

2023 - 2025 REQUEST FOR SPECIAL LANGUAGE IN APPROPRIATION ACT

0710 DHS - Medical Services Division

ACT#: 195

SECTION#: 8

CURRENT SPECIAL LANGUAGE (WITH AGENCY REQUEST)

EXECUTIVE RECOMMENDATION

SPECIAL LANGUAGE - CODE AMENDMENT. Arkansas Code § 19-12-112, concerning the creation of the Medicaid Expansion Program Account and resulting from Initiated Act 1 of 2000, is amended to add an additional subsection to codify special language in appropriation acts to read as follows:

(e)(1) The Chief Fiscal Officer of the State shall establish separate paying accounts for the Medicaid Expansion Program to be used exclusively to draw down federal funds associated with the federal share of expenditures and for the state share of expenditures transferred from the Medicaid Expansion Program Account or for any other appropriate state matching funds.

(2) The Medicaid Expansion Program, established by Initiated Act 1 of 2000 and enacted in the Tobacco Settlement Proceeds Act, § 19-12-101 et seq., is a separate and distinct component of the Arkansas Medicaid Program, administered by the Department of Human Services and established under § 19-12-116(b)(1).

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<p>ACCOUNTS. Such appropriations and fund accounts as may be necessary to administer the provisions of this act shall be established on the books of the Chief Fiscal Officer of the State, State Treasurer, and the Auditor of the State.</p> <p>The provisions of this section shall be in effect only from July 1, 2022 <u>2023</u> through June 30, 2023 <u>2024</u>.</p>	<p align="center">AGENCY REQUEST</p>

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POSITIONS. (a) Nothing in this act shall be construed as a commitment of the State of Arkansas or any of its agencies or institutions to continue funding any position paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the position.

(b) State funds will not be used to replace Tobacco Settlement funds when such funds expire, unless appropriated by the General Assembly and authorized by the Governor.

(c) A disclosure of the language contained in (a) and (b) of this Section shall be made available to all new hire and current positions paid from the proceeds of the Tobacco Settlement by the Tobacco Settlement Commission.

(d) Whenever applicable the information contained in (a) and (b) of this Section shall be included in the employee handbook and/or Professional Services Contract paid from the proceeds of the Tobacco Settlement.

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TRANSFER RESTRICTIONS. The appropriations provided in this act shall not be transferred under the provisions of Arkansas Code 19-4-522, but only as provided by this act.

The provisions of this section shall be in effect only from July 1, ~~2022~~ 2023 through June 30, ~~2023~~ 2024.

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TRANSFERS OF APPROPRIATIONS. In the event the amount of any of the budget classifications of maintenance and general operation in this act are found by the administrative head of the agency to be inadequate, then the agency head may request, upon forms provided for such purpose by the Chief Fiscal Officer of the State, a modification of the amounts of the budget classification. In that event, he shall set out on the forms the particular classifications for which he is requesting an increase or decrease, the amounts thereof, and his reasons therefor. In no event shall the total amount of the budget exceed either the amount of the appropriation or the amount of the funds available, nor shall any transfer be made from the capital outlay or data processing subclassifications unless specific authority for such transfers is provided by law, except for transfers from capital outlay to data processing when determined by the Division of Information Systems that data processing services for a state agency can be performed on a more cost-efficient basis by the Division of Information Systems than through the purchase of data processing equipment by that state agency. In considering the proposed modification as prepared and submitted by each state agency, the Chief Fiscal Officer of the State shall make such studies as he deems necessary. The Chief Fiscal Officer of the State shall, after obtaining the approval of the Legislative Council or Joint Budget Committee, approve the requested transfer if in his opinion it is in the best interest of the state.

Upon determination by the Secretary of the Department of Human Services that a Reallocation of Resources is necessary for the effective operation of the Medicaid Tobacco Settlement Program Grants, the

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Secretary, with the approval of the Governor, shall have the authority to request from the Chief Fiscal Officer of the State a transfer of Appropriation. This transfer authority applies only to the Medicaid Tobacco Settlement Program Grants appropriation section of this Act between the Hospital and Medical Services line item and the Prescription Drugs line item. The limitation restrictions applicable to the Department Reallocation of Resources authority applies to this section.

