2021 Arkansas Insurance Legislation Summary: Health Insurance

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This is the third article in a series of summaries of Insurance legislation from the 93rd Arkansas General Assembly.

The 93rd Arkansas General Assembly convened on January 11, 2021 and entered into an extended recess on April 27, 2021. The resolution authorizing the extended recess provides for the legislature to reconvene for the following purposes:

- Considering vetoes;
- Correcting errors and oversights;
- Completing work on congressional redistricting; and
- Considering legislation related to the COVID-19 public health emergency and distribution of COVID-19 relief funds.

The legislature expects to return in the fall to complete congressional redistricting. At least two special sessions are also expected to be called later this year. One special session is expected to consider tax cuts. A second special session is expected to consider changes to the state public employee and teacher health plans.

Acts not carrying an emergency clause or a specified effective date generally take effect on the 91st day following the date of sine die adjournment. According to the resolution permitting the extended recess, acts not carrying an emergency clause will take effect on the 91st day following the date of recess unless the legislature reconvenes before the expiration of 90 days. The Attorney General has opined that such bills will become effective on July 28, 2021. If the General Assembly reconvenes before the expiration of the 90 days, however, the effective date of bills passed without an emergency clause will be extended by the number of days the legislature is in session.

Legislation of Interest to Health Insurers

A. Passed

Prescription Drugs

1. HB1569 (Act 965) – Requires health plans to include any cost-sharing amounts paid by or on behalf of an enrollee in calculating cost-sharing responsibilities.
2. HB1709 (Act 1104) – Prohibits pharmaceutical manufacturers from offering discounts on insulin products unless the discount is offered directly to the end user and adjudicated at the point of sale. Effective January 1, 2022.
3. HB1852 (Act 992) – Requires the State Board of Pharmacy to promulgate and maintain standards for prescription delivery services and prohibits pharmacists/pharmacies affiliated with

an insurer, PBM, pharmaceutical manufacturer, or pharmaceutical wholesaler from requiring that a patient receive prescriptions through home delivery services.

4. HB1881 (Act 1103) – Prohibits a third-party payer or pharmacy benefits manager from requiring a patient to use a mail-order pharmacy; prohibits discrimination with regard to 340B drug pricing under the Veterans Health Care Act.
5. HB1907 (Act 1105) – Authorizes healthcare providers to determine whether certain drugs should be billed as a medial or pharmacy benefit. The scope of the bill is initially limited to treatments for a hematology or oncology diagnosis but permits the Insurance Department to expand the scope of the law.
6. SB99 (Act 97) – Requires healthcare insurers to base step therapy protocols on specified clinical practice guidelines or published peer-reviewed data developed by independent experts; establishes exceptions from protocols and procedures for requesting exceptions. Effective January 1, 2022.
7. SB446 (Act 645) – Clarifies that health insurance plans under the Arkansas Works program are subject to Act 97 of 2021 governing step therapy protocols.
8. SB617 (Act 1053) – Prohibits health care entities from requesting a new or refill prescription from a prescriber for a patient who does not have a prior relationship with the pharmacy without express written consent and places various restrictions and disclosure requirements on certain pharmacies, physicians, or other licensed prescribers who utilize out-of-state pharmacies and common carriers for deliveries.

Networks

1. HB1804 (Act 665) – Makes changes to the Arkansas Pharmacy Benefits Manager Licensure Act and requires the Insurance Commissioner to promulgate rules that place community pharmacies within two to 15 miles of the majority of populations in areas, depending on the area's urban/rural status.
2. SB603 (Act 723) – Requires health insurers to negotiate in good faith with ambulatory surgical centers that have converted to temporary hospital facilities during a public health emergency.

