

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

# A Bill

SENATE BILL 144

5 By: Senators Collins-Smith, Bledsoe, Flippo, B. Johnson, B. King, Rice, G. Stubblefield  
6

## For An Act To Be Entitled

8 AN ACT TO TERMINATE THE MEDICAID EXPANSION  
9 DEMONSTRATION PROGRAM OR THE HEALTH CARE INDEPENDENCE  
10 PROGRAM, COMMONLY KNOWN AS THE "PRIVATE OPTION"; TO  
11 TERMINATE ARKANSAS'S PARTICIPATION IN MEDICAID  
12 EXPANSION; TO REPEAL THE HEALTH CARE INDEPENDENCE ACT  
13 OF 2013; AND FOR OTHER PURPOSES.  
14  
15

## Subtitle

16 TO TERMINATE THE MEDICAID EXPANSION  
17 DEMONSTRATION PROGRAM COMMONLY KNOWN AS  
18 THE "PRIVATE OPTION"; TO TERMINATE  
19 ARKANSAS'S PARTICIPATION IN MEDICAID  
20 EXPANSION; AND TO REPEAL THE HEALTH CARE  
21 INDEPENDENCE ACT OF 2013.  
22  
23  
24

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

27 SECTION 1. DO NOT CODIFY. Termination of Medicaid Expansion in  
28 Arkansas.

29 (a) Arkansas's participation in Medicaid expansion established under  
30 the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148,  
31 is terminated effective on December 31, 2015.

32 (b)(1) The Health Care Independence Program, commonly known as the  
33 "Private Option", established by the Health Care Independence Act of 2013, §  
34 20-77-2401 et seq., shall terminate on December 31, 2015.

35 (2) Subdivision (b)(1) of this section does not prohibit federal  
36 funding for the payment of expenses incurred before December 31, 2015, by



1 persons participating in the Health Care Independence Program who were  
 2 determined as more effectively covered through the traditional Arkansas  
 3 Medicaid Program.

4  
 5 SECTION 2. DO NOT CODIFY. Health Care Independence Program.

6 (a) The Department of Human Services shall:

7 (1) Amend, on the effective date of this section, the state  
 8 Medicaid plan, consistent with this act, to reflect Arkansas's withdrawal  
 9 from the Medicaid expansion program and to eliminate eligibility for the  
 10 population enrolled in the Health Care Independence Program, commonly known  
 11 as the "Private Option", to be effective on or before December 31, 2015;

12 (2) Notify all persons enrolled in the Health Care Independence  
 13 Program, commonly known as the "Private Option", as of the effective date of  
 14 this section that the Health Care Independence Program and Arkansas's  
 15 participation in Medicaid expansion under the federal Patient Protection and  
 16 Affordable Care Act, Pub. L. No. 111-148, ends on December 31, 2015; and

17 (3) Inform any new person who enrolls in the Health Care  
 18 Independence Program, commonly known as the "Private Option", after the  
 19 effective date of this section that the Health Care Independence Program and  
 20 Arkansas's participation in Medicaid expansion under the federal Patient  
 21 Protection and Affordable Care Act, Pub. L. No. 111-148, ends on December 31,  
 22 2015.

23 (b) The department may prohibit new enrollees in the Health Care  
 24 Independence Program to begin the transition period before the termination  
 25 date of December 31, 2015.

26  
 27 SECTION 3. Effective on December 31, 2015, Arkansas Code Title 20,  
 28 Chapter 77, Subchapter 24, is repealed.

29 ~~Subchapter 24 — Health Care Independence Act of 2013~~

30  
 31 ~~20-77-2401. Title.~~

32 ~~This act shall be known and may be cited as the "Health Care~~  
 33 ~~Independence Act of 2013".~~

34  
 35 ~~20-77-2402. Legislative intent.~~

36 ~~(a) Notwithstanding any general or specific laws to the contrary, the~~

1 Department of Human Services is to explore design options that reform the  
 2 Medicaid program utilizing this subchapter so that it is a fiscally  
 3 sustainable, cost-effective, personally responsible, and opportunity-driven  
 4 program utilizing competitive and value-based purchasing to:

5 (1) Maximize the available service options;

6 (2) Promote accountability, personal responsibility, and  
 7 transparency;

8 (3) Encourage and reward healthy outcomes and responsible  
 9 choices; and

10 (4) Promote efficiencies that will deliver value to the  
 11 taxpayers.