The General Assembly has determined that the agency in this act could be operated more efficiently if some flexibility is given to that agency and that flexibility is being accomplished by providing authority to transfer between certain items of appropriation made by this act. Since the General Assembly has granted the agency broad powers under the transfer of appropriations, it is both necessary and appropriate that the General Assembly maintain oversight of the utilization of the transfers by requiring prior approval of the Legislative Council or Joint Budget Committee in the utilization of the transfer authority. Therefore, the requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

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COMPLIANCE WITH OTHER LAWS. Disbursement of funds authorized by this act shall be limited to the appropriation for such agency and funds made available by law for the support of such appropriations; and the restrictions of the State Purchasing Law, the General Accounting and Budgetary Procedures Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of this State, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of said funds.

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LEGISLATIVE INTENT. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations contained in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by Initiated Act 1 of 2000, the Agency Requests, Executive Recommendations and Legislative Recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption.

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EXECUTIVE RECOMMENDATION

SPECIAL LANGUAGE - CODE AMENDMENT. Arkansas Code Title 20, Chapter 77, Subchapter 4, is amended to add an additional section to codify special language in appropriation acts to read as follows:

AGENCY REQUEST

20-77-407. Pharmaceutical dispensing fee survey.

(a) No more than two (2) years before making any changes to the current pharmaceutical dispensing fee, the Department of Human Services shall conduct an independent survey utilizing generally accepted accounting principles to determine the cost of dispensing a prescription by pharmacists in Arkansas.

(b)(1) Only factors relative to the cost of dispensing shall be surveyed under subsection (a) of this section.

(2) The factors surveyed under subsection (a) of this section shall not include actual acquisition costs, average profit, or any combination of actual acquisition costs or average profit.

(c)(1) The survey results obtained under this section shall be the basis for establishing the dispensing fee paid to participating pharmacies in the Medicaid prescription drug program in accordance with federal requirements.

(2) The dispensing fee shall be no lower than the cost of dispensing as determined by the survey conducted under this section.

(e) This section does not prohibit the department from increasing the dispensing fee at any time.

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<p>MEDICAL SERVICES - GENERAL MEDICAID RATE METHODOLOGY PROVISIONS.</p> <p>(a) Rates established by the Division of Medical Services for the services or programs covered by this Act shall be calculated by the methodologies approved by the Centers for Medicare and Medicaid Services (CMS). The Division of Medical Services shall have the authority to reduce or increase rates based on the approved methodology. Further, the Division of Medical Services shall have the authority to increase or decrease rates for good cause including, but not limited to: (1) Identification of provider(s) who can render needed services of equal quality at rates less than traditionally charged and who meet the applicable federal and state laws, rules and regulations pertaining to the provision of a particular service;</p> <p>(2) Identification that a provider or group of providers has consistently charged rates to the Arkansas Medicaid Program greater than to other purchasers of medical services of similar size;</p> <p>(3) The Division determines that there has been significant changes in the technology or process by which services are provided by a provider or group of providers which has affected the costs of providing services, or;</p> <p>(4) A severe economic downturn in the Arkansas economy which has affected the overall state budget of the Division of Medical Services.</p> <p>The Division of Medical Services shall make available to requesting providers, the CMS's inflationary forecasts (CMS Market Basket Index). Rates established with cost of living increases based on the CMS Market Basket Index or other indices will be adjusted annually except when the state budget does not provide sufficient appropriation and funding to affect</p>	<p align="center">AGENCY REQUEST</p>

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the change or portion thereof.

(b) Any rate methodology changes proposed by the Division of Medical Services both of a general and specific nature, shall be subject to prior approval by the Legislative Council or Joint Budget Committee.

Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Human Services - Division of Medical Services may operate more efficiently if some flexibility is provided to the Department of Human Services - Division of Medical Services authorizing broad powers under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

The provisions of this section shall be in effect only from July 1, ~~2022~~ 2023 through June 30, ~~2023~~ 2024.

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FUND USAGE AUTHORIZED. The Arkansas Children's Hospital may request the Department of Human Services - Division of Medical Services to retain in the Department of Human Services Grant Fund account an amount not to exceed \$2,100,000 from funds made available by this Act in the Child and Family Life Institute line item of the Grants appropriation to be used to match federal funds used for supplemental Medicaid payments to Arkansas Children's Hospital. These retained funds shall not be recovered to transfer to the General Revenue Allotment Reserve Fund.

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SPECIAL LANGUAGE - CODE AMENDMENT. Arkansas Code Title 20, Chapter 77, Subchapter 1, is amended to add an additional section to codify special language in appropriation acts to read as follows:

AGENCY REQUEST

20-77-148. Early and Periodic Screening, Diagnostic, and Treatment. (a) The General Assembly finds that:

(1) The Medicaid State Plan must include the provision of early and periodic screening, diagnostic, and treatment services as those services are defined in 42 U.S.C. §§ 1396d(r), 1396a(a)(10)(A), 1396d(a)(4)(B), and 1396a(a)(43);

(2) Federal law, 42 U.S.C. § 1396d(r)(5), lists in detail the screening services, vision services, dental services, and hearing services that the State Medicaid Plan must expressly include, but with regard to treatment services, it states that early and periodic screening, diagnostic, and treatment means "[s]uch other necessary health care, diagnostic services, treatment, and other measures described in section 1950(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan";

(3) Federal law, 42 U.S.C. § 1396d(r)(5) states that early and periodic screening, diagnostic, and treatment services includes any treatments or measures outlined in 42 U.S.C. §1396d(a), which has twenty-seven sub-parts;

(4) Sub-part (a)(13) of 42 U.S.C. §1396d(a), in particular, which defines medical assistance reimbursable by Medicaid as "other diagnostic, screening, preventive, and rehabilitative services, including any

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medical or remedial services recommended by a physician . . . for the maximum reduction of physical and mental disability and restoration of an individual to the best possible functional level," when read with the other sections of the federal Medicaid Act, mandates that early intervention day treatment be provided when it is prescribed by a physician;

(5) Reading 42 U.S.C. § 1396a, 42 U.S.C. § 1396d(a), and 42 U.S.C. § 1396d(r) together, the Medicaid State Plan need not specifically list every treatment service conceivably available under the early and periodic screening, diagnostic, and treatment mandate;

(6) The Medicaid State Plan, however, must pay part or all of the cost of treatments to ameliorate conditions discovered by the screening process when those treatments meet the definitions set forth in 42 U.S.C. § 1396a; and

(7)(A) The Medicaid State Plan states that the "State will provide other health care described in [42 U.S.C. 1396d(a)] that is found to be medically necessary to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, even when such health care is not otherwise covered under the State Plan."

(B) This provision meets the early and periodic screening, diagnostic, and treatment mandate of the federal Medicaid Act.

(b) It is the intent of the General Assembly to affirm the district court's decision in *Pediatric Specialty Care, Inc. v. Arkansas Dept. of Human Services*, 293 F.3d 472 (8th Cir. 2002), to the extent that it holds that a Medicaid-eligible individual has a federal right to early intervention day treatment when a physician recommends such treatment.

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(c)(1) After child health management services clinic staff perform a diagnostic evaluation of an eligible child, if the child health management services physician prescribes early intervention day treatment as a service that would lead to the maximum reduction of medical and physical disabilities and restoration of the child to his or her highest possible functional level, the Arkansas Medicaid State Plan shall reimburse the treatment.

(2) As child health management services clinics are the only providers of early intervention day treatment, the Arkansas Medicaid Program shall reimburse child health management services clinics.

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SPECIAL LANGUAGE - CODE AMENDMENT. Arkansas Code Title 20, Chapter 77, Subchapter 1, is amended to add an additional section to codify special language in appropriation acts to read as follows:

20-77-148. Personal Care Program - Private care agency participation requirements.

