KIDS AT THE CAPITOL 2015
HOW KIDS FARED AT THE LEGISLATURE

MAY 2015

ARKANSAS ADVOCATES
FOR CHILDREN & FAMILIES

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by AACF Staff
Arkansas Advocates for Children and Families
May 2015

A SESSION OF UPS AND DOWNS

This legislative session, like many others before it, had its ups and downs. The children and families of Arkansas won some, but suffered some major losses as well. The Private Option, Arkansas's version of Medicaid expansion, will continue to provide health coverage for low-income Arkansans, at least through 2016. However, changes are likely on the horizon. Our state's Arkansas Better Chance preschool program received new funding for the first time in eight years. We had hoped for a $16 million increase, but newly-elected Gov. Asa Hutchinson said $3 million was all the budget could bear. After-school programs set forth in law way back in 2011 were once again denied the money they need to operate. Just $5 million would get these programs off the ground.

Tax cuts for middle-income Arkansans and for the very wealthy – totaling nearly $106 million in fiscal 2017 – meant there was little left for juvenile justice reforms, important initiatives like after-school/summer programs, or a tax credit for low-income Arkansans. It also meant that a number of important programs serving children and families took cuts, while budget gaps for others, such as Medicaid, had to be plugged using one-time funds. This raises questions on how these initiatives will be funded in the future, and about the potentially harmful impact on Arkansas children and families.

A budget is about priorities. AACF's priority has always been low-income children and families here in Arkansas. We were happy to help lawmakers this session who shared that same set of priorities. And we were happy to work with and inform those who saw things a little differently. It's something we've done every legislative session since 1977, and it's what we'll continue to do in the future.

HEALTH

With a newly elected governor and many freshman legislators, there was much speculation about the future of health coverage options through the Affordable Care Act in the weeks leading up to the 2015 session. Gov. Asa Hutchinson laid out his health care plan during an address in early January, in which he asked legislators to approve funding for the Private Option until the end of 2016 (federal approval to run the program ends in 2016 unless there is legislative action to continue the program). He also wanted to create a legislative task force to make recommendations on the future of the Private Option and the overall Medicaid program.

Legislation was quickly introduced to support this plan and overwhelmingly approved. Act 46 created the 16-member legislative Health Care Reform Task Force, which will issue a report with recommendations on health care system changes to the governor by December 2015. It also halted adding cost-sharing requirements for Private Option enrollees and moving ARKids B children and adults earning up to 17 percent of the federal poverty line into the Private Option. We were particularly pleased with these provisions because added costs are a known barrier to coverage. Also, the ARKids First program is working well for kids and ensures access to comprehensive coverage.

Although Act 46 authorizes the continuation for the Private Option, the legislature will still have to vote on the appropriation bill annually. The Arkansas Medicaid appropriation bill, now Act 41, also passed without much opposition. It funds the Private Option for the next fiscal year. Several unsuccessful bills would have immediately terminated the Private Option, ended coverage at the end of this year, or capped enrollment. Support for these proposals waned mainly because of possible interference with the charge of the task force and federal rules preventing enrollment caps.

A new law requires that Private Option enrollees be informed that the program ends in December 2016. In response to concerns that such notices would be misleading and create confusion among consumers, lawmakers passed another bill to require that they also included language about the work of the task force and coverage alternatives.

The legislature also made decisions about the state's health insurance marketplace, the system in which middle- and higher-income people can purchase private insurance plans – some with federal subsidies. In 2013, lawmakers approved a bill to transition to a state-run marketplace this year (right now it's operated in partnership with the federal government). The Arkansas Health Insurance Marketplace, a nonprofit organization, was established and has begun to implement plans to launch a state-run system. But that is on hold with the passage of Act 398. It prohibits a full transition to a state-run marketplace until after the Supreme Court issues a ruling concerning the type of marketplace that can offer financial assistance or tax subsidies to consumers purchasing private plans. A Supreme Court decision is expected in June.

