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A Bill

3 Regular Session, 2019

SENATE BILL 113

4

5 By: Senators Rapert, K. Hammer, *Bledsoe, Caldwell, J. Hendren, Hester, Irvin, B. Johnson, D. Wallace*

6 By: Representatives D. Ferguson, *Bragg, Dotson, Eubanks, M. Gray, Murdock, Richey*

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8

For An Act To Be Entitled

9 AN ACT TO ABOLISH THE BOARD OF DIRECTORS OF THE
10 ARKANSAS HEALTH INSURANCE MARKETPLACE; TO TRANSFER
11 THE ARKANSAS HEALTH INSURANCE MARKETPLACE TO THE
12 STATE INSURANCE DEPARTMENT; TO DECLARE AN EMERGENCY;
13 AND FOR OTHER PURPOSES.

14

15

16

Subtitle

17 TO ABOLISH THE BOARD OF DIRECTORS OF THE
18 ARKANSAS HEALTH INSURANCE MARKETPLACE; TO
19 TRANSFER THE ARKANSAS HEALTH INSURANCE
20 MARKETPLACE TO THE STATE INSURANCE
21 DEPARTMENT; AND TO DECLARE AN EMERGENCY.

22

23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25

26 SECTION 1. DO NOT CODIFY. Abolition of Board of Directors of the
27 Arkansas Health Insurance Marketplace – Transfer of Arkansas Health Insurance
28 Marketplace to State Insurance Department.

29 (a) The Board of Directors of the Arkansas Health Insurance
30 Marketplace is abolished, and its powers, duties, functions, records,
31 contracts, property, unexpended balances of appropriations, allocations, and
32 other funds are transferred to the State Insurance Department.

33 (b)(1) The Arkansas Health Insurance Marketplace and its statutory
34 powers, duties, and functions, including the functions of budgeting or
35 purchasing, records, contracts, property, and unexpended balances of
36 appropriations, allocations, and other funds are transferred to the State



1 Insurance Department.

2 (2) The Arkansas Health Insurance Marketplace shall operate as a
 3 division within the State Insurance Department under the authority of the
 4 Insurance Commissioner.

5 (3) All existing contracts with either the Arkansas Health
 6 Insurance Marketplace or the Board of Directors of the Arkansas Health
 7 Insurance Marketplace may be renegotiated by the State Insurance Department.

8
 9 SECTION 2. Arkansas Code § 23-61-803 is amended to read as follows:

10 23-61-803. Arkansas Health Insurance Marketplace.

11 ~~(a) There is created a nonprofit legal entity to be known as the~~
 12 ~~“Arkansas Health Insurance Marketplace”~~ The Arkansas Health Insurance
 13 Marketplace is created as a division within the State Insurance Department.

14 ~~(b)(1) The Arkansas Health Insurance Marketplace is created as a~~
 15 ~~political subdivision, instrumentality, and body politic of the State of~~
 16 ~~Arkansas and, as such, is not a state agency.~~

17 ~~(2) Except to the extent provided by this subchapter, the~~
 18 ~~Arkansas Health Insurance Marketplace is exempt from:~~

19 ~~(A) All state, county, and local taxes; and~~

20 ~~(B) All laws other than the Freedom of Information Act of~~
 21 ~~1967, § 25-19-101 et seq., governing state agencies, including without~~
 22 ~~limitation:~~

23 ~~(i) The Arkansas Procurement Law, § 19-11-201 et~~
 24 ~~seq.;~~

25 ~~(ii) The Uniform Classification and Compensation~~
 26 ~~Act, § 21-5-201 et seq.; and~~

27 ~~(iii)(a) The Arkansas Administrative Procedure Act,~~
 28 ~~§ 25-15-201 et seq.~~

29 ~~(b) The Arkansas Health Insurance Marketplace~~
 30 ~~shall adopt policies, procedures, and rules to implement its obligations~~
 31 ~~under this subchapter.~~

32 ~~(3)(A) Prior to the adoption, amendment, or repeal of any~~
 33 ~~policy, procedure, or rule, the Arkansas Health Insurance Marketplace shall:~~

34 ~~(i)(a) Give at least thirty (30) days' notice of its~~
 35 ~~intended action. The thirty day period shall begin on the first day of the~~
 36 ~~publication of notice.~~

1 ~~(b) The notice shall include a statement of~~
2 ~~the terms or substance of the intended action or a description of the~~
3 ~~subjects and issues involved and the time, the place where, and the manner in~~
4 ~~which interested persons may present their views on the intended action or~~
5 ~~the subjects and issues involved.~~

6 ~~(c) The notice shall be mailed to any person~~
7 ~~specified by law and to all persons who have requested advance notice of~~
8 ~~rule-making proceedings.~~

