ARKANSAS SENATE

89th General Assembly - Regular Session, 2013

Amendment Form

Subtitle of Senate Bill No. 859

CONCERNING THE DEVELOPMENT AND GOVERNANCE OF A HEALTH INSURANCE EXCHANGE; AND TO DECLARE AN EMERGENCY.

Amendment No. 1 to Senate Bill No. 859

Amend Senate Bill No. 859 as originally introduced:

Add Representative Biviano as a cosponsor of the bill

AND

Delete everything following the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 23, Chapter 61, is amended to add an additional subchapter to read as follows:

Subchapter 8 — Arkansas Health Insurance Exchange Act

23-61-801. Title.

This subchapter shall be known and may be cited as the "Arkansas Health Insurance Exchange Act".

23-61-802. Legislative intent.

(a) The General Assembly finds:

(1) The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, allow each state to establish a health insurance exchange or opt to participate in a health insurance exchange operated by the United States Department of Health and Human Services;

(2) The best option for the State of Arkansas is to establish a state-based health insurance exchange as defined by the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152; and

(3) The purpose of this subchapter is to create a health insurance exchange to:

(A) Meet the unique needs of Arkansas;

(B) Seek Arkansas-specific solutions; and

(C) Explore the maximum number of options available to Arkansas.

(b)(1) This subchapter provides for the establishment of an Arkansas

state-based health insurance exchange to facilitate the purchase and sale of qualified health plans in the individual market in this state and to provide for the establishment of a small business health options program to assist qualified small employers in this state in facilitating the enrollment of their employees in qualified health plans offered in the small group market.

(2) The intent of the health insurance exchange is to:

(A) Reduce the number of Arkansans without health insurance;

(B) Provide a transparent marketplace and education for consumers;

(C) Assist individuals through access to programs, premium assistance tax credits, and cost-sharing reductions; and

(D) Increase access, affordability, and choice for individuals and small business employees purchasing health insurance in Arkansas.

23-61-803. Definitions.

As used in this subchapter:

(1) "Federal act" means the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and any amendments to, or regulations or guidance issued under, those acts existing on the effective date of this act;

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

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

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

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

(iii) Liability insurance, including without limitation general liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; or

(viii) Other similar insurance coverage, specified in federal regulations issued under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and existing on the effective date of this act, under which benefits for healthcare services are secondary or incidental to other insurance benefits.

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

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or a combination of these; or

(iii) Other similar, limited benefits specified in federal regulations issued under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and existing on the

effective date of this act.

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

(i) Coverage only for a specified disease or illness; or

(ii) Hospital indemnity or other fixed indemnity insurance.

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

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

(ii) Coverage supplemental to the coverage provided under the Civilian Health and Medical Program of the Uniform Services, Chapter 55 of Title 10 of the United States Code, as existing on the effective date of this act; or

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

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

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

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

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

(D) Worker's compensation or similar insurance;

(E) Automobile medical payment insurance;

(F) Credit only insurance;

(G) Coverage for on-site medical clinics;

(H) Coverage only for limited scope vision benefits;

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

(J) Coverage for specified disease or critical illness;

(K) Hospital indemnity or other fixed indemnity insurance;

(L) Medicare supplement policies;

(M) Medicare, Medicaid or the Federal Employee Health Benefit program;

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

(O) Excess or stop loss insurance; and

(P) Other similar insurance coverage under which benefits for health insurance are secondary or incidental to other insurance benefits;

(4) "Health insurer" means an entity that provides health insurance in the State of Arkansas including without limitation an insurance company, medical services plan, hospital plan, hospital medical service corporation, health maintenance organization, fraternal benefits society, or any other entity providing a plan of health insurance or health benefits subject to state insurance regulation;

(5) "Qualified employer" means a small employer that elects to make its full-time employees eligible for one (1) or more qualified health plans offered through the small business health options program, and at the option of the employer, some or all of its part-time employees, provided that the employer:

(A) Has its principal place of business in this state and elects to provide coverage through the small business health options program to all of its eligible employees, wherever employed; or

(B) Elects to provide coverage through the small business health options program to all of its eligible employees who are principally employed in this state;

(6) "Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in section 1311(c) of the federal act; and

(7)(A) "Small employer" means an employer that employed an average of not more than one hundred (100) employees during the preceding calendar year.

