

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: S4/17/13

A Bill

SENATE BILL 1189

5 *By: Senator Bookout*
6 By: Representative Biviano
7

For An Act To Be Entitled

8
9 AN ACT CONCERNING THE HEALTH *INSURANCE MARKETPLACE*
10 NAVIGATOR PROGRAMS; AND FOR OTHER PURPOSES.
11

Subtitle

12
13
14 *CONCERNING THE HEALTH INSURANCE*
15 *MARKETPLACE NAVIGATOR PROGRAMS.*
16

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 *SECTION 1. Arkansas Code Title 23, Chapter 64, is amended to add an*
21 *additional subchapter to read as follows:*
22

23 *Subchapter 6 – Arkansas Health Insurance Marketplace Navigator, Guide, and*
24 *Certified Application Counselors Act*

25
26 *23-64-601. Title.*

27 *This subchapter shall be known and may be cited as the "Arkansas Health*
28 *Insurance Marketplace Navigator, Guide, and Certified Application Counselors*
29 *Act".*
30

31 *23-64-602. Definitions.*

32 *As used in this subchapter:*

33 *(1) "Applicant" means a person who has applied to become*
34 *licensed under this subchapter as a navigator, guide, certified application*
35 *counselor, or certified licensed producer;*

36 *(2) "Certified application counselor" means a person who is*



1 licensed under this subchapter to assist in enrolling consumers in a variety
2 of marketplace-designated organizations settings, including without
3 limitation a healthcare facility, but is not compensated by federal
4 marketplace funds;

5 (3) "Certified licensed producer" means a person who is:

6 (A) Licensed as an insurance producer as defined in § 23-
7 64-502;

8 (B) Certified under this subchapter to:

9 (i) Educate consumers about health insurance
10 marketplaces, Medicaid, tax credits, and other cost-sharing reductions; and

11 (ii) Assist consumers with enrollment in a health
12 insurance marketplace;

13 (C) Eligible to receive commissions from health insurers;
14 and

15 (D) Not compensated under the federal act, federal
16 regulations, or any guidance issued under the federal act or federal
17 regulations;

18 (4) "Consumer" means an individual, family, or small business
19 located in this state;

20 (5) "Enrollment" means enrolling in a qualified health plan
21 offered through a health insurance marketplace;

22 (6) "Federal act" means the federal healthcare laws established
23 by Pub. L. No. 111-148, as amended by Pub. L. No. 111-152, and any amendments
24 to or regulations or guidance issued under those statutes existing on the
25 effective date of this act;

26 (7) "Guide" means a person who is licensed under this subchapter
27 to provide in-person assistance and services as stated in 45 CFR § 155.210;

28 (8)(A) "Health benefit plan" means a policy, contract,
29 certificate, or agreement offered or issued by a health insurer to provide,
30 deliver, arrange for, pay for, or reimburse any of the costs of healthcare
31 services.

32 (B) "Health benefit plan" does not include:

33 (i) Coverage only for accident or disability income
34 insurance, or both;

35 (ii) Coverage issued as a supplement to liability
36 insurance;

1 (iii) Liability insurance, including without
2 limitation general liability insurance and automobile liability insurance;
3 (iv) Workers' compensation or similar insurance;
4 (v) Automobile medical payment insurance;
5 (vi) Credit-only insurance;
6 (vii) Coverage for on-site medical clinics; or
7 (viii) Other similar insurance coverage, specified
8 in federal regulations issued under the Health Insurance Portability and
9 Accountability Act of 1996, Pub. L. No. 104-191, and existing on the
10 effective date of this act, under which benefits for healthcare services are
11 secondary or incidental to other insurance benefits.

12 (C) "Health benefit plan" does not include the following
13 benefits if they are provided under a separate policy, certificate, or
14 contract of insurance or are otherwise not an integral part of the plan:

15 (i) Limited scope dental or vision benefits;
16 (ii) Benefits for long-term care, nursing home care,
17 home health care, community-based care, or a combination of these; or
18 (iii) Other similar limited benefits specified in
19 federal regulations issued under the Health Insurance Portability and
20 Accountability Act of 1996, Pub. L. No. 104-191, and existing on the
21 effective date of this act.