Other bills of note:

- Act 894 supported the governor's balanced budget proposal by transferring $2 million from the Tobacco Master Settlement Fund to the Medicaid program. State officials have indicated that reduced funds to the Prevention and Cessation Program will be absorbed by making administrative changes, such not filling vacant positions.
- Legislation to decrease the soft drink tax revenue collected for the Medicaid Trust Fund did not move forward. This Senate bill would have reduced the tax on simple syrups, which we were concerned about because no alternative revenue source was identified to make up for the reduction in funds to the Medicaid program.
- Act 935 will allow the Public School Health Advisory Committee to continue to meet. Legislation resulting from this task force also was introduced. Act 936 requires new school construction and major renovations to include school nursing centers and sets safety guidelines for these facilities. Legislation failed that would have improved nurse-to-student ratios by aligning with best practice standards, changed funding requirements for recommended ratios, and revised supervision requirements for school nurses.
- Legislation failed that would have reversed recent progress in water fluoridation. House Bill 1355 would have allowed local municipalities to set the fluoride level in their water system well below optimal levels necessary to prevent poor oral health and cavities in children.
- Acts 847 and 1235 establish regulations for e-cigarettes. Act 847 prohibits the use of e-cigarettes on state-supported higher education campuses. Act 1235 adds regulation to the sale and classification of e-cigarettes, but it does not add any additional taxes to these products.

EDUCATION

AACF was able to make some headway with our education work this session. Arkansas's state-funded pre-K program for low-income students, the Arkansas Better Chance Program, received additional state funding for the first time in eight years. Although the level of funding was not what we requested, any increase in a year in which so many programs saw cuts was a definite win. Many programs received no new funding or were given less than expected. We consider this $3 million of General Improvement Fund money to be the first step of a multi-year effort to increase annual pre-K funding, up to $16 million.

AACF was able to help defeat the "Arkansas Achievement School District" legislation. This effort would have created a statewide charter school district for schools in academic distress. We were less successful in other areas of our education agenda. No new funding was set aside for after-school and summer programs, and a last ditch effort to streamline the allowable uses of poverty funding was thwarted. Not only did the legislature fail to limit the use of these special funds, but another use for them was established for workforce programs by Act 994.

New Gov. Asa Hutchinson's influence proved strong this session. Most notably, it was his leadership that secured additional pre-K funding in collaboration with a bipartisan group of legislators. He set up a Governor's Council on Common Core Review, which will study both the Common Core and state-mandated exams to assess achievement under the new standards.

Below are some of the key themes of the policy debates this session with resulting legislation as well as bills that didn't make it.

SCHOOL AND TRADITIONAL FACILITIES FUNDING

Lawmakers increased educational foundation funding by $63 per student, or approximately one percent for the 2016 budget year. This was lower than the 2 percent increase necessary to meet districts' costs in the coming year, as estimated in the legislature's own adequacy assessment. Most categorical funding, such as that for English Language Learners, was increased by 2 percent. But NSLA funding (the enhanced poverty funding that is supposed to help improve education for low-income students) was increased by just 1 percent. An adequacy study recommendation to start a high cost transportation set-aside was not funded. Act 1087 increased the minimum salary schedule for teachers from $29,244 to $30,122, or 3 percent.

The Division of Public School Facilities and Transportation reported an estimated need of $65 million for facilities for traditional schools. The annual general revenue funding of almost $35 million was provided, and lawmakers set aside another $40 million through General Improvement Funds. Other general revenue funding is used for operations of the Division.

House Joint Resolution 1013, which would have asked voters to place a cap on education spending as a constitutional amendment, failed.

CHARTER EXPANSION EFFORTS

Charter schools made some significant gains in facilities funding. Traditional schools participate in the Partnership Facilities program. Act 739 creates a separate facilities funding program for charter schools. The $10 million for the new program comes from two sources. Act 735 transfers $5 million from the loan program formerly available to charter schools and sends it to be distributed through the public school fund account in the form of grants, rather than loans. Act 789 provides that $5 million in General Improvement Funds be transferred into the Open-

Enrollment Public Charter School Facilities Funding program. This $5 million is subject to the Governor's discretion.

One unsuccessful effort on behalf of charter schools was SB847, which would have allowed the Director of the Division of Public School Facilities and Transportation to designate school facilities as unused or under-used and to make them available to charter schools.

