

Notice for Extended Public Comment Period
Arkansas's Tax Equity and Fiscal Responsibility Act (TEFRA-like)
Section 1115 Demonstration Project Application for Five-Year Period
January 2023-December 2027

Program Description

The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 gave individual states the option to provide health care benefits to children living with disabilities whose family income was too high to qualify for traditional Medicaid. Prior to 2002, Arkansas opted to place eligible disabled children in traditional Medicaid by assigning them to a new aid category within its Medicaid State Plan. While this arrangement allowed the children to remain in their homes, it ultimately placed an unsustainable financial burden on the State during a time when budget limitations were becoming more restrictive. To address the financial viability of the program, the State chose to transition the disabled children from traditional Medicaid to a TEFRA-like, Section 1115 demonstration waiver program.

Using the flexibility available within a demonstration waiver, Arkansas was able to develop and implement a sliding scale premium fee structure based on the family's income, effectively passing a portion of the cost to the eligible child's family. Families with annual incomes at or below 150% of the federal poverty level (FPL) are exempted from the premium requirement, and program eligibility is determined solely on the assets and resources of the child.

Waiver and Expenditure Authorities

Under the authority of section 1115(a) (2) of the Social Security Act (the Act), Arkansas was granted the following expenditure authority to enable Arkansas to operate the program.

1. Demonstration Waiver Population – Expenditures for services provided to children ages 18 and under, who require an institutional level of care, and would otherwise be Medicaid-eligible under a TEFRA state plan option.

Additionally, the following provision is considered not applicable to the TEFRA program

1. Cost Sharing Section 1902(a)(14) Insofar as it incorporates Section 1916—To enable Arkansas to charge a sliding scale monthly premium to custodial parent(s) of eligible children with annual family income above \$25,000, except that no premium may be charged to families with incomes less than 150 percent of the federal poverty level.

Arkansas's 1115 TEFRA-like demonstration waiver was originally approved in October 2002 and implemented January 1, 2003. Following the initial five-year demonstration period (October 1, 2002 – December 31, 2007) , the waiver was twice renewed with three-year extensions (January 1, 2008 – December 31, 2010 and January 1, 2011 – December 31, 2013) and once for a one 1-year extension (January 1, 2014 – December 31, 2014) when CMS was unable to give states' extension renewal applications the attention needed for thorough reviews due to the number of 1115 demonstration

waiver extension renewal applications submitted to CMS at the end of 2013. CMS renewed all affected demonstration waivers for an additional 12-month period (January 1, 2014 – December 31, 2014). Then, because not all could be reviewed/approved in that 12-month period, some states' demonstrations, including Arkansas's TEFRA-like demonstration, were renewed for additional months to complete the review/approval process. Arkansas's TEFRA-like demonstration's renewal was extended for an additional 4 months (January 1, 2015 – May 11, 2015) until the review/approval process was completed. CMS approved a three-year extension for the period May 12, 2015 – December 31, 2017, and another extension through December 31, 2022. With this application, Arkansas is requesting a five-year extension of the state's TEFRA-like demonstration.

Goals and Objectives

The State's original objective was to replace the Medicaid state plan optional TEFRA aid category with a TEFRA-like demonstration. The State, with its budgetary limitations, wanted to continue to provide services to this population of children but needed to reduce the State's financial obligations. The State chose to reduce its financial obligations by requiring a sliding-scale family premium. If the TEFRA child's family had health insurance coverage for the child from another source, the family was, and still is, allowed to retain that insurance.

The State's current objective is to continue providing medical services to disabled children eligible for Medicaid under Section 134 of the Tax Equity and Fiscal Responsibility Act through the TEFRA-like Section 1115 demonstration waiver. Additionally, the State would like to continue to achieve the following four goals, established in its current demonstration evaluation:

Goal 1: *Ensure demonstration enrollees have equal or better access to health services compared to the Medicaid fee-for-service population.*

Goal 2: *Ensure demonstration enrollees have access to timely and appropriate preventive care.*

Goal 3: *Ensure enrollment in the demonstration increases clients' perceived access to health care services and experience in the quality of care received.*

Goal 4: *Ensure premium contributions are affordable, that they do not create a barrier to health care access, and that the proportion of clients who experience a lockout period for nonpayment of premiums is relatively low.*

Eligibility

To be eligible for the TEFRA-like demonstration, a child must meet the requirements for medical necessity, appropriateness of care, and financial need.

