Opinion No. 2013-042

May 7, 2013

Mr. Glenn Gallas
3267 Albert Pike
Hot Springs, Arkansas 71913

Dear Mr. Gallas:

This is in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2007), of the following popular name and ballot title for a proposed referendum:

Popular Name

A REFERENDUM BY THE CITIZENS OF THE STATE OF ARKANSAS ON ACT 1498 THE HEALTH CARE INDEPENDENCE ACT OF 2013

Ballot Title

Arkansas faced with the disruptive challenges from federal legislation called the Patient Protection and Affordable Care Act, the Arkansas 89th General Assembly passed HB1143 now known as Act 1498 The Healthcare Independence Act of 2013.

The 89th General Assembly has asserted its responsibility for local control and innovation to achieve health care access, improved health care quality, reduce traditional Medicaid enrollment, remove disincentives for work and social mobility, and required cost-containment. It is the intent of the General Assembly that the State of Arkansas through the Department of Human Services shall utilize a private insurance option for "low-risk" adults.

> The Department of Human Services shall develop a model and seek from the Center for Medicare and Medicaid Services all necessary waivers and approvals to allow non-aged, non-disabled program-eligible participants to enroll in a program that will create and utilize Independence Accounts that operate similar to a Health Savings Account or Medical Savings Account during the calendar year 2015.

The Attorney General is required, pursuant to A.C.A. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General may substitute and certify a more suitable and correct popular name and ballot title, if he can do so, or if the proposed popular name and ballot title are sufficiently misleading, may reject the entire petition. **Neither certification nor rejection of a popular name and ballot title reflects my view of the merits of the proposal. This Office has been given no authority to consider the merits of any measure.**

In this regard, A.C.A. § 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, consistent with Arkansas Supreme Court precedent, unless the measure is "clearly contrary to law,"[1] this office will not require that a measure's proponents acknowledge in the ballot title any possible constitutional infirmities. As part of my review, however, I may address constitutional concerns for consideration by the measure's proponents.

Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted accurately and impartially summarize the provisions of your proposed amendment.

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[1] *See Kurrus v. Priest,* 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest,* 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996); *Plugge v. McCuen,* 310 Ark. 654, 841 S.W.2d 139 (1992).

The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.[2]

The popular name is primarily a useful legislative device.[3] It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal.[4] The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.[5]

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented.[6] According to the court, if information omitted from the ballot title is an "essential fact which would give the voter serious ground for reflection, it must be disclosed."[7] At the same time, however, a ballot title must be brief and concise (*see* A.C.A. § 7-9-107(b)); otherwise voters could run afoul of A.C.A. § 7-5-522's five minute limit in voting booths when other voters are waiting in line.[8] The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.[9] The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring.[10] A ballot title

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[2] *See Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

[3] *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

[4] *E.g., Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976). ; *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958).

[5] *May v. Daniels,* 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

[6] *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

[7] *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

[8] *Id.* at 288, 884 S.W.2d at 944.

[9] *Id.* 293, 884 S.W.2d at 946–47.

[10] *Id.* at 284, 884 S.W.2d at 942.

must convey an intelligible idea of the scope and significance of a proposed change in the law.[11] The ballot title must be intelligible, honest, and impartial.[12]

Having analyzed your proposed popular name and ballot title under the above precepts, I must reject your submission for its failure to summarize the substance of the legislation you wish to refer to the voters. When a ballot title does not evidence an effort accurately, fairly and completely to summarize the substance and effects of the referred legislation, it is of necessity significantly misleading under A.C.A. § 7-9-107(c), and this office may decline to prepare a substitute. *See, e.g.,* Op. Att'y Gen. 2012-033. This office has repeatedly noted that it will reject ballot titles that are wholly deficient in failing adequately to summarize a measure submitted for the voters' review. *See, e.g.*, Ops. Att'y Gen. 2007-316; 2007-118; and 99-258. As guidance for you in possibly amending your ballot title for resubmission, I am attaching a copy of Op. Att'y Gen. 93-011, in which one of my predecessors modified and approved the popular name and ballot title submitted in support of a referendum petition.