9 ~~(d)(1) Unless otherwise provided by law, the~~
10 ~~notice shall be published in a newspaper of general daily circulation for~~
11 ~~three (3) consecutive days and, when appropriate, in those trade, industry,~~
12 ~~or professional publications that the Arkansas Health Insurance Marketplace~~
13 ~~may select.~~

14 ~~(2) The notice shall be published by the~~
15 ~~Secretary of State on the internet for thirty (30) days in accordance with §~~
16 ~~25-15-218; and~~

17 ~~(ii)(a) Afford all interested persons at least~~
18 ~~thirty (30) days to submit written data, views, or arguments, orally or in~~
19 ~~writing. The thirty-day period shall begin on the first day of the~~
20 ~~publication of notice under subdivision (b)(3)(A)(i)(a) of this section.~~

21 ~~(b) Opportunity for oral hearing shall be~~
22 ~~granted if requested by twenty five (25) persons, by a governmental~~
23 ~~subdivision or agency, or by an association having no fewer than twenty five~~
24 ~~(25) members.~~

25 ~~(c) The Arkansas Health Insurance Marketplace~~
26 ~~shall fully consider all written and oral submissions concerning the proposed~~
27 ~~rule before finalizing the language of the proposed rule and filing the~~
28 ~~proposed rule as required by subdivision (b)(3)(E) of this section.~~

29 ~~(d) Upon the adoption, amendment, or repeal of~~
30 ~~a policy, procedure, or rule, the Arkansas Health Insurance Marketplace, if~~
31 ~~requested to do so by an interested person either prior to adoption,~~
32 ~~amendment, or repeal or within thirty (30) days thereafter, shall issue a~~
33 ~~concise statement of the principal reasons for and against its adoption,~~
34 ~~amendment, or repeal, incorporating therein its reasons for overruling the~~
35 ~~considerations urged against its adoption, amendment, or repeal.~~

36 ~~(B) The thirty-day periods for giving public notice under~~

1 ~~subdivision (b)(3)(A)(i)(a) of this section and for receiving written data,~~
2 ~~views, or arguments, orally or in writing, under subdivision (b)(3)(A)(ii)(a)~~
3 ~~of this section shall run concurrently.~~

4 ~~(C)(i) If the Arkansas Health Insurance Marketplace finds~~
5 ~~that imminent peril to the public health, safety, or welfare or compliance~~
6 ~~with federal laws or regulations requires adoption of a policy, procedure, or~~
7 ~~rule upon less than thirty (30) days' notice and states in writing its~~
8 ~~reasons for that finding, it may proceed without prior notice or hearing, or~~
9 ~~upon any abbreviated notice and hearing that it may choose, to adopt an~~
10 ~~emergency rule.~~

11 ~~(ii) The rule may be effective for no longer than~~
12 ~~one hundred twenty (120) days.~~

13 ~~(iii) If, after the expiration of the effective~~
14 ~~period of an emergency rule, the Arkansas Health Insurance Marketplace wishes~~
15 ~~to adopt a successive emergency rule that is identical or substantially~~
16 ~~similar to the expired emergency rule, the Arkansas Health Insurance~~
17 ~~Marketplace shall not adopt the successive emergency rule earlier than thirty~~
18 ~~(30) days after the expiration of the emergency rule.~~

19 ~~(D)(i) The Arkansas Health Insurance Marketplace shall~~
20 ~~file with the Legislative Council, the Secretary of State, the Arkansas State~~
21 ~~Library, and the Bureau of Legislative Research a copy of each policy,~~
22 ~~procedure, or rule adopted by it and a statement of financial impact for the~~
23 ~~rule.~~

24 ~~(ii) The Secretary of State shall keep a copy of~~
25 ~~each policy, procedure, or rule filed under subdivision (b)(3)(D)(i) of this~~
26 ~~section in the permanent register required under § 25-15-204(e)(2).~~

27 ~~(iii)(a) The scope of the financial impact statement~~
28 ~~shall be determined by the Arkansas Health Insurance Marketplace but, at a~~
29 ~~minimum, shall include the estimated cost of complying with the policy,~~
30 ~~procedure, or rule and the estimated cost for the Arkansas Health Insurance~~
31 ~~Marketplace to implement the policy, procedure, or rule.~~

32 ~~(b) If the Arkansas Health Insurance~~
33 ~~Marketplace has reason to believe that the development of a financial impact~~
34 ~~statement will be so speculative as to be cost prohibitive, the Arkansas~~
35 ~~Health Insurance Marketplace shall submit a statement and explanation to that~~
36 ~~effect.~~

1 ~~(c) If the purpose of an Arkansas Health~~
2 ~~Insurance Marketplace policy, procedure, or rule is to implement a federal~~
3 ~~rule or regulation, the financial impact statement shall be limited to any~~
4 ~~incremental additional cost of the state policy, procedure, or rule, as~~
5 ~~opposed to the federal rule or regulation.~~

