

SB828 Blueprint

Conduit for Action, Inc
March 18, 2015

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WORST BILL EVER—(if you are against Obamacare and want voters/legislators to continue to have say in Obamacare-controls):

Obamacare and the overall Healthcare-Industrial Complex in America has been a contentious issue for most voters and legislators over the past several years. We at CFA have done our best to inform our supporters and the legislators not only what the people want, but what the legislation presented will actually do, relative to that desire. We have experienced some scorn from the “government solutions” legislators but have not been proven wrong on any of our conclusions to date. This particular bill (SB828) is, in our reading and understanding, a blatant attempt to end the discussion and hand off any future responsibility of legislators to a series of panels, commissions, and agencies, answerable only to the Governor, to avoid continuation of the debate and disapproval with the voters.

This SB828 is a complete hand-over to the Governor, DHS, DFA, Insurance Commissioner and Marketplace Exchange (non-profit entity) of all future control of Arkansas healthcare, health insurance, and taxing Arkansans to pay for it.

Key provisions!:

1-Purpose of the Bill:

Page 2, Lines 8-14:

8 WHEREAS, under 31 C.F.R. § 33.108, as an initial criterion for an
9 application for Waivers for State Innovation, evidence of state legislation
10 that provides the state with authority to implement the proposed waiver is
11 required; and

12

13 WHEREAS, existing state legislation may be insufficient in providing
14 the authority to permit an application under 31 C.F.R. § 33.108,

The above states:

1. Federal law now requires some sort of legislature approval for waivers before the feds will consider them.
2. Current law is insufficient to be considered such authority....
3. Implies this bill is now fixing that problem by giving such authority to the Governor by passing this bill.

2-Governor given sole and absolute discretion for any future action desired for health care and insurance:

Page 2, Lines 28-31:

27 23-61-902. Purpose.
28 The purpose of this subchapter is to encourage the executive and
29 legislative branches to explore, develop, and facilitate innovative
30 approaches to improving access to, affordability, and quality of
31 comprehensive health insurance coverage and health care.

The above gives broad unlimited authority, arguably approving any action as consistent with this bill, to the Governor (and his agencies) regarding health care and health insurance

3-Bill is “self-proving” so no more ‘Legislative Action’ is needed after bill becomes law:

Page 3, Lines 5-6:

5 ((b) Any waiver submitted under this section shall have
6 legislative approval under this section.

The above states that this bill is to serve as the legislative action required by federal law referenced in the “Whereas-s” mentioned above.

Though one could argue the language is “tortured,” it is very intentional, and clearly meant to be “self-proving” with no further action needed by the Legislature regarding any additional waivers.

Had the sponsors of this bill intended that further action to approve waiver requests were needed (such as an enacting statute passed in a future General or Special Session, then BLR or DHS or whoever wrote this bill for the sponsors would have set out that language clearly... Writing such language as intended by the sponsors is the primary job of the bill writer for which they are paid. Just like whether a bill includes an Emergency Clause or not, this language is written for a specific purpose. (BTW—Leaving out or including an Emergency Clause is a strategic and routine part of bill writing—leaving it out by accident is comparable to leaving out the beneficiaries’ names in a will or trust document.)

Crafting the language of this bill is not an afterthought but very intentional—especially with the original and two amendments and three added co-sponsors. No further action by the Legislature will be needed

to obtain any and all federal waivers requested by the Governor and his agencies and the Marketplace Exchange if this bill is passed.

Now to the Rules portion (which arguable by-passes the Legislative approval of rules process granted to the Legislature in Nov 2014 under the Constitutional Amendment, Issue 1.)ⁱⁱ

4-Absolute Power--Rules to be written by Insurance Commissioner, DHS, DFA, Marketplace Exchange:

Page 3, Lines 9-10 Rules to be written by the **Insurance Commissioner:**

9 (a) The Insurance Commissioner may promulgate rules to implement this
10 subchapter and any federal waivers sought in furtherance of this subchapter.

Okay—for “...any federal waivers sought in furtherance of this subchapter” is very broad.

Page 3, Lines 11-14 Rules to be written by the **DFA:**

11 (b) The Department of Finance and Administration may promulgate rules
12 to implement this subchapter and any federal waivers sought in furtherance of
13 this subchapter, including without limitation rules pertaining to the
14 calculation, assessment, or collection of state taxes.

Same broad powers—added here: including without limitation rules pertaining to the calculation, assessment, or collection of state taxes. *(Whether this is ability to make a practical assessment which adds additional taxes on the public (such as we have seen with sales tax assessments of recent years) is an interesting twist but arguable given powers to DFA over which the Legislature will have no control.)*

Page 3, Lines 17-20 Rules to be written by the **DHS:**

17 subchapter, including without limitation any required state plan amendments
18 to the Medicaid program, any waivers or other approvals required from the
19 Centers for Medicare and Medicaid Services, and any other rules pertaining to
20 the Medicaid program.

Same broad powers—added here: including without limitation any pertaining to Medicaid program.

Page 3, Lines 21-28 Rules to be written by **Marketplace Board** (not a state agency but a non-profit entity):

21 (d)(1) The Arkansas Health Insurance Marketplace may promulgate rules
22 to implement this subchapter and any federal waivers sought in furtherance of
23 this subchapter, including without limitation rules pertaining to the
24 Arkansas Health Insurance Marketplace.
25 (2) Rules adopted by the Arkansas Health Insurance Marketplace
26 under subdivision (d)(1) of this section:
27 (A) Are exempt from the Arkansas Administrative Procedure
28 Act, § 25-15-201 et seq.; and

This is the Board (non-government entity) under Arkansas Act 1500 which will implement the State Obamacare Exchange on July 1, 2015. Again, **this bill gives them rule making ability without limitation....regarding insurance market....and continues to exclude them in doing so from the laws imposed on state agencies.**

If you are willing to dedicate the time to read through and fairly assess this bill, the intent by its legislative sponsors become clear. **They simply wish to wash their hands of this contentious issue and let the bureaucracy do the dirty work. Sounds eerily familiar to the Obamacare debate in Washington in 2009-- does it not?**

Please realize that, if passed, the future Executive Branch of the state, R or D, will retain this power indefinitely? It is not a matter of whether we “trust” this administration. If permanently ending debate and your participation (thus the participation of those you represent) is important, then go ahead and “trust them.” As for us, we prefer not to trust the short-cut but to trust what we read, see, hear, and observe in relation to world history!

ⁱ <http://www.arkleg.state.ar.us/assembly/2015/2015R/Pages/BillInformation.aspx?measureno=SB828>

ⁱⁱ [http://ballotpedia.org/Arkansas_Legislative_Approval_of_State_Agency_Rules_Amendment,_Issue_1_\(2014\)](http://ballotpedia.org/Arkansas_Legislative_Approval_of_State_Agency_Rules_Amendment,_Issue_1_(2014))