22 (D) "Health benefit plan" does not include the following
23 benefits if the benefits are provided under a separate policy, certificate,
24 or contract of insurance, there is no coordination between the provision of
25 the benefits and any exclusion of benefits under any group health plan
26 maintained by the same plan sponsor, and the benefits are paid with respect
27 to an event without regard to whether benefits are provided with respect to
28 such an event under any group health plan maintained by the same plan
29 sponsor:

30 (i) Coverage only for a specified disease or
31 illness; or
32 (ii) Hospital indemnity or other fixed indemnity
33 insurance.

34 (E) "Health benefit plan" does not include the following
35 if offered as a separate policy, certificate, or contract of insurance:

36 (i) Medicare supplemental health insurance as

1 defined under section 1882(g)(1) of the Social Security Act, Pub. L. No. 74-
2 271, as existing on the effective date of this act;

3 (ii) Coverage supplemental to the coverage provided
4 to military personnel and their dependents under Chapter 55 of Title 10 of
5 the United States Code and the Civilian Health and Medical Program of the
6 Uniformed Services, 32 C.F.R. Part 199; or

7 (iii) Similar supplemental coverage provided to
8 coverage under a group health plan;

9 (9) "Health insurance" means insurance that is primarily for the
10 diagnosis, cure, mitigation, treatment, or prevention of disease or amounts
11 paid for the purpose of affecting any structure of the body, including
12 transportation that is essential to obtaining health insurance, but
13 excluding:

14 (A) Coverage only for accident or disability income
15 insurance, or any combination thereof;

16 (B) Coverage issued as a supplement to liability
17 insurance;

18 (C) Liability insurance, including general liability
19 insurance and automobile liability insurance;

20 (D) Workers' compensation or similar insurance;

21 (E) Automobile medical payment insurance;

22 (F) Credit-only insurance;

23 (G) Coverage for on-site medical clinics;

24 (H) Coverage only for limited scope vision benefits;

25 (I) Benefits for long-term care, nursing home care, home
26 health care, community-based care, or any combination thereof;

27 (J) Coverage for specified disease or critical illness;

28 (K) Hospital indemnity or other fixed indemnity insurance;

29 (L) Medicare supplement policies;

30 (M) Medicare, Medicaid, or the Federal Employee Health
31 Benefit Program, 5 U.S.C. §§ 8901 - 8914, as it existed on January 1, 2013;

32 (N) Coverage only for medical and surgical outpatient
33 benefits;

34 (O) Excess or stop-loss insurance; and

35 (P) Other similar insurance coverage;

36 (i) Under which benefits for health insurance are

1 secondary or incidental to other insurance benefits; or

2 (ii) Specified in federal regulations issued under
3 the Health Insurance Portability and Accountability Act of 1996, Pub. L. No.
4 104-191, and existing on the effective date of this act, under which benefits
5 for healthcare services are secondary or incidental to other insurance
6 benefits;

7 (10) "Health insurance marketplace" means the vehicle created to
8 help consumers in this state shop for and select health insurance coverage in
9 a way that permits comparison of available qualified health plans based on
10 price, benefits, services, and quality, regardless of its governance
11 structure;

12 (11) "Health insurer" means an entity that provides health
13 insurance or a health benefit plan in this state, including without
14 limitation an insurance company, medical services plan, hospital plan,
15 hospital medical service corporation, health maintenance organization,
16 fraternal benefits society, or any other entity providing a plan of health
17 insurance or health benefits in this state, and is subject to state insurance
18 regulation;

19 (12) "License" means a document issued by the Insurance
20 Commissioner authorizing a person to act as a navigator, guide, certified
21 application counselor, or certified licensed producer;

22 (13) "Licensee" means a navigator, guide, certified application
23 counselor, or certified licensed producer who is licensed under this
24 subchapter;