The ballot title you have submitted is so sketchy that a reasonable voter cannot be expected to comprehend the scope of the measure he or she is being asked to approve or reject. Your submission does little more than repeat certain rhetorically laden passages that mark the *introduction* to the referred legislation, leaving unaddressed the substantive provisions that lie at the measure's heart or the effects of these provisions on current law. My statutory duty, under these circumstances, is to reject your proposed ballot title, stating my reasons therefor, and to instruct you to "redesign" the proposed ballot title. *See* A.C.A. § 7-9-107(c).

My office, in the certification of ballot titles and popular names, does not concern itself with the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in A.C.A. § 7-9-107 and my duty is to the electorate. I

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[11] *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 245, 884 S.W.2d 605, 607 (1994) (internal quotations omitted).

[12] *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

am not your counsel in this matter and cannot advise you as to the substance of your proposal.

You may, after clarification of the matters discussed above, resubmit your proposal at your convenience. As noted above, some changes or additions to your submitted ballot title will be necessary. I will be pleased to perform my statutory duties in this regard in a timely manner after resubmission.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosures

STATE OF ARKANSAS

Office of the Attorney General

Winston Bryant
Attorney General

Telephone:
(501) 682-2007

Opinion No. 93-011

January 28, 1993

Mr. Robert S. Shafer
Friday, Eldredge & Clark
2000 First Commercial Building
400 West Capitol
Little Rock, AR 72201-3493

Dear Mr. Shafer:

This is in response to your request, received by this office on January 20, 1993, for certification of the following popular name and ballot title pursuant to A.C.A. § 7-9-107 (Supp. 1991):

Popular Name

ARKANSAS SOFT DRINK TAX ACT

Ballot Title

A tax on soft drinks and powdered drinks costing two dollars ($2.00) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the State; twenty-one cents ($0.21) per gallon for each gallon of bottled soft drinks sold or offered for sale in the State; and twenty-one cents ($0.21) for each gallon of soft drink which may be produced from powder or other base product, other than a syrup or simple syrup, sold or offered for sale in the State; and enacted on December 21, 1992;

> Defining certain terms used in the Act; exempting certain liquid or powder products from the tax; providing that the Act shall be administered in accordance with the Arkansas Tax Procedure Act unless otherwise provided; declaring an effective date of March 1, 1993; and for other purposes.

The above popular name and ballot title are submitted in connection with a petition for referendum pursuant to Amendment 7 to the Arkansas Constitution. The Attorney General is required pursuant to Section 7-9-107 (Repl. 1991) to approve and certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General may substitute and certify a more suitable and correct popular name and ballot title, or if the proposed popular name and ballot title are sufficiently misleading, the entire petition may be rejected.

Section 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment or likelihood that it will accomplish its stated objective. Consequently, this review has been limited to determining whether the proposed popular name and ballot title accurately and impartially summarize the provisions of the act which is the subject of the referendum petition.

The purpose of my review and certification is to insure that the popular name and ballot title honestly, intelligently, and fairly set forth the purpose of the act being referred. See Arkansas Women's Political Caucus v. Riviere, 282 Ark. 463, 466, 677 S.W.2d 846 (1984). The popular name is primarily a useful legislative device. Pafford v. Hall, 217 Ark. 734, 233 S.W.2d 72 (1950). It need not contain detailed information or include exceptions which might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the act. Chaney v. Bryant, 259 Ark. 294, 532 S.W.2d 741 (1976); Moore v. Hall, 229 Ark. 411, 316 S.W.2d 207 (1958). The popular name is to be considered together with the ballot title in determining its sufficiency. Id.

A ballot title must include an impartial summary of the measure which will give the voter a fair understanding of the issues presented. Hoban v. Hall, 229 Ark. 416, 417, 316 S.W.2d 185 (1958); Becker v. Riviere, 270 Ark. 219, 223, 226, 604 S.W.2d 555 (1980). It has been stated that the ballot title must contain any information that would "give the elector 'serious ground for reflection'". Finn v.

McCuen, 303 Ark. 418, 798 S.W.2d 34 (1990), citing Gaines v. McCuen, 296 Ark. 513, 758 S.W.2d 403 (1988). It has been stated that the ballot title must be: 1) intelligible, 2) honest, and 3) impartial. Becker v. McCuen, 303 Ark. 482, 798 S.W.2d 71 (1990) citing Leigh v. Hall, 232 Ark. 558, 339 S.W.2d 104 (1960).

