

Opinion No. 2013-054

June 11, 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 a proposed referendum measure. You previously submitted two similar measures, which this office rejected due to your failure to summarize the substance of the legislation you wish to refer to the voters. See Ops. Att’y Gen. Nos. 2013-043 and 2013-042. You have made changes in the text of your proposal since your last submission and have now submitted the following proposed popular name and ballot title for my certification:

Popular Name

A REFERENDUM ON THE HEALTH CARE INDEPENDENCE ACT OF 2013

Ballot Title

The Federal Patient Protection and Affordable Care Act (PPACA) will significantly impact Arkansas’s Healthcare system. The 89th General Assembly enacted the Health Care Independence Act of 2013 in an attempt to mitigate the impact and alter Arkansas’ Healthcare system. The major elements addressed by the Health Care Independence Act of 2013 are the expansion of Medicaid healthcare coverage, through the creation of an alternative model that moves eligible and newly eligible individuals to a “private insurance option” for “low risk” adults and the creation of the Health Insurance Marketplace and the creation of Independence Accounts.

The expansion of Medicaid healthcare coverage includes, 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; 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, as existing on January 1, 2013; and 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. On June 28th 2012 the United States Supreme Court decided in *National Federation of Independent Business v. Sebelius*, that each individual state was allowed to opt out of the Medicaid expansion.

The Health Care Independence Act of 2013 creates a Health Insurance Marketplace to offer healthcare insurance to include a "Qualified Health Plan" as mandated by the Federal Patient Protection and Affordable Care Act (PPACA). The mandated Healthcare coverage shall be achieved through a Qualified Health Plan at the "Silver Level" as defined in in [sic] 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. The Health Insurance Marketplace is a 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 Plans based upon price, benefits, services, and quality. 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 for Children eligible for the ARKids First Program Act and populations under Medicaid from zero percent (0%) of the federal poverty level to seventeen percent (17%) of the federal poverty level. The Health

Care Independence Act of 2013 creates Independence Accounts that operate similar to a Health Savings Account or Medical Savings Account that operate similar to a health savings account or a medical savings account during the calendar year 2015.

The implementation of the Health Care Independence Act of 2013 is contingent upon the approval by the Secretary of Health & Human Services of specific waivers including without limitation approval for a comprehensive waiver under Section 1115 of the Social Security Act. If the Department of Human Services does not receive the necessary federal approvals, the program shall not be implemented. An eligible individual enrolled in the program shall affirmatively acknowledge that: The program is not a perpetual federal or state right or a guaranteed entitlement; the program is subject to cancellation upon appropriate notice; and the program is not an entitlement program.

100% of the funding for the program will be provided by the federal government from 2014 through 2016 for “newly eligible” individuals. The funding will be decreased down to 95% in 2017, 94% in 2018, 93% in 2019, and 90% afterward. This decrease in funding will increase the cost to the State of Arkansas for implementation of the Health Care Independence Act of 2013.

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.

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

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).

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).

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 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

Applying the above precepts, it is my conclusion that the popular name you have submitted is acceptable and it is hereby certified without modification.

It is my conclusion, however, that a more suitable, complete, and correct ballot title should be substituted for the one proposed. The following is hereby certified in order to ensure that the ballot title accurately sets forth the purpose of the proposed amendment:

Ballot Title

This referendum enables the people to vote for or against The Health Care Independence Act of 2013 (the "Act"), which was enacted by the 89th General Assembly as identical Acts 1497 and 1498 of 2013. A vote "FOR" the measure will approve the Act; a vote "AGAINST" the measure will repeal the Act.

The federal Patient Protection and Affordable Care Act (PPACA) allows each of the states at its option to participate in a program, largely financed by the federal government, to expand the range of

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.

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).

low-income individuals who would be covered under traditional Medicaid. Instead of adopting the model proposed under the PPACA, the Act provides for these additional individuals to be provided with premium assistance to purchase coverage through qualified private plans in a regulated, competitive insurance marketplace. Under the Act, financing of the state's expanded coverage through premium assistance will be provided at first exclusively, and thereafter primarily, by the federal government. The Act is further designed to reduce traditional Medicaid enrollment by eventually extending premium assistance to individuals who currently qualify for coverage under Medicaid.

Specifically, the Act provides as follows:

- (1) Subject to all pertinent federal approvals, the Arkansas Department of Human Services ("DHS") will establish and administer a Health Care Independence Program (the "Program") to provide premium assistance for all adults with an income equal to or less or than 138% of the federal poverty level who (a) would not have been eligible for Medicaid under rules in effect on January 1, 2013; (b) are U.S. citizens or documented qualified aliens according to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as existing on January 1, 2013; and (c) would not be more effectively covered through standard Medicaid, such as the frail or those with exceptional medical needs;
- (2) In establishing the Program, DHS will apply for necessary federal waivers and submit only those Medicaid state plan amendments that are optional and therefore may be revoked by the State at its discretion;
- (3) Eligible individuals may enroll in qualified health plans offered through a health insurance marketplace consisting of participating carriers that offer private insurance coverage;
- (4) The Program will include cost sharing for eligible individuals comparable to that for individuals in the same income range in the private insurance market;