25 (14) "Navigator" means a person authorized under the federal act
26 to assist consumers to shop for and select health insurance offered through a
27 health insurance marketplace, including providing information to a consumer
28 on a health benefit plan or coverage offered through a health insurance
29 marketplace, or facilitates enrollment in a health insurance marketplace

30 (15) "Non-Navigator assistance personnel" means a person
31 authorized under the federal act to assist consumers to enroll and understand
32 the health insurance offered through a health insurance marketplace;

33 (16) "Person" means an individual, company, firm, organization,
34 association, corporation, government entity, nongovernmental entity, or any
35 other type of legal entity; and

36 (17) "Qualified health plan" means a health benefit plan that

1 has in effect a certification that the plan meets the criteria for
2 certification described in section 1311(c) of the federal act.

3
4 23-64-603. Navigator license required.

5 (a)(1) A person shall not act as a navigator in this state through a
6 health insurance marketplace unless licensed under this subchapter as an
7 eligible entity.

8 (2) A health insurer or an affiliate of a health insurer is not
9 an eligible entity.

10 (b) A grant awarded under a navigator contract is contingent on a
11 person's:

12 (1) Being licensed under this subchapter;

13 (2) Becoming licensed under this subchapter by September 30,
14 2013, or within ninety (90) days after the receipt of funding; or

15 (3) Employing a licensee that meets the requirements in
16 subdivision (b)(1) or subdivision (b)(2) of this section.

17 (c) A navigator shall:

18 (1) Conduct public education activities to raise awareness of
19 the availability of qualified health plans;

20 (2) Distribute fair and impartial information concerning
21 enrollment in qualified health plans and the availability of premium tax
22 credits under section 36B of the Internal Revenue Code of 1986 as existing on
23 the effective date of this act and cost-sharing reductions under section 1402
24 of the federal act;

25 (3) Facilitate enrollment in qualified health plans;

26 (4) Provide referrals to any applicable office of health
27 insurance consumer assistance or health insurance ombudsman or to any other
28 appropriate state agency or agencies for any enrollee with a grievance,
29 complaint, or question regarding his or her health benefit plan, coverage, or
30 a determination under that plan or coverage; and

31 (5) Provide enrollment information in a culturally and
32 linguistically appropriate manner that meets the needs of the population
33 being served by a health insurance marketplace in this state, including those
34 individuals with limited English proficiency or who are protected under
35 section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and Title II
36 of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165, as

1 they existed on January 1, 2013.

2 (d) A navigator shall not advise a person to select a particular plan.

3
4 23-64-604. Guide license required.

5 (a)(1) A person shall not act as a guide in this state through a
6 health insurance marketplace unless licensed under this subchapter as an
7 eligible entity.

8 (2) A health insurer or an affiliate of a health insurer is not
9 an eligible entity.

10 (b) A contract awarded to a guide is contingent on a person's:

11 (1) Being licensed under this subchapter;

12 (2) Becoming licensed under this subchapter by September 30,
13 2013, or within ninety (90) days after the receipt of funding; or

14 (3) Employing a licensee that meets the requirements in
15 subdivision (b)(1) or subdivision (b)(2) of this section.

16 (c) A guide shall:

17 (1) Assist consumers in understanding the available qualified
18 health plans offered through a health insurance marketplace, their
19 differences, premium tax credits, cost-sharing provisions, and the public
20 programs and their eligibility;

21 (2) Provide enrollment information in a culturally and
22 linguistically appropriate manner that meets the needs of the population
23 being served by a health insurance marketplace in this state, including those
24 individuals with limited English proficiency or who are protected under
25 section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and Title II
26 of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165, as
27 they existed on January 1, 2013;

28 (3) Ensure that information is provided in a way that simplifies
29 choices and considers the individual needs of consumers;

30 (4) Maintain expertise in eligibility, enrollment, and public
31 and private insurance specifications and conduct public education activities
32 to raise awareness about the health insurance marketplace in this state;

33 (5) Provide information and services in a fair, accurate, and
34 impartial manner that acknowledges other health programs;

35 (6) Increase awareness of insurance options in a way that does
36 not stigmatize qualified health plans;

