

MINUTES

ARKANSAS HEALTH INSURANCE MARKETPLACE BOARD OF DIRECTORS

U of A System B Alan Sugg Board Room

2404 North University Avenue, Little Rock, Arkansas

Tuesday, September 3, 2013

The Arkansas Health Insurance Marketplace Board of Directors held its initial meeting Tuesday, September 3, 2013, at 10:30 a.m., at the University of Arkansas System's B. Alan Sugg Board Room in Little Rock, Arkansas.

Board members present: Mr. Fred Bean, Mr. Mike Castleberry, Mr. Steve Faris, Mr. Greg Hatcher, Mr. Jerry Jones, Mr. Chris Parker, Mr. John Selig, Ms. Annabelle Imber Tuck, and Ms. Sherrill Wise.

Legislators attending: Members of the Arkansas Health Insurance Marketplace Legislative Oversight Committee: Senator David Sanders, Chair, Senator Jonathan Dismang, Senator Linda Chesterfield, and Representative Jeremy Gillam, Chair. **Also attending:** Senator Michael Lamoureux and Representatives Mark Biviano and Jim Nickels.

Senator Michael Lamoureux, Senate Pro Tempore, called the meeting to order. Ms. Marty Garrity, Director, Bureau of Legislative Research, provided assistance. Senator Lamoureux invited the Board of Directors to introduce themselves.

DISCUSSION REGARDING FUNDING OF ARKANSAS HEALTH INSURANCE MARKETPLACE (AHIM) BOARD [EXHIBIT C]

Ms. Cynthia Crone, Deputy Commissioner, Arkansas Health Connector Division, Arkansas Insurance Department (AID), explained information about funding options for the Board. She explained that Arkansas has 100% federal funding to plan, establish, and implement the marketplace through cooperative agreements with the Center for Consumer Information and Insurance Oversight (CCIO), Centers for Medicaid Services (CMS), and the Department of Health and Human Services (DHHS). Prior to July 2015, funds come from those agencies through the Arkansas Insurance Department.

There are two types of grant funding:

- Level One grants are for a period of up to one year and may be obtained multiple times. They are offered every quarter and can be used for any marketplace model.
- Level II funds are only allowed one time and for 3 years and are reserved for the state-based models.

November 15 is the next submission date for Level One or Level Two funding. Funding is then on a quarter cycle: February 15, May 15, August 15, and October 15, 2014.

For this body, there is an allowable 90-day pre-award funding. The board could do start up for staff and expenses. If it is in the work plan for the November 15 "ask", then 90 days before the award date, eligible funds could be awarded.

The only other options would be to re-scope some of the current grant if it does not adversely affect the current approved work plan for the state partnership model.

DISCUSSION /ACTION TO RECEIVE STIPEND AND REIMBURSEMENT OF ACTUAL EXPENSES

Ms. Jessica Middleton-Kurylo, Attorney, Bureau of Legislative Research (BLR), noted Act 1500 provides that this board may award itself a stipend of up to \$100 per day for days that board members attend a meeting or to conduct substantive business of the board. The board may also award itself reimbursements for actual costs incurred while performing substantive business of the board. However, Act 1500 does not define "substantive business", and this board will be asked to define "substantive business" in its operating rules. She also recommended the board go ahead and start keeping records of meetings attended and expenses incurred while performing substantive business.

Ms. Middleton-Kurylo said it would be recommended that the board consider a motion to adopt the stipend and reimbursement of expenses, as Act 1500 requires the board to adopt the reimbursement and stipend at its first meeting of the calendar year. Once the board makes this motion, the outcome of that vote should be reported to the Arkansas Health Insurance Marketplace Legislative Oversight Committee (Oversight Committee). The chair of the board will work with Carol Stapleton, BLR Legislative Analyst, to submit that report.

Ms. Crone questioned from where the funds would come? Ms. Garrity responded that the law requires adoption at the first meeting whether the funds are available or not. If the funds are available later, then they can be reimbursed. Mr. Parker stated he was concerned about the 90 day advance business. If it is the department's recommendation that the board apply in November, are you saying that it is possible to justify in that request expenses that are already incurred for 90 days. Ms. Crone stated that she is not sure that "stipends" defined that way are an allowable expense under the federal grant, so that needs to be checked out.

