

1 SB391
2 212738-1
3 By Senator Shelnutt
4 RFD: Banking and Insurance
5 First Read: 13-APR-21

8 SYNOPSIS: This bill would authorize the Commissioner
9 of Insurance to establish a state health insurance
10 exchange for the purchase and sale of qualified
11 health insurance plans in the individual market in
12 this state. The state health insurance exchange
13 would be in lieu of participation in the federal
14 health insurance exchange under the federal
15 Affordable Care Act (ACA).

16 This bill would also authorize the
17 Commissioner of Insurance to apply for the
18 appropriate waivers to establish a reinsurance
19 program for the individual health insurance market
20 in this state for eligible health carriers
21 participating in the state health insurance
22 exchange.

24 A BILL
25 TO BE ENTITLED
26 AN ACT

1 Relating to insurance; to authorize the Commissioner
2 of Insurance to establish a state health insurance exchange
3 for the purchase and sale of qualified health insurance plans
4 in the individual market in this state; to authorize the
5 Commissioner of Insurance to apply for the appropriate waivers
6 from the federal government necessary to establish a
7 reinsurance program for the individual health insurance market
8 in this state; and to amend Sections 10A-20-6.16 and
9 27-21A-23, Code of Alabama 1975, relating to certain health
10 care service corporations and health maintenance
11 organizations, for the purposes of this act.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Purpose.

14 (a) The purposes of this act include both of the
15 following:

16 (1) To grant the Commissioner of Insurance the
17 authority to establish the Alabama Health Insurance Exchange
18 Fund to facilitate the purchase and sale of qualified health
19 plans in the individual market in this state if the
20 commissioner determines that the establishment of the exchange
21 is in the best interest of the state and the health insurance
22 market for consumers of the state.

23 (2) To grant the Commissioner of Insurance the
24 authority to apply to the federal government for the
25 appropriate waivers necessary to establish a reinsurance
26 program for the individual health insurance market in this
27 state in the event the commissioner makes a determination that

1 a reinsurance program is in the best interest of this state
2 and the health insurance market in the state, and to use fees
3 received for the administration of an Alabama Health Insurance
4 Exchange Fund and federal funds in order to operate the
5 reinsurance program.

6 (b) If the Commissioner of Insurance implements this
7 act, the commissioner shall ensure and maintain the
8 sovereignty of the State of Alabama over the regulation of
9 health insurance in this state. This act is intended to
10 maintain the state's sovereignty over the regulation of health
11 insurance in this state to the greatest extent permitted under
12 federal law. The provisions of this act are intended to meet
13 these requirements while retaining the state's authority to
14 regulate health insurance in this state.

15 Section 2. Definitions

16 As used in this act, the following words have the
17 following meanings:

18 (1) AFFORDABLE CARE ACT or ACA. The Patient
19 Protection and Affordable Care Act (Public Law 111-148, 124
20 Stat. 119), as amended by the Health Care and Education
21 Reconciliation Act of 2010 (Public Law 111-152, 124 Stat.
22 1029).

23 (2) ATTACHMENT POINT. The threshold amount for
24 claims costs incurred by an eligible health carrier for an
25 enrolled individual's covered benefits in a benefit year,
26 above which the claims costs for benefits are eligible for
27 reinsurance payments under this act.

1 (3) BENEFIT YEAR. The calendar year during which an
2 eligible health carrier provides coverage through a health
3 benefit plan.

4 (4) CHILDREN'S HEALTH INSURANCE PROGRAM. The
5 children's health insurance program known as ALL Kids and
6 administered by the Department of Public Health.

7 (5) COINSURANCE RATE. The percentage rate at which
8 the reinsurance program will reimburse an eligible health
9 carrier for claims incurred for an enrollee's covered benefits
10 in a benefit year above the attachment point and below the
11 reinsurance cap.

12 (6) COMMISSIONER. The Alabama Commissioner of
13 Insurance.

14 (7) DEPARTMENT. The Department of Insurance.

15 (8) ELIGIBLE HEALTH CARRIER. A health carrier
16 offering silver health benefit plans to consumers on the
17 individual exchange in this state.

18 (9) ENROLLEE. A policyholder, certificate holder,
19 subscriber, covered person, or other individual who is
20 enrolled to receive health care services pursuant to a health
21 insurance policy.

22 (10) EXCHANGE. A health insurance exchange as
23 contemplated by the ACA, established or operating in this
24 state, that facilitates or assists in facilitating enrollment
25 in qualified plans.

26 (11) EXCHANGE ASSISTER. The term has the meaning
27 given to it in Section 2 of the federal Navigator and Exchange

1 Assister Accessibility and Regulation Act (P.L.25, No.7, June
2 19, 2015). Exchange assisters shall be subject to registration
3 and licensing requirements deemed necessary by the
4 commissioner and not inconsistent with federal law.

5 (12) EXCHANGE FUND. The Alabama Health Insurance
6 Exchange Fund established under Section 8 of this act,
7 relating to exchange fund.