1 (7) Facilitate enrollment in qualified health plans or coverage
2 offered through a health insurance marketplace and with post-enrollment
3 dispute resolution;

4 (8) Provide referrals to an applicable office of health
5 insurance consumer assistance or health insurance ombudsman established under
6 section 2793 of the Public Health Service Act, 42 U.S.C. § 300gg et seq., as
7 it existed on January 1, 2013, or any other appropriate state agency or
8 agencies, for a consumer participating in enrollment with a grievance,
9 complaint, or question regarding his or her health plan, coverage, or a
10 determination under the plan or coverage;

11 (9) Not receive any financial consideration directly or
12 indirectly from a health insurer or stop-loss insurance company or qualified
13 health plan;

14 (10) Demonstrate that no conflict of interest exists in
15 providing in-person assistance and the services as stated in 45 CFR §
16 155.210; and

17 (11) Provide resources or avenues for consumers to register
18 complaints and grievances with a service provided through the health
19 insurance marketplace.

20
21 23-64-605. Certified application counselor license required.

22 (a)(1) A person shall not act as a certified application counselor in
23 this state through a health insurance marketplace unless licensed under this
24 subchapter and working for a marketplace-designated organization.

25 (2) A health insurer or an affiliate of a health insurer is not
26 an eligible entity.

27 (b) A certified application counselor shall assist in enrolling a
28 consumer in a qualified health plan through a health insurance marketplace.

29
30 23-64-606. Licensed producer – Certification required.

31 A person shall not act as a certified licensed producer in this state
32 through a health insurance marketplace unless certified under this
33 subchapter.

34
35 23-64-607. Qualifications for licensure or certification – Issuance.

36 (a) To qualify for a license or certification under this subchapter, a

1 person shall:

2 (1) Be at least eighteen (18) years of age;

3 (2) Have received a high school diploma or a general education
4 development certificate;

5 (3) Be competent, trustworthy, financially responsible, and of
6 good personal and business reputation;

7 (4) Continue the qualifications under subdivision (a)(3) of this
8 section while licensed or certified;

9 (5)(A) Pass an examination and satisfy the educational
10 requirements the Insurance Commissioner may impose by rule or order.

11 (B) The examination required by this section shall be
12 developed and conducted under rules prescribed by the commissioner;

13 (6)(A) Have received instruction in health insurance, the
14 provisions of the federal act for a health insurance marketplace in this
15 state, and the medical assistance programs of this state.

16 (B) The instruction required by this section shall be
17 developed and conducted under rules prescribed by the commissioner; and

18 (7) For a certified licensed producer, be a licensee in good
19 standing under the Producer Licensing Model Act, § 23-64-501 et seq.

20 (b) In addition to the other information required under this
21 subchapter or rules adopted by the commissioner, an application for a license
22 or certification under this subchapter shall include:

23 (1) The applicant's business name, address, and social security
24 number or taxpayer identification number;

25 (2) A criminal and regulatory background check of the applicant;
26 and

27 (3) A description of the applicant's current business operations
28 and its activities, duties, and responsibilities, including without
29 limitation:

30 (A) The place of organization and a certified copy of the
31 applicant's organizational and governance documents;

32 (B) If a foreign business, a copy of the certificate of
33 authority from the Secretary of State;

34 (C) The proposed method of business operation and, if
35 applicable, other locations for doing business; and

36 (D)(i) The qualifications, business experience and

1 history, and financial condition of the applicant, its affiliates, and its
2 employees.

3 (ii) Information required under subdivision
4 (b)(3)(D)(i) of this section shall include:

5 (a) A description of any injunction or
6 administrative order, including a denial to engage in a regulated activity by
7 a state or federal authority that had jurisdiction over the applicant, its
8 affiliates, and its employees;

9 (b) A conviction of a misdemeanor involving
10 fraudulent dealings or moral turpitude or relating to any aspect of the
11 insurance industry, the mortgage industry, the securities industry, or any
12 other activity pertaining to financial services;

13 (c) Any felony conviction; and

14 (d) A beneficial interest in an affiliated
15 industry business.