Applying these precepts, it is my conclusion that the popular name is sufficient. It is therefore approved as submitted. The following ballot title is, however, substituted for that proposed in order to insure that, when construed together, the popular name and ballot title will fully apprise the voter of the purpose of the act being referred:

Ballot Title

AN ACT LEVYING A TAX ON SOFT DRINKS AND POWDERED DRINKS COSTING TWO DOLLARS ($2.00) PER GALLON FOR EACH GALLON OF SOFT DRINK SYRUP OR SIMPLE SYRUP SOLD OR OFFERED FOR SALE IN THE STATE, TWENTY-ONE CENTS ($0.21) PER GALLON FOR EACH GALLON OF BOTTLED SOFT DRINKS SOLD OR OFFERED FOR SALE IN THE STATE, AND TWENTY-ONE CENTS ($0.21) FOR EACH GALLON OF SOFT DRINK WHICH MAY BE PRODUCED FROM POWDER OR OTHER BASE PRODUCT, OTHER THAN A SYRUP OR SIMPLE SYRUP, SOLD OR OFFERED FOR SALE IN THE STATE; REQUIRING DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS WHO SELL OR OFFER SYRUPS, SIMPLE SYRUPS, POWDERS, BASE PRODUCTS OR SOFT DRINKS FOR SALE TO RETAIL DEALERS WITHIN THE STATE TO OBTAIN A LICENSE FROM THE DIRECTOR OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION; AND REQUIRING LICENSURE OF RETAILERS WHO PURCHASE SYRUPS, SIMPLE SYRUPS, POWDERS, BASE PRODUCTS OR SOFT DRINKS FROM UNLICENSED MANUFACTURERS, WHOLESALERS OR DISTRIBUTORS; PROVIDING THAT THE TAX SHALL BE PAID BY THE DISTRIBUTOR, WHOLESALER OR MANUFACTURER WHEN THE SYRUP, POWDER, BASE PRODUCT OR SOFT DRINK IS SOLD, AND BY A RETAILER WHO PURCHASES SYRUPS, POWDERS, BASE PRODUCTS OR SOFT DRINKS FROM AN UNLICENSED DISTRIBUTOR, WHOLESALER OR MANUFACTURER; DEFINING CERTAIN TERMS USED IN THE ACT; EXEMPTING CERTAIN LIQUID OR POWDER PRODUCTS FROM THE TAX; PROVIDING THAT

THE ACT SHALL BE ADMINISTERED IN ACCORDANCE WITH THE ARKANSAS TAX PROCEDURE ACT UNLESS OTHERWISE PROVIDED; PROVIDING THAT THE PROCEEDS OF THE TAX SHALL BE DEPOSITED IN THE STATE TREASURY AS GENERAL REVENUES; THE SAME BEING ACT 7 OF THE SECOND EXTRAORDINARY SESSION OF 1992, ENACTED ON DECEMBER 21, 1992 AND EFFECTIVE ON AND AFTER MARCH 1, 1993.

Pursuant to A.C.A. § 7-9-108 (Supp. 1991), instructions to canvassers and signers are enclosed herewith.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Elisabeth A. Walker.

Sincerely,

WINSTON BRYANT
Attorney General

WB:cyh

Enclosure

INSTRUCTIONS TO CANVASSERS AND SIGNERS

1. Amendment No. 7 to the Arkansas Constitution gives to the people of the State of Arkansas the power to propose legislation or constitutional amendments by initiative petition, and to order the referendum against any general act or any item of an appropriation bill, or measure passed by the General Assembly. The petition must be signed by eight percent (8%) of the legal voters in the case of proposed legislation, ten percent (10%) in the case of proposed constitutional amendments, and six percent (6%) in the case of a referendum. The proposed legislation or constitutional amendment must be submitted to the legal voters of the State at a regular election; referendum petitions may be referred to the people at special elections when fifteen percent (15%) of the legal voters petition for such special election. Any measure submitted to the people shall take effect and become a law when approved by a majority of the votes cast upon such measure.

2. Only legal voters may sign. Printed names, dates of birth, residences, and cities or towns of residence must be given as an aid to verification. The petition should contain only the signatures of voters residing in a single county.

3. All signatures must be affixed in ink or indelible pencil by the signers in their own handwriting in the presence of the persons circulating the petition.

4. Do not attach additional sheets to this petition unless such sheets contain the full language of the petition. Place as many names as possible on each petition.