8 (13) FEDERAL ACTS. The ACA and any amendments
9 thereto, and related provisions of the Public Health Service
10 Act (58 Stat. 682, 42 U.S.C. § 201 et seq.).

11 (14) GOVERNMENT PROGRAM. A program of government
12 sponsored or subsidized health care coverage, including all of
13 the following:

14 a. A premium tax credit or cost-sharing subsidy
15 under the federal acts.

16 b. Coverage under Medicare Parts A and B or Medicare
17 Advantage Part C under Title XVIII of the Social Security Act
18 (49 Stat. 620, 42 U.S.C. § 1395 et seq.).

19 c. A TRICARE or other health care plan provided
20 through the Civilian Health and Medical Program of the
21 Uniformed Services (CHAMPUS) as defined under 10 U.S.C. §
22 1072, relating to definitions.

23 d. A health care plan provided through the federal
24 Employees Health Benefits Program established under 5 U.S.C.
25 Chapter 89, relating to health insurance.

26 e. The Children's Health Insurance Program.

1 f. Health care coverage provided by the state, a
2 county, a city, or other state or local governmental entity,
3 or an agency or department of a governmental entity.

4 (15) GRANDFATHERED HEALTH CARE PLAN. Individual or
5 group health insurance coverage in which an individual was
6 enrolled prior to the date of enactment of the ACA, or as
7 otherwise specified in Section 1251 of the ACA (42 U.S.C. §
8 18011).

9 (16) HEALTH BENEFIT PLAN. Any individual,
10 non-grandfathered ACA compliant plan. The term includes, but
11 is not limited to, plans provided by health care service plans
12 created pursuant to Article 6, Chapter 20, Title 10A, Code of
13 Alabama 1975, and health maintenance organizations operating
14 pursuant to Chapter 21A, Title 27, Code of Alabama 1975. The
15 term does not include accident-only, specified disease,
16 individual hospital indemnity, credit, dental-only,
17 Medicare-supplement, long term care, or disability income
18 insurance, other limited benefit health insurance policies,
19 coverage issued as supplemental to liability insurance,
20 workers' compensation or similar insurance, or automobile
21 medical-payment insurance.

22 (17) HEALTH CARRIER or CARRIER. An entity subject to
23 the insurance laws of this state and rules of the Department
24 of Insurance, or subject to the jurisdiction of the
25 department, that contracts or offers to contract to provide,
26 deliver, arrange for, pay for, or reimburse any of the costs
27 of health care services, including, but not limited to, a

1 sickness and accident insurance company, a health maintenance
2 organization, a nonprofit hospital and health service
3 corporation, a health care service plan organized pursuant to
4 Article 6, Chapter 20 of Title 10A, or any other entity
5 providing a plan of health insurance, health benefits, or
6 health services.

7 (18) INDIVIDUAL MARKET. The market for health
8 insurance coverage offered to individuals other than in
9 connection with a group.

10 (19) INNOVATION WAIVER. A waiver applied for
11 pursuant to Section 1332 of the ACA (42 U.S.C. § 18052).

12 (20) INSURANCE PRODUCER. As defined in Section
13 27-7-1, Code of Alabama 1975.

14 (21) QUALIFIED ENROLLEE. A qualified employee or
15 qualified individual, as defined in Section 1312(f) of the ACA
16 and regulations adopted under that act.

17 (22) QUALIFIED PLAN. A plan as defined in Section
18 1301(a) of the ACA that provides health care or dental care
19 coverage that has been certified by the department as meeting
20 the criteria set forth in this act and any regulations adopted
21 pursuant to this act.

22 (23) REINSURANCE CAP. The upper limit amount for
23 claims costs incurred by an eligible health carrier for an
24 enrolled individual's covered benefits in a benefit year, over
25 which the claims costs for benefits are no longer eligible for
26 reinsurance payments under the reinsurance program.

1 (24) REINSURANCE-ELIGIBLE ENROLLEE. An enrollee who
2 is insured in a reinsurance-eligible health benefit plan under
3 this act.

4 (25) REINSURANCE-ELIGIBLE HEALTH BENEFIT PLAN. Any
5 individual, non-grandfathered ACA compliant plan sold by an
6 eligible health carrier as defined by this act.

7 (26) REINSURANCE PAYMENT. An amount paid by the
8 reinsurance program to an eligible health carrier under the
9 program.

10 (27) REINSURANCE PROGRAM. The state health insurance
11 reinsurance program established under Section 10 of this act,
12 relating to implementation of waiver and establishment of
13 reinsurance program.

14 Section 3. Establishment of the Alabama Health
15 Insurance Exchange Fund.

16 (a) The commissioner may take all actions necessary
17 to create, manage, and maintain an Alabama Health Insurance
18 Exchange Fund in order to benefit the state's health insurance
19 market and persons enrolling in health insurance policies. For
20 this purpose, the commissioner may do all of the following:

21 (1) Facilitate or assist in facilitating the
22 purchase of on-exchange qualified plans by qualified enrollees
23 in the individual market.

