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Spurred by the Supreme Court's decision in NFIB v. Sebelius, health reform federalism is flourishing as states experiment with various means of implementing the Affordable Care Act. Implementation has been slow, however, in most states with political environments hostile to "Obamacare," even though those states have much to gain. Among the red states, Arkansas stands out as an exception. This essay relates the story of two of Arkansas's innovative health reform initiatives: the "private option" for Medicaid expansion, extending private health insurance to the state's lower income residents, and the Arkansas Payment Improvement Initiative, re-orienting provider incentives away from wasteful fee-for-service payment structures toward a more cost-effective value-based structure. Early results are promising: the "private option" has resulted in the highest percentage increase in insurance coverage of any state, and preliminary tracking results from the Arkansas Payment Improvement Initiative show cost savings and quality improvements across several categories of health care interventions. The essay explains how the two initiatives work, and describes the delicate political process by which the state's political and health policy leaders – encompassing Democrats and Republicans, Medicaid officials and private insurers, hospitals and physicians' groups – collaborated to take advantage of opportunities for state-based innovation.

The Picture Begins to Assert Itself: Rules of Construction for Essential Health Benefits in Health Insurance Plans Subject to the Affordable Care Act
Wendy K. Mariner437

The Affordable Care Act (ACA) is pushing private health insurance to function primarily as a method of financing health care. This shift has the potential to alter the law governing the interpretation of health insurance policies. The requirement that qualified health plans offered in health insurance marketplaces cover Essential Health Benefits (EHB) poses a particular challenge to conventional rules of insurance policy interpretation. The ACA and implementing regulations describe EHB in broad categorical terms, leaving considerable discretion to states and insurers to flesh out benefit coverage ex ante and make coverage determinations ex post. This article explores

which rules of interpretation should apply to EHB coverage. Since the ACA has altered the concept of insurance in the context of health insurance, it stands to reason that insurance law applied to ACA plans should adapt to the ends that the ACA seeks to achieve. The article concludes that courts, insurers, and policyholders would be well served by adopting a functional combination of statutory interpretation and reasonable expectations doctrines – which might be called reasonable statutory expectations – to carry out the regulatory and financing functions of ACA-governed plans. This approach may also move insurance law toward a more principled conception of highly regulated insurance policies. At the very least, a rule of construction based on the legislative purpose of ACA plans is a step toward achieving fairness both across populations and in individual cases.

Employers and Health Insurance Under the Affordable Care Act

Arnold J. Rosoff & Anthony W. Orlando470

The United States has a healthcare system virtually unique in the world in being based largely on voluntary employment-based health insurance (EBHI). In its thrust toward Universal Health Care, the ACA has both “mandated” expansion of employment-based coverage and offered a workable alternative, purchase by individuals on the ACA’s Insurance Exchanges. This article traces the history of EBHI in the U.S. and examines the pros and cons of EBHI and the extent to which corporate America and the American public are committed to it. Finally, it projects how employers are likely to respond to the ACA with regard to offering coverage to their employees and their dependents, identifying and explaining the main factors affecting employers’ decisions and actions.