(5) All carriers participating in the health insurance marketplace will provide coverage conforming to standards defined by law;

(6) The State Insurance Department will ensure that at least two qualified health plans are offered in each county of the state;

(7) Upon receipt of required federal approval, during calendar year 2015, DHS will include within the Program (a) children eligible for benefits under the "ARKids B" Program and (b) Medicaid recipients with an income from 0% to 17% of the federal poverty level;

(8) DHS will develop a model for an Independence Accounts Program, to be implemented in 2015, that will allow non-aged, non-disabled eligible individuals earning more than 50% of the federal poverty level to purchase high-deductible insurance through accounts that operate in the manner of health savings accounts or medical savings accounts;

(9) A Health Care Independence Program Trust Fund will be created to be used by DHS to pay future obligations.

(10) The Program will terminate within 120 days following a reduction in any of the following federal medical assistance percentages: (a) 100% in 2014, 2015 or 2016; (b) 95% in 2017; (c) 94% in 2018; (d) 93% in 2019; and (e) 90% in 2020 or any year thereafter;

(11) The Program will terminate on June 30, 2017 unless it is amended or extended by the General Assembly;

(12) Subject to review by the Legislative Council, DHS and the Department of Insurance will promulgate rules for the Program, which they will administer; and

(13) DHS and the State Insurance Department will report quarterly to the Legislative Council regarding Program performance.

Pursuant to A.C.A. § 7-9-108, instructions to canvassers and signers must precede every petition, informing them of the privileges granted by the Constitution and of

Glenn Gallas
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the penalties imposed for violations of this act. Enclosed herewith, over the signature of the Attorney General, are instructions that should be incorporated in your petition prior to circulation.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosures

POPULAR NAME

A REFERENDUM ON THE HEALTH CARE INDEPENDENCE ACT OF 2013

BALLOT TITLE

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The expansion of Medicaid healthcare coverage includes, 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; 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, as existing on January 1, 2013; and 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. On June 28th 2012 the United States Supreme Court decided in National Federation of Independent Business v. Sebelius, that each individual state was allowed to opt out of the Medicaid expansion.

THE HEALTH CARE INDEPENDENCE ACT OF 2013 creates a Health Insurance Marketplace to offer healthcare insurance to include a "Qualified Health Plan" as mandated by the Federal Patient Protection and Affordable Care Act (PPACA). The mandated Healthcare coverage shall be achieved through a Qualified Health Plan at the "Silver Level" as defined in 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. The Health Insurance Marketplace is a 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 Plans based upon price, benefits, services, and quality. 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 for Children eligible for the ARKids First Program Act and populations under Medicaid from zero percent (0%) of the federal poverty level to seventeen percent (17%) of the federal poverty level.

THE HEALTH CARE INDEPENDENCE ACT OF 2013 creates Independence Accounts that operate similar to a Health Savings Account or Medical Savings Account that operate similar to a health savings account or a medical savings account during the calendar year 2015.

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100% of the funding for the program will be provided by the federal government from 2014 through 2016 for "newly eligible "individuals. The funding will be decreased down to 95% in 2017, 94% in 2018, 93% in 2019, and 90% afterward. This decrease in funding will increase the cost to the State of Arkansas for implementation of the HEALTH CARE INDEPENDENCE ACT OF 2013.

1 State of Arkansas *As Engrossed: H4/3/13 H4/6/13 H4/10/13 S4/17/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

HOUSE BILL 1143

4
5 By: Representatives J. Burris, Carter, Biviano

6 By: Senators J. Dismang, Bookout, D. Sanders, *Irvin*

For An Act To Be Entitled

8
9 *AN ACT CONCERNING HEALTH INSURANCE FOR CITIZENS OF*
10 *THE STATE OF ARKANSAS; TO CREATE THE HEALTH CARE*
11 *INDEPENDENCE ACT OF 2013; TO DECLARE AN EMERGENCY;*
12 *AND FOR OTHER PURPOSES.*

Subtitle

13
14
15
16 *TO CREATE THE HEALTH CARE INDEPENDENCE*
17 *ACT OF 2013; AND TO DECLARE AN EMERGENCY.*

18
19
20 *WHEREAS, Arkansas has historically addressed state-specific needs to*
21 *achieve personal responsibility and affordable health care for its citizens*
22 *such as the ARHealthNetworks partnership between the state and small*
23 *businesses; and*

24
25 *WHEREAS, Arkansas has initiated nationally recognized and*
26 *transformative changes in the healthcare delivery system through alignment of*
27 *payment incentives, health care delivery system improvements, enhanced rural*
28 *health care access, initiatives to reduce waste, fraud and abuse, policies*
29 *and plan structures to encourage the proper utilization of the healthcare*
30 *system, and policies to advance disease prevention and health promotion; and*

31
32 *WHEREAS, Arkansas is uniquely situated to serve as a laboratory of*
33 *comprehensive and innovative healthcare reform that can reduce the state and*
34 *federal obligations to entitlement spending; and*

35
36 *WHEREAS, faced with the disruptive challenges from federal legislation*



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

5
6 WHEREAS, the General Assembly hereby creates the Health Care
7 Independence Act of 2013;

8
9 NOW THEREFORE,

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

11
12 SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to create a
13 new subchapter to read as follows:

14
15 Subchapter 21 – Health Care Independence Act of 2013

16
17 20-77-2101. Title.

