

INTERIM STUDY PROPOSAL 2023-010

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023

A Bill

ANS/ANS
HOUSE BILL

4 By: Representative Wardlaw

5
6
7 Filed with: Arkansas Legislative Council
8 pursuant to A.C.A. §10-3-217.

9 **For An Act To Be Entitled**

10 AN ACT TO ESTABLISH A STATE-BASED HEALTH INSURANCE
11 MARKETPLACE; TO TRANSFER THE ARKANSAS HEALTH
12 INSURANCE MARKETPLACE FROM THE STATE INSURANCE
13 DEPARTMENT; TO CREATE A BOARD OF DIRECTORS OF THE
14 ARKANSAS HEALTH INSURANCE MARKETPLACE; TO DECLARE AN
15 EMERGENCY; AND FOR OTHER PURPOSES.

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17
18 **Subtitle**

19 TO TRANSFER THE ARKANSAS HEALTH INSURANCE
20 MARKETPLACE FROM THE STATE INSURANCE
21 DEPARTMENT; TO CREATE A BOARD OF
22 DIRECTORS OF THE ARKANSAS HEALTH
23 INSURANCE MARKETPLACE; AND TO DECLARE AN
24 EMERGENCY.

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

28
29 SECTION 1. DO NOT CODIFY. Transfer of Arkansas Health Insurance
30 Marketplace from State Insurance Department.

31 (a) The Arkansas Health Insurance Marketplace is transferred from the
32 State Insurance Department to the Board of Directors of the Arkansas Health
33 Insurance Marketplace.

34 (b) The powers, duties, functions, records, contracts, property,
35 unexpended balances of appropriations, allocations, and other funds of the

1 Arkansas Health Insurance Marketplace are transferred to the Board of
2 Directors of the Arkansas Health Insurance Marketplace.

3 (c)(1) The transfer of the Arkansas Health Insurance Marketplace from
4 the State Insurance Department does not affect the orders, rules,
5 regulations, directives, registration, licensing, or standards made or
6 promulgated by the Arkansas Health Insurance Marketplace the effective date
7 of this act.

8 (2) The orders, rules, regulations, directives, registration,
9 licensing, or standards under subdivision (c)(1) of this section shall
10 continue with full force and effect until amended or repealed under authority
11 given by law.

12 (d) The State Insurance Department shall grant access to and provide
13 all information requested by the Board of Directors of the Arkansas Health
14 Insurance Marketplace.

15
16 SECTION 2. Arkansas Code § 23-61-803 is amended to read as follows:

17 23-61-803. Arkansas Health Insurance Marketplace – Board of Directors
18 of the Arkansas Health Insurance Marketplace.

19 ~~(a) The Arkansas Health Insurance Marketplace is created as a division~~
20 ~~within the State Insurance Department~~ There is created a nonprofit legal
21 entity to be known as the "Arkansas Health Insurance Marketplace".

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

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

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

28 (B) All laws other than the Freedom of Information Act of
29 1967, § 25-19-101 et seq., governing state agencies, including without
30 limitation:

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

33 (ii) The Uniform Classification and Compensation
34 Act, § 21-5-201 et seq.; and

35 (iii)(a) The Arkansas Administrative Procedure Act,
36 § 25-15-201 et seq.

1 (b) The Arkansas Health Insurance Marketplace
2 shall adopt policies, procedures, and rules to implement its obligations
3 under this subchapter.

4 (3)(A) Before the adoption, amendment, or repeal of any policy,
5 procedure, or rule, the Arkansas Health Insurance Marketplace shall:

6 (i)(a)(1) Give at least thirty (30) days' notice of
7 its intended action.

8 (2) The thirty-day period under
9 subdivision (a)(3)(A)(i)(a)(1) of this section shall begin on the first day
10 of the publication of notice.

11 (b) The notice shall include a statement of
12 the terms or substance of the intended action or a description of the
13 subjects and issues involved and the time, the place, and the manner in which
14 interested persons may present their views on the intended action or the
15 subjects and issues involved.

16 (c) The notice shall be mailed to any person
17 specified by law and to all persons who have requested advance notice of
18 rule-making proceedings.

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

24 (2) The notice shall be published by the
25 Secretary of State on the website of the Secretary of State for thirty (30)
26 days according to § 25-15-218; and

27 (ii)(a)(1) Afford all interested persons at least
28 thirty (30) days to submit written data, views, or arguments, orally or in
29 writing.

