



STATE OF ARKANSAS

# House of Representatives

REPRESENTATIVE

John Burris

MINORITY LEADER

923 West Prospect Avenue

Harrison, Arkansas 72601-3261

870-688-6181 Business

burrisforlaterep@gmail.com

DISTRICT 85

Counties:

Part Boone

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Joint Committee on Energy

Legislative Joint Auditing

September 27, 2011

Mr. Jay Bradford, Commissioner  
Insurance Department  
1200 W. 3<sup>rd</sup> St.  
Little Rock, AR 72201

Dear Commissioner Bradford:

This letter is a response to your request for legislative comments on your grant application proposal. You have proposed that the state should apply for additional grant monies from the Federal government in order to pursue the establishment of a Health Insurance Exchange (HIE), an option created by the federal Patient Protection and Affordable Care Act (PPACA).

We appreciate your hard work as Commissioner on this issue. It is certainly complex and requires much research and thought. As members of the Legislative branch of government, we regret that our role in this decision cannot be more direct. **As you know, only approval of the Executive branch is required to apply for a Level I Establishment Grant.** However, we would like to offer our thoughts on the best plan moving forward.

**At this time, we oppose the Governor moving forward with any additional spending as it relates to implementation of the HIE.** These exchanges were mandated through passage of the PPACA. We believe a cautious "wait and see" approach is the right policy for several reasons. These include:

- In a court ruling that struck down key provisions of the PPACA, one federal judge noted that states participating in the implementation of the PPACA (including a HIE) could potentially make court challenges to the PPACA less successful. Therefore, moving forward with implementation of the HIE could potentially undermine the unresolved court challenges to the PPACA. **Although Arkansas has chosen not to participate in these lawsuits, we do not wish to undermine them through aggressive policies that implement key components of the PPACA.**
- Qualifications for a Level II Establishment Grant (deadline of June, 2012) do not include participation in the Level I Establishment Grant. **Therefore, future grant support is not necessarily contingent upon applying for a Level I grant.**
- Qualifications for a Level II grant explicitly state the "legal authority" and "governance structure" to run an exchange must be in place. Arkansas has established no such structure through legislation, and the Governor has openly stated his opposition of establishing the required structure through an Executive Order.

- **Therefore, continuation of planning through Level I grant despite not being able to qualify for a Level II grant appears to be an unnecessary expenditure of tax-payer funds.**
- Final rules and regulations have yet to be promulgated in regards to the HIE. Continued spending to plan a structure for a product that has yet to be defined also appears to be an unnecessary expenditure of tax-payer funds.
- Only 13 states have established state exchanges so far. Because of the many questions of and difficulties in implementation that PPACA presents, it is likely that federal regulatory deadlines will be pushed into the future in order to make it easier for states to comply with the complexities of healthcare reform. **The implementation of the PPACA is not an action we would approach with haste – especially because it seems to be based on deadlines that might change and funded by federal dollars that have giant federal strings attached.**

**As stated earlier, we realize the decision to move forward with applying for additional grants is a decision that can only be made by the Governor.** However, we believe the facts listed above should encourage any decision-maker to wait longer before making this decision.

We believe a better course of action would be to follow a similar approach of 21 other states who are advocating for changes to the current rules regarding HIE. These states sent a letter to Secretary Sebelius outlining their concerns with the PPACA and expressing their unwillingness to move forward with the creation of an exchange (letter attached). **As noted in the letter, creation of a Federally designed HIE has the potential to bankrupt a state's Medicaid budget, and also leaves a state little control on deciding how their exchange can function and be funded.**

The current debate seems to have been narrowed to "if we don't do it, they will." We believe the issue to be more complex. Moving forward with planning for an exchange with monies completely provided by the Federal government obligates the state to the rules and regulations provided by the Federal government. This is not a decision of state vs. federal control. **This seems to be a decision of "jump or get**

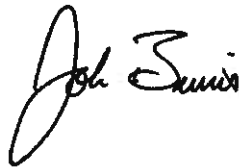
**pushed." The end result will be the same, but we should not "jump" until the plank has run out. It is clear that there is still plenty of time in the future to respond to the PPACA's demands.**

Finally, if all components of the PPACA are still in place by 2014, the Federal government will implement HIE for states that have not yet done so. However, states may begin the process of taking over control of the exchange for their state by 2015. This means if Arkansas has not yet implemented an exchange that complies with the Federal government's standards, the Federal government will simply establish an exchange that the state can eventually take over within 12 months. Again, the result will eventually be the same.

Our goal is simply to do what is best for the people of Arkansas. The many unanswered questions regarding HIE, as well as the overall future of the PPACA and the timelines and policies it imposes, compel us to believe that caution is the wisest course of action at this time.

Thank you for your consideration on this issue.

Respectfully submitted,



John Burris  
State Representative



Bruce Westerman  
State Representative



Allen Kerr  
State Representative



Johnny Key  
State Senator



Missy Irvin  
State Senator



Cecile Bledsoe  
State Senator