House Bill 1733 would have created an "Arkansas Achievement School District." The bill would have created a state-wide charter school district, which would operate school districts in academic distress. The Arkansas Department of Education would determine which districts would be placed into the "Arkansas Achievement School District." Opponents saw the bill as a move toward privatization of education in the state. The bill was pulled down by the sponsor after AACF and others voiced strong opposition.

PRIVATIZATION EFFORTS

There were three bills this session that would transfer public funding to private schools. Only one succeeded, after being amended to reduce its impact. Act 1178 provides for disabled students to transfer to private schools with the funding that a public school would have received for their attendance. Both House Bill 1593, which would have let public school funding follow any students to private schools, and House Bill 1745, which would have provided for tax credits to families of disabled students attending private schools, were pulled down by the sponsors.

COMMON CORE AND ASSESSMENTS

Common Core State Standards are the goals for learning at each grade level. Common Core standards are higher than Arkansas's former standards. The exam used to measure student progress is called the PARCC (Partnership for Assessment of Readiness for College and Careers). As with anything new, there has been controversy over the new test. Act 1074, in its original form, would have ended PARCC during this school year. It was amended to require the Arkansas Department of Education to contract with PARCC for only one year at a time, and it directs the State Board of Education to consider the recommendation of the Governor's Council on Common Core Review. Other bills that would have changed PARCC testing were pulled down to await the results of the review.

GRADE-LEVEL READING AND OPPORTUNITY TO LEARN

The Arkansas Campaign for Grade-Level Reading and the Arkansas Opportunity to Learn Campaign supported our efforts around education issues. Both groups strongly support parent engagement. House Bills 1515 and 1595 would have improved parent connection with their children's schools, but they failed. Act 1268 built on dyslexia legislation from 2013 that was important to the Arkansas Campaign for Grade-Level Reading. The act better defined qualifications required for staff providing student dyslexia assessment and intervention. No legislation on third grade retention was filed. The Opportunity to Learn Campaign supported Act 839, which provides for a Task Force on Best Practices in Special Education.

BACKTRACKING ON EDUCATIONAL ADEQUACY REQUIREMENTS

These bills became law, but their passage is concerning because of their impact on adequacy:

- Act 853 allows schools to offer less than the 38 credits required by the state's Standards of Accreditation, in certain circumstances. Until now, districts were required to offer a minimum number of specified classes for which students receive credits required for their graduation.
- Act 377 allows districts with fewer than 350 students to avoid consolidation if certain achievement levels are met and the district is not in financial distress.

JUVENILE JUSTICE

Little action was taken on juvenile justice reforms despite news accounts of troubles in juvenile locked facilities in the last months of 2014. Continued focus on needed reforms in the adult criminal justice system and rejection of an Arkansas Department of Corrections proposal to build another large adult prison were priority issues. The House of Representatives soundly defeated a bill that would have eliminated sentences of life without parole for minors. The notion that youth are not as culpable as adults, and should be treated differently, still eludes the hearts and minds of many legislators.

In the months leading up to this session, with more news about conditions within locked juvenile facilities, AACF and allies in the judicial and provider communities reached an agreement that it was time to reduce the use of secure confinement for youth who do not pose a substantial risk to public safety. However, any plans to implement programs to reduce incarceration were dashed when Department of Youth Services (DYS) funding took a huge cut. The agency suffered a one percent budget cut that amounts to $500,513. DYS also did not receive funding to replace one-time funds that had been provided by stimulus money in past years that amounted to over $2,050,000.

The stage has been set to make a serious run at legislative action on juvenile justice reform during the 2017 session. Act 1010 established a DYS Youth Justice Reform Board to make such recommendations. According to the law, the board will:

- Ensure accountability for the delivery of these services and to monitor the outcomes realized,
- Develop a plan for reducing commitments with measurable objectives for success,
- Measure the impact of this reduction on public safety and child outcomes,
- Establish a method to calculate state cost save by the reduced commitments, and to
- Consider the use of those savings in making appropriations to DYS to allow support for proven effective community-based alternatives to secure confinement.

This board is under the leadership of the DYS Director and is time limited to 4 years.

