BOARD OF DIRECTORS OF THE ARKANSAS HEALTH INSURANCE MARKETPLACE

OPERATING RULES

I. STATEMENT OF ORGANIZATION AND OPERATIONS

A. Operations.

The Arkansas Health Insurance Marketplace is a nonprofit legal entity that is a political subdivision, instrumentality, and body politic of the State of Arkansas created by Act 1500 of 2013, Ark. Code § 23-61-801 et seq. The Marketplace is exempt from the laws governing state agencies, including without limitation the Arkansas Procurement Law, Ark. Code § 19-11-201 et seq.; the Uniform Classification and Compensation Act, Ark. Code § 21-5-201 et seq.; and the Arkansas Administrative Procedure Act, Ark. Code § 25-15-201 et seq. The Marketplace is subject to the Freedom of Information Act of 1967, Ark. Code § 25-19-101 et seq.

The General Assembly has delegated to the Board of Directors of the Arkansas Health Insurance Marketplace the authority to plan and administer the Marketplace; enter into contracts with eligible entities to assist with the planning, implementation, and operation of the Marketplace; hire an executive director and interim staff; enter into information sharing agreements with federal and state agencies and other state marketplaces to carry out its responsibilities; provide claims and other plan and enrollment data to the Department of Human Services and the Insurance Commissioner when requested; apply for state, federal, or private funding on or after July 1, 2015; coordinate with the Insurance Commissioner to apply for state, federal, or private funds before July 1, 2015; enter into a memorandum of understanding with the Insurance Commissioner concerning the use of state, federal, or private funds received by the Insurance Commissioner that may be used by the Marketplace; and perform any duties identified under state or federal law, including without limitation the obligations stated in Ark. Code §§ 23-61-803 through 23-61-806.

The Marketplace staff acts as the administrator and operating entity of the Board. The staff may act as spokesperson for the Marketplace, receive correspondence and correspond on behalf of the Marketplace, provide legal and other research to the Marketplace, investigate allegations of violations of laws under the Marketplace's jurisdiction, and perform such other functions as the Board deems appropriate.

Unless otherwise provided by these rules or by state or federal law, these rules of practice and procedure shall govern all proceedings before the Board and shall be applicable to the adoption, amendment, or repeal of a policy, procedure, or rule of the Marketplace filed or initiated after the effective date of these rules. The adoption, amendment, or repeal of a policy, procedure, or rule shall comply with Ark. Code § 23-61-803.

B. Board Organization.

1. The Board shall consist of eleven (11) members.

2. The members shall be appointed as follows:

    a. Three (3) members by the Governor of the State of Arkansas;

b. Three (3) members by the Speaker of the Arkansas House of Representatives; and

c. Three (3) members by the President Pro Tempore of the Arkansas Senate.

3. The following public officials shall serve as members:

a. The Insurance Commissioner or his or her designee; and

b. The Director of the Department of Human Services or his or her designee.

4. The Governor shall appoint one (1) member who is a representative of insurance agents or brokers licensed to sell health insurance in Arkansas and two (2) members who are consumer representatives.

5. The President Pro Tempore shall appoint one (1) member who is a representative of a health insurer and one (1) member who is a representative of small employers.

6. The Speaker of the House shall appoint one (1) member who is a representative of a health insurer and one (1) member who is licensed by a health-related profession in Arkansas.

7. The appointing authorities shall ensure that a majority of the voting members of the Board have relevant experience in:

a. Health benefits administration;

b. Healthcare finance;

c. Health plan purchasing;

d. Healthcare delivery system administration; or

e. Public health or health policy issues related to the small group and individual markets and the uninsured.

8. Of the initial appointees to the Board by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, the appointing authority shall designate one (1) appointee to serve a term of four (4) years; one (1) appointee to serve a term of six (6) years; and one (1) appointee to serve a term of eight (8) years. All succeeding appointees to the Board shall be appointed for a term of six (6) years.

9. A member may resign at any time by delivering written notice to the Board. A resignation is effective when it is delivered to the Board, unless the notice specifies a later effective date.

10. A member subsequently appointed to the Board under subsection two (2) of this

section shall serve a term of six (6) years.

C. Removal.

The Board, by resolution, may petition the appropriate circuit court for the removal of a member of the Board under Ark. Code § 4-27-809.

D. Staff Organization.

1. Executive Director

a. The Board shall employ an Executive Director who shall serve at the will and pleasure of the Board.

b. The Executive Director shall employ a staff to assist in the administration of the Marketplace.

c. The Executive Director shall be responsible to the full Board and shall not be answerable to an individual member. However, the Executive Director shall ensure that the Chair of the Board is advised of the progress and conduct of the employees and operation of the Marketplace's office.

