

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

A Bill

SENATE BILL 859

5 By: Senator Rapert
6

For An Act To Be Entitled

8 AN ACT CONCERNING THE DEVELOPMENT AND GOVERNANCE OF A
9 HEALTH INSURANCE EXCHANGE; TO DECLARE AN EMERGENCY;
10 AND FOR OTHER PURPOSES.
11

Subtitle

12 CONCERNING THE DEVELOPMENT AND GOVERNANCE
13 OF A HEALTH INSURANCE EXCHANGE; AND TO
14 DECLARE AN EMERGENCY.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Title 20 of the Arkansas Code is amended to add an
22 additional chapter to read as follows:

23 Chapter 3 – Health Insurance Exchange

24
25 Subchapter 1 – Arkansas Health Insurance Alliance Act

26
27 20-3-101. Title.

28 This act shall be known and may be cited as the "Arkansas Health
29 Insurance Alliance Act".
30

31 20-3-102. Legislative intent.

32 (a) The General Assembly finds:

33 (1) The Patient Protection and Affordable Care Act, Pub. L. No.
34 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub.
35 L. 111-152, allow each state to establish a health insurance exchange through
36 state law or opt to participate in a national health insurance exchange



1 operated by the United States Department of Health and Human Services;

2 (2) The best option for the State of Arkansas is to establish a
3 health insurance exchange at the state level; and

4 (3) The purpose of this act is to create a health insurance
5 exchange to fit the unique needs of Arkansas, seek Arkansas-specific
6 solutions, and explore the maximum number of options available to Arkansas.

7 (b) The health insurance exchange under this act, to be developed and
8 governed by the Arkansas Health Insurance Alliance, is intended to facilitate
9 access to and enrollment in health care plans in the individual market in
10 this state and include a small business health options program to assist
11 small employers in this state in facilitating the enrollment of their
12 employees in health plans offered by the small employer market.

13 (c) The intent of the health insurance exchange under this act is to
14 increase access, affordability, and choice for individuals and small business
15 employees purchasing health insurance in Arkansas.

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17 20-3-103. Definition.

18 (a) As used in this subchapter, "health insurer" means an entity that
19 provides health insurance, including excess or stop-loss health insurance, in
20 the State of Arkansas.

21 (b) "Health insurer" includes without limitation an insurance company,
22 medical services plan, hospital plan, hospital medical service corporation,
23 health maintenance organization, fraternal benefits society, or any other
24 entity providing a plan of health insurance or health benefits subject to
25 state insurance regulation.

26
27 20-3-104. Arkansas Health Insurance Alliance – Creation.

28 (a) The Arkansas Health Insurance Alliance is created as a nonprofit
29 unincorporated public entity for the purpose of fostering a competitive
30 marketplace for health insurance.

31 (b)(1)(A) The alliance is an instrumentality of the State of Arkansas.

32 (B) The alliance is not a state agency and, except as
33 provided in subdivision (b)(1)(C) of this section, shall not be subject to
34 laws governing state agencies.

35 (C) The alliance shall be subject to:

36 (i) Section 16-120-101 et seq.;

1 (3) Two (2) members appointed by the Speaker of the House of
2 Representatives;

3 (4) The Director of the Department of Human Services or his or
4 her designee;

5 (5) The Insurance Commissioner or his or her designee; and

6 (6) The Director of the Arkansas Economic Development
7 Commission.

8 (b)(1)(A) The initial members appointed by the Governor under
9 subdivision (a)(1) of this section shall draw lots to determine the lengths
10 of the initial terms as follows:

11 (i) One (1) member shall serve a term of three (3)
12 years; and

13 (ii) One (1) member shall serve a term of six (6)
14 years.

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

17 (2)(A) The initial members appointed by the President Pro
18 Tempore of the Senate under subdivision (a)(2) of this section shall draw
19 lots to determine the lengths of the initial terms as follows:

20 (i) One (1) member shall serve a term of three (3)
21 years; and

22 (ii) One (1) member shall serve a term of six (6)
23 years.