6 ~~(E)(i)(a) Each policy, procedure, or rule adopted by the~~
7 ~~Arkansas Health Insurance Marketplace is effective thirty (30) days after the~~
8 ~~filing of the final policy, procedure, or rule unless a later date is~~
9 ~~specified by law or in the rule itself.~~

10 ~~(b) A final rule shall not be filed until the~~
11 ~~thirty-day public comment period required under subdivision (b)(3)(A)(ii)(a)~~
12 ~~of this section has expired.~~

13 ~~(c)(1) After the expiration of the thirty-day~~
14 ~~public comment period and before the effective date of the rule, the Arkansas~~
15 ~~Health Insurance Marketplace shall take appropriate measures to make the~~
16 ~~final rule known to the persons who may be affected by the rule.~~

17 ~~(2) Appropriate measures shall include~~
18 ~~without limitation posting the following information on the website of the~~
19 ~~Arkansas Health Insurance Marketplace:~~

20 ~~(A) The final rule;~~

21 ~~(B) Copies of all written comments~~
22 ~~submitted to the Arkansas Health Insurance Marketplace regarding the rule;~~

23 ~~(C) A summary of all written and~~
24 ~~oral comments submitted to the Arkansas Health Insurance Marketplace~~
25 ~~regarding the rule and the response of the Arkansas Health Insurance~~
26 ~~Marketplace to those comments; and~~

27 ~~(D) The proposed effective date of~~
28 ~~the final rule.~~

29 ~~(ii)(a) However, an emergency rule may become~~
30 ~~effective immediately upon filing or at a stated time less than thirty (30)~~
31 ~~days after filing if the Arkansas Health Insurance Marketplace finds that~~
32 ~~this effective date is necessary because of imminent peril to the public~~
33 ~~health, safety, or welfare.~~

34 ~~(b) The finding of the Arkansas Health~~
35 ~~Insurance Marketplace and a brief statement of the reasons for the finding~~
36 ~~shall be filed with the rule.~~

1 ~~(c) The Arkansas Health Insurance Marketplace~~
2 ~~shall take appropriate measures to make emergency rules known to the persons~~
3 ~~who may be affected by the emergency rules.~~

4 ~~(F) The Legislative Council shall review the proposed~~
5 ~~revised or amended policy, procedure, or rule and, if it is believed that the~~
6 ~~rule or regulation is contrary to legislative intent, shall file a statement~~
7 ~~thereof with the Arkansas Health Insurance Marketplace.~~

8 ~~(c) The Arkansas Health Insurance Marketplace shall operate subject to~~
9 ~~the supervision and control of the Board of Directors of the Arkansas Health~~
10 ~~Insurance Marketplace. The board shall consist of the following members to be~~
11 ~~appointed on or before July 1, 2013:~~

12 ~~(1)(A) Three (3) members appointed by the Governor.~~

13 ~~(B) One (1) member appointed by the Governor shall be a~~
14 ~~representative of insurance agents or brokers licensed to sell health~~
15 ~~insurance in the State of Arkansas.~~

16 ~~(C) Two (2) members appointed by the Governor shall be~~
17 ~~consumer representatives;~~

18 ~~(2)(A) Three (3) members appointed by the President Pro Tempore~~
19 ~~of the Senate.~~

20 ~~(B) One (1) of the members appointed by the President Pro~~
21 ~~Tempore of the Senate shall be a representative of a health insurer.~~

22 ~~(C) One (1) of the members appointed by the President Pro~~
23 ~~Tempore of the Senate shall be a representative of small employers;~~

24 ~~(3)(A) Three (3) members appointed by the Speaker of the House~~
25 ~~of Representatives.~~

26 ~~(B) One (1) of the members appointed by the Speaker of the~~
27 ~~House of Representatives shall be a representative of a health insurer.~~

28 ~~(C) One (1) member appointed by the Speaker of the House~~
29 ~~of Representatives shall be a member of a health-related profession licensed~~
30 ~~in the State of Arkansas;~~

31 ~~(4) The Insurance Commissioner or his or her designee as an ex~~
32 ~~officio nonvoting member; and~~

33 ~~(5) The Director of the Department of Human Services or his or~~
34 ~~her designee as an ex officio nonvoting member.~~

35 ~~(d)(1) Members appointed by the Governor serve at the pleasure of the~~
36 ~~Governor.~~

1 ~~(2)(A) The initial members appointed by the President Pro~~
2 ~~Tempore of the Senate under subdivision (c)(2) of this section shall serve~~
3 ~~terms as follows:~~

4 ~~(i) One (1) initial member shall be appointed to a~~
5 ~~term of four (4) years;~~

6 ~~(ii) One (1) initial member shall be appointed to a~~
7 ~~term of six (6) years; and~~

8 ~~(iii) One (1) initial member shall be appointed to a~~
9 ~~term of eight (8) years.~~

10 ~~(B) A member subsequently appointed to the board under~~
11 ~~subdivision (c)(2) of this section shall serve a term of six (6) years.~~

