

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

# A Bill

SENATE BILL 956

5 By: Senator D. Sanders  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING THE HEALTHCARE SYSTEM TRANSPARENCY  
9 FOR THE CITIZENS OF THE STATE OF ARKANSAS; TO CREATE  
10 THE ARKANSAS HEALTHCARE TRANSPARENCY INITIATIVE OF  
11 2015; TO DECLARE AN EMERGENCY; AND FOR OTHER  
12 PURPOSES.  
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## Subtitle

15 TO CREATE THE ARKANSAS HEALTHCARE  
16 TRANSPARENCY INITIATIVE OF 2015; AND TO  
17 DECLARE AN EMERGENCY.  
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20 WHEREAS, Arkansas has consistently received failing grades from  
21 independent national organizations that rate states' healthcare quality and  
22 price transparency laws; and  
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24 WHEREAS, Arkansans face a challenge finding reliable, consumer-friendly  
25 information on healthcare utilization, quality, and pricing; and  
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27 WHEREAS, greater transparency of healthcare utilization, quality, and  
28 price information leads to more informed, engaged, activated consumers; and  
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30 WHEREAS, Arkansas has taken significant steps to advance system-wide  
31 payment reform, and optimizing the state's efforts requires transforming our  
32 healthcare system into a more transparent, more informed, consumer-driven  
33 enterprise; and  
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35 WHEREAS, the Arkansas Health Care Reform Act of 2015 creates a task  
36 force to assess cost-effective opportunities to provide coverage to Health



1 Care Independence Program participants upon its termination, as well as  
2 opportunities to reform the Arkansas Medicaid Program and create a more  
3 transparent healthcare system; and

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5 WHEREAS, information about healthcare utilization, quality, and pricing  
6 allows policymakers to evaluate health programs and monitor the success and  
7 efficiency of efforts to enhance access, reduce healthcare costs, and improve  
8 both healthcare quality and population health; and

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10 WHEREAS, the availability and integration of healthcare information for  
11 legitimate research purposes to qualified researchers supports the pursuits  
12 of the state’s academic institutions and the continued study of the evolving  
13 landscape of the state’s health and healthcare system; and

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15 WHEREAS, comparative healthcare information supports efforts to design  
16 targeted quality-improvement initiatives and to compare provider performance  
17 with that of other provider peers; and

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19 WHEREAS, other states have learned the value of integrating healthcare  
20 data and transforming it into useful information to the benefit of their  
21 citizens while protecting the privacy rights of all individuals; and

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23 WHEREAS, demands for information to support program evaluation and  
24 healthcare reform and its impact on consumers, businesses, and the state  
25 constitute an emergency; and

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27 WHEREAS, the General Assembly hereby creates the Arkansas Healthcare  
28 Transparency Initiative,

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30 NOW THEREFORE,

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

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33 SECTION 1. Arkansas Code Title 23, Chapter 61, is amended to add an  
34 additional subchapter to read as follows:

35 Subchapter 9 – Arkansas Healthcare Transparency Initiative Act of 2015

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1        23-61-901. Title.

2        This subchapter shall be known and may be cited as the “Arkansas  
3 Healthcare Transparency Initiative Act of 2015”.

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5        23-61-902. Legislative intent and purpose.

6        (a) It is the intent of the General Assembly to create and maintain an  
7 informative source of healthcare information to support consumers,  
8 researchers, and policymakers in healthcare decisions within the state.

9        (b) The purpose of this subchapter is to:

10        (1) Empower Arkansans to drive, deliver, and seek out value in  
11 the healthcare system;

12        (2) Create the Arkansas Healthcare Transparency Initiative;

13        (3) Establish governance of the Arkansas Healthcare Transparency  
14 Initiative;

15        (4) Provide authority to collect healthcare information from  
16 insurance carriers and other entities; and

17        (5) Establish appropriate methods for collecting, maintaining,  
18 and reporting healthcare information, including privacy and security  
19 safeguards.

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21        23-61-903. Definitions.

22        As used in this subchapter:

23        (1) “Arkansas Healthcare Transparency Initiative” means an  
24 initiative to create a database, including ongoing all-payer claims database  
25 projects funded through the State Insurance Department, that receives and  
26 stores data from a submitting entity relating to medical, dental, and  
27 pharmaceutical and other insurance claims information and enrollment,  
28 eligibility, and provider files, for the purposes of this subchapter;

29        (2) “Arkansas resident” means an individual for whom the  
30 submitting entity has identified an Arkansas address as the individual’s  
31 primary place of residence;

32        (3) “Claims data” means information included in an  
33 institutional, professional, or pharmacy claim or equivalent information  
34 transaction for a covered individual, including the amount paid to a provider  
35 of healthcare services plus any amount owed by the covered individual;