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

26 (3)(A) The initial members appointed by the Speaker of the House
27 of Representatives under subdivision (a)(3) of this section shall draw lots
28 to determine the lengths of the initial terms as follows:

29 (i) One (1) member shall serve a term of three (3)
30 years; and

31 (ii) One (1) member shall serve a term of six (6)
32 years.

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

35 (4)(A) A vacancy in a position appointed under subdivisions
36 (a)(1)-(3) shall be filled in the same manner as the original appointment.

1 (B) A member appointed to fill a vacancy shall serve the
 2 remainder of the unexpired term.

3 (5)(A) A person appointed to the board under subdivisions
 4 (a)(1)-(3) of this section shall have demonstrated knowledge or experience in
 5 one (1) or more of the following areas:

- 6 (i) Individual health insurance coverage;
- 7 (ii) Small employer health insurance;
- 8 (iii) Health benefits administration;
- 9 (iv) Health care finance;
- 10 (v) Administration of a public or private health
 11 care delivery system;
- 12 (vi) The provision of health care services;
- 13 (vii) The purchase of health insurance coverage;
- 14 (viii) Health care consumer navigation or
 15 assistance;
- 16 (ix) Health care economics or health care actuarial
 17 sciences;
- 18 (x) Information technology; or
- 19 (xi) Founding a business with fifty (50) or fewer
 20 employees.

21 (B) A person appointed to the board shall not be directly
 22 affiliated with the insurance industry.

23 (b) The Insurance Commissioner or his or her designee shall serve as
 24 the chair of the board.

25 (c) The board may, by a majority vote of the total membership of the
 26 board cast during its first regularly scheduled meeting of each calendar
 27 year, authorize expense reimbursement for each board member for performing
 28 official board duties.

29 (d) Five (5) members of the board constitutes a quorum.

30 (e)(1)(A) A member of the board appointed under subdivisions (a)(1)-
 31 (3) of this section may be removed by the appointing authority for:

- 32 (i) Misconduct;
- 33 (ii) Incompetence; or
- 34 (iii) Malfeasance in office.

35 (B) The appointing authority shall appoint a qualified
 36 individual to replace the removed member of the board to serve the remainder

1 of the removed member's term.

2 (2) A notice of removal of a board member by the appointing
3 authority shall:

4 (A) Be in writing;

5 (B) Be delivered to the removed board member or counsel
6 for the removed board member; and

7 (C) Specifically describe the grounds for removal.

8 (3)(A) A removed board member may institute proceedings for
9 review by filing a petition in Pulaski County Circuit Court within thirty
10 (30) days after delivery of the notice of removal.

11 (B) This petition shall not supersede or stay the notice
12 of removal, and a court shall not issue an order that would impair the
13 authority of the appointing authority to appoint a board member to begin
14 service immediately upon fulfillment of the requirements for assuming office.

15 (4)(A) If the matter is heard by the circuit court, it shall be
16 tried de novo without a jury.

17 (B) The appointing authority has the burden of proving by
18 clear and convincing evidence that cause under subdivision (e)(1) of this
19 section existed for removal of the board member.

20 (C)(i) If the circuit court determines that cause has been
21 proved, it shall issue an order affirming the removal the board member in
22 question from office.

23 (ii) If the circuit court determines that cause
24 under subdivision (e)(1) of this section has not been proved, the circuit
25 court shall order the removed board member reinstated to his or her position
26 and upon request shall award a reasonable attorney's fee and court costs to
27 the reinstated party.

28 (5)(A) Subject to the restrictions under subdivision (e)(3)(B)
29 of this section, a removed board member may appeal the decision of the
30 circuit court to the Supreme Court.

31 (B) The appointing authority may appeal the decision of
32 the circuit court to the Supreme Court, but the circuit court may order the
33 reinstatement of the removed member.

34 (6) A commission action in which the appointed replacement board
35 member participates is not void, voidable, or subject to invalidation on
36 grounds of participation of the appointed replacement board member or lack of

1 participation by the removed board member if the circuit court or the Supreme
2 Court orders the removed board member reinstated.

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4 20-3-106. Powers and duties of board of directors.