2. Interim Staff

The Board may employ necessary staff on an interim basis until an Executive Director is hired.

II. INFORMATION FOR PUBLIC GUIDANCE

1. The Marketplace shall make available a list of persons holding certain responsibilities for handling Freedom of Information Act requests, responding to operation questions, addressing complaints, and handling its procedures concerning the adoption, amendment, or repeal of a rule, policy, or procedure of the Marketplace. The names, mailing addresses, telephone numbers, and electronic mail addresses can be obtained from the Marketplace's office or website.

2. The Marketplace shall maintain and make the following available on its website and from the Marketplace's office:

a. Official forms;

b. Written statements of a rule, policy, or procedure;

c. Written interpretative memoranda of a rule, policy, or procedure, if applicable; and

d. Information and documents required under the Freedom of Information Act, Ark. Code § 25-19-101 et seq.

3. The Marketplace shall file with the Arkansas Health Insurance Marketplace Legislative Oversight Committee, the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research a copy of each rule, policy, or procedure adopted by it and a statement of financial impact for the rule, policy, or procedure.

III. GENERAL ORGANIZATION

A. Officers.

1. The Board shall select a Chair, Vice-Chair, Secretary/Treasurer, and such other officers as a majority of the Board choose. The Board shall elect at its first meeting following July 1 of each year a Chair, Vice-Chair, and Secretary/Treasurer. An officer of the Board may not succeed himself or herself. For officers elected on or after July 1, 2014, and subject to the affirmation of the Board:

a. A person serving as Vice-Chair shall succeed to the office of Chair on the next following July 1; and

b. A person serving as Secretary/Treasurer shall succeed to the office of Vice-Chair on the next following July 1.

2. The Chair shall be a member of the Board and shall:

a. Preside at the meetings of the Board with the authority to vote;

b. Call meetings and special meetings as required; and

c. Perform such other duties as may be prescribed by law or by action of the Board.

3. The Vice-Chair shall be a member of the Board and shall perform the duties and have the powers of the Chair during the absence or disability of the Chair.

4. The Secretary/Treasurer shall be a member of the Board and shall attest the official actions of the Board.

B. Standard of Conduct.

1. A member of the Board shall discharge his or her duties:

a. In good faith;

b. With the care an ordinarily prudent person in a like position would

exercise under similar circumstances; and

c. In a manner the member reasonably believes to be in the best interests of the Marketplace.

2. A member of the Board acting in good faith may rely on information provided to him or her in accordance with Ark. Code § 4-33-830.

C. Conflicts of Interest.

Members of the Board and the Marketplace's staff shall maintain constant vigilance against conflicts of interest and against the appearance of conflicts of interest in accordance with Ark. Code § 4-33-831.

D. Liability.

The Board and its employees shall not be liable for the obligations of the Marketplace.

E. Indemnification.

The Board and its employees shall be indemnified under Ark. Code §§ 4-33-850 - 4-33-857. This provision does not waive any other immunity provided under applicable law, including but not limited to Ark. Code § 21-9-301 et seq.

F. Legal Representation.

The Board shall provide for legal representation for members or employees of the Board.

G. Meetings.

1. The business of the Board shall be conducted in public meetings pursuant to the Freedom of Information Act, Ark. Code § 25-19-101 et seq. and guided by Robert's Rules of Order Newly Revised. Regular meetings will be held at least quarterly.

2. Special meetings will be held at the call of the Chair or by written request signed by five (5) Board members. A special meeting that does not concern an emergency may be called on two (2) business days notice. A special meeting concerning an emergency may be called on the notice required under the Freedom of Information Act, Ark. Code § 25-19-101 et seq. The notice shall specify the place, date, and time of the special meeting and provide a concise statement of the business to be conducted at the special meeting.

3. A majority of the total membership of the Board, whether present in the meeting room, via telephone, teleconference, or similar technology, constitutes a quorum for the transaction of business. An affirmative vote of a majority of a quorum present shall be necessary to transact business.

4. The Chair shall prepare a proposed agenda for each regular meeting. The proposed

agenda shall be distributed to the Board and made available to the public in advance of the meeting. Any member of the Board may add items to the agenda by notifying the Chair before the scheduled meeting date and time. An item may be added to the agenda during the meeting upon the majority vote of the members present at the meeting.

5. At the last regular meeting of the Board in a fiscal year the Board shall determine the dates of its regular meetings in the next fiscal year.