(B) For purposes of this subsection:

(i) All persons treated as a single employer under subsection (b), subsection (c), subsection (m) or subsection (o) of section 414 of the Internal Revenue Code of 1986 as existing on the effective date of this act shall be treated as a single employer;

(ii) An employer and any predecessor employer shall be treated as a single employer;

(iii) All employees shall be counted, including part-time employees and employees who are not eligible for coverage through the employer;

(iv) If an employer was not in existence throughout the preceding calendar year, the determination of whether that employer is a small employer shall be based on the average number of employees that is reasonably expected that the employer will employ on business days in the current calendar year; and

(v) An employer that makes enrollment in qualified health plans available to its employees through the small business health options program and would cease to be a small employer because of an increase in the number of its employees shall continue to be treated as a small employer for purposes of this subchapter as long as it continuously makes enrollment through the small business health options program available to its employees.

23-61-804. Arkansas Health Insurance Exchange.

(a) There is created a nonprofit legal entity to be known as the "Arkansas Health Insurance Exchange".

(b)(1) The exchange is created as a political subdivision, instrumentality, and body politic of the State of Arkansas and, as such, is not a state agency.

(2) Except to the extent defined in this subchapter, the exchange is exempt from:

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

(B) All laws governing state agencies, including without limitation:

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

(ii) The Freedom of Information Act of 1967, § 21-9-301.

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

(3) The exchange is immune from liability and suit under § 25-15-201

(c) The exchange shall operate subject to the supervision and control of the Board of Directors of the Arkansas Health Insurance Exchange. The board shall consist of the following members:

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

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

(C) One (1) member appointed by the Governor shall be a consumer representative.

(D) One (1) member appointed by the Governor shall be a member of the general public not associated with the medical profession, a hospital, an insurer, or a health maintenance organization;

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

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

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

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

(B) One (1) of the members appointed by the Speaker of the House of Representatives shall be a representative of a health carrier.

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

(d)(1)(A) The initial members appointed by the Governor under subdivision (c)(1) of this section shall serve terms as follows:

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

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

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

(B) A member subsequently appointed to the board under subdivision (c)(1) of this section shall serve a term of six (6) years.

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

(i) One (1) initial member shall be appointed to a

term of four (4) years;

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

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

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

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

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

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

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

(B) Members subsequently appointed to the board under subdivision (c)(3) of this section shall serve a term of six (6) years.

(e) The appointing authorities shall ensure that a majority of the voting members of the board have relevant experience in:

(1) Health benefits administration;

(2) Health care finance;

(3) Health plan purchasing;

(4) Health care delivery system administration; or

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

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

(g)(1) The board, by a majority vote of the total membership of the board cast during its first regularly scheduled meeting of each calendar year, may authorize payment to its members of a stipend per day in an amount determined by the board for each meeting attended or for any day while performing any proper business of the board.

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

(h) The board shall appoint the Executive Director of the Arkansas Health Insurance Exchange to administer the exchange, and the executive director may employ necessary staff.

(i)(1) Neither the board nor its employees shall be liable for any obligations of the exchange.

(2) There shall be no liability on the part of and no cause of action of any nature may arise against the board, the board's agents, or the board's employees for any act or omission related to the performance of their powers and duties under this subchapter.

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

(j) The board shall adopt articles, bylaws and operating rules in accordance with this subchapter within ninety (90) days after the appointment of the board.

(k) The board shall keep an accurate accounting of all activities, receipts, and expenditures on behalf of the exchange and report to the Arkansas Health Insurance Exchange Legislative Oversight Committee as

requested by the committee.

(l) The board shall have the authority to apply for and expend on behalf of the exchange any state, federal, or private grant funds available to assist with the implementation and operation of the exchange.

(m)(1) The board may contract with an eligible entity to assist with the implementation and operation of the exchange.

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

(B) A health carrier or an affiliate of a health carrier is not an eligible entity.

(3) In contracting with an eligible entity under subdivision (m)(1) of this section, the board shall give preference to eligible entities that have relevant experience.

(n) The board may enter into information-sharing agreements with federal and state agencies and other state exchanges to carry out its responsibilities under this subchapter, provided such agreements:

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

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

(o) As a condition of doing business in the State of Arkansas, a health carrier shall participate in the exchange by paying the assessments, submitting the reports, and providing the information required by the board or the Insurance Commissioner to implement this subchapter.

