

1 State of Arkansas *As Engrossed: S4/7/16* Call Item 2
2 90th General Assembly **A Bill**
3 Second Extraordinary Session, 2016 SENATE BILL 1
4

5 By: Senators J. Hendren, E. Cheatham, J. Dismang, J. English, J. Hutchinson, B. Pierce, D. Sanders,
6 Standridge

7 By: Representatives Collins, Brown, Lowery, Neal, Ratliff, *Baltz*
8

9 **For An Act To Be Entitled**

10 AN ACT TO AMEND TITLE 23 OF THE ARKANSAS CODE TO
11 PROVIDE HEALTH INSURANCE TO QUALIFYING INDIVIDUALS;
12 TO CREATE THE ARKANSAS WORKS PROGRAM; TO DECLARE AN
13 EMERGENCY; AND FOR OTHER PURPOSES.
14
15

16 **Subtitle**

17 TO AMEND TITLE 23 OF THE ARKANSAS CODE TO
18 PROVIDE HEALTH INSURANCE TO QUALIFYING
19 INDIVIDUALS; TO CREATE THE ARKANSAS WORKS
20 PROGRAM; AND TO DECLARE AN EMERGENCY.
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24 WHEREAS, the State of Arkansas continues to seek strategies to provide
25 health insurance for low-income and other vulnerable populations in a manner
26 that will encourage employer-based insurance, incentivize program
27 beneficiaries to work or seek work opportunities, promote personal
28 responsibility, and enhance program integrity; and
29

30 WHEREAS, the General Assembly affirms its responsibility to safeguard
31 consumers and businesses from federal mandates by asserting local control and
32 implementation of modernized health insurance policies and programs that
33 utilize the private market to improve access to health insurance, enhance the
34 quality of health insurance, and reduce health insurance costs; and
35

36 WHEREAS, Arkansas recognizes the need to encourage employment among



1 beneficiaries of public assistance programs, offer enhanced opportunities for
2 beneficiaries to obtain jobs and job training, and endow beneficiaries with
3 the tools to achieve economic advancement; and

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

7
8 WHEREAS, the General Assembly hereby creates the Arkansas Works Act of
9 2016 to provide health insurance to qualifying individuals,

10
11 NOW THEREFORE,

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

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

16 Subchapter 10 – Arkansas Works Act of 2016

17
18 23-61-1001. Title.

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

21
22 23-61-1002. Legislative intent.

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

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

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

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

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

34
35 23-61-1003. Definitions.

36 As used in this subchapter:

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

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

7 (B) Eligible individuals who are not program participants,
8 either individually or together within an employer health insurance coverage,
9 is the same or less than the cost of providing comparable coverage through a
10 program authorized under Title XIX of the Social Security Act, 42 U.S.C. §
11 1396 et seq., as it existed on January 1, 2016;

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

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

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

22 (5) "Health insurance benefit plan" means a policy, contract,
23 certificate, or agreement offered or issued by a health insurer to provide,
24 deliver, arrange for, pay for, or reimburse any of the costs of healthcare
25 services, but not including excepted benefits as defined under 42 U.S.C. §
26 300gg-91(c), as it existed on January 1, 2016;

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

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

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

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

4 (A) An insurance company;

5 (B) A medical services plan;

6 (C) A hospital plan;

7 (D) A hospital medical service corporation;

8 (E) A health maintenance organization;

9 (F) A fraternal benefits society; or

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

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

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

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

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

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

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

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

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

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

36 (11)(A) "Small group plan" means a health insurance benefit plan

1 for a small employer that employed an average of at least two (2) but no more
2 than fifty (50) employees during the preceding calendar year.

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

6
7 23-61-1004. Administration of Arkansas Works Program.

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

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

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

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

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

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

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

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

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

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

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

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

35 (d)(1) Within thirty (30) days of a reduction in federal medical
36 assistance percentages as described in this section, the Department of Human

1 Services shall present to the Centers of Medicare and Medicaid Services a
2 plan to terminate the Arkansas Works Program and transition eligible
3 individuals out of the Arkansas Works Program within one hundred twenty (120)
4 days of a reduction in any of the following federal medical assistance
5 percentages:

6 (A) Ninety-five percent (95%) in the year 2017;

7 (B) Ninety-four percent (94%) in the year 2018;

8 (C) Ninety-three percent (93%) in the year 2019; and

9 (D) Ninety percent (90%) in the year 2020 or any year

10 after the year 2020.

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

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

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

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

25 (A) Eligibility and enrollment;

26 (B) Utilization;

27 (C) Premium and cost sharing reduction costs;

28 (D) Health insurer participation and competition;

29 (E) Avoided uncompensated care; and

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

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

36 (B) A health insurer may utilize existing mechanisms with

1 supplemental enrollment information to fulfill requirements under this
2 subchapter, including without limitation the state's all-payer claims
3 database established under the Arkansas Healthcare Transparency Initiative
4 Act of 2015, § 23-61-901 et seq., for claims and enrollment data submission.

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

9
10 23-61-1005. Requirements for eligible individuals.

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

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

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

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

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

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

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

31 (A) Incentivize and increase work and work training
32 opportunities; and

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

34 (2) The Department of Human Services, or its designee, shall
35 provide work training opportunities, outreach, and education about work and
36 work training opportunities through the Department of Workforce Services to

1 all eligible individuals regardless of income at the time of an eligibility
2 determination.

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

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

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

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

9
10 23-61-1006. Requirements for program participants.

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

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

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

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

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

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

26
27 23-61-1007. Insurance standards for individual qualified health
28 insurance plans.