Senator Lamoureux asked if there were any other questions. **Upon motion of Mr. Faris, and a second by Mr. Jones, the stipend and reimbursement of expenses was adopted.**

Ms. Middleton-Kurylo asked for clarification if they were approving the \$100 a day stipend, because Act 1500 provides up to that amount. Mr. Faris stated that is something that can be decided at our next meeting. Ms. Middleton-Kurylo said to avoid ambiguity she recommends the board go ahead and do it today. Mr. Faris asked her to explain what she means by avoiding ambiguity. Ms. Middleton-Kurylo noted Act 1500, page 9 line 33, requires that this board adopt its stipend and reimbursement at its first meeting. She said it does not particularly say the amount, but the best way to avoid a controversy is to address it. Senator Lamoureux said, "I took the motion to be up to the maximum amount and revise that at a later date and we will have plenty of opportunity to discuss that. When he made the motion I assumed that's what we were making, and I think it should reflect that it was up to the \$100."

DISCUSSION/REVIEW OF BYLAWS, ARTICLES, OPERATING RULES [HANDOUT 1]

Ms. Jessica Middleton-Kurylo explained Act 1500 requires, within 90 days of the board being appointed, that it adopts its Articles of Incorporation, Bylaws, and Operating Rules. That 90-day period expires September 28, but as that is a Saturday, it rolls over to September 30. Once the board adopts its Operating Rules, Articles of Incorporation, and Bylaws, they are to be filed with the Oversight Committee. She noted Operating Rules must be adopted in the manner prescribed in Act 1500 for Emergency Rules. Ms. Garrity clarified that the reason they need to be done in emergency action is because the law requires a 30-day notice and opportunity for comment. Since there is not time before the 90 days expires, it will require emergency action.

Ms. Middleton-Kurylo explained her outline and the color coding of her document packet. She said there were provisions of the proposed operating rules and specific policy issues that need to be addressed and brought to the attention of the board.

Operating Rules

Page. 10---Fiscal Impact Statement on Small Business to be filed prior to the adoption of proposed rule, policy or procedure. Act 1500 incorporated a set of statutes by reference into the Act concerning the fiscal impact on small business being prepared prior to the adoption of a Rule. However, Act 759 passed in the same session, repealed the statutes concerning small business fiscal impact statement. The statutes are: A.C.A. 25-15-301 through 25-15-303. The board will probably desire to seek an Attorney General's Opinion for legal guidance. In the operating rules (defined in grey in the board's packet) the board is presented with several options, i.e.

- Adhere 100% to former statutes with the understanding that it may be the only entity doing so;
- Adhere to former statute as much as reasonable, or
- Board may consider not adhering to the internal reference of the statutes with the understanding that although Act 759 did repeal the statutes requiring a small business fiscal impact statement to be filed before the adoption of a rule, another part of code, states under certain circumstances a fiscal impact statement should be filed with certain agency rules.

Ms. Middleton-Kurylo advised the board, at its request, she would provide a copy of Act 759.

Ms. Garrity stated that there are some responsibilities that the Arkansas Economic Development Commission (AEDC) has for the small business requirement for those fiscal impacts that they are no longer doing because the law was repealed. Therefore, you are in a position, if you adopt, those requirements that AEDC has to do, they are no longer

doing, and this needs to be looked at closely. Ms. Middleton-Kurylo reiterated that an Attorney General's Opinion may need to be sought by the board for legal guidance.

Ms. Middleton-Kurylo continued:

Page 7-Quorum of the Board – (Item 2, highlighted in pink)--Defines what would be the majority of a quorum. However, Act 1500 is silent on what constitutes a quorum, therefore the board will need to address this. The Arkansas Non-Profit Act has a statute that addresses this, A.C.A. 4-33-824, and is provided for the board's review.

Page 6-Indemnification (Item E highlighted in pink)--Act 1500 states that indemnification of board members and board employees is permissible. However, it does not define the circumstances in which indemnification may be made. It is arguable that a general statute, such as the Arkansas Non-Profit Act, could control, and those statutes are cited for reference. Upon request, there is also an entire subchapter that can be provided for the board's review. This is another matter that the board needs to address on how, or if, you want to indemnify the board or its employees.

Page 6-Immunity (under Liability highlighted in yellow and direct quote from Act 1500)--The board may consider defining what type of immunity it will have. This will be a policy decision that the board will need to make.

Page 4-Removal of Board Members – (Item C, Removal- highlighted in pink)--Act 1500 does not address the removal of board members. The Arkansas Non-Profit Act does address the removal of board members, and that statute, A.C.A. 4-33-809 through 810, is provided for your review. However, in this provision is a modified version of the Lottery Commission's Removal Process. It is identical to the Lottery Commission but for the appeals process enumerated in the lottery commission removal process. That would require an appeal to the state court system, and there are some jurisdictional concerns.