5 (a) The board of directors of the Arkansas Health Insurance Alliance
6 shall:

7 (1) Determine and establish the development, governance, and
8 operation of a health insurance exchange for the State of Arkansas and
9 perform all functions necessary to operate the exchange;

10 (2) Appoint an executive director to administer the exchange and
11 employ necessary staff;

12 (3) Create an initial operational and financial plan for the
13 exchange and thereafter approve operational and financial plans recommended
14 by the executive director;

15 (4)(A) Create technical and advisory groups, as deemed necessary
16 by the board, to report to the board.

17 (B) An advisory group created under subdivision (a)(4)(A)
18 of this section shall meet regularly throughout the year to discuss issues
19 related to the health insurance exchange and make recommendations to the
20 board;

21 (5) Provide a written report to the Governor, the President Pro
22 Tempore of the Senate, and the Speaker of the House of Representatives on or
23 before January 15 of each year concerning the planning and establishment of
24 the health insurance exchange;

25 (6) Consider the desirability of structuring the exchange as one
26 (1) entity that includes two (2) underlying entities to operate in the
27 individual and small employer markets, respectively;

28 (7) Limit any small business health options program to those
29 employers with at least one (1) but no more than fifty (50) employees, unless
30 federal law requires the participation of employers with more than fifty (50)
31 employees;

32 (8) Consider the needs of rural Arkansans concerning access,
33 affordability, and choice in purchasing health insurance;

34 (9) Consider the affordability and cost in the context of
35 quality care and increased access to purchasing health insurance;

36 (10) Investigate requirements, develop options, and determine

1 waivers, if appropriate, to ensure that the best interests of Arkansans are
2 protected;

3 (11) Establish conflict of interest policies; and

4 (12) Conduct periodic audits to ensure the general accuracy of
5 the financial data submitted to the exchange.

6 (b) The board of directors may:

7 (1)(A) Apply for planning and establishment grants made
8 available to the exchange under the Patient Protection and Affordable Care
9 Act, Pub. L. No. 111-148, as it existed on January 1, 2013, and apply for,
10 receive, and expend other gifts, grants, and donations.

11 (B) A grant application is subject to review and approval
12 by the board of directors; and

13 (2) Enter into information-sharing agreements with federal and
14 state agencies and other state health insurance exchanges to carry out its
15 responsibilities under this section if the agreements:

16 (A) Include adequate protections for the confidentiality
17 of the information that is shared; and

18 (B) Comply with applicable state and federal laws, rules,
19 and regulations as they existed on January 1, 2013.

20 (c)(1) The alliance may charge assessment or user fees to carriers,
21 qualified employers, or producers to generate funding necessary to support
22 exchange operations.

23 (2) Assessments or user fees shall be based on the reasonable
24 administrative costs of the health insurance exchange.

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26 SECTION 2. NOT TO BE CODIFIED. (a) The health insurance exchange
27 developed through a Federally-facilitated Exchange Partnership model shall
28 transfer to the control of the Arkansas Health Insurance Alliance on January
29 1, 2015.

30 (b) The board shall participate in the Federally-facilitated Exchange
31 Partnership to assist in planning the transition to a state-based exchange on
32 January 1, 2015.

33
34 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
35 General Assembly of the State of Arkansas that the Patient Protection and
36 Affordable Care Act, Pub. L. No. 111-148, and the Health Care and Education

1 Reconciliation Act of 2010, Pub. L. 111-152, allow each state to establish a
2 health insurance exchange through state law or opt to participate in a
3 national health insurance exchange operated by the United States Department
4 of Health and Human Services; that the state has elected to create a state-
5 based health insurance exchange effective on January 1, 2015; and that this
6 act should become effective at the earliest opportunity to begin the process
7 of transitioning to a state-based health insurance exchange. Therefore, an
8 emergency is declared to exist, and this act being immediately necessary for
9 the preservation of the public peace, health, and safety shall become
10 effective on:

- 11 (1) The date of its approval by the Governor;
- 12 (2) If the bill is neither approved nor vetoed by the Governor,
13 the expiration of the period of time during which the Governor may veto the
14 bill; or
- 15 (3) If the bill is vetoed by the Governor and the veto is
16 overridden, the date the last house overrides the veto.

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