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**Commentary Prize**

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**Name of Author(s):** John Brummett

**Author's Title (editor, columnist, etc.):** Columnist

**Newspaper:** Arkansas Democrat-Gazette

**Address:** 121 E. Capitol Ave.

**City:** Little Rock

**State:** AR

**ZIP:** 72201

**Phone:** 501-399-3686

**Fax:** 501-372-4765

**E-Mail:**  
johnnyray1004@sbcglobal.net

**Submitted by:** Sonny Albarado

**Title of Person Submitting:** Projects Editor/Contest Coordinator

**Phone Number:** 501-244-4321

**E-mail Address:** salbarado@arkansasonline.com

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**Please give a brief explanation of issues discussed and the results achieved. (This space will expand as you type in your comments.)**

Public outcry arose in summer 2015 when the Arkansas Department of Human Services began purging participants from the state's expanded Medicaid program because those recipients failed to respond within 10 days to notices that they might be ineligible to continue having subsidized health insurance. The outcry occurred not only because of the short time-frame for responding to the notice letter but because the state had been unable to complete a required computer system to handle the new program's requirements. John Brummett's columns on the issue adroitly asserted the absurdity and harshness of the situation, arguing that even conservative principles include compassion as a virtue. The columns in this entry explain the issues, comment on the conservative and liberal positions and suggest ways forward. Ultimately, the federal government told the state to give participants more time to respond to letters advising imminent cutoff of services.

# The urge to purge

John Brummett

## DEMOCRAT-GAZETTE ONLINE

I am told that the state Human Services Department is in the process of purging perhaps tens of thousands of persons from the state's popular private-option form of Medicaid expansion.

The action is pursuant to the first round of an income and eligibility verification process for all of Medicaid ordered by the Legislature in 2013.

So far the state has notified, in stages, 64,000 Medicaid recipients—the vast majority of them private-option participants—that an income check indicates they are now above the eligibility limit.

Of that number, 15,775 have failed to respond within the requisite 10 days to reassert their eligibility, and have been removed. That process is continuing, and the state expects more purges daily as the 10-day response deadline passes for more enrollees.

I've been advised that the private-option purges might actually reach 50,000. That would be a fifth of the program's vaunted enrollment of a quarter-million poor people.

State policymakers are walking around wondering if this means the program is less successful than they thought or just more efficient.

Political opponents of the private option will say the news proves the program has been, and is, a disastrous waste. Political advocates of the program will say strict conservatives can't have it both ways—asserting the program is bad because it's wasteful and then asserting the program is bad because it's eliminating waste.

It will be a blow to the state's private insurers to lose tens of thousands of customers whose premiums have been paid by the government. It could be a blow to hospitals, if those persons were actually using their insurance and not burdening providers with uncompensated care, and if those persons now can't afford or otherwise don't buy insurance for themselves with federal subsidies on the health-care exchange.

Naturally, the news may be a blow to poor people needing health insurance and who are losing it either because they've added a few seasonal dollars to the household treasury or simply don't know how to respond to a letter from the state telling them they have 10 days to prove they're still poor enough.

And there is that other looming ramification to consider: The development portends something—nobody is quite sure what—for the prospects of the state's continuing Medicaid expansion by another name and different rules after 2017.

Either this development means the government can't run anything right because maybe 50,000 people have been getting their insurance premiums paid though they weren't eligible, or it means the government is monitoring this operation pretty well to find 50,000 persons ineligible.

Liberals will explain that the loss of even 50,000 would still leave 200,000 persons of genuine eligibility, and they'll doubt that all those 50,000 actually are ineligible.

Maybe some got better jobs in the last year, which would be a good thing. Maybe some got only a fleeting seasonal boost to their payable hours. Maybe some are still actually eligible but—because of the transient nature of many poor folks—no longer residing at their last known addresses. Thus they'd be oblivious to an ominous government demand to respond within 10 days to re-establish their eligibility or lose it. They'd find out only on their next trip to the doctor.

People with incomes less than 138 percent of poverty, and thus eligible for the private option, can easily land new work that pushes them above 138 percent of poverty.

But those people could just as easily lose that work.

Maybe the dollar store increases a working mom's hours. And maybe it scales back her hours next month.

There is a punitive nature to such rigid regular income checks. But, really, it's hard to argue that we shouldn't enforce the rules.

But I predict we'll eventually learn that a sizable fluctuation in eligibility over a year is simply the norm, the nature of unskilled labor, the ordinary ebb and flow.