(a)(1) It is the intent of the General Assembly that the Department of Human Services, in the administration of the Arkansas Medicaid Program, set forth Medicaid provider participation requirements for personal care providers that will ensure sufficient available personal care providers to meet the required needs of all eligible recipients, including ensuring available in-home services twenty-four (24) hours a day and seven (7) days a week for personal care.

(2) The purpose of this section is to:

(A) Allow the private care agencies to be eligible to provide Medicaid reimbursed personal care services seven (7) days a week but does not supersede rules promulgated by the Department of Human Services establishing monthly benefit limits and prior authorization requirements; and

(B) Ensure the care provided by the private care agencies is consistent with the rules promulgated by the Department of Health.

(b) As used in this section, "private care agencies" means healthcare providers that:

(1) Are licensed by the United States Department of Labor;

(2) Are certified as Home and Community Based Services

Providers;

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(3) Furnish in-home staffing services for respite, chore services, and homemaker services; and

(4) Are covered by liability insurance of not less than one million dollars (\$1,000,000) covering their employees and independent contractors while engaging in providing services such as personal care, respite, chore services, and homemaker services.

(c) The availability of providers shall not require the Department of Human Services to reimburse for twenty-four (24) hours per day of personal care services.

(d) The Department of Human Services shall take necessary action as required by the Centers for Medicare and Medicaid Services to amend the Arkansas Medicaid Program to include private care agencies as qualified entities to provide Medicaid reimbursed personal care services.

(e)(1) The private care agencies shall comply with rules promulgated by the Department of Health, which shall establish a separate licensure category for the private care agencies for the provision of Medicaid reimbursable personal care services seven (7) days a week.

(2) The Department of Health shall supervise the conduct of the private care agencies.

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ARKANSAS HEALTH AND OPORTUNITY FOR ME AND ARKANSAS HEALTH INSURANCE MARKETPLACE RESTRICTIONS. (a) As used in this section, "Arkansas Health and Opportunity for Me" means Arkansas Health and Opportunity for Me established under the Arkansas Health and Opportunity for Me Act of 2021, Arkansas Code § 23-61-1001 et seq.

(b)(1) Determining the maximum number of employees, the maximum amount of appropriation, for what purposes an appropriation is authorized, and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly.

(2) The purposes of subdivision (b)(1) of this section are typically accomplished by:

(A) Identifying the purpose in the appropriation act;

(B) Delineating such maximums in the appropriation act for a state agency; and

(C) Delineating the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law, Arkansas Code § 19-5-101 et seq.

(3) It is both necessary and appropriate that the General Assembly restrict the use of appropriations authorized in this act.

(c)(1) Except as provided in this subsection, the Department of Human Services shall not allocate, budget, expend, or utilize any appropriation authorized by the General Assembly for the purpose of advertisement, promotion, or other activities designed to promote or encourage enrollment in the Arkansas Health Insurance Marketplace or Arkansas Health and Opportunity for Me, including without limitation:

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- recipients;
- (A) Unsolicited communications mailed to potential recipients;
 - (B) Television, radio, or online commercials;
 - (C) Billboard or mobile billboard advertising;
 - (D) Advertisements printed in newspapers, magazines, or other print media; and
 - (E) Internet websites and electronic media.
- (2) This subsection does not prohibit the department from:
- (A) Direct communications with:
 - (i) Licensed insurance agents; and
 - (ii) Persons licensed by the department;
 - (B) Solicited communications with potential recipients;
 - (C)(i) Responding to an inquiry regarding the coverage for which a potential recipient might be eligible, including without limitation providing educational materials or information regarding any coverage for which the individual might qualify.
 - (ii) Educational materials and information distributed under subdivision (c)(2)(C)(i) of this section shall contain only factual information and shall not contain subjective statements regarding the coverage for which the potential recipient might be eligible; and
 - (D) Using an Internet website for the exclusive purpose of enrolling individuals in the Arkansas Health Insurance Marketplace or Arkansas Health and Opportunity for Me.
- (d) The Department of Human Services shall not apply for or accept

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any funds, including without limitation federal funds, for the purpose of advertisement, promotion, or other activities designed to promote or encourage enrollment in the Arkansas Health Insurance Marketplace or Arkansas Health and Opportunity for Me.