5. TO SIGN ANY NAME OTHER THAN YOUR OWN, TO KNOWINGLY SIGN YOUR NAME MORE THAN ONCE TO ANY PETITION, TO KNOWINGLY SIGN YOUR NAME WHEN YOU ARE NOT LEGALLY ENTITLED TO SIGN IT, TO KNOWINGLY AND FALSELY MISREPRESENT THE PURPOSE AND EFFECT OF THIS PETITION FOR THE PURPOSE OF CAUSING ANYONE TO SIGN IT, OR TO KNOWINGLY MAKE A FALSE STATEMENT ON A PETITION VERFICATION FORM SHALL CONSTITUTE A CLASS "A" MISDEMEANOR AND SUBJECT THE OFFENDER TO A FINE OF UP TO $1,000.00 AND IMPRISONMENT FOR UP TO ONE (1) YEAR.

The Attorney General is by law required to certify the sufficiency of the popular name and ballot title of all initiative or referendum petitions. This certification does not necessarily indicate the approval or disapproval of the contents thereof.

Winston Bryant
ATTORNEY GENERAL OF THE STATE OF ARKANSAS

Popular Name

Arkansas Soft Drink Tax Act

Ballot Title

A tax on soft drinks and powdered drinks costing two dollars ($2.00) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the State; twenty-one cents ($0.21) per gallon for each gallon of bottled soft drinks sold or offered for sale in the State; and twenty-one cents ($0.21) for each gallon of soft drink which may be produced from powder or other base product, other than a syrup or simple syrup, sold or offered for sale in the State; and enacted on December 21, 1992;

Defining certain terms used in the Act; exempting certain liquid or powder products from the tax; providing that the Act shall be administered in accordance with the Arkansas Tax Procedure Act unless otherwise provided; declaring an effective date of March 1, 1993; and for other purposes.

Popular Name

A referendum by the CITIZENS OF THE STATE OF ARKANSAS on Act 1498 the HEALTH CARE INDEPENDENCE ACT OF 2013

Ballot Title

Arkansas faced with the disruptive challenges from federal legislation called the Patient Protection and Affordable Care Act, the Arkansas 89th General Assembly passed HB1143 now known as Act 1498 The Healthcare Independence Act of 2013.

The 89th General Assembly has asserted its responsibility for local control and innovation to achieve health care access, improved health care quality, reduce traditional Medicaid enrollment, remove disincentives for work and social mobility, and required cost-containment. It is the intent of the General Assembly that the State of Arkansas through the Department of Human Services shall utilize a private insurance option for "low-risk" adults.

The Department of Human Services shall develop a model and seek from the Center for Medicare and Medicaid Services all necessary waivers and approvals to allow non-aged, non-disabled program-eligible participants to enroll in a program that will create and utilize Independence Accounts that operate similar to a Health Savings Account or Medical Savings Account during the calendar year 2015.

State of Arkansas *As Engrossed: H4/3/13 H4/6/13 H4/10/13 S4/17/13*
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 1143

By: Representatives J. Burris, Carter, Biviano
By: Senators J. Dismang, Bookout, D. Sanders, *Irvin*

For An Act To Be Entitled

AN ACT CONCERNING HEALTH INSURANCE FOR CITIZENS OF THE STATE OF ARKANSAS; TO CREATE THE HEALTH CARE INDEPENDENCE ACT OF 2013; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE HEALTH CARE INDEPENDENCE ACT OF 2013; AND TO DECLARE AN EMERGENCY.

WHEREAS, Arkansas has historically addressed state-specific needs to achieve personal responsibility and affordable health care for its citizens such as the ARHealthNetworks partnership between the state and small businesses; and

WHEREAS, Arkansas has initiated nationally recognized and transformative changes in the healthcare delivery system through alignment of payment incentives, health care delivery system improvements, enhanced rural health care access, initiatives to reduce waste, fraud and abuse, policies and plan structures to encourage the proper utilization of the healthcare system, and policies to advance disease prevention and health promotion; and

WHEREAS, Arkansas is uniquely situated to serve as a laboratory of comprehensive and innovative healthcare reform that can reduce the state and federal obligations to entitlement spending; and

WHEREAS, faced with the disruptive challenges from federal legislation

and regulations, the General Assembly asserts its responsibility for local control and innovation to achieve health care access, improved health care quality, reduce traditional Medicaid enrollment, remove disincentives for work and social mobility, and required cost-containment; and

WHEREAS, the General Assembly hereby creates the Health Care Independence Act of 2013;

NOW THEREFORE,
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to create a new subchapter to read as follows:

Subchapter 21 — Health Care Independence Act of 2013

20-77-2101. Title.