16 (c) Each applicant shall pay a reasonable annual licensure or
17 certification fee as established by rule of the commissioner.

18 (d) Each license or certification issued by the commissioner under
19 this subchapter expires at the close of business on September 30 of the
20 calendar year unless otherwise surrendered or revoked.

21 (e) A license or certification issued under this subchapter is not
22 transferable.

23 (f) To assist in the performance of the commissioner's duties, the
24 commissioner may contract with nongovernmental entities, including the
25 National Association of Insurance Commissioners or any affiliates or
26 subsidiaries that the National Association of Insurance Commissioners
27 oversees, to perform any ministerial functions that the commissioner and the
28 nongovernmental business may consider appropriate, including the collection
29 of the annual fee for licensure or certification of a navigator, guide,
30 certified application counselor, or certified licensed producer.

31
32 23-64-608. License renewal.

33 (a) A licensee shall submit an application for renewal of a license or
34 certification issued under this subchapter in a form prescribed by the
35 Insurance Commissioner.

36 (b) An applicant for a license or certification renewal is required to

1 complete continuing education as prescribed by rule of the commissioner.

2 (c) Each licensee shall pay a reasonable annual licensure or
3 certification fee as established by rule of the commissioner.

4
5 23-64-609. Additional licensee duties.

6 (a) A licensee is subject to the insurance laws of this state,
7 including those concerning privacy, market conduct, and unfair trade
8 practices acts.

9 (b) A licensee shall:

10 (1) Comply with other consumer protection and market conduct
11 standards that the Insurance Commissioner considers necessary; and

12 (2) Counsel enrollees in the health insurance marketplace in
13 this state about options in Medicaid, the federal Children's Health Insurance
14 Program, and other health insurance coverage.

15
16 23-64-610. Prohibited activities.

17 (a) Except for a certified licensed producer, a licensee shall not:

18 (1) Receive compensation directly or indirectly from any health
19 insurer;

20 (2) Engage in an activity that requires licensing as a
21 residential insurance producer under the Producer Licensing Model Act, § 23-
22 64-501 et seq.; or

23 (3) Recommend a particular plan or advise consumers about which
24 plan to choose.

25 (b) A licensee shall not engage in improper conduct, commit fraud, or
26 violate marketplace and consumer protection requirements of this state.

27
28 23-64-611. Disciplinary authority.

29 (a) The Insurance Commissioner by order may deny, suspend, revoke, or
30 refuse to issue or renew a license of a licensee or applicant under this
31 subchapter or may restrict or limit the activities of a licensee if the
32 commissioner finds that:

33 (1) The order is in the public interest; and

34 (2) A licensee or applicant:

35 (A) Has filed an application for an initial license or a
36 renewal of a license that as of its effective date or as of any date after

1 the filing of the application, contains an omission or statement that in
2 light of the circumstances under which it was made is false or misleading
3 with respect to any material fact;

4 (B) Has violated or failed to comply with this subchapter,
5 the insurance laws of this state, any rule adopted by the commissioner, or
6 any order of the commissioner issued under this subchapter;

7 (C) Has pleaded guilty or nolo contendere to or has been
8 found guilty in a domestic, foreign, or military court of:

9 (i) A felony;

10 (ii) An offense involving breach of trust, moral
11 turpitude, money laundering, or fraudulent or dishonest dealing; or

12 (iii) An offense involving any aspect of the
13 insurance business, the mortgage industry, the securities industry, or any
14 other activity pertaining to financial services;

15 (D) Is permanently or temporarily enjoined by a court of
16 competent jurisdiction from engaging in or continuing any conduct or practice
17 involving any aspect of the insurance business, the mortgage industry, the
18 securities industry, or any other activity pertaining to financial services;

19 (E) Is the subject of an order of the commissioner:

20 (i) Denying, suspending, revoking, restricting, or
21 limiting a license issued under the insurance laws of this state; or

22 (ii) Directing the licensee or applicant to cease
23 and desist an activity regulated by the commissioner;

24 (F) Is the subject of an order, including a denial,
25 suspension, or revocation of authority to engage in a regulated activity by
26 another state or federal authority to which the licensee or applicant is, has
27 been, or has sought to be subject, entered in the past five (5) years,
28 including without limitation the insurance industry;

29 (G)(i) Has failed to pay the proper fees as established by
30 rule of the commissioner.