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

34 (b) The Department of Human Services shall pay premiums and
35 supplemental cost sharing reductions directly to a health insurer for a
36 program participant enrolled in an individual qualified health insurance

1 plan.

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

4 (1)(A) Offer individual qualified health insurance plans
5 conforming to the requirements of this section and applicable insurance
6 rules.

7 (B) The individual qualified health insurance plans shall
8 be approved by the State Insurance Department; and

9 (2) Maintain a medical-loss ratio of at least eighty percent
10 (80%) for an individual qualified health insurance plan as required under 45
11 C.F.R. § 158.210(c), as it existed on January 1, 2016, or rebate the
12 difference to the Department of Human Services for program participants.

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

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

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

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

23 (3) Supplying clinical performance data to patient-centered
24 medical homes, including data to enable patient-centered medical homes to
25 assess the relative cost and quality of healthcare providers to whom patient-
26 centered medical homes refer patients.

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

30

31 23-61-1008. Insurance standards for employer health insurance
32 coverage.

33 (a) A program participant shall enroll in employer health insurance
34 coverage if:

35 (1) The employer of the program participant elects to
36 participate;

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

6 (3) The employer health insurance coverage is deemed cost-
7 effective; and

8 (4) The employer and health insurer providing the employer
9 health insurance coverage are willing to meet the reporting obligations under
10 § 23-61-1004(g)(2).

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

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

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

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

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

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

23 (d) The Department of Human Services, in coordination with the State
24 Insurance Department and the Arkansas Health Insurance Marketplace, shall
25 develop methods to ensure the continuation of health insurance coverage for a
26 program participant with employer health insurance coverage if the program
27 participant:

28 (1) Loses employment with an employer who is offering the
29 employer health insurance coverage; or

30 (2) Switches employment to a different employer who does not
31 offer employer health insurance coverage that meets the standards in
32 subsection (a) of this section.

33 (e) This subchapter does not:

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

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

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

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

12
13 23-61-1009. Sunset.

14 This subchapter shall expire on December 31, 2021.

15
16 SECTION 2. Arkansas Code § 20-77-2408 is amended to read as follows:
17 20-77-2408. Effective Date.

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

24
25 SECTION 3. Arkansas Code § 23-61-805(b), concerning an offset of an
26 assessment fee within the Arkansas Health Insurance Marketplace, is repealed.

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

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

32
33 SECTION 4. Arkansas Code § 26-57-604(a)(1)(B)(ii), concerning the
34 allowance of a credit to be applied against the insurance premium tax, is
35 amended to read as follows:

36 (ii) However, the credit shall not be applied as an

1 offset against the premium tax on collections resulting from an eligible
2 individual insured under the Health Care Independence Act of 2013, § 20-77-
3 2401 et seq., ~~or the Arkansas Health Insurance Marketplace Act, § 23-61-801~~
4 ~~et seq.~~ the Arkansas Works Act of 2016, § 23-61-1001 et seq., the Arkansas
5 Health Insurance Marketplace Act, § 23-61-801 et seq., or individual
6 qualified health insurance plans, including without limitation stand-alone
7 dental plans, issued through the health insurance marketplace as defined by §
8 23-61-1003.

9

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

12 (2) The taxes based on premiums collected under the Health Care
13 Independence Act of 2013, § 20-77-2401 et seq., ~~and the Arkansas Health~~
14 ~~Insurance Marketplace Act, § 23-61-801 et seq.~~ the Arkansas Works Act of
15 2016, § 23-61-1001 et seq., the Arkansas Health Insurance Marketplace Act, §
16 23-61-801 et seq., or individual qualified health insurance plans, including
17 without limitation stand-alone dental plans, issued through the health
18 insurance marketplace as defined by § 23-61-1003 shall be:

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

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

25 (ii) On and after January 1, 2017, transferred to
26 the Arkansas Works Program Trust Fund and used as required by the Arkansas
27 Works Program Trust Fund;

28

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

31 19-5-1146. Arkansas Works Program Trust Fund.

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

35 (b) The fund shall consist of:

36 (1) Moneys saved and accrued under the Arkansas Works Act of

1 2016, § 23-61-1001 et seq., including without limitation:

2 (A) Increases in premium tax collections; and

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

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

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

9
10 SECTION 7. Arkansas Code § 19-5-1141, concerning the Health Care
11 Independence Program Trust Fund, is amended to add an additional subsection
12 to read as follows:

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

15 (2) Any balance in the Health Care Independence Program Trust
16 Fund on January 1, 2017, shall be transferred by the Chief Fiscal Officer of
17 the State on his or her books and the books of the Treasurer of State and the
18 Auditor of the State to the Arkansas Works Program Trust Fund.

19
20 SECTION 8. EFFECTIVE DATE.

21 Section 3 and Section 4 of this act are effective on and after January
22 1, 2017.

23
24 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
25 General Assembly of the State of Arkansas that the federal laws established
26 by Pub. L. No. 111-148, have caused disruptive challenges to the State of
27 Arkansas in the health insurance industry and the medical assistance
28 industry; that the Arkansas Works Program utilizes the private insurance
29 market to improve access to health insurance, enhances quality of health
30 insurance, and reduces health insurance and medical assistance costs; that
31 the Arkansas Works Program requires private insurance companies and employers
32 to create, present, implement, and market a new type of health insurance
33 policy; and that this act is immediately necessary because the private
34 insurance companies and employers need certainty about the law creating the
35 Arkansas Works Program before fully investing time, funds, personnel, and
36 other resources into the development of new health insurance policies.

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

10
11 */s/J. Hendren*
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