Five proposed legislative efforts to make changes to the Juvenile Code this session were referred to the Joint Committee on Children and Youth for interim study. This illustrates that there is a mounting interest for juvenile justice reform in Arkansas during the next biennium.

Other legislation of note:

- Act 1016 requires that certain juveniles charged with a misdemeanor offense must first be convicted or found delinquent before a law enforcement agency may take his or her fingerprints.
- Act 1021 gives juvenile intake officers the authority to release youth to a parent, guardian, or a custodian with written conditions; place a youth on electronic monitoring; or place a youth in temporary shelter care prior to the youth's appearance in juvenile court. Prior to the Act's passage, intake staff did not have the express authority to take such actions without juvenile court approval. Stakeholders in the state's two JDAI (Juvenile Detention Alternatives Initiative) sites, Benton County and Washington County, had identified the need for such a change to make better use of alternatives to detention.
- Act 1023 provides legislative support and endorsement to implement a validated risk assessment of all youth found to be delinquent prior to the imposition of a sentence. This will introduce an objective evaluation of a youth's risk to public safety. It provides judges with a tool to better determine the needs of the youth and can help document and hopefully reduce the inappropriate use of incarceration in Arkansas. In past years these assessments were utilized only after sentencing a juvenile to DYS custody. This practice revealed that 75 percent of youth being locked up were a low or moderate risk.

  The MacArthur Foundation recently funded the Arkansas Administrative Office of the Courts to implement these pre-disposition assessment to implement this assessment statewide by 2017. This time frame matches that of Act 1010 which plans to make specific recommendations for reducing incarceration and using savings to invest in effective, community-based alternatives by 2017.

tools in three pilot judicial districts in 2015 and

- Act 1024 alters the list of persons who receive notice of a youth taken into police custody to include custodial parent, non-custodial parent, guardian, or custodian of the juvenile.
- Act 1084 restricts the taking of DNA samples from juvenile offenders to a limited number of delinquency convictions.
- Act 1085 states that a juvenile committed to DYS under extended juvenile jurisdiction shall not remain in the physical custody of the division beyond the date of his or her twenty-first birthday, even if the court fails to provide a hearing before the release.

TAX AND BUDGET

AACF spent much of the 90th General Assembly fighting bad tax cut ideas and proposals to divert state general revenue away from programs like pre-K, child welfare, and after school programs. Significant tax cuts early in the session made decisions over the remaining budget dollars particularly difficult. Programs that working families rely on also faced some unfortunate cuts and restrictions. AACF efforts to promote maternity leave for state employees, tax credits for employers who offer paid family leave, and bills that discouraged wage theft were unsuccessful while several bills that restricted public benefits for working families passed easily.

INCOME TAX CUTS FOR MIDDLE-INCOME AND UPPER-INCOME

The session started off with Governor Hutchinson's middle-income tax cut plan that left out the poorest 20 percent of Arkansans (those with incomes less than $21,000). These cuts raised concerns about what would be left to fund programs for children and families in the future. Despite tax breaks targeted to the middle class, the bottom 20 percent of Arkansas taxpayers will see no change in the taxes they pay with this plan.

The Governor's original tax cut plan was partly funded by reducing unfair capital gains tax cuts passed during the previous legislative session, but this positive aspect of the plan was eliminated later in the session by Representative Shepard's House Bill 1402 (now Act 1172). Shepard's bill restored the 50 percent break on capital gains income (the Governor's plan reduced the break to only a 40 percent exemption on capital gains income) as well as a shameful exemption on all capital gains income over $10 million. Because of these changes, the state will essentially hand over $6 million in state general revenue to some of the wealthiest folks in Arkansas in 2016, and $11.8 million in 2017.

PRIORITIES, PRIORITIES

As a result of major tax cuts passed during the 2013 and 2015 legislative sessions, the $5.19 billion budget passed by the Arkansas General Assembly for the upcoming 2016 fiscal year will be a tight one. State general revenue, the main pot of money that is distributed to state agencies, got a little bigger this year, but the 2.8 percent growth (just $139 million) wasn't enough to keep many struggling programs adequately funded.[1] Tax revenues that fill this pot generally increase year over year because of inflation and economic growth. Even though revenues are growing, many programs have gone underfunded for so long since the 2008 recession that they now need much bigger percentage increases in their budgets just to get back to normal.