24 (2) Coordinate with the appropriate federal and
25 state agencies to seek waivers from statutory or regulatory
26 requirements as necessary to carry out the purposes of this
27 act.

1 (3) Enter into other arrangements or contracts,
2 including, without limitation, interagency agreements with
3 federal agencies and state agencies or other states' agencies,
4 or non-governmental entities and vendors as may be necessary
5 or appropriate to carry out the duties of the commissioner
6 under this act.

7 (4) Give reasonable public notice of any policies
8 and procedures the commissioner may implement to accomplish
9 the operation of the exchange.

10 (5) Perform other operational activities necessary
11 or appropriate to further the purposes of this act.

12 (6) Take other actions required pursuant to federal
13 law or regulations to implement this act.

14 (b) The commissioner shall perform all duties
15 necessary or appropriate to advance the purpose of this act,
16 including the following:

17 (1) Educate consumers, including through outreach, a
18 navigator program, and post-enrollment support.

19 (2) Assist individuals to access income-based
20 assistance for which they may be eligible, including premium
21 tax credits, cost-sharing reductions, and government programs.

22 (3) Take into consideration the need for consumer
23 choice in rural, urban, and suburban areas in the state.

24 (4) Assess and collect fees from on-exchange health
25 carriers in an amount not to exceed what is necessary to
26 support the operation of the exchange under this section and
27 the reinsurance program established under Section 7, except

1 that the commissioner may not assess or collect any form of
2 obligation other than an exchange user fee on total monthly
3 premiums for on-exchange policies.

4 (5) Disburse receipted fees, including to benefit
5 the reinsurance program established under Section 10.

6 (c) The commissioner shall ensure that the exchange
7 complies with the federal acts, rules, and regulations that
8 may be imposed by the federal government pursuant to the
9 federal acts in a manner that maintains the state sovereignty
10 over the health insurance market in this state. Enforcement
11 responsibilities shall be delegated to the appropriate state
12 agency and shall be sufficient to prevent a determination by
13 the U.S. Secretary of Health and Human Services that the state
14 has failed to substantially enforce any provision of the
15 federal acts.

16 Section 4. Confidentiality and Disclosure.

17 (a) Except as provided in this section, all working
18 papers, recorded information, documents and copies of working
19 papers, recorded information and documents produced by,
20 obtained by, or disclosed to the commissioner or any other
21 person in the course of the exercise of the commissioner's
22 powers and duties under this act shall be all of the
23 following:

24 (1) Confidential.

25 (2) Not subject to subpoena.

26 (3) Not subject to Section 36-12-40, Code of Alabama
27 1975.

1 (4) Not subject to discovery or admissible in
2 evidence in any private civil action.

3 (5) Not made public by the commissioner or any other
4 person.

5 (b) Notwithstanding subsection (a), the commissioner
6 may disclose de-identified aggregated data as part of the
7 administration of the reinsurance program authorized pursuant
8 to this act.

9 (c) The commissioner shall protect personally
10 identifiable health and financial information in accordance
11 with all applicable federal and state laws and regulations,
12 including the Health Insurance Portability and Accountability
13 Act of 1996 (Public Law 104-191, also known as HIPAA, 110
14 Stat. 1936), the Health Information Technology for Economic
15 and Clinical Health Act (Public Law 111-5, 123 Stat. 226-279
16 and 467-496), and implementing regulations.

17 (d) Subject to the confidentiality provisions of
18 this section:

19 (1) Information shall be shared, as appropriate, for
20 the purpose of determining and coordinating the eligibility of
21 individuals for the exchange or any government program,
22 including the Children's Health Insurance Program, Medicaid,
23 or for compliance with federal law in all of the following
24 circumstances:

25 a. Among the commissioner and various state
26 agencies, including:

27 1. The Medicaid Agency.

1 2. The Department of Senior Services.

2 3. The Department of Mental Health.

3 4. The Department of Public Health.

4 5. The Department of Labor.

5 6. The Department of Revenue.

6 b. Between the commissioner and federal agencies,
7 including:

8 1. The Centers for Medicare and Medicaid Services.

9 2. The Treasury Department.

10 (2) Information may be disclosed in all of the
11 following circumstances:

12 a. As necessary to comply with the audit
13 requirements of Section 6, relating to audits and the
14 reporting requirements of Section 7, relating to reports, only
15 in an aggregated and de-identified form.

16 b. In any circumstance, other than those described
17 in subdivision (1) or paragraph a., only if the prior written
18 consent of the company or person to which the information
19 pertains has been obtained.

20 (e) Nothing in this section shall be construed to
21 prohibit the commissioner or the federal government from
22 accessing the information necessary to carry out his or her
23 responsibilities in accordance with law.

24 Section 5. Nonliability.

25 (a) Except as provided under subsection (b), there
26 shall be no liability on the part of and no cause of action of
27 any nature may arise against the commissioner, the department,

1 a health carrier, insurance producer, an exchange assister, or
2 an authorized representative, agent, or employee thereof, for
3 the use of information furnished pertaining to any of the
4 following:

5 (1) An application for, inquiry concerning, or
6 enrollment or disenrollment in a health insurance policy or
7 government program, including an inquiry regarding eligibility
8 for enrollment or eligibility for a government program,
9 relevant to health insurance available through an exchange or
10 health care coverage or other benefits through a government
11 program.