This act shall be known and may be cited as the "Health Care Independence Act of 2013".

20-77-2102. Legislative intent.

(a) Notwithstanding any general or specific laws to the contrary, the Department of Human Services is to explore design options that reform the Medicaid Program utilizing the Health Care Independence Act of 2013 so that it is a fiscally sustainable, cost-effective, personally responsible, and opportunity-driven program utilizing competitive and value-based purchasing to:

(1) Maximize the available service options;

(2) Promote accountability, personal responsibility, and transparency;

(3) Encourage and reward healthy outcomes and responsible choices; and

(4) Promote efficiencies that will deliver value to the taxpayers.

(b)(1) It is the intent of the General Assembly that the State of Arkansas through the Department of Human Services shall utilize a private

insurance option for "low-risk" adults.

(2) The Health Care Independence Act of 2013 shall ensure that:

(A) Private health care options increase and government-operated programs such as Medicaid decrease; and

(B) Decisions about the design, operation and implementation of this option, including cost, remain within the purview of the State of Arkansas and not with Washington, D.C.

20-77-2103. Purpose.

(a) The purpose of this subchapter is to:

(1) Improve access to quality health care;

(2) Attract insurance carriers and enhance competition in the Arkansas insurance marketplace;

(3) Promote individually-owned health insurance;

(4) Strengthen personal responsibility through cost-sharing;

(5) Improve continuity of coverage;

(6) Reduce the size of the state-administered Medicaid program;

(7) Encourage appropriate care, including early intervention, prevention, and wellness;

(8) Increase quality and delivery system efficiencies;

(9) Facilitate Arkansas's continued payment innovation, delivery system reform, and market-driven improvements;

(10) Discourage over-utilization; and

(11) Reduce waste, fraud, and abuse.

(b) The State of Arkansas shall take an integrated and market-based approach to covering low-income Arkansans through offering new coverage opportunities, stimulating market competition, and offering alternatives to the existing Medicaid program.

20-77-2104. Definitions.

As used in this subchapter:

(1) "Carrier" means a private entity certified by the State Insurance Department and offering plans through the Health Insurance Marketplace;

(2) "Cost sharing" means the portion of the cost of a covered medical service that must be paid by or on behalf of eligible individuals,

consisting of copayments or coinsurance but not deductibles;

(3) "Eligible individuals" means individuals who:

(A) Are adults between nineteen (19) years of age and sixty-five (65) years of age with an income that is equal to or less than one hundred thirty-eight percent (138%) of the federal poverty level, including without limitation individuals who would not be eligible for Medicaid under laws and rules in effect on January 1, 2013;

(B) Have been authenticated to be a United States citizen or documented qualified alien according to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, as existing on January 1, 2013; and

(C) Are not determined to be more effectively covered through the standard Medicaid program, such as an individual who is medically frail or other individuals with exceptional medical needs for whom coverage through the Health Insurance Marketplace is determined to be impractical, overly complex, or would undermine continuity or effectiveness of care;

(4) "Healthcare coverage" means healthcare benefits as defined by certification or rules, or both, promulgated by the State Insurance Department for the Qualified Health Plans or available on the marketplace;

(5) "Health Insurance Marketplace" means the vehicle created to help individuals, families, and small businesses in Arkansas shop for and select health insurance coverage in a way that permits comparison of available Qualified Health Plan based upon price, benefits, services, and quality, regardless of the governance structure of the marketplace;

(6) "Premium" means a charge that must be paid as a condition of enrolling in health care coverage;

(7) "Program" means the Health Care Independence Program established by this subchapter;

(8) "Qualified Health Plan" means a State Insurance Department certified individual health insurance plan offered by a carrier through the Health Insurance Marketplace; and

(9) "Independence account" mean individual financing structures that operate similar to a health savings account or a medical savings account.

20-77-2105. Administration of the Health Care Independence Program.

(a) The Department of Human Services shall:

(1) Create and administer the Health Care Independence Program; and

(2)(A) Submit and apply for any:

(i) Federal waivers necessary to implement the program in a manner consistent with this subchapter, including without limitation approval for a comprehensive waiver under Section 1115 of the Social Security Act, 42 U.S.C. § 1315; and

(ii)(a) Medicaid State Plan Amendments necessary to implement the program in a manner consistent with this subchapter.

