

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 859

By: Senator Rapert

For An Act To Be Entitled

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

Subtitle

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

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

SECTION 1. Title 20 of the Arkansas Code is amended to add an
additional chapter to read as follows:

Chapter 3 – Health Insurance Exchange

Subchapter 1 – Arkansas Health Insurance Alliance Act

20-3-101. Title.

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

20-3-102. 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. 111-152, allow each state to establish a health insurance exchange through
state law or opt to participate in a national 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 health insurance exchange at the state level; and

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

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

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

20-3-103. Definition.

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

(b) "Health insurer" includes 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.

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

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

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

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

(C) The alliance shall be subject to:

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

- (ii) Section 21-8-101;
- (iii) Section 21-8-304;
- (iv) Section 21-8-701 et seq.;
- (v) Section 21-8-801;
- (vi) Section 21-8-1001 et seq.; and
- (vii) The Freedom of Information Act of 1967, § 25-19-101 et seq.

(D) The alliance shall enjoy the protection of the state's sovereign immunity.

(E) The debts and liabilities of the alliance do not constitute the debts and liabilities of the state.

(2) The alliance shall not duplicate, impair, enhance, supplant, infringe upon, or replace, in whole or in part, the powers, duties, or authorities of the State Insurance Department, including without limitation rate review and approval, except as provided in the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as it existed on January 1, 2013.

(3) The alliance:

(A) Shall foster a competitive marketplace for health insurance; and

(B) Shall not solicit bids or engage in the active purchasing of health insurance.

(4) A health insurer licensed by the department and meeting the requirements of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as it existed on January 1, 2013, is eligible to participate in the health insurance exchange operated by the alliance.

20-3-105. Board of directors.

(a) The Arkansas Health Insurance Alliance shall be governed by a board of directors consisting of nine (9) members as follows:

(1)(A) Two (2) members appointed by the Governor.

(B) One (1) of the members appointed by the Governor shall be a consumer advocate.

(C) The Governor shall appoint not more than one (1) person belonging to the same political party;

(2) Two (2) members appointed by the President Pro Tempore of the Senate;

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

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

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

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

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

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

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

(B) A member subsequently appointed to the board under subdivision (a)(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 (a)(2) of this section shall draw lots to determine the lengths of the initial terms as follows:

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

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

(B) A member subsequently appointed to the board under subdivision (a)(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 (a)(3) of this section shall draw lots to determine the lengths of the initial terms as follows:

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

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

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

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

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

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

- (i) Individual health insurance coverage;
- (ii) Small employer health insurance;
- (iii) Health benefits administration;
- (iv) Health care finance;
- (v) Administration of a public or private health care delivery system;
- (vi) The provision of health care services;
- (vii) The purchase of health insurance coverage;
- (viii) Health care consumer navigation or assistance;
- (ix) Health care economics or health care actuarial sciences;
- (x) Information technology; or
- (xi) Founding a business with fifty (50) or fewer employees.

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

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

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

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

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

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

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

of the removed member's term.

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

(A) Be in writing;

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

(C) Specifically describe the grounds for removal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Investigate requirements, develop options, and determine

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

(11) Establish conflict of interest policies; and

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

(b) The board of directors may:

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

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

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

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

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

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

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

SECTION 2. 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 Alliance on January 1, 2015.

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

SECTION 3. 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. 111-152, allow each state to establish a health insurance exchange through state law or opt to participate in a national health insurance exchange operated by the United States Department of Health and Human Services; that the state has elected to create a state-based health insurance exchange effective on January 1, 2015; and that this act should become effective at the earliest opportunity to begin the process of transitioning to a state-based health insurance 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.