12 (b)(1) It is the intent of the General Assembly that the State of  
 13 Arkansas through the Department of Human Services utilize a private insurance  
 14 option for "low-risk" adults.

15 (2) This subchapter shall ensure that:

16 (A) Private healthcare options increase and government-  
 17 operated programs such as Medicaid decrease; and

18 (B) Decisions about the design, operation, and  
 19 implementation of this option, including cost, remain within the purview of  
 20 the State of Arkansas and not with Washington, D.C.

21  
 22 ~~20-77-2403. Purpose.~~

23 (a) The purpose of this subchapter is to:

24 (1) Improve access to quality health care;

25 (2) Attract insurance carriers and enhance competition in the  
 26 Arkansas insurance marketplace;

27 (3) Promote individually-owned health insurance;

28 (4) Strengthen personal responsibility through cost-sharing;

29 (5) Improve continuity of coverage;

30 (6) Reduce the size of the state-administered Medicaid program;

31 (7) Encourage appropriate care, including early intervention,  
 32 prevention, and wellness;

33 (8) Increase quality and delivery system efficiencies;

34 (9) Facilitate Arkansas's continued payment innovation, delivery  
 35 system reform, and market-driven improvements;

36 (10) Discourage over-utilization; and

1           ~~(1) Reduce waste, fraud, and abuse.~~

2           ~~(b) The State of Arkansas shall take an integrated and market based~~  
 3 ~~approach to covering low income Arkansans through offering new coverage~~  
 4 ~~opportunities, stimulating market competition, and offering alternatives to~~  
 5 ~~the existing Medicaid program.~~

6  
 7           ~~20-77-2404. Definitions.~~

8           ~~As used in this subchapter:~~

9           ~~(1) "Carrier" means a private entity certified by the State~~  
 10 ~~Insurance Department and offering plans through the Arkansas Health Insurance~~  
 11 ~~Marketplace;~~

12           ~~(2) "Cost sharing" means the portion of the cost of a covered~~  
 13 ~~medical service that must be paid by or on behalf of eligible individuals,~~  
 14 ~~consisting of copayments or coinsurance but not deductibles;~~

15           ~~(3) "Eligible individuals" means individuals who:~~

16           ~~(A) Are adults between nineteen (19) years of age and~~  
 17 ~~sixty-five (65) years of age with an income that is equal to or less than one~~  
 18 ~~hundred thirty-eight percent (138%) of the federal poverty level, including~~  
 19 ~~without limitation individuals who would not be eligible for Medicaid under~~  
 20 ~~laws and rules in effect on January 1, 2013;~~

21           ~~(B) Have been authenticated to be United States citizens~~  
 22 ~~or documented qualified aliens according to the Personal Responsibility and~~  
 23 ~~Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, as existing~~  
 24 ~~on January 1, 2013; and~~

25           ~~(C) Are not determined to be more effectively covered~~  
 26 ~~through the standard Medicaid program, such as an individual who is medically~~  
 27 ~~frail or other individuals with exceptional medical needs for whom coverage~~  
 28 ~~through the Arkansas Health Insurance Marketplace is determined to be~~  
 29 ~~impractical or overly complex, or would undermine continuity or effectiveness~~  
 30 ~~of care;~~

31           ~~(4) "Healthcare coverage" means healthcare benefits as defined~~  
 32 ~~by certification or rules, or both, promulgated by the State Insurance~~  
 33 ~~Department for the Qualified Health Plans or available on the marketplace;~~

34           ~~(5) "Arkansas Health Insurance Marketplace" means the vehicle~~  
 35 ~~created to help individuals, families, and small businesses in Arkansas shop~~  
 36 ~~for and select health insurance coverage in a way that permits comparison of~~

1 available Qualified Health Plans based upon price, benefits, services, and  
2 quality, regardless of the governance structure of the marketplace;

3 (6) "Independence accounts" means individual financing  
4 structures that operate similar to a health savings account or a medical  
5 savings account;

6 (7) "Premium" means a charge that must be paid as a condition of  
7 enrolling in healthcare coverage;

8 (8) "Program" means the Health Care Independence Program established  
9 by this subchapter; and

10 (9) "Qualified Health Plan" means a State Insurance Department-  
11 certified individual health insurance plan offered by a carrier through the  
12 Arkansas Health Insurance Marketplace.