12 (2) A charge, assessment, or fee imposed on or
13 received from a person or entity relevant to the exchange.

14 (b) Subsection (a) shall apply only insofar as the
15 person or entity is acting in good faith and within the scope
16 of the person's or entity's duties and responsibilities under
17 this act.

18 Section 6. Audits.

19 (a) The accounts and books of the program shall be
20 examined and audited annually by an independent certified
21 public accounting firm or a governmental audit agency chosen
22 by the commissioner. The audit shall at a minimum do both of
23 the following:

24 (1) Assess compliance with the requirements of this
25 act.

1 (2) Identify any material weaknesses or significant
2 deficiencies and identify ways to correct the material
3 weaknesses or deficiencies.

4 (b) By December 31 of each year, the commissioner
5 shall electronically share the audit of the preceding fiscal
6 year required under subsection (a) and related documents by
7 doing all of the following:

8 (1) Posting the following on the department's
9 publicly accessible Internet website:

10 a. The audit.

11 b. A summary of the audit, including any material
12 weakness or significant deficiency identified and how the
13 commissioner intends to correct the material weakness or
14 significant deficiency.

15 (2) Providing an electronic link to the posted audit
16 to the Secretary of the Senate and the Clerk of the House of
17 Representatives.

18 (3) Providing an electronic link to the posted audit
19 to the department.

20 (c) The expense of preparing the annual audit
21 required under subsection (a) shall be paid from the exchange
22 fund.

23 Section 7. Reports.

24 (a) The commissioner shall prepare an annual report
25 on the activities of the exchange for the year.

26 (1) Electronically transmit the report to all of the
27 following:

- 1 a. The Governor.
- 2 b. The President Pro Tempore of the Senate.
- 3 c. The Minority Leader of the Senate.
- 4 d. The Speaker of the House of Representatives.
- 5 e. The Minority Leader of the House of
- 6 Representatives.

7 f. The chairs of the following legislative
8 committees:

- 9 1. The Senate Finance and Taxation General Fund
- 10 Committee.
- 11 2. The House Ways and Means General Fund Committee.
- 12 3. The Senate Banking and Insurance Committee.
- 13 4. The House Insurance Committee.

14 (2) Post the report on the department's publicly
15 accessible Internet website.

16 (b) The commissioner shall comply with all
17 applicable federal reporting requirements.

18 Section 8. Exchange Fund.

19 (a) The Alabama Health Insurance Exchange Fund is
20 established as a special fund within the State Treasury. The
21 exchange fund shall be administered by the commissioner for
22 the purposes set forth in this act, including the deposit of
23 money that may be received pursuant to and disbursements
24 permitted by this act.

25 (1) Money deposited into the exchange fund shall be
26 held for the purposes set forth in this act and may not be
27 considered a part of the State General Fund.

1 (2) Money in the exchange fund may only be used for
2 the purposes of this act as determined by the commissioner.

3 (3) All interest earned from the investment or
4 deposit of money in the exchange fund shall be deposited into
5 the exchange fund.

6 (4) All accrued and future earnings from money
7 invested by the commissioner and other accrued and future
8 earnings from non-appropriated money, including, but not
9 limited to, money obtained from the federal government and
10 fees, shall be available to the commissioner and shall be
11 deposited into the State Treasury and may be utilized at the
12 discretion of the commissioner for carrying out any of the
13 duties of the commissioner under this act.

14 (5) Placement of money by the state Comptroller in
15 depositories or investments shall be consistent with
16 guidelines approved by the commissioner.

17 (b) The exchange fund shall be a non-lapsing fund.
18 All money in the exchange fund and interest accrued are
19 continuously appropriated to the commissioner for expenditure
20 consistent with this act.

21 Section 9. Reinsurance Program.

22 (a) Application.

23 (1) The department may apply to the U.S. Secretary
24 of Health and Human Services under Section 1332 of the ACA for
25 a state innovation waiver to do all of the following:

26 a. Waive any applicable provisions of the ACA with
27 respect to health insurance coverage in this state.

1 b. Establish a reinsurance program in accordance
2 with an approved waiver.

3 c. Seek to maximize federal funding for the
4 reinsurance program.

5 (b) Prior to submitting a final application, the
6 commissioner shall make a draft application available for a 30
7 day public review and comment period. The commissioner shall
8 consider any comments in the final submitted application.

9 (c) The commissioner may amend the waiver
10 application as necessary to carry out the provisions of this
11 act.

12 (d) The commissioner shall notify the Chair of the
13 Senate Finance and Taxation General Fund Committee, the Chair
14 of the House Ways and Means General Fund, the Chair of the
15 Senate Banking and Insurance Committee, and the Chair of the
16 House Insurance Committee promptly of any amendment to the
17 waiver application and of any federal actions regarding the
18 waiver application.