23-61-805. Duties of exchange.

The Arkansas Health Insurance Exchange shall:

(1) Implement procedures for the certification, recertification, and decertification of health benefit plans as qualified health plans;

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

(3) Maintain an Internet website through which enrollees and prospective enrollees of qualified health plans may obtain standardized comparative information on such plans;

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

(5) Use a standardized format for presenting health benefit options in the exchange;

(6) Establish compensation rates for licensed brokers and agents;

(7)(A) Inform individuals of eligibility requirements for the Medicaid program under Title XIX of the Social Security Act as existing on the effective date of this act, the Children's Health Insurance Program under Title XXI of the Social Security Act as existing on the effective date of this act, or any applicable state or local public program.

(B) If through screening of the application by the exchange, the exchange determines that any individual is eligible for any

such program, the exchange shall refer that individual to the program for enrollment;

(8) Establish and make available by electronic means a calculator to determine the actual cost of coverage after application of a premium tax credit under section 36B of the Internal Revenue Code of 1986 as existing on the effective date of this act and any cost-sharing reduction under section 1402 of the federal act;

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

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

(10) Subject to section 1411 of the federal act, grant a certification attesting that, for purposes of the individual responsibility penalty under section 5000A of the Internal Revenue Code of 1986 as existing on the effective date of this act, an individual is exempt from the individual responsibility requirement or from the penalty imposed by that section because:

(A) There is no affordable qualified health plan available through the exchange, or the individual's employer, covering the individual; or

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

(11) Transfer to the Secretary of the United States Department of the Treasury the following:

(A) A list of the individuals who are issued a certification under subdivision (10) of this section, including the name and taxpayer identification number of each individual;

(B) The name and taxpayer identification number of each individual who was an employee of an employer but who was determined to be eligible for the premium tax credit under section 36B of the Internal Revenue Code of 1986 as existing on the effective date of this act because:

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

(ii) The employer provided the minimum essential coverage, but it was determined under section 36B(c)(2)(C) of the Internal Revenue Code OF 1986 as existing on the effective date of this act to either be unaffordable to the employee or not provide the required minimum actuarial value; and

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

(i) Notifies the exchange under section 1411(b)(4) of the federal act that he or she has changed employers; and

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

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

(13) Select entities qualified to serve as navigators and award grants to enable navigators to:

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

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

(C) Facilitate enrollment in qualified health plans;

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

(E) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange.

23-61-806. Funding — Publication of costs.

(a) The Arkansas Health Insurance Exchange may charge assessments or user fees to health carriers, or otherwise generate funding, to support its operations provided under this subchapter.

(b)(1) An assessment may be offset in an amount equal to the amount of the assessment paid to the exchange against the premium tax payable for the year in which the assessment is levied or for the four (4) years subsequent to that year.

(2) No offset shall be allowed for any penalty assessed under subsection (c) of this section.

(c)(1) All assessments and fees shall be due and payable upon receipt and shall be delinquent if not paid within thirty (30) days of the receipt of the notice by the health carrier.

(2) Failure to timely pay the assessment will automatically subject the health carrier to a penalty of ten percent (10%), which shall be due and payable within the next thirty-day period.

(3) The Board of Directors of the Arkansas Health Insurance Exchange and the Insurance Commissioner may enforce the collection of the assessment and penalty in accordance with this subchapter and the Arkansas Insurance Code.

(4) The board may waive the penalty authorized by this subsection if the board determines that compelling circumstances exist that justify a waiver.

(d)(1) The exchange shall publish the average costs of licensing, regulatory fees, and any other payments required by the exchange and the administrative costs of the exchange on an Internet website to educate consumers on such costs.

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

23-61-807. Rules.

(a) The Insurance Commissioner may promulgate rules to implement the provisions of this subchapter.

(b) Rules promulgated under this section shall not conflict with or prevent the application of regulations promulgated by the Secretary of the

United States Department of Health and Human Services under the federal act.

23-61-808. Relation to other laws.

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

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

(c) Nothing in this subchapter, and no action taken by the Arkansas Health Insurance Exchange under this subchapter, shall be construed to preempt or supersede the authority of the Insurance Commissioner to regulate the business of insurance within this state.