30 (2) The thirty-day period under
31 subdivision (a)(3)(A)(ii)(a)(1) of this section shall begin on the first day
32 of the publication of notice under subdivision (b)(3)(A)(i)(a)(1) of this
33 section.

34 (b) Opportunity for an oral hearing shall be
35 granted if requested by twenty-five (25) persons, by a governmental

1 subdivision or agency, or by an association having no fewer than twenty-five
2 (25) members.

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

7 (d) Upon the adoption, amendment, or repeal of
8 a policy, procedure, or rule, the Arkansas Health Insurance Marketplace, if
9 requested to do so by an interested person either before adoption, amendment,
10 or repeal or within thirty (30) days thereafter, shall issue a concise
11 statement of the principal reasons for and against its adoption, amendment,
12 or repeal, incorporating therein its reasons for overruling the
13 considerations urged against its adoption, amendment, or repeal.

14 (B) The thirty-day periods for giving public notice under
15 subdivision (b)(3)(A)(i)(a)(1) of this section and for receiving written
16 data, views, or arguments, orally or in writing, under subdivision
17 (b)(3)(A)(ii)(a)(1) of this section shall run concurrently.

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

25 (ii) The rule may be effective for no longer than
26 one hundred twenty (120) days.

27 (iii) If, after the expiration of the effective
28 period of an emergency rule, the Arkansas Health Insurance Marketplace wishes
29 to adopt a successive emergency rule that is identical or substantially
30 similar to the expired emergency rule, the Arkansas Health Insurance
31 Marketplace shall not adopt the successive emergency rule earlier than thirty
32 (30) days after the expiration of the emergency rule.

33 (D)(i) The Arkansas Health Insurance Marketplace shall
34 file with the Legislative Council, the Secretary of State, the Arkansas State
35 Library, and the Bureau of Legislative Research a copy of each policy,

1 procedure, or rule adopted by it and a statement of financial impact for the
2 rule.

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

6 (iii)(a) The scope of the financial impact statement
7 shall be determined by the Arkansas Health Insurance Marketplace but, at a
8 minimum, shall include the estimated cost of complying with the policy,
9 procedure, or rule and the estimated cost for the Arkansas Health Insurance
10 Marketplace to implement the policy, procedure, or rule.

11 (b) If the Arkansas Health Insurance
12 Marketplace has reason to believe that the development of a financial impact
13 statement will be so speculative as to be cost prohibitive, the Arkansas
14 Health Insurance Marketplace shall submit a statement and explanation to that
15 effect.

16 (c) If the purpose of an Arkansas Health
17 Insurance Marketplace policy, procedure, or rule is to implement a federal
18 rule or regulation, the financial impact statement shall be limited to any
19 incremental additional cost of the state policy, procedure, or rule, as
20 opposed to the federal rule or regulation.

21 (E)(i)(a) Each policy, procedure, or rule adopted by the
22 Arkansas Health Insurance Marketplace is effective thirty (30) days after the
23 filing of the final policy, procedure, or rule unless a later date is
24 specified by law or in the rule itself.

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

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

32 (2) Appropriate measures shall include
33 without limitation posting the following information on the website of the
34 Arkansas Health Insurance Marketplace:

35 (A) The final rule;

1 (B) Copies of all written comments
2 submitted to the Arkansas Health Insurance Marketplace regarding the rule;

3 (C) A summary of all written and
4 oral comments submitted to the Arkansas Health Insurance Marketplace
5 regarding the rule and the response of the Arkansas Health Insurance
6 Marketplace to those comments; and

7 (D) The proposed effective date of
8 the final rule.

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

14 (b) The finding of the Arkansas Health
15 Insurance Marketplace and a brief statement of the reasons for the finding
16 shall be filed with the rule.

17 (c) The Arkansas Health Insurance Marketplace
18 shall take appropriate measures to make emergency rules known to the persons
19 who may be affected by the emergency rules.

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

24 (c)(1) The Arkansas Health Insurance Marketplace shall operate subject
25 to the supervision and control of the Board of Directors of the Arkansas
26 Health Insurance Marketplace.

27 (2) The board shall consist of the following members to be
28 appointed on or before July 1, 2023:

29 (A)(i) Three (3) members appointed by the Governor.