(b) The Department of Human Services shall submit only those Medicaid State Plan Amendments under subdivision (a)(2)(A)(ii)(a) of this section that are optional and therefore may be revoked by the state at its discretion.

(B)(i) As part of its actions under subdivision (a)(2)(A) of this section, the Department of Human Services shall confirm that employers shall not be subject to the penalties, including without limitation an assessable payment, under Section 1513 of Pub. L. No. 111-148, as existing on January 1, 2013, concerning shared responsibility, for employees who are eligible individuals if the employees:

(a) Are enrolled in the program; and

(b) Enroll in a Qualified Health Plan through the Health Insurance Marketplace.

(ii) If the Department of Human Services is unable to confirm provisions under subdivision (a)(2)(B)(i) of this section, the program shall not be implemented.

(b)(1) Implementation of the program is conditioned upon the receipt of necessary federal approvals.

(2) If the Department of Human Services does not receive the necessary federal approvals, the program shall not be implemented.

(c) The program shall include premium assistance for eligible individuals to enable their enrollment in a Qualified Health Plan through the Health Insurance Marketplace.

(d)(1) The Department of Human Services is specifically authorized to pay premiums and supplemental cost-sharing subsidies directly to the

Qualified Health Plans for enrolled eligible individuals.

(2) The intent of the payments under subdivision (d)(1) of this section is to increase participation and competition in the health insurance market, intensify price pressures, and reduce costs for both publicly and privately funded health care.

(e) To the extent allowable by law:

(1) The Department of Human Services shall pursue strategies that promote insurance coverage of children in their parents' or caregivers' plan, including children eligible for the ARKids First Program Act, § 20-77-1101 et seq., commonly known as the "ARKids B program"; and

(2) Upon the receipt of necessary federal approval, during calendar year 2015 the Department of Human Services shall include and transition to the Health Insurance Marketplace:

(A) Children eligible for the ARKids First Program Act, § 20-77-1101 et seq.; and

(B) Populations under Medicaid from zero percent (0%) of the federal poverty level to seventeen percent (17%) of the federal poverty level.

(3) The Department of Human Services shall develop and implement a strategy to inform Medicaid recipient populations whose needs would be reduced or better served through participation in the Health Insurance Marketplace.

(f) The program shall include allowable cost sharing for eligible individuals that is comparable to that for individuals in the same income range in the private insurance market and is structured to enhance eligible individuals' investment in their health care purchasing decisions.

(g)(1) The State Insurance Department and Department of Human Services shall administer and promulgate rules to administer the program authorized under this subchapter.

(2) No less than thirty (30) days before the State Insurance Department and Department of Human Services begin promulgating a rule under this subchapter, the proposed rule shall be presented to the Legislative Council.

(h) The program authorized under this subchapter shall terminate within one hundred twenty (120) days after a reduction in any of the following federal medical assistance percentages:

(1) One hundred percent (100%) in 2014, 2015, or 2016;

(2) Ninety-five percent (95%) in 2017;

(3) Ninety-four percent (94%) in 2018;

(4) Ninety-three percent (93%) in 2019; and

(5) Ninety percent (90%) in 2020 or any year after 2020.

(i) An eligible individual enrolled in the program shall affirmatively acknowledge that:

(1) The program is not a perpetual federal or state right or a guaranteed entitlement;

(2) The program is subject to cancellation upon appropriate notice; and

(3) The program is not an entitlement program.

(j)(1) The Department of Human Services shall develop a model and seek from the Center for Medicare and Medicaid Services all necessary waivers and approvals to allow non-aged, non-disabled program-eligible participants to enroll in a program that will create and utilize Independence Accounts that operate similar to a Health Savings Account or Medical Savings Account during the calendar year 2015.

(2) The Independence Accounts shall:

(A) Allow a participant to purchase cost-effective high-deductible health insurance; and

(B) Promote independence and self-sufficiency.

(3) The state shall implement cost sharing and co-pays and, as a condition of participation, earnings shall exceed fifty percent (50%) of the federal poverty level.

(4) Participants may receive rewards based on healthy living and self-sufficiency.

(5)(A) At the end of each fiscal year, if there are funds remaining in the account, a majority of the state's contribution will remain in the participant's control as a positive incentive for the responsible use of the health care system and personal responsibility of health maintenance.