36        (4) “Covered individual” means a natural person who is an

1 Arkansas resident and is eligible to receive medical, dental, or  
2 pharmaceutical benefits under any policy, contract, certificate, evidence of  
3 coverage, rider, binder, or endorsement that provides for or describes  
4 coverage;

5 (5) "Direct personal identifiers" means information relating to  
6 a covered individual that contains primary or obvious identifiers, such as  
7 the individual's name, street address, e-mail address, telephone number, and  
8 Social Security number;

9 (6) "Enrollment data" means demographic information and other  
10 identifying information relating to covered individuals, including direct  
11 personal identifiers;

12 (7) "Protected health information" means health information as  
13 protected by the federal Health Insurance Portability and Accountability Act  
14 of 1996, Pub. L. No. 104-191, as it existed on January 1, 2015;

15 (8) "Provider" means an individual or entity licensed by the  
16 state to provide healthcare services; and

17 (9) "Submitting entity" means:

18 (A) An entity that provides health or dental insurance or  
19 a health or dental benefit plan in the state, including without limitation an  
20 insurance company, medical services plan, hospital plan, hospital medical  
21 service corporation, health maintenance organization, or fraternal benefits  
22 society, provided that the entity has covered individuals and the entity had  
23 at least two thousand (2,000) covered individuals in the previous calendar  
24 year;

25 (B) A health benefit plan offered or administered by or on  
26 behalf of the state or an agency or instrumentality of the state;

27 (C) A health benefit plan offered or administered by or on  
28 behalf of the federal government with the agreement of the federal  
29 government;

30 (D) An automobile insurance plan, provided that the  
31 automobile insurance plan has covered individuals and the automobile  
32 insurance plan had at least two thousand (2,000) covered individuals in the  
33 previous calendar year;

34 (E) A disability plan, provided that the disability plan  
35 has covered individuals and the disability plan had at least two thousand  
36 (2,000) covered individuals in the previous calendar year;

1                   (F) Any other entity providing a plan of health insurance  
2 or health benefits subject to state insurance regulation, a third-party  
3 administrator, or a pharmacy benefits manager, provided that the entity has  
4 covered individuals and the entity had at least two thousand (2,000) covered  
5 individuals in the previous calendar year;

6                   (G) A health benefit plan subject to the federal Employee  
7 Retirement Income Security Act of 1974, Pub. L. No. 93-406, as permitted by  
8 federal law, provided however that the health benefit plan does not include  
9 an employee welfare benefit plan, as defined by federal law, as amended from  
10 time to time, that is also a trust established pursuant to collective  
11 bargaining subject to the federal Labor Management Relations Act, 29 U.S.C.  
12 §§ 401 – 531; and

13                   (H) An entity that contracts with institutions of the  
14 Department of Correction or Department of Community Correction to provide  
15 medical, dental, or pharmaceutical care to inmates.

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17                   23-61-904. Arkansas Healthcare Transparency Initiative.

18                   (a) The Arkansas Healthcare Transparency Initiative is established  
19 with the purpose to create a database, including ongoing all-payer claims  
20 database projects funded through the State Insurance Department, that  
21 receives and stores data from a submitting entity relating to medical,  
22 dental, and pharmaceutical and other insurance claims information and  
23 enrollment, eligibility, and provider files, for the purposes of this  
24 subchapter.

25                   (b) The Arkansas Healthcare Transparency Initiative shall be governed  
26 by the State Insurance Department and advised by the Arkansas Healthcare  
27 Transparency Initiative Board.

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29                   23-61-905. Arkansas Healthcare Transparency Initiative Board –  
30 Membership – Duties.

31                   (a)(1) There is created the Arkansas Healthcare Transparency  
32 Initiative Board, which shall be composed of the following members:

33                   (A) A representative of the Department of Human Services;

34                   (B) A representative of the Department of Health;

35                   (C) A representative of the Office of Health Information  
36 Technology or its successor entity as provided by state law;



1 shall exercise its powers and duties under this subchapter to:

2 (1) Establish policies and procedures necessary for the  
3 administration and oversight of the Arkansas Healthcare Transparency  
4 Initiative, including procedures for the collection, processing, storage,  
5 analysis, use, and release of data;

6 (2) Identify and explore the key healthcare issues, questions,  
7 and problems that may be improved through more transparent information,  
8 including without limitation data required to be disclosed to patients  
9 related to provider relationships or affiliations with payers and providers,  
10 financial interests in healthcare businesses, and payments or items of any  
11 value given to providers from pharmaceutical or medical device manufacturers  
12 or agents thereof; and

13 (3) Provide a biennial report to the General Assembly on the  
14 operations of the Arkansas Healthcare Transparency Initiative.

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16 23-61-906. Data submission.