19 Section 10. Implementation of Waiver and
20 Establishment of Reinsurance Program.

21 (a) Upon approval of the department's application
22 for an innovation waiver by the U.S. Department of Health and
23 Human Services, the commissioner shall implement a reinsurance
24 program.

25 (b) Contingent upon federal approval, a reinsurance
26 program may be established by the commissioner for the
27 purposes of stabilizing the rates and premiums for health

1 insurance policies in the individual market and providing
2 greater financial certainty to consumers of health insurance
3 in this state. The reinsurance program shall be considered a
4 reinsurance entity to carry out a reinsurance program under
5 the federal acts.

6 (c) Operation of a reinsurance program shall be
7 contingent on federal approval of the waiver application
8 submitted pursuant to this act.

9 Section 11. Administration and Operation of
10 Reinsurance Program.

11 (a) The commissioner shall take all actions
12 necessary to administer the reinsurance program in a manner
13 consistent with applicable federal and state law.

14 (b) The commissioner shall perform all of the
15 following functions necessary and appropriate to carry out the
16 operation of the reinsurance program and to effectuate the
17 purposes for which the reinsurance program is organized, in
18 accordance with the approved waiver:

19 (1) Establish procedures for and performing
20 administrative and accounting operations of the reinsurance
21 program.

22 (2) Seek and receive funding for the reinsurance
23 program and to maximize federal funding for the reinsurance
24 program, including from both of the following:

25 a. Federal funding that is or becomes available to
26 states to support administration and implementation of
27 state-based reinsurance programs.

1 b. Other available sources.

2 (3) Collect data submissions and reinsurance payment
3 requests by eligible health carriers.

4 (4) Make reinsurance payments to eligible health
5 carriers.

6 (5) Resolve disputes related to the amount of
7 reinsurance payments.

8 (6) Sue or be sued, including taking any legal
9 action necessary or proper for the recovery of money for
10 reinsurance payments.

11 (7) Submit invoices or other requests for money as
12 may be necessary and appropriate under the innovation waiver.

13 (8) Purchase reinsurance as deemed necessary from a
14 private reinsurance carrier or appropriate public entity.

15 (c) Except as prohibited by applicable federal law
16 and regulation, and as may be necessary or appropriate to
17 carry out department duties, the commissioner may administer
18 the reinsurance program directly or through any of the
19 following:

20 (1) Other federal agencies, state agencies, or other
21 states' agencies.

22 (2) Contracted persons or entities, including with
23 legal, actuarial, economic, third-party administrator, or
24 other persons or entities, as the department deems
25 appropriate, to provide consultation services and technical
26 assistance in operating the reinsurance program. Contracted
27 persons or entities shall submit regular reports to the

1 department regarding the person's or entity's performance, the
2 frequency, content, and form of which shall be determined by
3 the department.

4 Section 12. Reinsurance Parameters.

5 (a) After consultation with all health carriers
6 currently participating in the exchange, and not less than 60
7 days before final rates for health insurance policies are
8 required to be submitted each year, the commissioner shall
9 issue orders necessary and appropriate to determine and adopt
10 the attachment point, the reinsurance cap, and the coinsurance
11 rate applicable to the reinsurance program for the following
12 year.

13 (b) In determining the attachment point, reinsurance
14 cap, and coinsurance rate applicable to the reinsurance
15 program for the following year, the commissioner shall do all
16 of the following:

17 (1) Manage the program within the amount of total
18 funding available to the department, beginning with the oldest
19 reinsurance payments incurred, including prior benefit years.

20 (2) With respect to the individual market:

21 a. Mitigate the impact of high-cost claims on
22 premium rates.

23 b. Stabilize or reduce premium rates.

24 c. Increase participation.

25 d. Maintain reinsurance parameters to the greatest
26 extent possible.

1 (c) The commissioner shall post notice of the
2 adopted attachment point, reinsurance cap, and coinsurance
3 rate on the department's publicly accessible Internet website
4 and shall do all of the following:

5 (1) Electronically send notice to the Chair of the
6 Senate Banking and Insurance Committee and the Chair of the
7 House Insurance Committee.

8 (2) Electronically send notice to each participating
9 health carrier by a contact person or electronic mailing
10 address, as identified by the health carrier.

11 Section 13. Health Carrier Eligibility and Duties.

12 (a) A health carrier shall be eligible for a
13 reinsurance payment if all of the following apply:

14 (1) The health carrier meets the definition of an
15 eligible health carrier in the benefit year in which the
16 claims costs for which a reinsurance payment is sought were
17 incurred.

18 (2) The claims costs of the health carrier for a
19 reinsurance-eligible enrollee's covered benefits in a benefit
20 year exceed the attachment point.

21 (3) The eligible health carrier has implemented and
22 documented reasonable care management practices for enrollees
23 who are the subject of reinsurance claims through the
24 reinsurance program.

25 (4) The eligible health carrier makes its requests
26 for reinsurance payments in accordance with any requirements
27 established by the department, including requirements related

1 to the format, structure, and timing for submission of claims
2 for reinsurance payments.

