



# Connecting the Dots: Why Arkansas's Medicaid expansion will not expire if the legislature does not act this session

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## Overview

In 2013, the Arkansas legislature voted to expand Medicaid eligibility to able-bodied, childless adults through ObamaCare. To garner conservative support for this expansion of welfare, policymakers decided to ask the Obama administration for a waiver to funnel these newly-eligible enrollees through the ObamaCare exchange and give them “private insurance” plans, rather than conventional Medicaid coverage. This model was branded as the “*private option*” and Arkansas still uses this mechanism to deliver expansion benefits today, even though the term “private option” has been largely retired from legislative discourse and is now more often referred to as “*Arkansas Works*.”

Virtually every legislative session since has included spirited debates over whether Arkansas should continue expansion, a key pillar of ObamaCare, at all. But as the new general assembly begins their work in 2021, the conversation has shifted to whether Arkansas should continue using the “private option” model to deliver expansion benefits.

The model has proven to be wildly more expensive than regular expansion. State-commissioned reports have shown that this model is *twice* as expensive as regular expansion.<sup>1</sup> It is no wonder that the only two states to replicate Arkansas's more expensive model have since scrapped it.<sup>2</sup>

Now, a large contingency of Arkansas lawmakers—backed by a majority of Arkansas voters—are prepared to take a similar step, but confusion exists about how to legally get there.

Some members are being led to believe that the legislature must proactively reauthorize the expansion program or the entire program, along with the waiver, will sunset at the end of this calendar year. But a closer look at how Arkansas got here will clearly show that by doing nothing, the legislature can achieve something—specifically, by declining to act, the legislature can simply allow the “private option” model to expire and naturally transition to conventional Medicaid expansion, saving taxpayers millions of dollars per year.

## Arkansas's original expansion included no sunset or expiration for expansion

Arkansas's Medicaid expansion was originally created by *Act 1498* of 2013.<sup>3</sup> This act authorized the Department of Human Services (DHS) to amend the state's Medicaid plan and expand eligibility to the ObamaCare-prescribed group. This act had no expiration or sunset.

DHS followed this legislative directive and received federal approval to expand Medicaid to the ObamaCare population on December 10, 2013 and made the expansion population a “mandatory group” in Arkansas Medicaid.<sup>4</sup> **Absent any further action, this eligibility group will remain as a part of the state’s Medicaid program.**

### **The legislature passed a real sunset of expansion eligibility, but it was unraveled**

In 2015, after political support for expansion had virtually vanished, the legislature passed SB96 (*Act 46 of 2015*) which, after various amendments, ultimately included language that would have forced DHS to unwind expansion altogether at the end of 2016.<sup>5</sup> This was designed to give members political cover to vote for the funding and get the DHS budget approved while also being able to say they voted to “end expansion.”

But the expiration of expansion eligibility was contingent upon the legislature taking no additional action:

*“Under no circumstances may Medicaid eligibility be extended past December 31, 2016, for the current Medicaid expansion population...without express legislative approval through a proper enactment of law by the General Assembly.”*

The bill even required the department to re-amend the Medicaid state plan and remove expansion eligibility—but again, only if *the legislature failed to act* before the end of 2016.

Ultimately, they *did* act, and, as a result, they erased the sunset of expansion eligibility.

The legislature convened and passed the *Arkansas Works Act* in a special session in 2016. This legislation—*Act 1 of the Second Extraordinary Session*—instructed DHS to continue granting eligibility to the Medicaid expansion population.<sup>6</sup>

*“The Department of Human Services...shall: (A) Provide health insurance or medical assistance under this subchapter to all eligible individuals.”*

The act defined “eligible individuals” as individuals eligible for Medicaid as set forth under ObamaCare.<sup>7</sup>

This effectively unraveled the sunset of eligibility that was set to take effect at the end of 2016. **Expansion has since continued and will continue into the future unless the legislature takes proactive action to repeal expansion eligibility.**

### **“Arkansas Works” will expire without legislative action, but expansion eligibility will not**

While the *Arkansas Works Act/Act 1* did include a sunset clause, this sunset only applies to the act itself which did not create expansion eligibility. That occurred in 2013 when the state amended its state plan and, as noted, the sunset of eligibility was already unraveled.