Telehealth

1. HB1063 (Act 829) – Authorizes audio-only consultations to qualify as covered services under the Telemedicine Act. Effective April 21, 2021.
2. HB1068 (Act 767) – Authorizes healthcare professionals to use telemedicine to perform group meetings for services including group therapy and clarifies that the home of a patient is included as an originating site with regard to coverage for telemedicine services.
3. HB1176 (Act 624) – Mandates Medicaid reimbursement for behavioral and mental health services that are provided via telemedicine. Effective April 8, 2021.

Medicaid

1. HB1515 (Act 508) – Prohibits an insurance carrier or participating provider from holding, owning, or having a beneficial ownership in more than one Provider Led Shared Services Entity.
2. HB1862 (Act 886) – Prohibits the Arkansas Medicaid Program from requiring a beneficiary to first obtain a referral from a primary care provider for their first ten mental health counseling visits.

3. HB1781 (Act 758) – Increases the limit on monthly prescriptions for participants in the Arkansas Medicaid Program from three to six and instructs the Department of Human Services to apply for a federal waiver to implement the program.
4. HB1810 (Act 830) – Requires the Department of Human Services to establish separate Medicaid reimbursement rates for vagus nerve stimulation therapy at 100 percent of the cost of acquiring the therapy system device in addition to the surgery fees already listed.
5. SB143 (Act 745) – Ensures that Medicaid beneficiaries have immediate access to approved new products and label expansions and requires the Department of Human Services to appoint two individuals to the Medicaid Drug Utilization Review Board.
6. SB387 (Act 637) – Requires the Arkansas Medicaid Program to provide coverage for off- label use of drug treatments for the pediatric disorders known as PANS and PANDAS.
7. SB410 (Act 530) – Creates the Arkansas Health and Opportunity for Me Act of 2021 (ARHOME), replacing the Arkansas Works Program for expanded Medicaid coverage. Creates incentives for individuals to gain qualified health insurance premium assistance. Effective January 1, 2022.
8. SB521 (Act 643) – Requires the Arkansas Medicaid Program to cover a continuous glucose monitor for an individual with type 1 diabetes or any other type of diabetes with the use of insulin or evidence of Level 2 or 3 hypoglycemia.
9. SB607 (Act 782) – Changes the certification origin for a peer support specialist in the Medicaid Program from the Arkansas Substance Abuse Certification Board to an accredited organization approved by the Arkansas Alcohol and Drug Abuse Coordinating Council.
10. SB621 (Act 899) – Requires the Medicaid Program and the Department of Human Services to reconsider a number of consent decrees resulting from court decisions in light of an intervening Supreme Court decision.

Mandates

1. HB1357 (Act 583) – Mandates coverage of positron emission tomography to screen for or to diagnose cancer in a patient upon the recommendation of the patient's physician when the patient has a prior history of cancer.
2. HB1450 (Act 357) – Requires health benefit plans to provide coverage for early refills of prescription eye drops.
3. HB1545 (Act 656) – Revises the definition of "autism spectrum disorder" to include a condition diagnosed according to the diagnostic criteria under the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and adds speech-language pathologists to list of autism service providers.
4. SB212 (Act 430) – Creates the Arkansas PANS/PANDA Advisory Council. Effective March 24, 2021.
5. SB290 (Act 553) – Requires healthcare insurers to ensure that the cost-sharing requirement under a health benefit plan that is applicable to a diagnostic examination for breast cancer is no less favorable than the requirement applicable to a screening examination.
6. SB309 (Act 779) – Redefines "persons at high risk for colorectal cancer" to include individuals over 45 with any family history of colorectal cancer; states that a covered person shall not be subject to a deductible, coinsurance, or cost-sharing requirement for screening. Effective January 1, 2022.