Medical necessity: The TEFRA-like demonstration waiver provides coverage to children ages 18 and under with substantial disabilities. The child must be disabled according to the SSI definition of disability. If disability has not been established by SSA, it must be determined by the State's Medical Review Team. The child(ren) of families applying to participate in the TEFRA-like demonstration waiver are also evaluated for likely eligibility in Arkansas's title XIX Medicaid state plan programs.

Appropriateness of care: Clients must meet the medical necessity requirement for institutional placement, but their needed medical services must be appropriate to provide outside an institution.

Financial need: Clients must have income and resources that do not exceed established limits. The income limit for TEFRA applicants/clients is three times the SSI/SPA (which calculates to \$2,523 per month). Only the child's income is considered. Parental income is not considered in the eligibility determination but is considered for the purpose of calculating monthly premium. The resource limit is \$2,000. A child can enroll in TEFRA and retain other creditable health insurance coverage.

Client Enrollment

Throughout the current demonstration period, the TEFRA program has served an increasing number of enrollees, allowing Medicaid to serve more clients who would otherwise require institutional care. During the current demonstration period, enrollment started at just under 5,000 TEFRA enrollees. Enrollment rose by more than 20%, peaking at just under 6,000 enrollees by June of 2021.

Proposed Change

DHS is proposing a change to the current program to require less frequent medical redeterminations for clients with certain conditions. Some TEFRA clients have long-term or chronic conditions that do not need to be reidentified every year. DHS would like to establish a list of long-term or chronic conditions and require TEFRA clients with these conditions to obtain a medical redetermination only every three years, rather than the current annual process. These TEFRA clients still would reapply and meet financial requirements annually, but they would no longer need to be medically redetermined every year. Reducing the frequency of medical redeterminations would eliminate unnecessary paperwork and reduce some of the burden of renewals on these families, providers and DHS staff processing renewals.

Cost Sharing

The TEFRA-like demonstration waiver allows the State to require a sliding-scale premium for eligible children based on the income of the custodial parent(s). A monthly premium can be assessed only if the family income is above 150% of the FPL and more than \$25,000. There are no co-payments charged for services to TEFRA children, and a family's total annual out-of-pocket cost sharing cannot exceed 5% of the family's gross income.

A premium is assessed only if the family has income (after allowable deductions) above 150% of the FPL. The maximum premium assessed is \$5,500 per year for incomes above \$200,000 annually. Families are not charged additional premium if they have more than one child in the TEFRA program. And a family's total annual out of pocket cost sharing cannot exceed 5 percent of the family's gross income.

The majority of clients (between 60% and 70% each year of the demonstration) pay premiums between \$20 and \$182 per month. In the 2021 TEFRA Beneficiary Survey, just 7% of respondents said the premiums were "a big financial burden." The other 93% said it was only a small financial burden or not a burden at all. The premiums collected from clients ranged from \$5.3 million in 2018 to \$6.5 million in 2021. The premium payments continue to provide an important offset to the cost of providing this care under the TEFRA program. In 2021, the premiums collected reduced program expenditures by 8%.

Arkansas is not requesting changes to the current demonstration's cost sharing requirements.

Benefit Coverage and Health Care Delivery System

Individuals enrolled in the TEFRA-like demonstration waiver receive the full range of State Medicaid benefits and services. Services provided under the TEFRA-like demonstration waiver are delivered through the State's existing network of Medicaid providers. Demonstration waiver clients must select a primary care physician.

Arkansas is not requesting changes to the current demonstration's benefit or health care delivery requirements.

Expenditures and Budget Neutrality

During the current demonstration period, the Arkansas TEFRA-like program has consistently operated under the budget neutrality levels set by #43 of the Special Terms and Conditions. The total expenditures have increased 5% on average each year during the period, while the number of member months increased an average of 4% each year.

	CY2017	CY 2018	CY 2019	CY 2020	CY 2021
	DY15	DY16	DY17	DY18	DY19
TOTAL EXPENDITURES	\$67,168,894	\$64,101,606	\$75,331,470	\$74,432,259	\$82,324,145
TOTAL PREMIUMS COLLECTED	\$(3,700,729)	\$(5,302,962)	\$(5,595,945)	\$(5,448,201)	\$(6,503,116)
ELIGIBLE MEMBER MONTHS	59,623	60,427	63,443	65,986	70,106
PMPM COST	\$1,126.56	\$1,060.81	\$1,187.39	\$1,128.00	\$1,174.28
BUDGET NEUTRALITY LIMITS	\$1,935.26	\$1,143.87	\$1,181.39	\$1,220.14	\$1,260.16

Arkansas proposes extending the current TEFRA demonstration with an expected 4.1% annual increase in member months. The per member per month cost will not exceed a 1% annual increase, provided in the table below.