The *Arkansas Works Act* simply cemented the private option model into state law and required the department to pursue premiums and other tweaks to the program via federal waivers (much of which was undone in 2017). If it expires, Arkansas will simply transition to conventional expansion and expansion coverage will remain intact.

## Timeline of events:

- **2013:** Arkansas legislature authorized DHS to amend the Medicaid state plan and expand eligibility to able-bodied, working-age adults (*Act 1498*).
- **2013:** DHS filed a state plan amendment with the federal government to make the expansion population a mandatory category in Arkansas Medicaid.
- **2015:** The legislature passed a sunset for expansion eligibility (*Act 46*).
- **2016:** The legislature reauthorized expansion and eliminated *Act 46*'s sunset of eligibility (*Act 1*); this bill included an expiration for the *Arkansas Works Act*, but not expansion eligibility.
- **End of 2021:** The *Arkansas Works Act* and the Section 1115 Medicaid waiver—including the “private option” model—will expire, but expansion eligibility will remain intact.

## Bottom line: The Arkansas legislature should simply let the “private option” model expire

Ultimately, the best move for the legislature would be to let the *Arkansas Works Act* and subsequent waiver expire. If this happens, Arkansas's existing expansion population will simply transition to conventional Medicaid at the end of this calendar year.

This would be a wise policy decision by the legislature. The “private option” model has proven to be a financial boondoggle for the state and a political lightning rod. The only two states that opted to follow Arkansas's lead and implement their own private options quickly abandoned them due to skyrocketing costs.<sup>8</sup>

This move is supported by Arkansas voters. Indeed, **54 percent of all Arkansas voters and nearly two-thirds of Arkansas Republicans support shifting to conventional expansion.**<sup>9</sup>

In addition, given the state of affairs at the federal level, it is exceedingly unlikely that Arkansas will be able to obtain meaningful flexibility through the Medicaid waiver process to achieve real savings or any conservative reforms.

To protect Arkansas's budget and free up more funding for the truly needy, infrastructure, and public safety, the legislature should let the *Arkansas Works Act*—and the private option model along with it—expire and end this debacle once and for all.

<sup>1</sup> Jonathan Ingram, “Arkansas So-Called Conservative Approach to ObamaCare Expansion Has Failed,” Foundation for Government Accountability (2020), <https://thefga.org/research/arkansas-conservative-obamacare-expansion-has-failed/>.

<sup>2</sup> Ibid.

<sup>3</sup> Arkansas Legislature, “Act 1498 of 2013,” State of Arkansas (2013).

<https://www.arkleg.state.ar.us/Acts/FTPDocument?path=%2FACTS%2F2013R%2FPublic%2F&file=1498.pdf&ddBienniumSession=2013%2F2013R>.

<sup>4</sup> Centers for Medicare and Medicaid Services, “Arkansas State Plan Amendment 13-15 MM1,” U.S. Department of Health and Human Services (2013), <https://www.medicaid.gov/sites/default/files/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/AR/AR-13-15-MM1.pdf>.

<sup>5</sup> Arkansas Legislature, “Act 46 of 2015,” State of Arkansas (2015).

<https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2015%2FPublic%2F&file=46.pdf>.

<sup>6</sup> Arkansas Legislature, “Act 1 of the Second Extraordinary Session,” State of Arkansas (2016).

<https://www.arkleg.state.ar.us/Acts/FTPDocument?path=%2FACTS%2F2016S2%2FPublic%2F&file=1.pdf&ddBienniumSession=2015%2F2016S2>.

<sup>7</sup> Section 1902 (a)(10)(A)(i)(VIII) of the Social Security Act, 42 U.S.C. (S) 1396a.

<sup>8</sup> Jonathan Ingram, “Arkansas So-Called Conservative Approach to ObamaCare Expansion Has Failed,” Foundation for Government Accountability (2020), <https://thefga.org/research/arkansas-conservative-obamacare-expansion-has-failed/>.

<sup>9</sup> Foundation for Government Accountability, “Policy Priorities for Arkansas Voters,” Foundation for Government Accountability (2020) <https://thefga.org/poll/arkansas>.