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

33 (iii) Two (2) members appointed by the Governor
34 shall be consumer representatives;

35 (B)(i) Three (3) members appointed by the President Pro
36 Tempore of the Senate.

1 (ii) One (1) member appointed by the President Pro
2 Tempore of the Senate shall be a representative of a health insurer.

3 (iii) One (1) member appointed by the President Pro
4 Tempore of the Senate shall be a representative of small employers;

5 (C)(i) Three (3) members appointed by the Speaker of the
6 House of Representatives.

7 (ii) One (1) member appointed by the Speaker of the
8 House of Representatives shall be a representative of a health insurer.

9 (iii) One (1) member appointed by the Speaker of the
10 House of Representatives shall be a member of a health-related profession
11 licensed in the State of Arkansas;

12 (D) The Insurance Commissioner or his or her designee as
13 an ex officio nonvoting member; and

14 (E) The Secretary of the Department of Human Services or
15 his or her designee as an ex officio nonvoting member.

16 (d)(1) Members appointed by the Governor serve at the pleasure of the
17 Governor.

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

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

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

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

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

29 (3)(A) The initial members appointed by the Speaker of the House
30 of Representatives under subdivision (c)(2) of this section shall serve terms
31 as follows:

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

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

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

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

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

7 (1) Health benefits administration;

8 (2) Healthcare finance;

9 (3) Health plan purchasing;

10 (4) Healthcare delivery system administration; or

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

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

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

17 (A) Payment to its members of a stipend per day not to
18 exceed one hundred dollars (\$100) for each meeting attended or for any day
19 while performing substantive business of the board; and

20 (B) Reimbursement of actual expenses while performing
21 substantive business of the board.

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

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

26 (A) Plan and administer the Arkansas Health Insurance
27 Marketplace; and

28 (B) Employ necessary staff.

29 (2) ~~The State Insurance Department shall~~ board may plan and
30 administer the Arkansas Health Insurance Marketplace and employ necessary
31 staff on an interim basis until the executive director is hired.

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

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

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

4 (j)(1) The board shall adopt articles, bylaws, and operating rules
5 according to this subchapter.

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

8 ~~(e)(k)~~ The ~~State Insurance Department~~ board shall keep an accurate
9 accounting of all activities, receipts, and expenditures on behalf of the
10 Arkansas Health Insurance Marketplace and report to the Legislative Council
11 as requested by the Legislative Council.

12 ~~(d)(1)~~ The ~~State Insurance Department~~ ~~may~~ board shall have the
13 authority to apply for and expend on behalf of the Arkansas Health Insurance
14 Marketplace any state, federal, or private ~~grant~~ funds available to assist
15 with the implementation and operation of the Arkansas Health Insurance
16 Marketplace.

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

20 (2) For the purposes of this subsection:

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

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

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

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

32 (B) The competitive bidding process for awarding contracts
33 under this subchapter to an eligible entity shall be reviewed by the
34 Legislative Council.

35 ~~(f)(n)~~ The ~~State Insurance Department~~ board may enter into
36 information-sharing agreements with federal and state agencies and other

1 state marketplaces to carry out its responsibilities under this subchapter,
2 provided such agreements:

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

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

7 ~~(g)~~(o) As a condition of participating in the Arkansas Health
8 Insurance Marketplace, a health insurer shall pay the assessments, submit the
9 reports, and provide the information required by the board or the Insurance
10 Commissioner to implement this subchapter.

11 ~~(h)~~(p) The ~~State Insurance Department~~ board and any eligible entity
12 under subdivision ~~(e)~~(2)~~(m)~~(1) of this section shall provide claims and other
13 plan and enrollment data to the Department of Human Services and the
14 commissioner upon request to:

15 (1) Facilitate compliance with reporting requirements under
16 state and federal law; and

17 (2) Assess the performance of the Arkansas Health and
18 Opportunity for Me Program established by the Arkansas Health and Opportunity
19 for Me Act of 2021, § 23-61-1001 et seq., including without limitation the
20 program's quality, cost, and consumer access.

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

24 (2) The Legislative Council may request reports from the
25 Arkansas Health Insurance Marketplace pertaining to the operations, programs,
26 or finances of the Arkansas Health Insurance Marketplace as it deems
27 necessary.