H. Committees.

The Board may create standing and ad hoc committees. The Board may appoint members to a committee by a majority vote of a quorum of members present. A quorum for the transaction of committee business is a majority of the number of voting members of the committee.

I. Compensation.

1. Subject to review by the Arkansas Health Insurance Marketplace Legislative Oversight Committee, the Board may authorize by a majority vote of the total membership of the Board cast during its first regularly scheduled meeting of each calendar year the:

a. Payment to its members of a stipend per day not to exceed one hundred dollars ($100) for each meeting attended or for any day while performing substantive business of the Board; and

b. Reimbursement of actual expenses while performing substantive business of the Board.

2. Members of the Board shall receive no other compensation, expense reimbursement, or in-lieu-of payments.

J. Accounting.

The Board shall keep an accurate accounting of all activities, expenditures, and receipts on behalf of the Marketplace and report to the Arkansas Health Insurance Marketplace Legislative Oversight Committee upon the Committee's request.

K. State, Federal, or Private Grants.

1. If the Insurance Commissioner applies for and receives state, federal, or private grant funds available to assist with the planning, implementation, and operation of the Marketplace, the Marketplace may enter into a memorandum of understanding with the Insurance Commissioner concerning the use and expenditure of the funds in a manner authorized by state or federal law, including without limitation Ark. Code § 23-61-803.

2. The Marketplace may apply for state, federal, public, or private funding in the time

specified in state or federal law, including without limitation Ark. Code § 23-61-803.

IV. RULES, POLICIES, AND PROCEDURES

A. Authority.

Ark. Code § 23-61-803 requires the Marketplace to promulgate rules, policies, and procedures to implement its statutory obligations.

B. Initiation of Rule-making.

The process of adopting a new rule, policy, or procedure or amending or repealing an existing rule, policy, or procedure (hereinafter referred to as "rule-making") may be initiated by request of the Board or Executive Director that the staff submit proposed drafts.

C. Notice.

The Marketplace shall give notice of the proposed rule-making pursuant to Ark. Code § 23-61-803.

D. Public Input.

1. In accordance with Ark. Code § 23-61-803, an interested person may petition the Marketplace within a specified period of the rule-making for an oral hearing. An oral hearing shall be granted if requested by twenty-five (25) people, by a governmental subdivision or agency, or by an association having no fewer than twenty-five (25) members.

2. A public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the Marketplace to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.

3. The Chair, a member of the Board, or a person designated by the Board may preside at the public hearing. The Marketplace must ensure that its personnel responsible for preparing the proposed rule, policy, or procedure or amendment are available to explain the proposal and to respond to questions or comments regarding the proposed rule, policy, or procedure.

4. A person may submit written statements within a specified period of time. All timely, written statements will be considered by the Marketplace and be made a part of the rule-making record.

E. Decision to Adopt, Amend or Repeal a Rule, Policy, or Procedure.

1. The Marketplace shall not finalize language of a rule, policy, or procedure or decide whether to adopt a rule, policy, or procedure until the period for public comment has expired.

2. Before acting on a proposed rule, policy, or procedure the Marketplace shall consider all of the written submissions and oral submissions received in the rule-making proceeding or a memorandum summarizing such oral submissions and the fiscal impact statement issued in the rule-making proceeding.

3. The Marketplace may use its own experience, specialized knowledge, and judgment in the rule-making process.

F. Variance Between Adopted Rule, Policy, or Procedure and Published Notice of a Proposed Rule, Policy, or Procedure.

1. The Marketplace shall not adopt a rule, policy, or procedure that differs from the rule, policy, or procedure proposed in the published notice of the intended rule-making on which the rule, policy, or procedure is based unless:

a. The final rule, policy, or procedure is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule, policy, or procedure; or

b. The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.

2. In determining whether the final rule, policy, or procedure is in character with the original scheme and was a logical outgrowth of the notice and comments, and that the notice of intended rule-making provided fair warning that the outcome of that rule-making proceeding could be the rule, policy, or procedure in question, the Marketplace must consider the extent to which the:

a. Persons who will be affected by the rule, policy, or procedure should have understood that the rule-making proceeding on which it is based could affect their interests;

b. Subject matter of the rule, policy, or procedure or issues determined by the rule, policy, or procedure are different from the subject matter or issues contained in the notice of intended rule-making; and

c. Effects of the rule, policy, or procedure differ from the effects of the proposed rule, policy, or procedure contained in the notice of intended rule-making.