13  
14 20-77-2405. Administration of Health Care Independence Program.

15 (a) The Department of Human Services shall:

16 (1) Create and administer the Health Care Independence Program;  
17 and

18 (2)(A) Submit and apply for any:

19 (i) Federal waivers necessary to implement the  
20 program in a manner consistent with this subchapter, including without  
21 limitation approval for a comprehensive waiver under section 1115 of the  
22 Social Security Act, 42 U.S.C. § 1315; and

23 (ii)(a) Medicaid State Plan Amendments necessary to  
24 implement the program in a manner consistent with this subchapter.

25 (b) The Department of Human Services shall  
26 submit only those Medicaid State Plan Amendments under subdivision  
27 (a)(2)(A)(ii)(a) of this section that are optional and therefore may be  
28 revoked by the state at its discretion.

29 (B)(i) As part of its actions under subdivision (a)(2)(A)  
30 of this section, the Department of Human Services shall confirm that  
31 employers shall not be subject to the penalties, including without limitation  
32 an assessable payment, under section 1513 of the Patient Protection and  
33 Affordable Care Act, Pub. L. No. 111-148, as existing on January 1, 2013,  
34 concerning shared responsibility, for employees who are eligible individuals  
35 if the employees:

36 (a) Are enrolled in the program; and



1           ~~(f) The program shall include allowable cost sharing for eligible~~  
 2 ~~individuals that is comparable to that for individuals in the same income~~  
 3 ~~range in the private insurance market and is structured to enhance eligible~~  
 4 ~~individuals' investment in their healthcare purchasing decisions.~~

5           ~~(g)(1) The State Insurance Department and the Department of Human~~  
 6 ~~Services shall administer and promulgate rules to administer the program~~  
 7 ~~authorized under this subchapter.~~

8           ~~(2) No less than thirty (30) days before the State Insurance~~  
 9 ~~Department and the Department of Human Services begin promulgating a rule~~  
 10 ~~under this subchapter, the proposed rule shall be presented to the~~  
 11 ~~Legislative Council.~~

12           ~~(h) The program authorized under this subchapter shall terminate~~  
 13 ~~within one hundred twenty (120) days after a reduction in any of the~~  
 14 ~~following federal medical assistance percentages:~~

15                   ~~(1) One hundred percent (100%) in 2014, 2015, or 2016;~~

16                   ~~(2) Ninety five percent (95%) in 2017;~~

17                   ~~(3) Ninety four percent (94%) in 2018;~~

18                   ~~(4) Ninety three percent (93%) in 2019; and~~

19                   ~~(5) Ninety percent (90%) in 2020 or any year after 2020.~~

20           ~~(i) An eligible individual enrolled in the program shall affirmatively~~  
 21 ~~acknowledge that:~~

22                   ~~(1) The program is not a perpetual federal or state right or a~~  
 23 ~~guaranteed entitlement;~~

24                   ~~(2) The program is subject to cancellation upon appropriate~~  
 25 ~~notice; and~~

26                   ~~(3) The program is not an entitlement program.~~

27           ~~(j)(1) The Department of Human Services shall develop a model and seek~~  
 28 ~~from the Centers for Medicare and Medicaid Services all necessary waivers and~~  
 29 ~~approvals to allow non-aged, non-disabled program-eligible participants to~~  
 30 ~~enroll in a program that will create and utilize independence accounts that~~  
 31 ~~operate similarly to a health savings account or medical savings account~~  
 32 ~~during the calendar year 2015.~~

33                   ~~(2) The independence accounts shall:~~

34                           ~~(A) Allow a participant to purchase cost-effective high-~~  
 35 ~~deductible health insurance; and~~

36                           ~~(B) Promote independence and self-sufficiency.~~

1           ~~(3) The state shall implement cost sharing and copays and, as a~~  
 2 ~~condition of participation, earnings shall exceed fifty percent (50%) of the~~  
 3 ~~federal poverty level.~~

4           ~~(4) Participants may receive rewards based on healthy living and~~  
 5 ~~self-sufficiency.~~