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

SECTION 2. Arkansas Code Title 10, Chapter 3, is amended to add an additional subchapter to read as follows:

Subchapter 27 — Arkansas Health Insurance Exchange Legislative Oversight Committee

10-3-2701. Arkansas Health Insurance Exchange Legislative Oversight Committee.

(a) The Arkansas Health Insurance Exchange Legislative Oversight Committee is established.

(b) The Arkansas Health Insurance Exchange Legislative Oversight Committee shall consist of the following members of the General Assembly appointed as follows:

(1) The President Pro Tempore of the Senate or his or her designee;

(2) The Speaker of the House of Representatives or his or her designee;

(3) The chair of the Senate Committee on Insurance and Commerce or his or her designee;

(4) The chair of the House Committee on Insurance and Commerce or his or her designee;

(5) The chair of the Senate Committee on Public Health, Welfare, and Labor or his or her designee;

(6) The chair of the House Committee on Public Health, Welfare, and Labor or his or her designee;

(7) The chair of the Senate Committee on Revenue and Taxation or his or her designee;

(8) The chair of the House Committee on Revenue and Taxation or his or her designee;

(9) The Senate chair of the Hospital and Medicaid Study Subcommittee of the Legislative Council or his or her designee;

(10) The House chair of the Hospital and Medicaid Study Subcommittee of the Legislative Council or his or her designee;

(11) The Senate chair of the Medicaid Subcommittee of the Legislative Joint Auditing Committee or his or her designee; and

(12) The House chair of the Medicaid Subcommittee of the Legislative Joint Auditing Committee or his or her designee.

(c)(1) The Arkansas Health Insurance Exchange Legislative Oversight Committee shall study matters pertaining to the Arkansas Health Insurance Exchange Act, § 23-61-801 et seq., as the Arkansas Health Insurance Exchange Legislative Oversight Committee considers necessary to fulfill its mandate.

(2) The Arkansas Health Insurance Exchange Legislative Oversight Committee may request reports from the Arkansas Health Insurance Exchange pertaining to the operations, programs, or finances of the exchange as it deems necessary.

(d) Annually by December 15, the Arkansas Health Insurance Exchange Legislative Oversight Committee shall provide to the General Assembly any analysis or findings resulting from its activities under this section that the Arkansas Health Insurance Exchange Legislative Oversight Committee deems relevant.

(e)(1) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Arkansas Health Insurance Exchange Legislative Oversight Committee.

(2) The Arkansas Health Insurance Exchange Legislative Oversight Committee shall meet at least quarterly upon the joint call of the cochairs of the Arkansas Health Insurance Exchange Legislative Oversight Committee.

(3) A majority of the Arkansas Health Insurance Exchange Legislative Oversight Committee constitutes a quorum.

(4) No action may be taken by the Arkansas Health Insurance Exchange Legislative Oversight Committee except by a majority vote at a meeting at which a quorum is present.

(f) Members of the Arkansas Health Insurance Exchange Legislative Oversight Committee are entitled to per diem and mileage reimbursement at the same rate authorized by law for attendance at meetings of interim committees of the General Assembly and shall be paid from the same source.

(g)(1) With the consent of both the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Arkansas Health Insurance Exchange Legislative Oversight Committee may meet during a session of the General Assembly to perform its duties under this section.

(2) This subsection does not limit the authority of the Arkansas Health Insurance Exchange Legislative Oversight Committee to meet during a recess as authorized by § 10-3-211 or § 10-2-223.

SECTION 3. NOT TO BE CODIFIED. (a) The health insurance exchange developed through a Federally-facilitated Exchange Partnership model shall transfer to the control of the Arkansas Health Insurance Exchange on January 1, 2015.

(b) The Board of Directors of the Arkansas Health Insurance Exchange shall participate in the Federally-facilitated Exchange Partnership to assist in planning the transition to a state-based exchange on January 1, 2015.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, allow each state to establish a health insurance exchange or opt to participate in a health insurance exchange operated by the United States Department of Health and Human Services; that the state has elected to create a state-based exchange effective on January 1, 2015; and that this act should become effective at

the earliest opportunity to begin the process of planning for the implementation of a state-based exchange and transitioning to a state-based exchange. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Rapert

MBM/CDS - 04-04-2013 17:19:14 _____

MBM262 **Secretary**