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

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

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

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

2 (A) Establish or utilize one (1) or more subcommittees to
3 assist in the duties of the Legislative Council or the Joint Budget
4 Committee, respectively, under this subchapter;

5 (B) Assign information filed with the Legislative Council
6 under this subchapter to one (1) or more subcommittees of the Legislative
7 Council or the Joint Budget Committee, respectively, including without
8 limitation a subcommittee created under subdivision ~~(i)(5)(A)~~(q)(5)(A) of
9 this section; and

10 (C) Delegate the duties of the Legislative Council or the
11 Joint Budget Committee, respectively, under this subchapter to one (1) or
12 more subcommittees of the Legislative Council or the Joint Budget Committee,
13 respectively, subject to the final review and approval of the Legislative
14 Council or the Joint Budget Committee, respectively.

15
16 SECTION 3. Arkansas Code § 23-61-804 is amended to read as follows:
17 23-61-804. Duties of Arkansas Health Insurance Marketplace.

18 ~~(a)~~ The Arkansas Health Insurance Marketplace shall:

19 (1)~~(A)~~ Implement procedures and criteria for the certification,
20 recertification, and decertification of health benefit plans as qualified
21 health plans in coordination with the Insurance Commissioner and in
22 compliance with state and federal law.

23 (B) The procedures and criteria shall comply with
24 applicable:

25 (i) Federal law;

26 (ii) Federal waivers obtained by the state to
27 implement the Arkansas Health and Opportunity for Me Act of 2021, § 23-61-
28 1001 et seq.; and

29 (iii) Rules promulgated by the State Insurance
30 Department and the Department of Human Services under the Arkansas Health and
31 Opportunity for Me Act of 2021, § 23-61-1001 et seq.;

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

34 (3) Require that a health carrier offering a qualified health
35 plan post on the public part of its website in a readily accessible format

1 the ~~formulary list for each individual qualified health plan and the~~
 2 ~~following information:~~

3 ~~(A) The qualified health plan to which the formulary~~
 4 ~~applies;~~

5 ~~(B) Any exclusions from coverage or restrictions,~~
 6 ~~including:~~

7 ~~(i) Any tiering structure, including copay and~~
 8 ~~coinsurance requirements;~~

9 ~~(ii) Prior authorization requirements;~~

10 ~~(iii) [Repealed.]~~

11 ~~(iv) Deductibles and cost sharing;~~

12 ~~(v) Quantity limits; and~~

13 ~~(vi) Whether access is dependent upon the location~~
 14 ~~where a prescription drug is obtained or administered; and~~

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

17 (4)(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 (C) This subdivision ~~(a)(4)(4)~~ does not apply if an
 24 available qualified health carrier does not offer a health benefit plan under
 25 the small business health options program;

26 (5)(A) Select entities qualified to serve as navigators ~~and~~
 27 ~~award grants to enable navigators, consistent with state and federal law, to:~~

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

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

34 (iii) Facilitate enrollment in qualified health
 35 plans;

1 (iv) Provide referrals to any applicable office of
 2 health insurance consumer assistance or health insurance ombudsman or to any
 3 other appropriate state agency for any enrollee with a grievance, complaint,
 4 or question regarding his or her health benefit plan or health benefit
 5 coverage or a determination under his or her health benefit plan or health
 6 benefit coverage; and

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

10 (B) ~~The Insurance Commissioner~~ Board of Directors of the
 11 Arkansas Health Insurance Marketplace in coordination with the commissioner
 12 shall ensure in the navigator selection process that the navigators are
 13 geographically, culturally, ethnically, and racially representative of the
 14 populations served; ~~and~~

15 (6) Otherwise comply with a requirement the ~~commissioner board~~
 16 determines is necessary to obtain or maintain the approval to administer a
 17 health insurance marketplace; ~~;~~

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

21 ~~(1)(A)(7)(A)~~ Maintain a website through which enrollees and
 22 prospective enrollees of qualified health plans may obtain standardized
 23 comparative information on such plans.