6           ~~(5)(A) At the end of each fiscal year, if there are funds~~  
 7 ~~remaining in the account, a majority of the state's contribution will remain~~  
 8 ~~in the participant's control as a positive incentive for the responsible use~~  
 9 ~~of the healthcare system and personal responsibility of health maintenance.~~

10           ~~(B) Uses of the funds may include without limitation~~  
 11 ~~rolling the funds into a private sector health savings account for the~~  
 12 ~~participant according to rules promulgated by the Department of Human~~  
 13 ~~Services.~~

14           ~~(6) The Department of Human Services shall promulgate rules to~~  
 15 ~~implement this subsection.~~

16           ~~(k)(1) State obligations for uncompensated care shall be projected,~~  
 17 ~~tracked, and reported to identify potential incremental future decreases.~~

18           ~~(2) The Department of Human Services shall recommend appropriate~~  
 19 ~~adjustments to the General Assembly.~~

20           ~~(3) Adjustments shall be made by the General Assembly as~~  
 21 ~~appropriate.~~

22           ~~(l) The Department of Human Services shall track the hospital~~  
 23 ~~assessment under § 20-77-1902 and report to the General Assembly subsequent~~  
 24 ~~decreases based upon reduced uncompensated care.~~

25           ~~(m) On a quarterly basis, the Department of Human Services and the~~  
 26 ~~State Insurance Department shall report to the Legislative Council, or to the~~  
 27 ~~Joint Budget Committee if the General Assembly is in session, available~~  
 28 ~~information regarding:~~

29           ~~(1) Program enrollment;~~

30           ~~(2) Patient experience;~~

31           ~~(3) Economic impact including enrollment distribution;~~

32           ~~(4) Carrier competition; and~~

33           ~~(5) Avoided uncompensated care.~~

34  
 35           ~~20-77-2406. Standards of healthcare coverage through Arkansas Health~~  
 36 ~~Insurance Marketplace.~~

1           ~~(a) Healthcare coverage shall be achieved through a qualified health~~  
 2 ~~plan at the silver level as provided in 42 U.S.C. §§ 18022 and 18071, as~~  
 3 ~~existing on January 1, 2013, that restricts cost sharing to amounts that do~~  
 4 ~~not exceed Medicaid cost sharing limitations.~~

5           ~~(b)(1) All participating carriers in the Arkansas Health Insurance~~  
 6 ~~Marketplace shall offer healthcare coverage conforming to the requirements of~~  
 7 ~~this subchapter.~~

8           ~~(2) A participating carrier in the Arkansas Health Insurance~~  
 9 ~~Marketplace shall maintain a medical loss ratio of at least eighty percent~~  
 10 ~~(80%) for an individual and small group market policy and at least eighty-~~  
 11 ~~five percent (85%) for a large group market policy as required under the~~  
 12 ~~Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as existing~~  
 13 ~~on January 1, 2013.~~

14           ~~(c) To assure price competitive choice among healthcare coverage~~  
 15 ~~options, the State Insurance Department shall assure that at least two (2)~~  
 16 ~~qualified health plans are offered in each county in the state.~~

17           ~~(d) Health insurance carriers offering healthcare coverage for~~  
 18 ~~program-eligible individuals shall participate in the Health Care Payment~~  
 19 ~~Improvement Initiative including:~~

20                   ~~(1) Assignment of primary care clinician;~~

21                   ~~(2) Support for patient-centered medical home; and~~

22                   ~~(3) Access of clinical performance data for providers.~~

23           ~~(e) On or before July 1, 2013, the State Insurance Department shall~~  
 24 ~~implement through certification requirements or rules, or both, the~~  
 25 ~~applicable provisions of this subchapter.~~

26  
 27           ~~20-77-2407. Enrollment.~~

28           ~~(a) The General Assembly shall assure that a mechanism within the~~  
 29 ~~Arkansas Health Insurance Marketplace is established and operated to~~  
 30 ~~facilitate enrollment of eligible individuals.~~

31           ~~(b) The enrollment mechanism shall include an automatic verification~~  
 32 ~~system to guard against waste, fraud, and abuse in the program.~~

33  
 34           ~~20-77-2408. Effective date.~~

35           ~~This subchapter shall be in effect until June 30, 2017, unless amended~~  
 36 ~~or extended by the General Assembly.~~