12 ~~(3)(A) The initial members appointed by the Speaker of the House~~
13 ~~of Representatives under subdivision (c)(3) of this section shall serve terms~~
14 ~~as follows:~~

15 ~~(i) One (1) initial member shall be appointed to a~~
16 ~~term of four (4) years;~~

17 ~~(ii) One (1) initial member shall be appointed to a~~
18 ~~term of six (6) years; and~~

19 ~~(iii) One (1) initial member shall be appointed to a~~
20 ~~term of eight (8) years.~~

21 ~~(B) A member subsequently appointed to the board under~~
22 ~~subdivision (c)(3) of this section shall serve a term of six (6) years.~~

23 ~~(e) The appointing authorities under this section shall ensure that a~~
24 ~~majority of the voting members of the board have relevant experience in:~~

25 ~~(1) Health benefits administration;~~

26 ~~(2) Healthcare finance;~~

27 ~~(3) Health plan purchasing;~~

28 ~~(4) Healthcare delivery system administration; or~~

29 ~~(5) Public health or health policy issues related to the small~~
30 ~~group and individual markets and the uninsured.~~

31 ~~(f) The board shall select one (1) of its members as chair.~~

32 ~~(g)(1) Subject to review by the Legislative Council, the board may~~
33 ~~authorize by a majority vote of the total membership of the board cast during~~
34 ~~its first regularly scheduled meeting of each calendar year:~~

35 ~~(A) Payment to its members of a stipend per day not to~~
36 ~~exceed one hundred dollars (\$100) for each meeting attended or for any day~~

1 while performing substantive business of the board; and

2 (B) Reimbursement of actual expenses while performing
3 substantive business of the board.

4 (2) Members of the board shall receive no other compensation,
5 expense reimbursement, or in lieu of payments.

6 (h)(1) The board shall hire the Executive Director of the Arkansas
7 Health Insurance Marketplace to:

8 (A) Plan and administer the Arkansas Health Insurance
9 Marketplace; and

10 (B) Employ necessary staff.

11 (2)(b) The board may State Insurance Department shall plan and
12 administer the Arkansas Health Insurance Marketplace and employ necessary
13 staff on an interim basis until the executive director is hired.

14 (3) The employees of the Arkansas Health Insurance Marketplace
15 are not eligible to participate in the Arkansas Public Employees' Retirement
16 System under § 24-4-101 et seq.

17 (i)(1) Neither the board nor its employees shall be liable for any
18 obligations of the Arkansas Health Insurance Marketplace.

19 (2) The board may provide in its bylaws or rules for
20 indemnification of and legal representation for the board members and board
21 employees.

22 (j)(1) The board shall adopt articles, bylaws, and operating rules in
23 accordance with this subchapter.

24 (2) The articles, bylaws, and operating rules shall be reviewed
25 by the Legislative Council.

26 (k)(c) The board State Insurance Department shall keep an accurate
27 accounting of all activities, receipts, and expenditures on behalf of the
28 Arkansas Health Insurance Marketplace and report to the Legislative Council
29 as requested by the Legislative Council.

30 (1)(1)(A)(d) On and after July 1, 2015, the board shall have the
31 authority to The State Insurance Department may apply for and expend on
32 behalf of the Arkansas Health Insurance Marketplace any state, federal, or
33 private grant funds available to assist with the implementation and operation
34 of the Arkansas Health Insurance Marketplace.

35 (B) Before July 1, 2015, the board shall coordinate with
36 the commissioner the application for state, federal, or private grant funds

1 ~~to plan, implement, and operate the Arkansas Health Insurance Marketplace.~~

2 ~~(2)(A) Before July 1, 2015, the commissioner may apply for any~~
3 ~~state, federal, or private grant funds available to assist with the~~
4 ~~implementation and operation of the Arkansas Health Insurance Marketplace.~~

5 ~~(B) If the commissioner applies for and receives any~~
6 ~~state, federal, or private grant funds available to assist with the~~
7 ~~implementation and operation of the Arkansas Health Insurance Marketplace,~~
8 ~~the commissioner shall enter into a memorandum of understanding with the~~
9 ~~Arkansas Health Insurance Marketplace concerning the use and expenditure of~~
10 ~~the grant funds.~~

11 ~~(m)(1)(e)(1)~~ The ~~board~~ State Insurance Department may contract with
12 eligible entities to assist with the planning, implementation, and operation
13 of the Arkansas Health Insurance Marketplace.

14 (2) For the purposes of this subsection:

15 (A) An eligible entity includes without limitation an
16 entity that has experience in individual and small group health insurance,
17 benefit administration, or other experience relevant to the responsibilities
18 to be assumed by the entity; and

19 (B) A health insurer or an affiliate of a health insurer
20 is not an eligible entity.