This new push for more vigilant income re-verification, or re-determination, was mandated by the Legislature in 2013 at the insistence of the young Republican architects of the private option.

More rigid monitoring of ongoing eligibility was a contingency demanded most prominently by Sen. Jonathan Dismang of Beebe before he would embrace the private option that he, Sen. David Sanders of Little Rock and former Rep. John Burris of Harrison are credited with championing.

Here was the deal: Accept the Obamacare money to expand Medicaid by the state's own innovative and market-driven way, meaning through the purchase of private insurance, but only if we set up a system to monitor eligibility better than ever before.

Regardless of how all that turns out, the state will still keep at least a couple hundred thousand people on this program for now. And the governor and the Legislature will still face the question of what to do for those people in 2017 when, according to the governor and leading legislators, the private option ends.

Ideally, more and more working people would earn their way to ineligibility year after year, and the state would continue the program for the remaining neediest while realizing savings.

But the first step will be to decide on a prevailing spin for this purge.

What I'm sure of is the underlying truth, which is that this is a spectacularly successful program whether for 200,000 or 250,000.

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John Brummett's column appears regularly in the Arkansas Democrat-Gazette. Email him at [jbrummett@arkansasonline.com](mailto:jbrummett@arkansasonline.com). Read his blog at [brummett.arkansasonline.com](http://brummett.arkansasonline.com), or his [@johnbrummett](https://twitter.com/johnbrummett) Twitter feed.



# The problem of the purge

**John Brummett**

Gov. Asa Hutchinson arranged a conference call Thursday morning so he could speak at once with as many of the 135 state legislators as could be assembled.

I'm advised that he briefed legislators on the ongoing "redetermination" of income eligibility for the private option and other Medicaid programs. And I'm advised that he announced that, as of that morning, more than 35,000 persons, mostly private-option clients, had been purged. That's from a maximum enrollment nearing 250,000. And it's not the final number of purges.

Nearly all of those removals occurred because persons didn't respond within 10 days to protest the ineligibility finding as required by letters sent to them by the Human Services Department.

The number is expected to grow daily as the 10-day periods lapse for recipients continuing to be sent the letters.

—————So the governor wanted to know from legislators: What are you hearing about this back home? And what do you think about it?

There were the hard-liners who said it was about darned time the state start kicking cheaters off the dole.

Then there were those saying, you know, governor, this "re-determination" is a good thing—indeed, moving people from welfare to a better circumstance is the very idea. But they said the state Human Services Department was using new interfacing software to glean income information, and that there might be errors. And since there could be errors, they said, we might consider giving respondents more than 10 days to escape removal—because, you know, poor people move frequently from their last known addresses or don't always understand official-sounding mail.

For the record: The federal government says states must give people at least 10 days to respond before kicking them off Medicaid because of an ineligibility determination. So Arkansas, historically a poor state and a punish-the-poor state, adheres strictly to that minimum. We cut folks off as quickly as the feds will let us.

The governor could tell Human Services at any time to give notice of 20 or 30 days or more.

But this governor has enough trouble already with hard-liners on his right. And he needs to salvage some continuing remake of the private option. That's a daunting undertaking by any circumstance, but it becomes nigh unto undo-able if hard-liners rear up because they think he's gone soft on poor people.

As you know, Hutchinson has a certain cautious, deliberate and synthesizing nature. If he can find a third way—or a fourth or fifth or sixth—he'll take it.

In this case, I'm told, he has decided to stay the course for now and rely for balancing on insurers enjoying private-option premium income and now steadily losing it through these purges.

He believes the private sector has the will and skill to get in touch with clients and alert them to the letters and urge them to respond with an objection quickly if they believe themselves to be wronged. In that case they would get a 30-day appeal.

A spokesman for Arkansas Blue Cross and Blue Shield subsequently told me the firm is fully mobilized in that very way. Health-insurance agents, providers and pharmacists have been prompted to alert clients and customers who are on Medicaid.

At the Arkansas Blue Cross and Blue Shield website, the top line asks, "Did you get a letter from DHS?" Then it

provides a link explaining the nature of the letter and the process to respond.

The point is not to keep persons on the private option inappropriately. Medicaid eligibility always ought to be a matter of ongoing verification.

The point is to try to keep a person from losing coverage incorrectly because he wasn't given sufficient time to understand what was happening to him.

That's especially so considering that the Human Services Department, a vast agency not previously known as a model of competence and efficiency, is in the infancy state of software monitoring.