(B) Uses of the funds may include without limitation rolling the funds into a private sector health savings account for the participant according to rules promulgated by the Department of Human Services.

(6) The Department of Human Services shall promulgate rules to implement this subsection (j).

(k)(1) State obligations for uncompensated care shall be projected, tracked, and reported to identify potential incremental future decreases.

(2) The Department of Human Services shall recommend appropriate adjustments to the General Assembly.

(3) Adjustments shall be made by the General Assembly as appropriate.

(l) The Department of Human Services shall track the Hospital Assessment Fee as defined in § 20-77-1902 and report to the General Assembly subsequent decreases based upon reduced uncompensated care.

(m) On a quarterly basis, the Department of Human Services and the State Insurance Department shall report to the Legislative Council or to the Joint Budget Committee if the General Assembly is in session, available information regarding:

(1) Program enrollment;

(2) Patient experience;

(3) Economic impact including enrollment distribution;

(4) Carrier competition; and

(5) Avoided uncompensated care.

20-77-2106. Standards of healthcare coverage through the Health Insurance Marketplace.

(a) Healthcare coverage shall be achieved through a qualified health plan at the silver level as provided in 42 U.S.C. §§ 18022 and 18071, as existing on January 1, 2013, that restricts cost sharing to amounts that do not exceed Medicaid cost-sharing limitations.

(b)(1) All participating carriers in the Health Insurance Marketplace shall offer healthcare coverage conforming to the requirements of this subchapter.

(2) A participating carrier in the Health Insurance Marketplace shall maintain a medical loss ratio of at least eighty percent (80%) for an individual and small group market policy and at least eighty-five percent (85%) for a large group market policy as required under Pub. L. No. 111-148, as existing on January 1, 2013.

(c) To assure price competitive choice among healthcare coverage

options, the State Insurance Department shall assure that at least two (2) qualified health plans are offered in each county in the state.

(d) Health insurance carriers offering health care coverage for program eligible individuals shall participate in Arkansas Payment Improvement Initiatives including:

(1) Assignment of primary care clinician;

(2) Support for patient-centered medical home; and

(3) Access of clinical performance data for providers.

(e) On or before July 1, 2013, the State Insurance Department shall implement through certification requirements, rule, or both the applicable provisions of this subchapter.

20-77-2107. Enrollment.

(a) The General Assembly shall assure that a mechanism within the Health Insurance Marketplace is established and operated to facilitate enrollment of eligible individuals.

(b) The enrollment mechanism shall include an automatic verification system to guard against waste, fraud, and abuse in the program.

20-77-2108. Effective date.

This subchapter shall be in effect until June 30, 2017, unless amended or extended by the General Assembly.

SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

19-5-1140. Health Care Independence Program Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Health Care Independence Program Trust Fund".

(b)(1) The Health Care Independence Program Trust Fund may consist of moneys saved and accrued under the Health Care Independence Act of 2013, § 20-77-2101 et seq., including without limitation:

(A) Increases in premium tax collections;

(B) Reductions in uncompensated care; and

(C) Other spending reductions resulting from the Health Care Independence Act of 2013, 20-77-2101 et seq.

(2) The fund shall also consist of other revenues and funds authorized by law.

(c) The fund may be used by the Department of Human Services to pay for future obligations under the Health Care Independence Program created by the Health Care Independence Act of 2013, § 20-77-2101 et seq.

SECTION 3. NOT TO BE CODIFIED. (a) The implementation of this act is suspended until an appropriation for the implementation of this act is passed by a three-fourths vote of both houses of the Eighty-Ninth General Assembly.

(b) If an appropriation for the implementation of this act is not passed by the Eighty-Ninth General Assembly, this act is void.

SECTION 4. NOT TO BE CODIFIED. The enactment and adoption of this act shall supersede Section 21 of HB1219 of the Eighty-Ninth General Assembly, if Section 21 of HB1219 of the Eighty-Ninth General Assembly is enacted and adopted.

SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Health Care Independence Program requires private insurance companies to create, present to the Department of Human Services for approval, implement, and market a new kind of insurance policy; and that the private insurance companies need certainty about the law creating the Health Care Independence Program before fully investing time, funds, personnel, and other resources to the development of the new insurance policies. 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.

/s/J. Burris

APPROVED: 04/23/2013