21 (3) In contracting with an eligible entity under subdivision
22 ~~(m)(1)(e)(1)~~ of this section, the ~~board~~ State Insurance Department shall give
23 preference to eligible entities that have relevant experience.

24 ~~(4)(A) The board shall establish a competitive bidding process~~
25 ~~for awarding contracts under this subchapter to an eligible entity.~~

26 ~~(B) The competitive bidding process for awarding contracts~~
27 ~~under this subchapter to an eligible entity shall be reviewed by the~~
28 ~~Legislative Council.~~

29 ~~(n)(f)~~ The ~~board~~ State Insurance Department may enter into
30 information-sharing agreements with federal and state agencies and other
31 state marketplaces to carry out its responsibilities under this subchapter,
32 provided such agreements:

33 (1) Include adequate protections with respect to the
34 confidentiality of the information to be shared; and

35 (2) Comply with all applicable state and federal laws and
36 regulations.

1 ~~(e)~~(g) As a condition of participating in the Arkansas Health
2 Insurance Marketplace, a health insurer shall pay the assessments, submit the
3 reports, and provide the information required by ~~the board or the~~
4 ~~commissioner~~ Insurance Commissioner to implement this subchapter.

5 ~~(p)~~(h) The ~~board~~ State Insurance Department and any eligible entity
6 under subdivision ~~(m)~~(1)~~(e)~~(1) of this section shall provide claims and other
7 plan and enrollment data to the Department of Human Services ~~and the~~
8 ~~commissioner~~ upon request to:

9 (1) Facilitate compliance with reporting requirements under
10 state and federal law; and

11 (2) Assess the performance of the Arkansas Works Program
12 established by the Arkansas Works Act of 2016, § 23-61-1001 et seq.,
13 including without limitation the program's quality, cost, and consumer
14 access.

15 ~~(q)~~(1)~~(i)~~(1) The Legislative Council may study matters pertaining to
16 this subchapter that the Legislative Council considers necessary to fulfill
17 its mandate under this subchapter.

18 (2) The Legislative Council may request reports from the
19 Arkansas Health Insurance Marketplace pertaining to the operations, programs,
20 or finances of the Arkansas Health Insurance Marketplace as it deems
21 necessary.

22 (3) Annually by December 15, the Legislative Council shall
23 provide to the General Assembly any analysis or findings resulting from its
24 activities under this section that the Legislative Council deems relevant.

25 (4)(A) During a regular, fiscal, or extraordinary session of the
26 General Assembly, the Joint Budget Committee shall perform the functions
27 assigned to the Legislative Council under this subchapter.

28 (B) This subsection does not limit the authority of the
29 Legislative Council and its subcommittees to meet during a recess as
30 authorized by § 10-2-223 or § 10-3-211.

31 (5) The Legislative Council and the Joint Budget Committee may:

32 (A) Establish or utilize one (1) or more subcommittees to
33 assist in ~~its duties~~ the duties of the Legislative Council or the Joint
34 Budget Committee, respectively, under this subchapter;

35 (B) Assign information filed with the Legislative Council
36 under this subchapter to one (1) or more subcommittees of the Legislative

1 Council or the Joint Budget Committee, respectively, including without
 2 limitation a subcommittee created under subdivision ~~(q)(5)(A)~~ (i)(5)(A) of
 3 this section; and

4 (C) Delegate ~~their duties~~ the duties of the Legislative
 5 Council or the Joint Budget Committee, respectively, under this subchapter to
 6 one (1) or more subcommittees of the Legislative Council or the Joint Budget
 7 Committee, respectively, subject to the final review and approval of the
 8 Legislative Council or the Joint Budget Committee, respectively.

9
 10 SECTION 3. Arkansas Code § 23-61-804 is amended to read as follows:

11 23-61-804. Duties of the Arkansas Health Insurance Marketplace.

12 (a) The Arkansas Health Insurance Marketplace shall:

13 (1)~~(A)~~ Implement procedures and criteria for the certification,
 14 recertification, and decertification of health benefit plans as qualified
 15 health plans ~~in coordination with the Insurance Commissioner and in~~
 16 compliance with state and federal law;

17 ~~(B) The procedures and criteria shall comply with~~
 18 ~~applicable:~~

19 ~~(i) Federal law;~~

20 ~~(ii) Federal waivers obtained by the state to~~
 21 ~~implement the Arkansas Works Program established by the Arkansas Works Act of~~
 22 ~~2016, § 23-61-1001 et seq.; and~~

23 ~~(iii) Rules promulgated by the State Insurance~~
 24 ~~Department and the Department of Human Services under the Arkansas Works~~
 25 ~~Program established by the Arkansas Works Act of 2016, § 23-61-1001 et seq.;~~

26 (2) Provide for the operation of a toll-free telephone hotline
 27 to respond to requests for assistance;

28 (3) Require that a health carrier offering a qualified health
 29 plan post on the public part of its website in a readily accessible format
 30 the formulary list for each individual qualified health plan and the
 31 following information:

32 (A) The qualified health plan to which the formulary
 33 applies;

34 (B) Any exclusions from coverage or restrictions,
 35 including:

36 (i) Any tiering structure, including copay and

1 coinsurance requirements;

2 (ii) Prior authorization requirements;

3 (iii) Step-therapy requirements;

4 (iv) Deductibles and cost sharing;

5 (v) Quantity limits; and

6 (vi) Whether access is dependent upon the location
7 where a prescription drug is obtained or administered; and

8 (C) The appeal process for a denial of coverage or adverse
9 determination for an item or service for a prescription drug;

10 (4)(A) Establish a small business health options program through
11 which qualified employers may access coverage for their employees.