31 (ii) The commissioner may enter a denial order
32 against a licensee or applicant under subdivision (a)(2)(G)(i) of this
33 section if the licensee or applicant fails to pay the proper fees as
34 established by rule of the commissioner, but the denial order shall be
35 vacated by the commissioner if the fees are paid;

36 (H) Has engaged in fraudulent, coercive, or dishonest

1 practices or demonstrated incompetence, untrustworthiness, lack of good
2 personal or business reputation, or financial irresponsibility;

3 (I) Has forged another's name to an application for
4 insurance or to any document related to an insurance transaction;

5 (J) Has improperly used notes or any other reference
6 material to complete an examination for an insurance license;

7 (K) Has failed to provide a written response within thirty
8 (30) days after receipt of a written inquiry from the commissioner or the
9 commissioner's designee concerning transactions unless the commissioner
10 waives the requirement of a timely response in writing;

11 (L) Has failed to comply with an administrative or court
12 order imposing a child support obligation;

13 (M) Has failed to pay state income tax or comply with an
14 administrative or court order directing payment of state income tax;

15 (N) Has refused to be examined or to produce an account,
16 record, or file for examination at the request of the commissioner or the
17 commissioner's designee; or

18 (O) Has failed to cooperate with the commissioner in an
19 investigation.

20 (b) The commissioner by order may:

21 (1)(A) Impose a civil penalty on a licensee for a violation of
22 this subchapter, the insurance laws of this state, a rule under this
23 subchapter, or an order of the commissioner.

24 (B) The civil penalty shall not exceed ten thousand
25 dollars (\$10,000) for each violation under subdivision (b)(1)(A) of this
26 section by a licensee;

27 (2) Summarily postpone or suspend the license of a licensee
28 pending a final determination of a proceeding under this section; and

29 (3) Change or vacate an order or extend it until a final
30 determination of a proceeding under this section if a hearing is requested or
31 ordered by the commissioner.

32 (c) On entering an order under subdivision (b)(1) or subdivision
33 (b)(2) of this section, the commissioner shall:

34 (1) Promptly notify the licensee by sending notice of the order
35 and the reasons for issuing the order to the address of the licensee on file
36 with the commissioner by first class mail, postage prepaid; and

1 (2)(A) Schedule a hearing under § 23-61-301 et seq. if a
2 licensee contests the order.

3 (B) The licensee may contest an order entered under
4 subdivision (b)(1) or subdivision (b)(2) of this section by delivering a
5 written request for a hearing to the commissioner within thirty (30) days
6 after the date on which notice of the order is sent by the commissioner.

7 (C)(i) The hearing shall be held within thirty (30) days
8 after the commissioner receives a timely written request for a hearing.

9 (ii) At the request of the licensee, the hearing may
10 be postponed for a reasonable amount of time.

11 (D) If a licensee does not request a hearing and the
12 commissioner does not order a hearing, the order shall remain in effect until
13 the order is modified or vacated by the commissioner.

14 (d) The commissioner by order may cancel a license or application if
15 the commissioner finds that a licensee or applicant:

16 (1) Is no longer in existence;

17 (2) Has stopped doing business as a licensee;

18 (3) Is subject to an adjudication of mental incompetence or to
19 the control of a committee, conservator, or guardian; or

20 (4) Cannot be located after a reasonable search by the
21 commissioner.

22 (e)(1) In addition to other powers under this subchapter, on finding
23 that an action of a person is in violation of this subchapter, the
24 commissioner may summarily order the person to cease and desist the
25 prohibited action.