Page 5-Officers – (Item A highlighted in yellow)--The requirement that there be a chair of the board is highlighted and provided for in Act 1500. However, Act 1500 is silent on the requirements that there be a vice-chair, secretary or treasurer of the board. If the board does not address this matter, then you will be controlled by the Arkansas Non-Profit Act which does provide for a vice-chair, secretary and treasurer.

Page 6 Meetings (Item G) The very last sentence says regular meetings will be held quarterly; special meetings will be held at the call of the chair or four or more board members. Language may be modified. Act 1500 is silent on your meeting requirements. This is a policy issue that the board will need to address.

Freedom of Information Act (FOIA) (copy provided for board's review)--There is a public meeting requirement for this board, so that would prohibit telephone calls or emails concerning board business amongst board members.

Ms. Garrity suggested that the next meeting include a presentation by the Attorney General's Office on the FOIA and open records so members will know the parameters of what they can and cannot do.

Ms. Tuck addressed involvement in the federal partnership and regular communication with Ms. Crone and Mr. Selig in this regard. She wanted to be sure they are not crossing the line and thinks it would be a matter of the issue they were discussing.

Ms. Middleton-Kurylo continued with her explanation of:

Bylaws

Operating rules are incorporated into the bylaws, and the only issue the board needs to define is the location of its registered office.

DISCUSSION OF INCORPORATION OF BOARD OF DIRECTORS, AS A NON-PROFIT

Ms. Middleton-Kurylo briefly explained the Articles of Incorporation and stated the board would need to:

- Arrange for the \$50 filing fee to the Secretary of State's Office;
- Decide which members would be listed as incorporators, and
- Identify its registered agent and registered office provided.

Additionally, the Arkansas non-profit code states that indemnification needs to be addressed in the Articles of Incorporation.

Mr. Parker made a motion to incorporate. Mr. Faris made a second to the motion. The motion was adopted.

DISCUSSION OF AHIM LEGISLATIVE OVERSIGHT COMMITTEE'S ROLE

Ms. Middleton-Kurlyo explained the initial role and responsibilities of the Oversight Committee, stating it will be to:

- Review the policies, rules and procedures of this board for legislative intent. If the Oversight Committee determines that legislative intent is not met in a rule, policy or procedure, then it will file a report with Legislative Council.
- Review the adoption of the stipend and reimbursement that the board adopted today.
- Review Articles, Bylaws and Operating Rules, and
- Request reports from the marketplace pertaining to operations, programs or finances.

Ms. Garrity addressed a question regarding the BLR staff providing services to the board for 30 days. She noted that the Legislative Council is the governing body during the interim. The Legislative Council chairs have authorized the BLR to provide staff assistance for 30 days. She acknowledged there is a lot to do and mentioned there has been some discussion about possibly requesting an extension of the time period to the chairs.

Senator Lamoureux acknowledged the legislators in attendance and invited them to stand and introduce themselves.

INTERNET ACCESS

Mr. Jim Schratz, Chief Information Officer, BLR, stated he had been asked to set up an internet address for the board's presence on the web and email. The BLR will initially host it until the board has the funds and necessary staff. He mentioned that a ".gov" website is free and can be operational relatively quickly. Ms. Garrity stated part of the reason the board needs a website is to post its Rules, and this is the best method to do so.

Mr. Castleberry made a motion to have the website as "arhim.arkansas.gov" Ms. Wise made a second to the motion. The motion was adopted.

SELECTION OF OFFICERS

Mr. Faris made a motion to select a temporary chair and named Ms. Wise. Mr. Bean seconded the motion. The motion was adopted. Ms. Sherrill Wise will be the temporary chairman of the board until its next meeting.

NEXT MEETING DATES

The board will meet again on: Thursday, September 12, 2013, at 1:30 p.m.; and
Friday, September 20, 2013, at 9:00 a.m.

Ms. Garrity noted that the ex-officio members can send proxies. If other members cannot attend, they can conference call in for the meeting.

Ms. Garrity reminded the board of the assigned BLR staff: Carol Stapleton, Legislative Analyst; Barbara Brown, Legislative Administrative Assistant; Jessica Middleton-Kurylo, Attorney, with support from Matthew Miller, Assistant Director for Legal Services.

Senator Chesterfield suggested that the board review and adopt the *Robert's Rules of Order Newly Revised*. Ms. Middleton-Kurylo noted that will be something the board will need to decide.

The meeting adjourned at 11:25 a.m.