12 (B) The small business health options program, without
13 limitation, shall enable a qualified employer to specify a level of coverage
14 so that any of its employees may enroll in a qualified health plan offered
15 through the program at the specified level of coverage.

16 (C) Subdivision (a)(4) of this section does not apply if
17 an available qualified health carrier does not offer a health benefit plan
18 under the small business health options program;

19 (5)(A) Select entities qualified to serve as navigators and
20 award grants to enable navigators to:

21 (i) Conduct public education activities to raise
22 awareness of the availability of qualified health plans;

23 (ii) Distribute fair and impartial information
24 concerning enrollment in qualified health plans and the availability of
25 premium tax credits under 26 U.S.C. § 36B, as existing on April 23, 2013, and
26 cost-sharing reductions under section 1402 of the federal act;

27 (iii) Facilitate enrollment in qualified health
28 plans;

29 (iv) Provide referrals to any applicable office of
30 health insurance consumer assistance or health insurance ombudsman or to any
31 other appropriate state agency for any enrollee with a grievance, complaint,
32 or question regarding his or her health benefit plan or health benefit
33 coverage or a determination under his or her health benefit plan or health
34 benefit coverage; and

35 (v) Provide information in a manner that is
36 culturally and linguistically appropriate to the needs of the population

1 being served by the Arkansas Health Insurance Marketplace.

2 (B) The Insurance Commissioner shall ensure in the
 3 navigator selection process that the navigators are geographically,
 4 culturally, ethnically, and racially representative of the populations
 5 served; and

6 (6) Otherwise comply with a requirement the commissioner
 7 determines is necessary to obtain or maintain the approval to administer a
 8 health insurance marketplace.

9 (b) If the Governor determines that a state-based exchange not on the
 10 federal platform for the individual health insurance marketplace is
 11 beneficial and appropriate, the Arkansas Health Insurance Marketplace shall:

12 ~~(3)(A)(1)(A)~~ Maintain a website through which enrollees and
 13 prospective enrollees of qualified health plans may obtain standardized
 14 comparative information on such plans.

15 ~~(B) The Board of Directors of the Arkansas Health~~
 16 ~~Insurance Marketplace in coordination with the commissioner shall ensure that~~
 17 ~~an entity offering a qualified health plan through the Arkansas Health~~
 18 ~~Insurance Marketplace shall post posts~~ the information described in § 23-79-
 19 159 on the Arkansas Health Insurance Marketplace website in a readily
 20 accessible format;

21 ~~(C) Beginning January 1, 2017, a health carrier offering a~~
 22 ~~qualified health plan shall post on the public part of its website in a~~
 23 ~~readily accessible format the formulary list for each individual qualified~~
 24 ~~health plan and the following information:~~

25 ~~(i) The qualified health plan to which the formulary~~
 26 ~~applies;~~

27 ~~(ii) Any exclusions from coverage or restrictions,~~
 28 ~~including:~~

29 ~~(a) Any tiering structure, including copay and~~
 30 ~~coinsurance requirements;~~

31 ~~(b) Prior authorization requirements;~~

32 ~~(c) Step therapy requirements;~~

33 ~~(d) Deductibles and cost sharing;~~

34 ~~(e) Quantity limits; and~~

35 ~~(f) Whether access is dependent upon the~~
 36 ~~location where a prescription drug is obtained or administered; and~~

1 ~~(iii) The appeal process for a denial of coverage or~~
2 ~~adverse determination for an item or service for a prescription drug;~~

3 ~~(4)(2)~~ Assign a rating to each qualified health plan offered
4 through the Arkansas Health Insurance Marketplace and determine each
5 qualified health plan's level of coverage in accordance with regulations
6 issued by the ~~Secretary of the United States Department~~ United States
7 Secretary of Health and Human Services under section 1302(d)(2)(A) of the
8 federal act;

9 ~~(5)(3)~~ Use a standardized format for presenting health benefit
10 options in the Arkansas Health Insurance Marketplace; and

11 ~~(6) Review compensation rates for licensed brokers and agents;~~

12 ~~(7)(4)~~ Establish and make available by electronic means a
13 calculator to determine the actual cost of coverage after application of a
14 premium tax credit under section 36B of the Internal Revenue Code of 1986 as
15 existing on April 23, 2013, and any cost-sharing reduction under section 1402
16 of the federal act;.