The bulk of new money in the budget for next year will go to Medicaid, K-12 education, and corrections. A number of important programs serving children and families, such as juvenile justice programs administered thought the DHS Division of Youth Services received cuts this year. Others received very small increases in funding or were kept at the same funding level as the previous year. A small handful of programs, such as the Arkansas Better Chance program, received no increases in their state general revenue baseline budget for next year, but did receive a temporary funding boast using one-time monies.

When programs don't get funding increases, or get very small increases, they are actually falling behind. This is because program expenses increase with the cost of living and the number of people they serve due to population growth, but funding does not. This is like working at the same job year after year and never getting a raise. You will actually be worse off because costs like housing and food will go up, but your paycheck will not. For example, poverty funding (NSLA) received only about a 1 percent increase this year, which is not enough to keep up with rising costs. See the chart below for a breakdown of other important winners and losers this legislative session.

Budgetary winners and losers in 2015		
	Increase (in millions)	Percent increase
DHS (Medicaid)	$56.0	6.0%
Public School Fund	$52.5	2.5%
Corrections	$14.3	4.4%
Community Corrections	$1.7	2.2%
DCFS (child welfare system)	$21.6	4.4%
DYS (juvenile justice)	$-0.5	-0.8%
Health Department	$-6.5	-7.6%
Higher Education	No Change	No Change
Arkansas Better Chance Pre-K Program	No Change	No Change

Based on current predictions, there should be enough general revenue to pay for all but $10 million in the 2016 budget.[2] There are many reasons the budget could come up short, like an economic slowdown or faulty predictions. Because Arkansas is legally required to have a balanced budget, lawmakers give each fund a priority level in case the pot of money dries up unexpectedly. If the money runs out, the programs with the lowest priority will face budget cuts first. In 2016, the funds that would be on the chopping block first are $3 million from the Public School Fund and $7 million from General Education.

Another, smaller pot of money that lawmakers can use is the General Improvement Fund (GIF), which consists of surplus funds and is used mostly to pay for special, one-time projects or to help plug immediate budget gaps using one-time funds. Major GIF expenditures planned for the next two years are:

- Medicaid ($90 million)
- Department of corrections lease payments ($13 million)
- Department of education facilities ($40 million)
- Pre-K ($3million)
- Additional beds and parole for the department of corrections ($25 million)

Any money remaining in the GIF after all priority projects are funded can be used to pay for projects identified by the governor and the General Assembly; $20 million of the remaining funding goes to the governor's projects and $20 million goes to projects identified by the legislature.

It should be noted that, as a result of the tax cuts passed in 2013 and 2015 (which will really hit hard a year from now) and the extensive use of one-time funds used to plug budget holes for the upcoming 2016 fiscal year, the legislature will face an even greater challenge meeting state budget needs when it comes back next year to work on the fiscal year 2017 budget. More budget cuts will almost certainly be required unless steps are taken to raise new revenues in the future.

DEFEATING FUNDING TRANSFER LEGISLATION

Our most significant victory was defeating the Highway Robbery bill (House Bill 1346), similar to the one we beat back in the 2013 legislative session. This bill was essentially a plan to "rob Peter to pay Paul" by siphoning money out of general revenue and dedicating it to highways and roads. Taking money from quality pre-K and education is an extreme and unacceptable way to fund highways. The transfer would have increased incrementally, starting with $34.8 million transferred out of state general

revenue the first year and ending with over half a billion dollars ($548.4 million) transferred out in year 10. The total amount that the bill would have taken out of general revenue over the next 10 years is an incredible $2.8 billion. That is enough to pay the salaries of 6,000 teachers every year for the next decade.

ECONOMIC SECURITY

DRUG SCREENING FOR PUBLIC BENEFITS

Some of the poorest Arkansans will now be subject to intrusive drug tests before receiving TANF benefits because of Senate Bill 600 (now Act 1205). Temporary Assistance for Needy Families (TANF) is a program that helps pregnant women and families with children under age 18 make ends meet by providing temporary cash assistance. Other states that have tried to restrict access to these important programs with drug testing have found that public benefit recipients test positive for drug use at much lower rates than the general population. Only a small fraction is likely to test positive, but all low-income folks forced to participate will feel the sting of judgment that is at the heart of this bill. This bill is expensive, it hurts families, and it unfairly targets honest folks just because they are poor.