G. Concise Statement of Reasons.

1. When requested by an interested person, either prior to the adoption of a proposed rule, policy, or procedure or within thirty (30) days after its adoption, the Marketplace shall issue a concise statement of the principal reasons for and against its adoption, amendment, or repeal, incorporating therein its reasons for overruling the considerations urged against its adoption, amendment, or repeal. Requests for such a statement must be in writing and be delivered to the

employee identified by the Marketplace as having authority to accept the request. The request should indicate whether the statement is sought for all or only a specified part of a rule, policy, or procedure. A request will be considered to have been submitted on the date on which it is received by the authorized employee of the Marketplace.

2. The concise statement of reasons must contain:

a. The Marketplace's reasons for adopting the rule, policy, or procedure;

b. An indication of any change between the text of the proposed rule, policy, or procedure and the text of the rule, policy, or procedure as finally adopted, with explanations for any such change; and

c. The principal reasons urged in the rule-making procedure for and against the rule, policy, or procedure and the Marketplace's reasons for overruling the arguments made against the rule, policy, or procedure.

H. Factors to Consider When Developing Rules, Policies, and Procedures.

1. Prior to the adoption, amendment, or repeal of a rule, policy, or procedure, the Board shall consider the following factors:

a. Whether the Board is required by statute to adopt the proposed rule, policy, or procedure, whether by a specific date, and whether the Board has discretion to promulgate rules, policies, or procedures;

b. Other statutes relevant to the proposed rule, policy, or procedure and its alternatives;

c. The specific nature and significance of the problem the Board addresses with the proposed rule, policy, or procedure including without limitation:

i. The nature and degree of the risks the problem poses;

ii. The priority of addressing those risks as opposed to other matters or activities within the Board's jurisdiction;

iii. Whether the problem warrants new Board action; and

iv. The countervailing risks that may be posed by alternative rules, policies, or procedures for the Board;

d. Whether existing rules, policies, or procedures have created or contributed to the problem the Board is addressing with the proposed rule, policy, or procedure and whether those rules, policies, or procedures could be amended or repealed to address the problem in whole or in part;

e. Reasonable alternatives to the proposed rule, policy, or procedure, including without limitation:

i. Adopting no rule, policy, or procedure;

ii. Amending or repealing existing rules, policies, or procedures; and

iii. Other potential responses that could be taken instead of Board action;

f. The financial impact of the proposed rule, policy, or procedure; and

g. Any other factor relevant to the need for and alternatives to the proposed rule, policy, or procedure.

2. The Board shall not adopt, amend, or repeal a rule, policy, or procedure unless the rule, policy, or procedure is based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule, policy, or procedure.

3. The Board shall adopt the least costly rule, policy, or procedure considered under this section, unless:

a. The additional benefits of the more costly rule, policy, or procedure justify its additional cost;

b. The Board explains its reason for adoption of the more costly rule, policy, or procedure in writing;

c. The reason is based on the interests of public health, safety, or welfare; and

d. The reason is within the scope of the Board's statutory authority.

I. Contents.

The Marketplace shall cause its rules, policies, and procedures to be published and made available to interested persons on its website. The publication must include:

1. The text of the final rule, policy, or procedure; and

2. The proposed effective date of the final rule, policy, or procedure.

J. Incorporation by Reference.

1. By reference in a rule, policy, or procedure, the Marketplace may incorporate all or part of a code, standard, rule, or other matter if the Marketplace finds that copying the matter into the Marketplace's rule, policy, or procedure would be unduly cumbersome, expensive, or otherwise inexpedient.

2. The reference in the Marketplace rule, policy, or procedure shall fully and precisely identify the incorporated matter by title, citation, date, and edition, if any; briefly indicate the precise subject and general contents of the incorporated matter; and state that the rule, policy, or procedure does not include any later amendments or editions of the incorporated matter.

3. The Marketplace may incorporate such a matter by reference in a proposed or adopted rule, policy, or procedure only if the Marketplace makes copies of the incorporated matter readily available to the public. The Marketplace must retain a copy of materials incorporated by reference in a rule, policy, or procedure of the Marketplace.

K. Filing.

1. After the Marketplace formally adopts a new rule, policy, or procedure; amends a current rule, policy, or procedure; or repeals an existing rule, policy, or procedure it shall file final copies of the rule, policy, or procedure and a statement of financial impact for the rule, policy, or procedure with the Arkansas Health Insurance Marketplace Legislative Oversight Committee, the Secretary of State, the Arkansas State Library, and Bureau of Legislative Research, or as otherwise provided by Ark. Code § 23-61-803.