17 ~~(8)(A) Establish a small business health options program through~~
18 ~~which qualified employers may access coverage for their employees.~~

19 ~~(B) The small business health options program, without~~
20 ~~limitation, shall enable a qualified employer to specify a level of coverage~~
21 ~~so that any of its employees may enroll in a qualified health plan offered~~
22 ~~through the program at the specified level of coverage;~~

23 ~~(9) Subject to section 1411 of the federal act, grant a~~
24 ~~certification attesting that, for purposes of the individual responsibility~~
25 ~~penalty under section 5000A of the Internal Revenue Code of 1986 as existing~~
26 ~~on April 23, 2013, an individual is exempt from the individual responsibility~~
27 ~~requirement or from the penalty imposed by that section of the Internal~~
28 ~~Revenue Code of 1986 because:~~

29 ~~(A) There is no affordable qualified health plan available~~
30 ~~through the Arkansas Health Insurance Marketplace or the individual's~~
31 ~~employer covering the individual; or~~

32 ~~(B) The individual meets the requirements for any other~~
33 ~~such exemption from the individual responsibility requirement or penalty;~~

34 ~~(10) Transfer to the Secretary of the United States Department~~
35 ~~of the Treasury the following:~~

36 ~~(A) A list of the individuals who are issued a~~

1 ~~certification under subdivision (9) of this section, including the name and~~
2 ~~taxpayer identification number of each individual;~~

3 ~~(B) The name and taxpayer identification number of each~~
4 ~~individual who was an employee of an employer but who was determined to be~~
5 ~~eligible for the premium tax credit under section 36B of the Internal Revenue~~
6 ~~Code of 1986 as existing on April 23, 2013, because:~~

7 ~~(i) The employer did not provide minimum essential~~
8 ~~coverage; or~~

9 ~~(ii) The employer provided the minimum essential~~
10 ~~coverage, but it was determined under section 36B(e)(2)(C) of the Internal~~
11 ~~Revenue Code of 1986 as existing on April 23, 2013, either to be unaffordable~~
12 ~~to the employee or not to provide the required minimum actuarial value; and~~

13 ~~(C) The name and taxpayer identification number of each~~
14 ~~individual who:~~

15 ~~(i) Notifies the Arkansas Health Insurance~~
16 ~~Marketplace under section 1411(b)(4) of the federal act that he or she has~~
17 ~~changed employers; and~~

18 ~~(ii) Ceases coverage under a qualified health plan~~
19 ~~during a plan year and the effective date of that cessation;~~

20 ~~(11) Provide to each employer the name of each employee of the~~
21 ~~employer described in subdivision (10)(B) of this section who ceases coverage~~
22 ~~under a qualified health plan during a plan year and the effective date of~~
23 ~~the cessation;~~

24 ~~(12)(A) Select entities qualified to serve as navigators and~~
25 ~~award grants to enable navigators to:~~

26 ~~(i) Conduct public education activities to raise~~
27 ~~awareness of the availability of qualified health plans;~~

28 ~~(ii) Distribute fair and impartial information~~
29 ~~concerning enrollment in qualified health plans and the availability of~~
30 ~~premium tax credits under section 36B of the Internal Revenue Code of 1986 as~~
31 ~~existing on April 23, 2013, and cost-sharing reductions under section 1402 of~~
32 ~~the federal act;~~

33 ~~(iii) Facilitate enrollment in qualified health~~
34 ~~plans;~~

35 ~~(iv) Provide referrals to any applicable office of~~
36 ~~health insurance consumer assistance or health insurance ombudsman or to any~~

1 ~~other appropriate state agency or agencies for any enrollee with a grievance,~~
2 ~~complaint, or question regarding his or her health benefit plan or health~~
3 ~~benefit coverage or a determination under his or her health benefit plan or~~
4 ~~health benefit coverage; and~~

5 ~~(v) Provide information in a manner that is~~
6 ~~culturally and linguistically appropriate to the needs of the population~~
7 ~~being served by the Arkansas Health Insurance Marketplace.~~

8 ~~(B) The board shall ensure in the navigator selection~~
9 ~~process that the navigators are geographically, culturally, ethnically, and~~
10 ~~racially representative of the populations served; and~~

11 ~~(13) Otherwise comply with a requirement the board determines is~~
12 ~~necessary to obtain or maintain the approval to administer a health insurance~~
13 ~~marketplace.~~

14
15 SECTION 4. Arkansas Code § 23-61-805 is amended to read as follows:

16 23-61-805. Funding – Publication of costs.

17 (a)(1) The General Assembly shall establish a reasonable initial
18 assessment or user fee and reasonable increases or decreases in the amount of
19 future assessments or user fees and penalties and interest charges for
20 nonpayment of an assessment or user fee charged to participating health
21 insurers for the efficient operation of the Arkansas Health Insurance
22 Marketplace.

