

Stricken language would be deleted from and underlined language would be added to present law.

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

As Engrossed: S3/19/15
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.
13
14

Subtitle

15 TO CREATE THE ARKANSAS HEALTHCARE
16 TRANSPARENCY INITIATIVE OF 2015; AND TO
17 DECLARE AN EMERGENCY.
18
19

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

4
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

14
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

26
27 WHEREAS, the General Assembly hereby creates the Arkansas Healthcare
28 Transparency Initiative,

29
30 NOW THEREFORE,

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

32
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

36

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”.

4
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.

20
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, unique identifiers,
28 and geographic and demographic information for covered individuals as
29 permitted in this subchapter, and provider files, for the purposes of this
30 subchapter;

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

34 (3) “Claims data” means information included in an
35 institutional, professional, or pharmacy claim or equivalent information
36 transaction for a covered individual, including the amount paid to a provider

1 of healthcare services plus any amount owed by the covered individual;

2 (4) "Covered individual" means a natural person who is an
3 Arkansas resident and is eligible to receive medical, dental, or
4 pharmaceutical benefits under any policy, contract, certificate, evidence of
5 coverage, rider, binder, or endorsement that provides for or describes
6 coverage;

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

11 (B) "Direct personal identifiers" does not include
12 geographic or demographic information that would not allow the identification
13 of a covered individual;

14 (6) "Enrollment data" means demographic information and other
15 identifying information relating to covered individuals, including direct
16 personal identifiers;

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

20 (8) "Provider" means an individual or entity licensed by the
21 state to provide healthcare services;

22 (9) "Submitting entity" means:

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

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

32 (C) A health benefit plan offered or administered by or on
33 behalf of the federal government with the agreement of the federal
34 government;

35 (D) An automobile insurance plan, provided that the
36 automobile insurance plan has covered individuals and the automobile

1 insurance plan had at least two thousand (2,000) covered individuals in the
2 previous calendar year;

3 (E) The Arkansas Workers' Compensation Commission;

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

9 (G) A health benefit plan subject to the federal Employee
10 Retirement Income Security Act of 1974, Pub. L. No. 93-406, as permitted by
11 federal law, provided however that the health benefit plan does not include
12 an employee welfare benefit plan, as defined by federal law, as amended from
13 time to time, that is also a trust established pursuant to collective
14 bargaining subject to the federal Labor Management Relations Act, 29 U.S.C.
15 §§ 401 – 531; and

16 (H) An entity that contracts with institutions of the
17 Department of Correction or Department of Community Correction to provide
18 medical, dental, or pharmaceutical care to inmates; and

19 (10) "Unique identifier" means any identifier that is guaranteed
20 to be unique among all identifiers for covered individuals but does not
21 include direct personal identifiers.

22
23 23-61-904. Arkansas Healthcare Transparency Initiative.

24 (a) The Arkansas Healthcare Transparency Initiative is established
25 with the purpose to create a database, including ongoing all-payer claims
26 database projects funded through the State Insurance Department, that
27 receives and stores data from a submitting entity relating to medical,
28 dental, and pharmaceutical and other insurance claims information, unique
29 identifiers, and geographic and demographic information for covered
30 individuals as permitted in this subchapter, and provider files, for the
31 purposes of this subchapter.

32 (b) The Arkansas Healthcare Transparency Initiative shall be governed
33 by the State Insurance Department and advised by the Arkansas Healthcare
34 Transparency Initiative Board.

35
36 23-61-905. Arkansas Healthcare Transparency Initiative Board –

1 Membership – Duties.

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

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

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

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

8 (D) The Surgeon General; and

9 (E) Nine (9) members appointed by the Governor as follows:

10 (i) Two (2) representatives from the health
11 insurance industry, one (1) of whom shall be a multistate representative and
12 one (1) of whom shall be a domestic representative;

13 (ii) Two (2) representatives from the healthcare
14 provider community;

15 (iii) A representative from a self-insured employer;

16 (iv) A representative from an employer of fewer than
17 one hundred (100) full-time employees that provides healthcare coverage to
18 employees through a fully-insured product;

19 (v) A representative from a healthcare consumer
20 organization;

21 (vi) A representative from the academic research
22 community with expertise in healthcare claims data analysis; and

23 (vii) A representative with expertise in health data
24 privacy and security.

25 (2) A Governor-appointed member of the board in subdivision
26 (b)(1)(E) of this section shall serve for a term of three (3) years.