3 (b) A health carrier that seeks reinsurance payments
4 under this act shall report to the commissioner, in the form
5 and manner prescribed by the commissioner, information deemed
6 necessary by the commissioner for the commissioner to
7 calculate reinsurance payments.

8 (c) Reinsurance claims submitted under this section
9 are confidential and are not subject to public disclosure,
10 except as provided under Sections 21 and 22.

11 (d) The calculation of reinsurance payments, due to
12 an eligible health carrier, shall be net of all other
13 available recoupment payments, including recoupments through
14 subrogation or coordination of benefits.

15 Section 14. Payment of Coverage and Administrative
16 Costs.

17 (a) Consistent with federal requirements, the
18 commissioner shall pay all of the following from the
19 reinsurance fund:

20 (1) Administrative expenses of the reinsurance
21 program, including the annual audit required under Section 17.

22 (2) Reinsurance payments for coverage of
23 reinsurance-eligible enrollees.

24 (3) Reinsurance premiums for third-party reinsurance
25 coverage.

26 (b) The commissioner may adopt rules necessary and
27 appropriate to establish processes for the settlement of

1 reinsurance coverage claims and disbursement of reinsurance
2 money.

3 (c) A health carrier that is aggrieved by a
4 determination of the commissioner relating to the amount of
5 reinsurance payments due to the health carrier may file a
6 request for administrative review of the decision in
7 accordance with Chapter 2 of Title 27.

8 Section 15. Not an Entitlement.

9 (a) The provision of reinsurance program money or
10 benefits accrued through the reinsurance fund does not
11 constitute an entitlement derived from the State of Alabama or
12 a claim for any other money from the state.

13 Section 16. Annual Audit.

14 (a) The reinsurance program shall be examined and
15 audited annually by an independent certified public accounting
16 firm or a governmental audit agency chosen by the
17 commissioner. The audit shall, at a minimum do both of the
18 following:

19 (1) Assess compliance with the requirements of this
20 act.

21 (2) Identify any material weaknesses or significant
22 deficiencies and identify and implement solutions to correct
23 the material weaknesses or deficiencies.

24 (b) By December 31 of each year, the commissioner
25 shall electronically share the audit of the preceding fiscal
26 year required under subsection (a) and related documents by
27 doing all of the following:

1 (1) Posting both of the following on the
2 department's publicly accessible Internet website:

3 a. The audit.

4 b. A summary of the audit, including any material
5 weakness or significant deficiency identified and how the
6 department intends to correct the material weakness or
7 significant deficiency.

8 (2) Providing an electronic link to the posted audit
9 to the Secretary of the Senate and the Clerk of the House of
10 Representatives.

11 (c) The cost of the annual audit required under
12 subsection (a) shall be paid for from the reinsurance fund.

13 Section 17. Annual Report of Operations.

14 (a) No later than November 1 of the year following
15 the applicable benefit year or 60 calendar days following the
16 final disbursement of reinsurance payments for the applicable
17 benefit year, whichever is later, the commissioner shall
18 prepare a financial report for the applicable benefit year.
19 The report shall include, at a minimum, the following
20 information for the benefit year that is the subject of the
21 report:

22 (1) Money deposited into the reinsurance fund.

23 (2) Requests for reinsurance payments received from
24 eligible health carriers.

25 (3) Reinsurance payments made to eligible health
26 carriers.

1 (4) Administrative and operational expenses incurred
2 for the reinsurance program.

3 (b) No later than 60 days after individual market
4 health insurance rates are final, the commissioner shall
5 prepare a report summarizing the quantifiable impact of the
6 reinsurance program on individual market health insurance
7 rates for the following plan year.

8 (c) The commissioner shall do all of the following:

9 (1) Electronically transmit the reports under this
10 section to all of the following:

11 a. The President Pro Tempore of the Senate.

12 b. The Minority Leader of the Senate.

13 c. The Speaker of the House of Representatives.

14 d. The Minority Leader of the House of
15 Representatives.

16 e. The Chair of the Senate Finance and Taxation
17 General Fund Committee and the Chair of the House Ways and
18 Means General Fund.

19 f. The Chair of the Senate Banking and Insurance
20 Committee and the Chair of the House Insurance Committee.

21 (2) Post the reports under this section on the
22 department's publicly accessible Internet website.

23 Section 18. Reinsurance Fund.

24 (a) The reinsurance fund is established as a special
25 fund within the State Treasury. The reinsurance fund shall be
26 administered by the department for the purposes set forth in
27 this act, including the deposit of federal money and all other

1 money received pursuant to and disbursements permitted by this
2 act.

3 (b) The reinsurance fund shall be dedicated
4 exclusively for the reinsurance program established under this
5 act.

6 (c) The reinsurance fund shall be subject to all of
7 the following:

8 (1) Expenditures from the reinsurance fund shall be
9 used for the following:

10 a. To implement and operate the reinsurance program.

11 b. To make reinsurance payments to eligible health
12 carriers under the reinsurance program. Payments to health
13 carriers shall be calculated and made on a pro rata basis.