23 (2) Annually by October 1, the ~~Arkansas Health Insurance~~
24 ~~Marketplace~~ State Insurance Department shall report to the Legislative
25 Council in the manner and format that the Legislative Council requires the
26 recommendations of the ~~Arkansas Health Insurance Marketplace~~ department for
27 the initial assessment or user fee and increases or decreases in the amount
28 of future assessments or user fees and penalties and interest charges for
29 nonpayment of an assessment or user fee charged to participating health
30 insurers.

31 (3) Annually by December 1, the Legislative Council shall review
32 the recommendations of the ~~Arkansas Health Insurance Marketplace~~ department
33 under subdivision (a)(1) of this section and report to the President Pro
34 Tempore of the Senate and the Speaker of the House of Representatives the
35 recommendations of the Legislative Council for the initial assessment or user
36 fee and future increases or decreases in the amount of assessments or user

1 fees and penalties and interest charges for nonpayment of an assessment or
2 user fee charged to participating health insurers.

3 ~~(b)~~

4 ~~(e)(1)~~(b)(1) All assessments and fees shall be due and payable upon
5 receipt in the matter required by the Insurance Commissioner and shall be
6 delinquent if not paid within thirty (30) days of the receipt of notice of
7 the assessment by the health insurer.

8 (2)(A) Failure to timely pay the assessment shall automatically
9 subject the health insurer to a penalty not to exceed ten percent (10%) of
10 the assessment plus interest as established under subsection (a) of this
11 section.

12 (B) The penalty and interest is due and payable within the
13 next thirty-day period.

14 (3) ~~The Board of Directors of the Arkansas Health Insurance~~
15 ~~Marketplace and the Insurance Commissioner~~ commissioner may enforce the
16 collection of the assessment and penalty and interest in accordance with this
17 subchapter and the Arkansas Insurance Code.

18 (4) ~~The board~~ commissioner may waive the penalty and interest
19 authorized by this subsection if the ~~board~~ commissioner determines that
20 compelling circumstances exist that justify a waiver.

21 ~~(d)(1)(c)(1)~~ The Arkansas Health Insurance Marketplace department
22 shall publish the average costs of licensing, regulatory fees, and any other
23 payments required by the Arkansas Health Insurance Marketplace and the
24 administrative costs of the Arkansas Health Insurance Marketplace on an
25 internet website to educate consumers on such costs.

26 (2) Information published under subdivision ~~(d)(1)(c)(1)~~ of this
27 section shall include information on moneys lost to waste, fraud, and abuse.

28 ~~(e)(1) Annually, the Arkansas Health Insurance Marketplace shall~~
29 ~~report the following information to the Legislative Council:~~

30 ~~(A) The total amount of assessment fees or user fees~~
31 ~~collected;~~

32 ~~(B) The administrative costs and expenditure of the~~
33 ~~Arkansas Health Insurance Marketplace, including without limitation salaries~~
34 ~~of employees, supply costs, building rental costs, and technology costs;~~

35 ~~(C) The amount of any other funds received by the Arkansas~~
36 ~~Health Insurance Marketplace; and~~

1 ~~(D) Other budgetary or financial matters relating to the~~
2 ~~Arkansas Health Insurance Marketplace.~~

3 ~~(2) The Arkansas Health Insurance Marketplace shall disclose and~~
4 ~~provide additional budgetary or financial information upon the request of the~~
5 ~~Legislative Council or the Joint Budget Committee.~~

6
7 SECTION 5. Arkansas Code § 23-61-808 is repealed.

8 ~~23-61-808. Restriction on use of grant funds for final implementation~~
9 ~~of state-based health insurance exchange.~~

10 ~~The Arkansas Health Insurance Marketplace and the Board of Directors of~~
11 ~~the Arkansas Health Insurance Marketplace shall not allocate, budget, expend,~~
12 ~~or commit for expenditure any grant funds received for final implementation~~
13 ~~of a state-based health insurance exchange under this subchapter until after~~
14 ~~the decision of the United States Supreme Court in King v. Burwell, 759 F.3d~~
15 ~~358 (4th Cir.), cert. granted, U.S. , 135 S. Ct. 475 (2014).~~

16
17 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that the citizens of Arkansas would
19 receive more benefits from the State Insurance Department operating the
20 Arkansas Health Insurance Marketplace; that transfer of the operation of the
21 Arkansas Health Insurance Marketplace impacts the expenses and operations of
22 state government; and that this act is necessary to allow for the transition
23 and implementation of the transfer before the upcoming fiscal year.
24 Therefore, an emergency is declared to exist, and this act being necessary
25 for the preservation of the public peace, health, and safety shall become
26 effective on March 15, 2019.

27
28
29 /s/Rapert

30
31
32 **APPROVED: 2/13/19**