
- ~~(D) Health insurer participation and competition;~~
- ~~(E) Avoided uncompensated care; and~~
- ~~(F) Participation in job training and job search programs.~~

~~(2)(A) A health insurer who is providing an individual qualified health insurance plan or employer health insurance coverage for an eligible~~

~~individual shall submit claims and enrollment data to the State Insurance Department to facilitate reporting required under this subchapter or other state or federally required reporting or evaluation activities.~~

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

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

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

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

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

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

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

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

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

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

~~(A) Incentivize and increase work and work training opportunities; and~~

1 ~~(B) Participate in job training and job search programs.~~

2 ~~(2) The Department of Human Services or its designee shall~~
 3 ~~provide work training opportunities, outreach, and education about work and~~
 4 ~~work training opportunities through the Division of Workforce Services to all~~
 5 ~~eligible individuals regardless of income at the time of an eligibility~~
 6 ~~determination.~~

7 ~~(c) An eligible individual shall receive notice that:~~

8 ~~(1) The Arkansas Works Program is not a perpetual federal or~~
 9 ~~state right or a guaranteed entitlement;~~

10 ~~(2) The Arkansas Works Program is subject to cancellation upon~~
 11 ~~appropriate notice; and~~

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

13
 14 ~~23-61-1006. Requirements for program participants.~~

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

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

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

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

24 ~~(B)(i) The loss of incentive benefits in the event of~~
 25 ~~failure to pay premiums for three (3) consecutive months, as incentive~~
 26 ~~benefits are defined by the Department of Human Services in consultation with~~
 27 ~~the State Insurance Department.~~

28 ~~(ii) However, incentive benefits shall be restored~~
 29 ~~if a program participant pays all premiums owed.~~

30
 31 ~~23-61-1007. Insurance standards for individual qualified health~~
 32 ~~insurance plans.~~

33 ~~(a) Insurance coverage for a program participant enrolled in an~~
 34 ~~individual qualified health insurance plan shall be obtained through silver-~~
 35 ~~level metallic plans as provided in 42 U.S.C. § 18022(d) and § 18071, as they~~
 36 ~~existed on January 1, 2016, that restrict out-of-pocket costs to amounts that~~

1 ~~do not exceed applicable out-of-pocket cost limitations.~~

2 ~~(b) The Department of Human Services shall pay premiums and~~
3 ~~supplemental cost sharing reductions directly to a health insurer for a~~
4 ~~program participant enrolled in an individual qualified health insurance~~
5 ~~plan.~~

6 ~~(c) All participating health insurers offering individual qualified~~
7 ~~health insurance plans in the health insurance marketplace shall:~~

8 ~~(1)(A) Offer individual qualified health insurance plans~~
9 ~~conforming to the requirements of this section and applicable insurance~~
10 ~~rules.~~

11 ~~(B) The individual qualified health insurance plans shall~~
12 ~~be approved by the State Insurance Department; and~~

13 ~~(2) Maintain a medical loss ratio of at least eighty percent~~
14 ~~(80%) for an individual qualified health insurance plan as required under 45~~
15 ~~G.F.R. § 158.210(c), as it existed on January 1, 2016, or rebate the~~
16 ~~difference to the Department of Human Services for program participants.~~

17 ~~(d) The State of Arkansas shall assure that at least two (2)~~
18 ~~individual qualified health insurance plans are offered in each county in the~~
19 ~~state.~~

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

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

25 ~~(2) Providing financial support to patient-centered medical~~
26 ~~homes to meet practice transformation milestones; and~~

27 ~~(3) Supplying clinical performance data to patient-centered~~
28 ~~medical homes, including data to enable patient-centered medical homes to~~
29 ~~assess the relative cost and quality of healthcare providers to whom patient-~~
30 ~~centered medical homes refer patients.~~

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

34
35 ~~23-61-1008. — [Expired]~~
36

1 ~~23-61-1009. Sunset.~~

2 ~~This subchapter shall expire on December 31, 2021.~~

3
4 SECTION 4. Arkansas Code § 19-5-1146 is repealed.

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

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

9 ~~(b) The fund shall consist of:~~

10 ~~(1) Moneys saved and accrued under the Arkansas Works Act of~~
11 ~~2016, § 23-61-1001 et seq., including without limitation:~~

12 ~~(A) Increases in premium tax collections; and~~

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

15 ~~(2) Other revenues and funds authorized by law.~~

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

19
20 SECTION 5. Arkansas Code § 23-61-803(h), concerning the creation of
21 the Arkansas Health Insurance Marketplace, is amended to read as follows:

22 (h) The State Insurance Department and any eligible entity under
23 subdivision (e)(1) of this section shall provide claims and other plan and
24 enrollment data to the Department of Human Services upon request to:

25 ~~(1) Facilitate facilitate compliance with reporting requirements~~
26 ~~under state and federal law; and~~

27 ~~(2) Assess the performance of the Arkansas Works Program~~
28 ~~established by the Arkansas Works Act of 2016, § 23-61-1001 et seq.,~~
29 ~~including without limitation the program's quality, cost, and consumer~~
30 ~~access.~~

31
32 SECTION 6. Arkansas Code § 26-57-610(b)(2), concerning the disposition
33 of insurance premium taxes, is amended to read as follows:

34 (2) The taxes based on premiums collected under ~~the Health Care~~
35 ~~Independence Act of 2013, § 20-77-2401 et seq. [repealed], the Arkansas Works~~
36 ~~Act of 2016, § 23-61-1001 et seq.,~~ the Arkansas Health Insurance Marketplace

1 Act, § 23-61-801 et seq., or individual qualified health insurance plans,
 2 including without limitation stand-alone dental plans, ~~issued through the~~
 3 ~~health insurance marketplace as defined by § 23-61-1003 shall be,~~

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

7 ~~(B) Transferred to the Arkansas Works Program Trust Fund~~
 8 ~~and used as required by the Arkansas Works Program Trust Fund;~~

9
 10 SECTION 7. DO NOT CODIFY. Rules.

11 (a) The Department of Human Services, in coordination with the State
 12 Insurance Department, shall promulgate rules as necessary under this section.

13 (b)(1) When adopting the initial rules to implement this section, the
 14 final rule shall be filed with the Secretary of State for adoption under §
 15 25-15-204(f):

16 (A) On or before January 1, 2022; or

17 (B) If approval under § 10-3-309 has not occurred by
 18 January 1, 2020, as soon as practicable after approval under § 10-3-309.

19 (2) The Department of Human Services shall file the proposed
 20 rule with the Legislative Council under § 10-3-309(c) sufficiently in advance
 21 of January 1, 2022, so that the Legislative Council may consider the rule for
 22 approval before January 1, 2022.

23
 24 SECTION 8. Effective date.

25 Sections 2-7 of this act are effective on and after January 1, 2022.

26
 27 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
 28 General Assembly of the State of Arkansas that it is the public policy of the
 29 State of Arkansas to end individual premium assistance offered under the
 30 Arkansas Works Program; that an urgent need exists to transfer the
 31 individuals enrolled in the Arkansas Works Program into the fee-for-service
 32 Arkansas Medicaid Program; that to ensure efficient use of taxpayer dollars
 33 and continued healthcare coverage for the state's most vulnerable citizens,
 34 it is immediately necessary to transfer individuals enrolled in the Arkansas
 35 Works Program into the fee-for-service Arkansas Medicaid Program; and that
 36 this act is immediately necessary to initiate reforms to the Medicaid

1 Expansion population. Therefore, an emergency is declared to exist, and this
2 act being immediately necessary for the preservation of the public peace,
3 health, and safety shall become effective on:

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

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

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

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