17 (a) Except as provided in subsection (d) of this section, no later  
18 than January 1, 2016, and every quarter thereafter, a submitting entity shall  
19 submit health and dental claims data, enrollment and eligibility files for  
20 covered individuals, and provider files to the Arkansas Healthcare  
21 Transparency Initiative in accordance with standards and procedures adopted  
22 by the State Insurance Department.

23 (b) Data submitted under this subchapter shall be treated as  
24 confidential and are exempt from disclosure under the Freedom of Information  
25 Act of 1967, § 25-19-101 et seq., and are not subject to subpoena, except to  
26 the extent provided in § 23-61-205.

27 (c) The collection, storage, and release of data and other information  
28 under this section is subject to the requirements of Health Insurance  
29 Portability and Accountability Act of 1996, Pub. L. No. 104-191.

30 (d) No later than June 1, 2015, a submitting entity shall provide data  
31 required in subsection (a) of this section to the Arkansas Healthcare  
32 Transparency Initiative to support deliberations of the Arkansas Health  
33 Reform Legislative Task Force.

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35 23-61-907. Data release.

36 (a) Data in the Arkansas Healthcare Transparency Initiative shall:

1           (1) To the extent authorized by the State Insurance Department,  
2 be available:

3           (A) When disclosed in a form and manner that ensures the  
4 privacy and security of protected health information as required by state and  
5 federal laws, as a resource to insurers, employers, purchasers of health  
6 care, researchers, state agencies, and healthcare providers to allow for  
7 assessment of healthcare utilization, expenditures, and performance in this  
8 state, including without limitation as a resource for hospital community  
9 health needs assessments; and

10           (B) To state programs regarding healthcare quality and  
11 costs for use in improving health care in the state, subject to rules  
12 prescribed by the State Insurance Department conforming to state and federal  
13 privacy laws or limiting access to limited-use data sets; and

14           (2) Not be used to:

15           (A) Disclose trade secrets of submitting entities;

16           (B) Reidentify or attempt to reidentify an individual who  
17 is the subject of any protected health information without obtaining the  
18 individual's consent; or

19           (C) Create or augment data contained in a national claims  
20 database.

21           (b) Notwithstanding Health Insurance Portability and Accountability  
22 Act of 1996, Pub. L. No. 104-191, or any other provision of law, the Arkansas  
23 Healthcare Transparency Initiative shall not publicly disclose any data that  
24 contains direct personal identifiers.

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26           23-61-908. Penalties for failure to submit data.

27           (a) A submitting entity that fails to submit data as required by this  
28 subchapter or the rules of the State Insurance Department may be subject to a  
29 penalty.

30           (b) The department shall adopt a schedule of penalties not to exceed  
31 one thousand dollars (\$1,000) per day of violation, determined by the  
32 severity of the violation.

33           (c) A penalty imposed under this section may be remitted or mitigated  
34 upon such terms and conditions as the department considers proper and  
35 consistent with the public health and safety.

36           (d) A penalty remitted under this section shall be used for Arkansas



1 Healthcare Transparency Initiative operations.

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3 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 11, is  
4 amended to add an additional section to read as follows:

5 19-5-1142. Arkansas Healthcare Transparency Initiative 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 Stat a trust fund to be  
8 known as the "Arkansas Healthcare Transparency Initiative Fund".

9 (b)(1) The fund shall be an interest-bearing account and may be  
10 invested in the manner permitted by law, with the interest income a proper  
11 credit to the fund and which shall not revert to general revenue, unless  
12 otherwise designated in law.

13 (2) The fund shall be overseen by the State Insurance  
14 Department, and shall be used to pay all proper costs incurred in  
15 implementing the provisions of the Arkansas Healthcare Transparency  
16 Initiative Act of 2015, § 23-61-901 et seq.

17 (c) The following moneys shall be paid into this fund:

18 (1) Penalties imposed on submitting entities pursuant to the  
19 Arkansas Healthcare Transparency Initiative Act of 2015, § 23-61-901 et seq.  
20 and rules promulgated under the Arkansas Healthcare Transparency Initiative  
21 Act of 2015, § 23-61-901 et seq.;

22 (2) Funds received from the federal government;

23 (3) Appropriations from the General Assembly; and

24 (4) All other payments, gifts, grants, bequests, or income from  
25 any source.

26 (d) Activities of the Arkansas Healthcare Transparency Initiative  
27 Board and the availability of data as authorized in § 23-61-905(c)(1) are  
28 contingent upon available funding.

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30 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General  
31 Assembly of the State of Arkansas that there is a lack of available  
32 information to support the required evaluation of state programs and the  
33 deliberations of policymakers within the timeframe required by the Health  
34 Care Reform Act of 2015, and that there is an immediate need to collect data  
35 to support these activities so that policymakers may make more informed  
36 decisions about the cost-effectiveness of current programs and the future of

1 the state's healthcare system. Therefore, an emergency is declared to exist,  
2 and this act being immediately necessary for the preservation of the public  
3 peace, 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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