27 (3) The board shall appoint one (1) member as a chair and
28 determine the qualifications, duties, and the term of office of the chair.

29 (4) Seven (7) members present constitutes a quorum.

30 (5) The Arkansas Healthcare Transparency Initiative Board shall
31 hold its first meeting no later than June 1, 2015.

32 (b) The State Insurance Department shall:

33 (A) Have the authority to:

34 (i) Collect, validate, analyze, and present health
35 data including claims data;

36 (ii) Assess penalties for noncompliance with this

1 subchapter; and

2 (iii) Establish and convene additional subcommittees
3 to carry out the purposes of this subchapter;

4 (B) Designate the Arkansas Center for Health Improvement
5 as the administrator of the Arkansas Healthcare Transparency Initiative,
6 which shall be responsible for development and implementation of a
7 sustainability plan subject to data use and disclosure requirements of this
8 subchapter and any rules promulgated under this subchapter;

9 (C) With the assistance of the administrator of the
10 Arkansas Healthcare Transparency Initiative, establish and convene the
11 following subcommittees:

12 (i) The Data Oversight Subcommittee of the Arkansas
13 Healthcare Transparency Initiative, which shall:

14 (a) Consist of:

15 (1) Three (3) Governor-appointed board
16 members; and

17 (2) One (1) individual healthcare
18 consumer; and

19 (b) Review and make recommendations to the
20 State Insurance Department regarding:

21 (1) Data requests for consistency with
22 the intent and purpose of this subchapter, including whether the data request
23 contains the minimum required information; and

24 (2) Reports and publications generated
25 from data requests to ensure compliance with this subchapter;

26 (ii) The Scientific Advisory Subcommittee of the
27 Arkansas Healthcare Transparency Initiative, which shall:

28 (a) Consist of:

29 (1) The Governor-appointed member of the
30 board from the academic research community; and

31 (2) Two (2) nonmembers of the board who
32 are academic researchers; and

33 (b) Serve as peer review for academic
34 researchers and provide advice regarding data requests for academic proposals
35 and the scientific rigor of analytic work; and

36 (D) Adopt any rules necessary to implement this subchapter

1 under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

2 (c) In consultation with the board, the State Insurance Department
3 shall exercise its powers and duties under this subchapter to:

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

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

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

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18 23-61-906. Data submission.

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

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

30 (c) The collection, storage, and release of data and other information
31 under this section is subject to applicable state and federal data privacy
32 and security law.

33 (d) No later than July 1, 2015, a submitting entity shall submit
34 health and dental claims data, unique identifiers, and geographic and
35 demographic information for covered individuals as permitted in this
36 subchapter to the Arkansas Healthcare Transparency Initiative to support

1 deliberations of the Arkansas Health Reform Legislative Task Force.

2
3 23-61-907. Data release.

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

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

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

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

18 (2) Not be used to:

19 (A) Disclose trade secrets of submitting entities;

20 (B) Reidentify or attempt to reidentify an individual who
21 is the subject of any *submitted data* without obtaining the individual's
22 consent; or

23 (C) Create or augment data contained in a national claims
24 database.

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

29
30 23-61-908. Penalties for failure to submit data.

31 (a) Except for state or federal agencies that are submitting entities,
32 a submitting entity that fails to submit data as required by this subchapter
33 or the rules of the State Insurance Department may be subject to a penalty.

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

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

4 (d) A penalty remitted under this section shall be used for Arkansas
5 Healthcare Transparency Initiative operations.

6
7 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 11, is
8 amended to add an additional section to read as follows:

9 19-5-1142. Arkansas Healthcare Transparency Initiative Fund.

10 (a) There is created on the books of the Treasurer of State, the
11 Auditor of State, and the Chief Fiscal Officer of the Stat a trust fund to be
12 known as the "Arkansas Healthcare Transparency Initiative Fund".

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

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

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

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

26 (2) Funds received from the federal government;

27 (3) Appropriations from the General Assembly; and

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

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

33
34 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General
35 Assembly of the State of Arkansas that there is a lack of available
36 information to support the required evaluation of state programs and the

1 deliberations of policymakers within the timeframe required by the Health
2 Care Reform Act of 2015, and that there is an immediate need to collect data
3 to support these activities so that policymakers may make more informed
4 decisions about the cost-effectiveness of current programs and the future of
5 the state's healthcare system. Therefore, an emergency is declared to exist,
6 and this act being immediately necessary for the preservation of the public
7 peace, health, and safety shall become effective on:

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

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

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

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15 */s/D. Sanders*
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