26 (2) On entering the order under subdivision (e)(1) of this
27 section, the commissioner shall:

28 (A) Promptly notify the person by sending notice of the
29 order and the reasons for issuing the order to the last known address of the
30 person by first class mail, postage prepaid; and

31 (B)(i) Schedule a hearing under § 23-61-301 et seq. if the
32 person contests the order.

33 (ii) The person may contest an order entered under
34 subdivision (e)(1) of this section by delivering a written request for a
35 hearing to the commissioner within thirty (30) days after the date on which
36 notice of the order is sent by the commissioner.

1 (iii)(a) The hearing shall be held within thirty
2 (30) days after the commissioner receives a timely written request for a
3 hearing.

4 (b) At the request of the person, the hearing
5 may be postponed for a reasonable amount of time.

6 (iv) If a person does not request a hearing and the
7 commissioner does not order a hearing, the order shall remain in effect until
8 it is modified or vacated by the commissioner.

9 (3)(A) A person is subject to a civil penalty of up to twenty-
10 five thousand dollars (\$25,000) for each violation of the commissioner's
11 cease and desist order committed after entry of the order if:

12 (i) The person under the cease and desist order
13 fails to appeal the order under § 23-61-307 or if the person appeals and the
14 appeal is denied or dismissed; and

15 (ii) The person continues to engage in the
16 prohibited action in violation of the commissioner's order.

17 (B) The commissioner may file an action requesting the
18 civil penalty under subdivision (e)(3)(A) of this section with the Pulaski
19 County Circuit Court or another court of competent jurisdiction.

20 (C) The penalties of this section apply in addition to,
21 but not instead of, other applicable law to a person for the person's failure
22 to comply with an order of the commissioner.

23 (f) Unless otherwise provided, an action, hearing, or other proceeding
24 under this subchapter is governed by § 23-61-301 et seq.

25 (g) If the commissioner has grounds to believe that a licensee has
26 violated this subchapter or that facts exist that would be the basis for an
27 order against a licensee, the commissioner or the commissioner's designee may
28 investigate or examine the business of the licensee and examine the books,
29 accounts, records, and files of a licensee relating to the complaint or
30 matter under investigation.

31 (h)(1) The commissioner or the commissioner's designee may:

32 (A) Administer oaths and affirmations;

33 (B) Issue subpoenas to require the attendance of and to
34 take testimony of a person whose testimony the commissioner considers
35 relevant to the licensee's business; and

36 (C) Issue subpoenas to require the production of the

1 books, papers, correspondence, memoranda, agreements, or other documents or
2 records that the commissioner considers relevant or material to the inquiry.

3 (2)(A) When there is contumacy by or refusal to obey a subpoena
4 issued to a licensee or applicant, the Pulaski County Circuit Court, on
5 application by the commissioner, may issue an order requiring the person to
6 appear before the commissioner or the commissioner's designee to produce
7 evidence if so ordered or to give evidence touching the matter under
8 investigation or in question.

9 (B) Failure to obey the order of the court may be punished
10 by the court as a contempt of court.

11 (3) The assertion that the testimony or evidence before the
12 commissioner may tend to incriminate or subject a person to a penalty or
13 forfeiture shall not under § 23-61-302 excuse the person from:

14 (A) Attending and testifying;

15 (B) Producing any document or record; or

16 (C) Obeying the subpoena of the commissioner or the
17 commissioner's designee.

18 (i) From time to time and with or without cause, the commissioner may
19 conduct examinations of the books and records of a licensee or applicant to
20 determine the compliance with this subchapter and the rules adopted under
21 this subchapter.

22 (j) This section does not prohibit or restrict the informal
23 disposition of a proceeding or allegations that may give rise to a proceeding
24 by stipulation, settlement, consent, or default instead of a formal or
25 informal hearing on the allegations or in place of the sanctions authorized
26 by this section.