24 (B) The ~~commissioner board~~ shall ensure that an entity
 25 offering a qualified health plan through the Arkansas Health Insurance
 26 Marketplace posts the information described in § 23-79-159 on the Arkansas
 27 Health Insurance Marketplace website in a readily accessible format;

28 ~~(2)(8)~~ Assign a rating to each qualified health plan offered
 29 through the Arkansas Health Insurance Marketplace and determine each
 30 qualified health plan's level of coverage ~~in accordance with~~ according to
 31 regulations issued by the United States Secretary of Health and Human
 32 Services under section 1302(d)(2)(A) of the federal act;

33 ~~(3)(9)~~ Use a standardized format for presenting health benefit
 34 options in the Arkansas Health Insurance Marketplace; ~~and~~

35 ~~(4)(10)~~ Review compensation rates for licensed brokers and
 36 agents; and

1 (11) Establish and make available by electronic means a
 2 calculator to determine the actual cost of coverage after application of a
 3 premium tax credit under section 36B of the Internal Revenue Code of 1986 as
 4 existing on April 23, 2013, and any cost-sharing reduction under section 1402
 5 of the federal act.

6
 7 SECTION 4. Arkansas Code § 23-61-805 is amended to read as follows:
 8 23-61-805. Funding – Publication of costs.

9 ~~(a)(1) The General Assembly shall establish a reasonable initial~~
 10 ~~assessment or user fee and reasonable increases or decreases in the amount of~~
 11 ~~future assessments or user fees and penalties and interest charges for~~
 12 ~~nonpayment of an assessment or user fee charged to participating health~~
 13 ~~insurers for the efficient operation of the Arkansas Health Insurance~~
 14 ~~Marketplace~~ The Board of Directors of the Arkansas Health Insurance
 15 Marketplace shall establish in a bank authorized to do business in this
 16 state, selected by the board, a revolving cash fund to be known as the
 17 "Arkansas Health Insurance Marketplace Fund".

18 (2) All federal or state grant funds, assessments, user fees,
 19 penalties for nonpayment, and late charges for late payment collected under
 20 this subchapter shall be deposited into the fund.

21 (3) The Board of Directors of the Arkansas Health Insurance
 22 Marketplace shall administer this fund for the purposes stated in this
 23 subchapter as determined by the Executive Director of the Arkansas Health
 24 Insurance Marketplace.

25 (4) The board shall keep a complete record of all receipts and
 26 expenditures from the fund and shall make the record available to Arkansas
 27 Legislative Audit for audit and verification.

28 (b)(1) Beginning August 1, 2023, and then annually by August 1, the
 29 Board of Directors of the Arkansas Health Insurance Marketplace shall develop
 30 a methodology for determining the amounts of:

31 (A) Assessments;
 32 (B) User fees; and
 33 (C) Penalties and interest charges for late payment or
 34 nonpayment.

35 (2) Annually Beginning October 1, 2023, and then annually by
 36 October 1, the ~~State Insurance Department~~ board shall report to the

1 Legislative Council in the manner and format that the Legislative Council
 2 requires the recommendations of the ~~department~~ Arkansas Health Insurance
 3 Marketplace for the initial assessment or user fee and increases or decreases
 4 in the amount of future assessments or user fees and penalties and interest
 5 charges for nonpayment of an assessment or user fee charged to participating
 6 health insurers.

7 (3) ~~Annually by December 1~~ Beginning January 1, 2024, and then
 8 annually by January 1, the Legislative Council shall review the
 9 recommendations of the ~~department~~ Arkansas Health Insurance Marketplace under
 10 subdivision ~~(a)(2)(b)(2)~~ of this section and report to the President Pro
 11 Tempore of the Senate and the Speaker of the House of Representatives the
 12 recommendations of the Legislative Council for the initial assessment or user
 13 fee and future increases or decreases in the amount of assessments or user
 14 fees and penalties and interest charges for nonpayment of an assessment or
 15 user fee charged to participating health insurers.

16 ~~(b)(1)(c)(1)~~ All assessments and fees shall be due and payable upon
 17 receipt ~~in the matter required by the Insurance Commissioner~~ and shall be
 18 delinquent if not paid within thirty (30) days of the receipt of notice of
 19 the assessment by the health insurer.

20 (2)(A) Failure to timely pay the assessment shall automatically
 21 subject the health insurer to a penalty not to exceed ten percent (10%) of
 22 the assessment plus interest as established under ~~subsection (a)~~ subdivision
 23 (b)(1) of this section.

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

26 (3) The ~~commissioner~~ Board of Directors of the Arkansas Health
 27 Insurance Marketplace and the Insurance Commissioner may enforce the
 28 collection of the assessment and penalty and interest ~~in accordance with~~
 29 according to this subchapter and the Arkansas Insurance Code.