	CY 2022		CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
			DEMONSTRATION YEARS (DY)				
	DY 00	DEMO TREND RATE	DY 01	DY 02	DY 03	DY 04	DY 05
Eligible Member Months	73,001	4.1%	76,016	79,156	82,425	85,829	89,374
PMPM Cost	\$1,186.49	1.0%	\$1,198.83	\$1,211.30	\$1,223.90	\$1,236.63	\$1,249.49
Total Expenditure			\$91,130,665	\$95,881,435	\$100,879,892	\$106,138,836	\$111,671,718

Evaluation

The four goals of the TEFRA program will continue to be examined through the following evaluation hypotheses:

- The beneficiaries of the Arkansas TEFRA-like demonstration have equal or better access to health services compared to the Medicaid fee-for-service population.
- The beneficiaries of the Arkansas TEFRA-like demonstration have equal or better proportion of days covered for prescriptions compared to the Medicaid fee-for-service population.

- Preventive care services for newly enrolled beneficiaries of the Arkansas TEFRA-like demonstration are similar to or better than before enrollment.
- The beneficiaries of the Arkansas TEFRA-like demonstration have equal or higher rates of third-party liability (TPL) coverage of appropriate preventive care compared to the Medicaid fee-for-service population.
- The beneficiaries of the Arkansas TEFRA-like demonstration have equal or higher rates of durable medical equipment (DME) coverage of appropriate preventive care compared to the Medicaid fee-for-service population.
- Patient experience for the quality of care and access to health care services received by the beneficiaries in the Arkansas TEFRA-like demonstration remains the same or improves over time.
- Patient experience with access to health care services improve with enrollment into TEFRA-like program.
- Premium barriers for TEFRA-like beneficiaries remain stable over time.
- TEFRA-like beneficiary case closures due to program barriers to health care access reduce or stay the same over time.

Proposed Change

For the summative evaluation of the current TEFRA-like demonstration and the evaluation of the requested extension period, DHS is considering changes to its TEFRA evaluation design to enhance its methodology, if approved by CMS. The potential changes include:

- 1) Changing the comparison population to include the Provider-Led Arkansas Shared Savings Entity (PASSE) population if the primary medical and behavioral health conditions are similar to the TEFRA-like population. The current evaluation uses a comparison group that consists of patients of similar age and diagnosis characteristics as the TEFRA-like population, but DHS believes the comparison population could be a better match if PASSE clients were included in the analysis.
- 2) Exploring other data sources including other payors' medical claims from the Arkansas All-Payer Claims Database (APCD) for the TEFRA-like population. Nearly three-quarters of TEFRA clients have additional health insurance coverage. Because the analysis for the interim evaluation included only Fee for Service (FFS) claims, the evaluation did not consider health services TEFRA clients received that were covered by third party liability. The inclusion of additional data will ensure the evaluation explores a broader array of information in the measure calculations. The two data sources are Provider-Led Arkansas Shared Savings Entity (PASSE) encounter claims for clients enrolled in the new Medicaid program (launched March 1, 2019) and medical claims from other insurance carriers for individuals with TPL medical claims.
- 3) Adding a longitudinal analysis by trending the TEFRA-like population over time. Since the TEFRA demonstration waiver has been successful in serving a population with high treatment needs and the population medical needs are unique, DHS would like to explore a longitudinal design for future evaluations.

Public Notice Availability

The application for a Section 1115 Demonstration Project for the TEFRA was posted online May 22, 2022. A copy of DHS's proposed waiver application is available for review at: [LINK](#). The Department of Human Services will hold the following public hearings:

As part of a meeting of The Task Force on Autism, Room B of the MAC Building, 1 Capitol Mall, Little Rock, AR 72201 on May 24, 2022, at 1:30 PM.

By remote access through a Zoom webinar on June 2, 2022, at 2:30 p.m. Public comments may be submitted at the hearing. Individuals can access this public hearing at <https://us02web.zoom.us/j/83750606618>. The webinar ID is 837 5060 6618.

The public may comment on the proposed demonstration application during the 30-day public comment period beginning May 22, 2022, through June 20, 2022. Public comments may be submitted in writing to the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437 or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than June 20, 2022. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available.