27 (k)(1) If it appears on sufficient grounds or evidence satisfactory to
28 the commissioner that a person has engaged in or is about to engage in an act
29 or practice that violates this subchapter, the commissioner may:

30 (A) Refer the evidence that is available concerning
31 violations of this subchapter or a rule or order issued under this subchapter
32 to the prosecuting attorney or regulatory agency that with or without the
33 referral may otherwise begin criminal or regulatory proceedings under this
34 subchapter; and

35 (B)(i) Summarily order the person to stop the act or
36 practice under subsections (b) and (e) of this section and apply to the

1 Pulaski County Circuit Court to enjoin the act or practice or to enforce
2 compliance with this subchapter, rule, or order issued under this subchapter,
3 or both.

4 (ii) The commissioner, without issuing a cease and
5 desist order, may apply directly to the Pulaski County Circuit Court for
6 injunctive or other relief.

7 (2) On proper showing, the court shall grant a permanent or
8 temporary injunction, restraining order, or writ of mandamus.

9 (3) The commissioner may also seek, and on proper showing the
10 appropriate court shall grant, any other ancillary relief that may be in the
11 public interest, including:

12 (A) The appointment of a receiver, temporary receiver, or
13 conservator;

14 (B) A declaratory judgment;

15 (C) An accounting;

16 (D) Disgorgement;

17 (E) Assessment of a fine of not more than ten thousand
18 dollars (\$10,000) for each violation; and

19 (F) Any other relief as may be appropriate in the public
20 interest.

21 (4) The court shall not require the commissioner to post a bond.

22
23 23-64-612. Authority – Grants and contracts.

24 (a) The health insurance marketplace in this state may accept grants
25 or contract with a governmental or nongovernmental entity that uses
26 navigators or guides on the conditions the health insurance marketplace finds
27 to be in the best interest of the citizens of this state if the governmental
28 or nongovernmental entity:

29 (1) Has a physical business location to conduct business with
30 this state and its service area;

31 (2) Is considered to be competent, trustworthy, financially
32 responsible, and of a good business reputation;

33 (3) Continues the qualifications under subdivision (a)(2) of
34 this section during the contract;

35 (4) Requires the members of management of the governmental or
36 nongovernmental entity to complete instruction in health benefit plans or

1 health insurance, the provisions of the federal act for a health insurance
2 marketplace in this state, and the medical assistance programs of this state
3 through a training program approved by the Insurance Commissioner for the
4 required minimum hours; and

5 (5) Furnishes to the commissioner information concerning the
6 identity and background of the members of management of the governmental or
7 nongovernmental entity, including criminal and regulatory background checks.

8 (b) Each nongovernmental business entity shall pay a reasonable annual
9 licensure fee that is established by rule.

10 (c) A grant or contract under this section is not transferable.

11
12 23-64-613. Rules.

13 (a) The Insurance Commissioner may promulgate rules to implement this
14 subchapter.

15 (b) Rules promulgated under this section shall not conflict with or
16 prevent the application of regulations promulgated by the Secretary of the
17 United States Department of Health and Human Services under the federal act.

18
19 23-64-614. Relation to other laws.

20 (a) This subchapter is amendatory to the Arkansas Insurance Code.

21 (b) Provisions of the Arkansas Insurance Code that are not in conflict
22 with this subchapter apply to this subchapter.

23 (c) This subchapter and actions taken by the health insurance
24 marketplace in this state under this subchapter do not preempt or supersede
25 the authority of the Insurance Commissioner to regulate the business of
26 insurance within this state.

27 (d) Except as expressly provided to the contrary in this subchapter, a
28 health insurer offering a qualified health plan in this state shall comply
29 fully with all applicable health insurance laws of this state and regulations
30 adopted and orders issued by the commissioner.

31
32 SECTION 2. DO NOT CODIFY. Effective date.

33 This act is effective when:

34 (1) The United States Department of Health and Human Services or
35 other responsible federal agency or federal official notifies the Governor,
36 the Insurance Commissioner, or other responsible state agency or state

1 official pursuant to the federal healthcare laws established by Pub. L. No.
2 111-148, as amended by Pub. L. No. 111-152, and any amendments thereto, or
3 regulations or guidance issued under those federal statutes; or
4 (2) A health insurance marketplace is initiated and is operable
5 in this state.

6
7 /s/Rapert

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10 **APPROVED: 04/22/2013**
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