CUTS TO UNEMPLOYMENT BENEFITS

The Arkansas legislature struck a huge blow to unemployment insurance by passing House Bill 1489, (now Act 412) which reduces total benefits to unemployed workers by $50 million a year. It also lowers the number of weeks a worker can draw unemployment benefits from 25 to 20. The new law will make it harder for low-income families who are out of work to get back on their feet.

Two other bills add to this problem by making it easier for employers to count workers as independent contractors (House Bill 1540, now Act 945) and exempting services provided by certain legal immigrants from the definition of employment (Senate Bill 842, now Act 1128). Generally, if an immigrant is lawfully present for the purpose of performing services and, it is out of conformity with federal law for the state to deny unemployment benefits.

CHANGING DIALOGUE AROUND LOW-INCOME FAMILIES

Testimony, literature, and social media around bills, even if they are unsuccessful, can be effective in changing the dialogue at the capitol and increasing awareness. Although many good bills did not pass into law, efforts by AACF to promote awareness of the issues that affect low-income families and their kids will lay the groundwork for these proposals to gain traction in future legislative sessions. AACF worked to advocate for a bill which would have encouraged employers to provide paid leave in Arkansas (House Bill 1275) and a bill which would have provided paid maternity leave for state employees (House Bill 1426).

AACF also worked with legislators to promote bills that would have improved workers' rights and reduced wage theft in our state. The Right to Know Your Pay Act (House Bill 1276) would have made sure that employees receive timely and accurate paystubs from their employers. The right to wages earned act (House Bill 1277) also would have helped to reduce wage theft by placing penalties for employers who do not give workers their final paychecks.

AACF also worked with legislators to promote a bill that would have helped many low-income folks who were left out of the middle class tax cuts and the tax cuts for capital gains. Although this bill did not pass, we were able to help change the dialogue about the unfair tax cuts for the wealthy and remind lawmakers that low-income working families are being left behind. The Working Families Opportunity Act (WFOA) would have been the first of its kind in Arkansas and a huge step towards reducing poverty for hard working families in our state. WFOA is a tax credit that piggybacks on the federal version that is already in place (the Earned Income Tax Credit, or EITC). These credits only go to working families, and they are the nation's most effective tool for reducing poverty among working families and children.

CHILD WELFARE

The Division of Children and Family requested an additional $10 million in State General Revenue to replace $10 million in funding received the previous year from other state sources to help shore up their budget in order to meet their current obligations. Of the additional $10 million requested, DCFS received $9,184,972. This amount was placed in level B funding. Level B funds are only released after all level A money is paid, which is usually not until the last two months of the state's fiscal year. This could put a strain on DCFS's ability to manage cash flows during the fiscal year. DCFS will lose $1,658,666 in TANF (Temporary Assistance for Needy Families) funding from the Department of Workforce Services.

Two laws (Act 1017 and Act 1018) were enacted that make it a criminal act to re-home children who have been adopted through the foster care system. Both laws provide post-adoptive services to parents who are struggling with caring for an adoptive child. And Act 1018 also makes sure that the adoption subsidy agreement is reviewed to determine if it should be terminated when the adoptive parent is no longer responsible for the child.

NOTES

[1] Act 1145 increases the state FY2016 general revenue budget for state agencies --also known as the "net available for distribution"--to $5.19 billion, an increase of about $139 million, or 2.8 percent above the current year budget of $5.05 billion. There is an additional $4.3 million that has been set aside for rainy day funds and other uses. The state general revenue budget prioritizes spending into four categories: A, B, B1 and C. Category A, which includes the bulk of the new funding at $5.07 billion, is to be funded first, followed by category B at $99.19 million, category B1 at $7.63 million and category C at $10 million.

[2] The state general revenue forecast for FY2016 is expected to fully fund the first three of its four categories, leaving the $10 million in the final "C" category currently unfunded.

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