2. A final rule, policy, or procedure shall not be filed until after the thirty-day public comment period has expired.

3. The financial impact statement shall be prepared as directed under Ark. Code § 23-61-803.

4. If a financial impact statement reveals a new or increased cost or obligation of at least one hundred thousand dollars ($100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined, the Board shall file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include without limitation:

a. A statement of the basis and purpose of the rule, policy, or procedure;

b. The problem the Board seeks to address with the proposed rule, including a statement of whether a rule, policy, or procedure is required by statute;

c. A description of the factual evidence that:

i. Justifies the Board's need for the proposed rule, policy, or procedure; and

ii. Describes how the benefits of the rule, policy, or procedure meet the relevant statutory objectives and justify the costs of the rule, policy, or procedure;

d. A list of less costly alternatives to the proposed rule, policy, or procedure and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule, policy, or procedure;

e. A list of alternatives to the proposed rule, policy, or procedure that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule, policy, or procedure;

f. A statement of whether existing rules, policies, and procedures have created or contributed to the problem the Board seeks to address with the proposed rule, policy, or procedure;

g. If existing rules, policies, or procedures have created or contributed to the problem, an explanation of why amendment or repeal of the rule, policy, or procedure creating or contributing to the problem is not a sufficient response; and

h. A Board plan for review of the rule, policy, or procedure no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including without limitation whether:

i. The rule, policy, or procedure is achieving the statutory objectives;

ii. The benefits of the rule, policy, or procedure continue to justify its costs; and

iii. The rule, policy, or procedure can be amended or repealed to reduce costs while continuing to achieve the statutory objections.

5. Proof of filing a copy of a final rule, policy, or procedure with the Arkansas Health Insurance Marketplace Legislative Oversight Committee, the Secretary of State, the Arkansas State Library, and Bureau of Legislative Research, will be kept in a file maintained by the Marketplace.

6. Notice of the rule, policy, or procedure change will be posted on the Marketplace's website.

L. Notice of Final Rule, Policy, or Procedure.

1. After the expiration of the thirty-day public comment period and before the

effective date of the rule, policy, or procedure the Marketplace shall take appropriate measures to make the final rule, policy, or procedure known to the persons who may be affected by the rule, policy, or procedure.

2. Appropriate measures shall include without limitation the posting of the following information on the Marketplace's website:

a. The final rule, policy, or procedure;

b. Copies of all written comments submitted to the Marketplace regarding the rule, policy, or procedure;

c. A summary of all written and oral comments submitted to the Marketplace regarding the rule, policy, or procedure and the Marketplace's response to those comments; and

d. The proposed effective date of the final rule, policy, or procedure.

M. Effective Date.

The rule, policy, or procedure will be effective thirty (30) days after the filing of the final rule, policy, or procedure unless a later date is specified by law or in the rule, policy, or procedure itself.

V. EMERGENCY RULE-MAKING

A. Imminent Peril.

1. If the Marketplace finds imminent peril to the public health, safety, or welfare or compliance with federal laws or regulations requires adoption of a rule, policy, or procedure, upon less than thirty (30) days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule, policy, or procedure.

2. The emergency rule, policy, or procedure may be effective for no longer than one hundred twenty (120) days.

B. Filing.

1. The emergency rule, policy, or procedure shall be filed with the Arkansas Health Insurance Marketplace Legislative Oversight Committee, the Secretary of State, the Arkansas State Library, and Bureau of Legislative Research.

2. The Marketplace will file with the rule, policy, or procedure its written findings justifying the determination that emergency rule-making is appropriate.

3. Proof of filing a copy of an emergency rule, policy, or procedure with the

Arkansas Health Insurance Marketplace Legislative Oversight Committee, the Secretary of State, the Arkansas State Library, and Bureau of Legislative Research, will be kept in a file maintained by the Marketplace.

C. Notice.

1. The emergency rule, policy, or procedure shall be posted on the Marketplace's website.

2. The Marketplace shall take appropriate measures to make an emergency rule, policy, or procedure known to persons who may be affected by the emergency rule, policy, or procedure.

D. Effective Date.

The emergency rule, policy, or procedure will be effective immediately upon filing or at a stated time less than thirty (30) days after filing if the Marketplace finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

E. Successive Emergency Rule, Policy, or Procedure.

If, after the expiration of the effective period of an emergency rule, policy, or procedure the Marketplace wishes to adopt a successive emergency rule, policy, or procedure that is identical or substantially similar to the expired emergency rule, policy, or procedure the Marketplace shall not adopt the successive emergency rule, policy, or procedure earlier than thirty (30) days after the expiration of the emergency rule, policy, or procedure.