14 (2) In making expenditures from the reinsurance
15 fund, available federal money shall be expended first.

16 (3) Pending disbursement, money in the reinsurance
17 fund shall be invested or reinvested in the same manner as
18 money in the custody of the State Treasurer. All earnings
19 received from the investment or reinvestment of money shall be
20 credited to the reinsurance fund.

21 (d) All costs and expenses of the reinsurance
22 program shall be paid from the reinsurance fund, including
23 compensation of employees and any independent contractors or
24 consultants hired by the commissioner.

25 (1) The reinsurance fund shall be a non-lapsing
26 fund. All money placed in the reinsurance fund and interest

1 accrued are continuously appropriated to the department for
2 expenditure consistent with this act.

3 (2) Nothing in this section shall prevent money in
4 the reinsurance fund from being used as a revolving fund to
5 cover necessary expenditures if federal money is requested and
6 committed but not yet received, or if other money is committed
7 but not yet received.

8 (e) Notwithstanding any general or specific powers
9 granted to the commissioner under this act, whether express or
10 implied, the commissioner may not pledge the credit or taxing
11 power of the state or any political subdivision of the state
12 in favor of the reinsurance program.

13 Section 19. Access to Information and Records.

14 (a) A health carrier shall, without charge, report
15 information and provide access to and furnish records as the
16 commissioner requests in order for the department to do all of
17 the following:

18 (1) Prepare the state innovation waiver application
19 submitted under Section 10, relating to application.

20 (2) Determine reinsurance parameters under Section
21 13, relating to reinsurance parameters.

22 (3) Determine the reinsurance payments due to each
23 health carrier.

24 (4) Monitor costs and revenues associated with the
25 reinsurance program.

26 (5) Administer the reinsurance program.

1 (6) Assure compliance with applicable federal and
2 state law.

3 (b) The information and records requested under
4 subsection (a) shall be provided to the department within 30
5 days of receipt by a health carrier of the written request,
6 unless required at an earlier reasonable date.

7 (c) Information and records provided to the
8 department under subsection (a) may only be used for the
9 purposes specified in subsection (a).

10 Section 20. Confidentiality and Information
11 Disclosure.

12 (a) Except as provided for in this section, all
13 working papers, recorded information, documents and copies of
14 working papers, recorded information and documents produced
15 by, obtained by, or disclosed to the department or any other
16 person in the course of exercising the department's powers and
17 duties under this act shall be all of the following:

18 (1) Confidential.

19 (2) Not subject to subpoena.

20 (3) Not subject to Section 36-12-40, Code of Alabama
21 1975.

22 (4) Not subject to discovery or admissible in
23 evidence in any private civil action.

24 (5) Not made public by the department or any other
25 person.

26 (b) The department shall protect personally
27 identifiable health and financial information in accordance

1 with federal and state laws and regulations, including the
2 Health Insurance Portability and Accountability Act of 1996
3 (Public Law 104-191, 110 Stat. 1936), the Health Information
4 Technology for Economic and Clinical Health Act (Public Law
5 111-5, 123 Stat. 226-279 and 467-496), and implementing
6 regulations.

7 (c) Subject to the confidentiality provisions of
8 this section:

9 (1) Information shall be shared as follows:

10 a. Between the department and the federal Centers
11 for Medicare and Medicaid Services for purposes of compliance
12 with the federal law.

13 b. Between the department and each health carrier
14 participating in the reinsurance program.

15 (2) Information may be disclosed as follows:

16 a. As necessary to comply with the audit
17 requirements of Section 17, relating to annual audit, and the
18 reporting requirements of Section 18, relating to annual
19 report of operations, only in an aggregated and de-identified
20 form.

21 b. In any circumstance other than as described in
22 subdivision (1) or paragraph a., only if the prior written
23 consent of the company or person to which the information
24 pertains is obtained.

25 (d) Nothing in this section shall be construed to
26 prohibit the commissioner from accessing the information

1 reasonably required to carry out his or her responsibilities
2 in accordance with law.

3 Section 21. Immunity.

4 (a) Except as provided in subsection (b), the
5 commissioner, the department, a state agency, any person or
6 entity under contract with the department for the reinsurance
7 program, or an authorized representative, agent, or employee
8 of any of the above may not be subject to civil or criminal
9 liability and no cause of action of any nature shall arise for
10 any action taken or not taken, including any discretionary
11 decision or failure to make a discretionary decision, when the
12 action or inaction is done in good faith and in the
13 performance of the powers and duties under this act, or for
14 the reasonable and good faith use of any information
15 pertaining to the reinsurance program.

16 (b) This section shall not prohibit legal actions
17 against the reinsurance program to enforce the reinsurance
18 program's statutory or contractual duties or obligations.

19 Section 22. Regulation of Health Carriers.

20 Nothing in this act shall be construed to limit or
21 supersede the regulatory authority vested with the
22 commissioner to regulate the business of insurance within this
23 state, including health insurance policies offered on or off
24 the exchange.