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

33 ~~(c)(1)(d)(1)~~ The ~~department~~ Arkansas Health Insurance Marketplace
 34 shall publish the average costs of licensing, regulatory fees, and any other
 35 payments required by the Arkansas Health Insurance Marketplace and the

1 administrative costs of the Arkansas Health Insurance Marketplace on an
2 internet website to educate consumers on such costs.

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

5 (e)(1) Annually, the Arkansas Health Insurance Marketplace shall
6 report the following information to the Legislative Council:

7 (A) The total amount of assessment fees or user fees
8 collected;

9 (B) The administrative costs and expenditure of the
10 Arkansas Health Insurance Marketplace, including without limitation salaries
11 of employees, supply costs, building rental costs, and technology costs;

12 (C) The amount of any other funds received by the Arkansas
13 Health Insurance Marketplace; and

14 (D) Other budgetary or financial matters relating to the
15 Arkansas Health Insurance Marketplace.

16 (2) The Arkansas Health Insurance Marketplace shall disclose and
17 provide additional budgetary or financial information upon the request of the
18 Legislative Council or the Joint Budget Committee.

19
20 SECTION 5. Arkansas Code § 23-61-806 is amended to read as follows:
21 23-61-806. Rules.

22 (a) The ~~Insurance Commissioner~~ Board of Directors of the Arkansas
23 Health Insurance Marketplace may promulgate rules to implement this
24 subchapter.

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

28
29 SECTION 6. DO NOT CODIFY. State innovation waiver.

30 (a) By January 1, 2024, the Board of Directors of the Arkansas Health
31 Insurance Marketplace and the Insurance Commissioner shall review and make
32 joint recommendations to the Legislative Council regarding the submission of
33 a state innovation waiver allowable under section 1332 of the Patient
34 Protection and Affordable Care Act, Pub. L. No. 111-148.

1 (b) The recommendations under subsection (a) of this section for
2 health insurance coverage or health insurance products shall include any or
3 all of the following:

4 (1) Risk stabilization strategies aimed at addressing risk
5 associated with individuals with high healthcare costs;

6 (2) Individual coverage health reimbursement arrangements for
7 employees of large and small businesses in this state;

8 (3) Financial assistance for different types of health insurance
9 plans, including without limitation nonqualified health plans for individuals
10 purchasing coverage;

11 (4) Creation of a new, state-administered subsidy program for
12 individuals, families, and small businesses on behalf of employees who are
13 purchasing coverage through the Arkansas Health Insurance Marketplace; and

14 (5) Establishment of account-based premium credits for
15 individuals and families enrolled in coverage through the Arkansas Health
16 Insurance Marketplace.

17 (c) Based on the approval of the Legislative Council, the commissioner
18 may submit one (1) or more applications to the United States Secretary of
19 Health and Human Services and the United States Secretary of the Treasury for
20 a waiver of applicable provisions.

21 (d) Upon approval of a waiver submitted under subsection (c) of this
22 section, the commissioner may implement the waiver as approved.

23
24 SECTION 7. DO NOT CODIFY. Legislative intent.

25 It is the intent of the General Assembly by the enactment of this act
26 to establish a private, nonprofit, state-based exchange health insurance
27 marketplace.

28
29 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly of the State of Arkansas that the citizens of Arkansas would
31 receive more benefit from the operation of a state-based exchange under
32 federal healthcare laws under Pub. L. No. 111-148, as amended by Pub. L. No.
33 111-152, and administration by a board of directors to reduce fees and costs;
34 that the state has elected to create a state-based exchange health insurance
35 marketplace and to transfer of the operation of the Arkansas Health Insurance
36 Marketplace from the State Insurance Department; this transfer impacts the

1 expenses and operations of state government; and that this act is immediately
2 necessary to begin the process of planning for the transitioning to,
3 implementation of, a state-based exchange health insurance marketplace
4 operated by a private, nonprofit entity before the upcoming fiscal year.
5 Therefore, an emergency is declared to exist, and this act being immediately
6 necessary for the preservation of the public peace, health, and safety shall
7 become effective on:

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

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

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

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16 Referred by Representative Wardlaw

17 Prepared by: ANS/ANS

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