(e)(1) Except as provided in subdivision (e)(2) of this section, the Department of Human Services shall not:

(A)(i) Except as provided in subdivision (e)(1)(A)(ii) of this section, allocate, budget, expend, or utilize an appropriation authorized by the General Assembly for the purpose of funding activities of navigators, guides, certified application counselors, and certified licensed producers under the Arkansas Health Insurance Marketplace Navigator, Guide, and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

(ii) Subdivision (e)(1)(A)(i) of this section does not apply to regulatory and training responsibilities related to navigators, guides, certified application counselors, and certified licensed producers; and

(B) Apply for or accept any funds, including without limitation federal funds, for the purpose of funding activities of navigators, guides, certified application counselors, and certified licensed producers under the Arkansas Health Insurance Marketplace Navigator, Guide, and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

(2) Subdivision (e)(1) of this section does not apply to certified application counselors at health related institutions, including without limitation the University of Arkansas for Medical Sciences.

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(f) An appropriation authorized by the General Assembly shall not be subject to the provisions allowed through reallocation of resources or transfer of appropriation authority for the purpose of transferring an appropriation to any other appropriation authorized for the Department of Human Services to be allocated, budgeted, expended, or utilized in a manner prohibited by this section.

(g) The provisions of this section are severable, and the invalidity of any subsection or subdivision of this section shall not affect other provisions of the section that can be given effect without the invalid provision.

(h) This section expires on June 30, ~~2023~~ 2024.

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EXECUTIVE RECOMMENDATION

MEDICAL SERVICES - COMMUNITY AND EMPLOYMENT SUPPORTS MEDICAID WAIVER.

AGENCY REQUEST

(a) Of the funding allocated to the Department of Human Services Grants Fund Account under § 19-5-402, the first thirty-seven million six hundred thousand dollars (\$37,600,000) shall be set aside in its own subfund by the Department of Human Services and shall be used only for home and community-based services to individuals with intellectual and developmental disabilities under the Community and Employment Supports Medicaid Waiver Program or a successor Medicaid Waiver program that provides home and community-based services to individuals with intellectual and developmental disabilities.

(b) At the close of the fiscal year ending June 30, ~~2023~~ 2024, any unexpended balance of monies set aside as established in subsection (a) herein shall be transferred forward and made available for the same purpose for the fiscal year ending June 30, ~~2024~~ 2025.

(c) The provisions of this section shall be in effect only from July 1, ~~2022~~ 2023 through June 30, ~~2023~~ 2024.

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ASSISTED LIVING FACILITY REIMBURSEMENT - ACCOUNTING OF HOME AND COMMUNITY-BASED FUNDS.

AGENCY REQUEST

(a)(1) The Department of Human Services shall take the necessary action to submit a waiver application to the Centers for Medicare and Medicaid Services to increase reimbursement rates for assisted living facilities under the Living Choices Assisted Living Waiver.

(2) The department shall study and explore methods to increase the reimbursement rates for assisted living facilities under the Living Choices Assisted Living Waiver, including without limitation setting the reimbursement rate for assisted living facilities under the Living Choices Assisted Living Waiver as a percentage of the reimbursement rate for nursing home facilities.

(b) The department shall provide an accounting of funds allocated to qualifying entities under home and community-based services to the Legislative Council.

(c)(1) The Secretary of the Department of Human Services shall provide, in person, a monthly update to the Legislative Council on the status of the actions listed in subsections (a) and (b) of this section until the conclusion or resolution of these actions.

(2) If the General Assembly is in session, the secretary shall provide the updates described in subdivision (c)(1) of this section to the Joint Budget Committee.

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SEVERABILITY. If any provisions of this act or the application of this act to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

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