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

20
21 20-77-2102. Legislative intent.

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

28 (1) Maximize the available service options;

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

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

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

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

1 insurance option for "low-risk" adults.

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

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

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

8
9 20-77-2103. Purpose.

10 (a) The purpose of this subchapter is to:

11 (1) Improve access to quality health care;

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

14 (3) Promote individually-owned health insurance;

15 (4) Strengthen personal responsibility through cost-sharing;

16 (5) Improve continuity of coverage;

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

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

20 (8) Increase quality and delivery system efficiencies;

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

23 (10) Discourage over-utilization; and

24 (11) Reduce waste, fraud, and abuse.

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

29
30 20-77-2104. Definitions.

31 As used in this subchapter:

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

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

1 consisting of copayments or coinsurance but not deductibles;

2 (3) "Eligible individuals" means individuals who:

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

8 (B) Have been authenticated to be a United States citizen
9 or documented qualified alien according to the federal Personal
10 Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No.
11 104-193, as existing on January 1, 2013; and

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

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

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

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

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

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

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

36

1 20-77-2105. Administration of the Health Care Independence Program.

2 (a) The Department of Human Services shall:

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

4 and

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

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

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

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

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

22 (a) Are enrolled in the program; and

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

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

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

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

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

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

1 Qualified Health Plans for enrolled eligible individuals.

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

6 (e) To the extent allowable by law:

7 (1) The Department of Human Services shall pursue strategies
8 that promote insurance coverage of children in their parents' or caregivers'
9 plan, including children eligible for the ARKids First Program Act, § 20-77-
10 1101 et seq., commonly known as the "ARKids B program"; and

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

14 (A) Children eligible for the ARKids First Program Act, §
15 20-77-1101 et seq.; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (3) The program is not an entitlement program.

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

20 (2) The Independence Accounts shall:

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

23 (B) Promote independence and self-sufficiency.

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

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

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

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

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

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

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

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

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

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

16 (1) Program enrollment;

17 (2) Patient experience;

18 (3) Economic impact including enrollment distribution;

19 (4) Carrier competition; and

20 (5) Avoided uncompensated care.

21
22 20-77-2106. Standards of healthcare coverage through the Health
23 Insurance Marketplace.

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

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

31 (2) A participating carrier in the Health Insurance Marketplace
32 shall maintain a medical loss ratio of at least eighty percent (80%) for an
33 individual and small group market policy and at least eighty-five percent
34 (85%) for a large group market policy as required under Pub. L. No. 111-148,
35 as existing on January 1, 2013.

36 (c) To assure price competitive choice among healthcare coverage

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

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

- 6 (1) Assignment of primary care clinician;
- 7 (2) Support for patient-centered medical home; and
- 8 (3) Access of clinical performance data for providers.

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

12
13 20-77-2107. Enrollment.

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

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

19
20 20-77-2108. Effective date.

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

23
24 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 11, is
25 amended to add an additional section to read as follows:

26 19-5-1140. Health Care Independence Program Trust Fund.

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

30 (b)(1) The Health Care Independence Program Trust Fund may consist of
31 moneys saved and accrued under the Health Care Independence Act of 2013, §
32 20-77-2101 et seq., including without limitation:

- 33 (A) Increases in premium tax collections;
- 34 (B) Reductions in uncompensated care; and
- 35 (C) Other spending reductions resulting from the Health

36 Care Independence Act of 2013, 20-77-2101 et seq.

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

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

6
7 SECTION 3. NOT TO BE CODIFIED. (a) The implementation of this act is
8 suspended until an appropriation for the implementation of this act is passed
9 by a three-fourths vote of both houses of the Eighty-Ninth General Assembly.

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

12
13 SECTION 4. NOT TO BE CODIFIED. The enactment and adoption of this act
14 shall supersede Section 21 of HB1219 of the Eighty-Ninth General Assembly, if
15 Section 21 of HB1219 of the Eighty-Ninth General Assembly is enacted and
16 adopted.

17
18 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
19 General Assembly of the State of Arkansas that the Health Care Independence
20 Program requires private insurance companies to create, present to the
21 Department of Human Services for approval, implement, and market a new kind
22 of insurance policy; and that the private insurance companies need certainty
23 about the law creating the Health Care Independence Program before fully
24 investing time, funds, personnel, and other resources to the development of
25 the new insurance policies. Therefore, an emergency is declared to exist,
26 and this act being immediately necessary for the preservation of the public
27 peace, health, and safety shall become effective on:

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

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

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

34
35 /s/J. Burris

36 APPROVED: 04/23/2013