7. SB602 (Act 955) – Requires craniofacial anomaly reconstructive surgery coverage to be approved by a member of a nationally approved cleft-craniofacial team of the American Cleft Palate-Craniofacial Association and approved by a health plan within two days for non-urgent cases and 24 hours for urgent cases. Mandates annual coverage of sclera contact lenses, including coatings; office visits; an ocular impression of each eye; any additional tests or procedures that are medically necessary for a craniofacial patient; every two years, two hearing aids and two hearing aid molds for each ear; and a dehumidifier every four years. Prohibits out-of-network charges for craniofacial anomaly treatments. Effective April 27, 2021.
8. SB639 (Act 1054) – Requires health benefit plans offered, issued, or renewed in Arkansas to provide coverage for off-label use of drug treatments to treat patients who are diagnosed with PANS or PANDAS.
9. SB664 (Act 939) – Exempts health savings account-qualified health insurance policies from prohibitions on cost-sharing requirements with certain exceptions for preventative care.

General

1. HB1570 (Act 626) – Prohibits providing any of a list of gender transition procedures to persons who are under 18 and are gender nonconforming or experiencing gender dysphoria; prohibits public funding and health insurance for such procedures.
2. HB1714 (Act 979) – Allows MEWA reserves to be established by a letter of credit and permits the sponsor of a MEWA to have been organized for less than a year if the sponsor has a substantial business purposes other than providing insurance.
3. SB239 (Act 383) – Amends attachment point criteria for employee benefit stop loss policies.
4. SB289 (Act 462) – Ensures a right of conscience for all healthcare institutions, healthcare payers, and medical practitioners; prohibits discrimination based on medical decisions made due to religious, moral, ethical, or philosophical principles with limited exceptions.
5. SB505 (Act 651) – Requires a healthcare provider to co-prescribe naloxone or another opioid antagonist when prescribing or dispensing an opioid of 50 MME or more per day or when certain past prescriptions or patient histories are present.

B. Failed/Defeated/No Action in Committee

1. HB1064 – Would have required hospitals to submit data regarding insurers' hospital reimbursement rates to the Insurance Department for publication but was not presented.
2. HB1138 – Would have required health insurance providers to cover positron emission tomography imaging tests for patients who have a prior history of cancer but was withdrawn.
3. HB1404 – Would have exempted certain not-for-profit organizations providing noninsurance health care benefits from insurance regulation but failed to advance out of the House Insurance and Commerce Committee.
4. HB1428 – Would have repealed the Arkansas Works Act of 2016; moved enrollees to the fee-for-service Medicaid Program on and after January 1, 2022; terminated Medicaid expansion if the federal Medicaid assistance percentage is reduced below 90%; and directed the Governor to request a Medicaid block grant but failed to advance out of the House Public Health, Welfare and Labor Committee.
5. HB1945 – Would have required pharmacies applying for a pharmacy permit to be a licensed pharmacist, a partnership in which each active member is a licensed pharmacist, a corporation in which the majority stock is owned by a licensed pharmacist, or a limited liability company

majority owned by a licensed pharmacist but failed to advance out of the House Public Health, Welfare and Labor Committee.

6. SB13 – Would have provided immunity to healthcare providers in the course of performing emergency management functions related to COVID-19 but was not presented.
7. SB198 – Would have prohibited a healthcare provider from reporting negative financial information to a consumer reporting agency if the patient is a covered person and has paid or is in the process of paying outstanding balances but was not presented.
8. SB672 – Would have prevented an insurer from reimbursing an outpatient surgery center a rate less than 90 percent of an average rate of reimbursement for procedures billed as a hospital outpatient service for the county where the outpatient surgery center is licensed but was not presented.

C. Submitted for Interim Study

1. ISP-2021-004 – Requires a fiscal impact statement for any proposed legislation imposing a new or increased cost obligation for health benefit plans including pharmacy benefits on an entity of the state.

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View the fourth article of the series: 2021 Arkansas Insurance Legislation Summary: Life Insurance

View the fifth article of the series: 2021 Arkansas Insurance Legislation Summary: Arkansas Insurance Business Transfer Act

View the sixth article of the series: 2021 Arkansas Insurance Legislation Summary: Act 925 Prohibits Life Insurance/Annuity Beneficiary Change through Will