25 Section 23. Authority To Adopt Rules.

26 The commissioner may adopt rules implementing this
27 act pursuant to Chapter 2 of Title 27.

1 Section 24. Sunset Provisions.

2 (a) To the extent appropriate or necessary, this act
3 or parts of this act shall sunset pursuant to federal
4 requirements, if any of the following occur:

5 (1) The Congress of the United States repeals or
6 defunds those provisions of the ACA integral to the
7 implementation of this act by the commissioner or the
8 reinsurance program established under this act.

9 (2) A court of the United States with competent
10 jurisdiction invalidates the provisions of the ACA integral to
11 the duties of the commissioner or the reinsurance program
12 established under this act.

13 (3) The executive branch of the federal government
14 repeals or defunds the provisions of the ACA and its
15 subsequent regulations integral to the duties of the
16 commissioner regarding the exchange program or the reinsurance
17 program established under this act.

18 (4) The commissioner determines that the state based
19 exchange and reinsurance program are not in the best interest
20 of the consumers in this state.

21 (b) If this act sunsets, pursuant to subsection (a),
22 the commissioner shall transmit notice of that action to the
23 Legislative Services Agency for publication in the Alabama
24 Administrative Monthly.

25 (c) Upon publication of the notice under subsection
26 (b), the department shall initiate steps to cease operation of
27 the effects part or parts of the exchange program or

1 reinsurance program no later than 15 months after publication
2 of the notice.

3 Section 25. Sections 10A-20-6.16 and 27-21A-23, Code
4 of Alabama 1975, are amended to read as follows:

5 "§10A-20-6.16.

6 "(a) No statute of this state applying to insurance
7 companies shall be applicable to any corporation organized
8 under this article and amendments thereto or to any contract
9 made by the corporation; except the corporation shall be
10 subject to the following:

11 "(1) The provisions regarding annual premium tax to
12 be paid by insurers on insurance premiums.

13 "(2) Chapter 55 of Title 27.

14 "(3) Article 2 and Article 3 of Chapter 19 of Title
15 27.

16 "(4) Section 27-1-17.

17 "(5) Chapter 56 of Title 27.

18 "(6) Rules ~~promulgated~~ adopted by the Commissioner
19 of Insurance pursuant to Sections 27-7-43 and 27-7-44.

20 "(7) Chapter 54 of Title 27.

21 "(8) Chapter 57 of Title 27.

22 "(9) Chapter 58 of Title 27.

23 "(10) Chapter 59 of Title 27.

24 "(11) Chapter 54A of Title 27.

25 "(12) Chapter 12A of Title 27.

26 "(13) Chapter 2B of Title 27.

27 "(14) Chapter 29 of Title 27.

1 "(15) Chapter 62 of Title 27.

2 "(16) The act adding this language.

3 "(b) The provisions in subsection (a) that require
4 specific types of coverage to be offered or provided shall not
5 apply when the corporation is administering a self-funded
6 benefit plan or similar plan, fund, or program that it does
7 not insure.

8 "§27-21A-23.

9 "(a) Except as otherwise provided in this chapter,
10 provisions of the insurance law and provisions of health care
11 service plan laws shall not be applicable to any health
12 maintenance organization granted a certificate of authority
13 under this chapter. This provision shall not apply to an
14 insurer or health care service plan licensed and regulated
15 pursuant to the insurance law or the health care service plan
16 laws of this state except with respect to its health
17 maintenance organization activities authorized and regulated
18 pursuant to this chapter.

19 "(b) Solicitation of enrollees by a health
20 maintenance organization granted a certificate of authority
21 shall not be construed to violate any provision of law
22 relating to solicitation or advertising by health
23 professionals.

24 "(c) Any health maintenance organization authorized
25 under this chapter shall not be deemed to be practicing
26 medicine and shall be exempt from the provisions of Section
27 34-24-310, et seq., relating to the practice of medicine.

1 "(d) No person participating in the arrangements of
2 a health maintenance organization other than the actual
3 provider of health care services or supplies directly to
4 enrollees and their families shall be liable for negligence,
5 misfeasance, nonfeasance, or malpractice in connection with
6 the furnishing of such services and supplies.

7 "(e) Nothing in this chapter shall be construed in
8 any way to repeal or conflict with any provision of the
9 certificate of need law.

10 "(f) Notwithstanding the provisions of subsection
11 (a), a health maintenance organization shall be subject to all
12 of the following:

13 "(1) Section 27-1-17.

14 "(2) Chapter 56.

15 "(3) Chapter 54.

16 "(4) Chapter 57.

17 "(5) Chapter 58.

18 "(6) Chapter 59.

19 "(7) Rules ~~promulgated~~ adopted by the Commissioner
20 of Insurance pursuant to Sections 27-7-43 and 27-7-44.

21 "(8) Chapter 12A.

22 "(9) Chapter 54A.

23 "(10) Chapter 2B.

24 "(11) Chapter 29.

25 "(12) Chapter 62.

26 "(13) The act adding this language."

1 Section 26. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.