State Sen. David Sanders, Republican of Little Rock and privateoption architect, labeled as a "complete and utter failure" the "procuring, implementing and managing" of this income-verification system. He says the current rush "may create more problems without really solving any," by which he means purging people from the private option only to end up putting them back.

Sanders and other pro-private-option Republican legislators fully embrace ongoing "redetermination." It was, in fact, a condition of their support for the private option. And they think an ever-fluid private-option enrollment that fluctuates from 200,000 upward is probably the norm.

It's the deadly combination of early technological hiccups with a 10-day deadline that worries them.

So for now the governor is counting on the vested private sector to raise a backstop.

If you like irony, this one is worth mentioning: Here we have government trying to put people off welfare and the private sector trying to keep them there.

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## Parsimony on pause

**John Brummett**

Gov. Asa Hutchinson announced Tuesday that he will suspend meanness for a couple of weeks and then resume it.

He said it's hard for employees of the state Human Services Department to keep up with the pace of people being summarily thrown off the private-option form of Medicaid expansion because they didn't answer their mail quickly.

So he's going to bring in extra help—for the bureaucrats. The poor people are on their own.

—————Maybe these poor folks got in the mail a letter from some official-sounding agency forwarded to their current mobile-home address from their former one.

Maybe the letter told them something they didn't understand, something about losing their Medicaid eligibility for private health insurance they didn't know they had. They'd probably been auto-enrolled.

Maybe the letter accused them of having earned a little more money lately, thus making them ineligible for this thing they didn't know they had. Maybe they said "beats me," and round-filed the letter, and went out to see if the car would start.

The fact is that they just lost health insurance because they didn't respond in 10 days to serve notice that they intended to argue their income as asserted in this letter they received six or seven days into the 10-day "grace" period, using the word "grace" most abusively.

And they lost it because the Human Services Department reached a conclusion about the level of meagerness of their income by using some interfacing software that has been an unreliable mess from the start.

The state has sent out 60,000 or so letters telling people it looks like they've improved their financial lot in life sufficiently to be purged from the rolls of the private option.

To date, 35,000 or so of those people have been thrown off, nearly all of those—97 percent—because they didn't respond in 10 days.

Human Services officials say they are surprised so few people responded. I'm not.

So now if those people get sick and go to the doctor or the emergency room, they will not have the insurance they would have had—whether they knew they had it or not. The people in the doctors' offices who do the billing so the doctors won't starve—they're the ones who know how to find out who is insured for payment and who isn't.

We are headed toward purging 50,000 people, knowledgeable sources estimate.

But here is what has happened just lately: There has been so much state agency paperwork associated with these purges—and with checking out the increased level of objections that letter recipients are starting to raise because the health-insurance companies and agents have alerted them to do so—that the governor has stepped in.

Hutchinson has now said that, for two weeks, nobody will get a letter or be purged while he brings in extra people and approves overtime work at Human Services. After that, he says, we'll go back to the 10-day purge, because that's not the problem. The problem, he says, is the overwhelming pace of bureaucratic processing.

He defended the 10-day deadline because that's the minimum notice required by the federal government for throwing someone off Medicaid. The minimum.

Long before this administration, Arkansas was a state anxious to punish its too-many poor people as soon as the federal government would permit it.

Please understand that it is appropriate, indeed essential, that state government make periodic checks of Medicaid recipients and take away their benefits if they've risen above the income threshold. But there is no reason to haul off and do it this abruptly, this quickly, with an untested system.

Actually, there is a reason, one not human, but political.

It's that Hutchinson, who is not nearly this cold by personal nature, is beholden to his right-wing flank to get tough with supposed Medicaid cheaters if he is to have any hope of passing a modified extension of Medicaid expansion after 2017.

A more deliberate process would be better, and, in the end, more fair and valid.

Best bets are that the state will end up having to put a lot of these people back on the private option.

Poor people's incomes vary by how many hours they worked this week, based on the weather, or the season, or the available work, or whether the kid was sick, or whether the car would start.

Poor people typically don't get a contracted salary and regular direct deposit.

Their Medicaid eligibility should be monitored responsibly and vigorously, even toughly, but not hurriedly, and never recklessly.

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John Brummett's column appears regularly in the Arkansas Democrat-Gazette. Email him at [jbrummett@arkansasonline.com](mailto:jbrummett@arkansasonline.com). Read his blog at [brummett.arkansasonline.com](http://brummett.arkansasonline.com), or his [@johnbrummett](https://twitter.com/johnbrummett) Twitter feed.



# What a waste

**John Brummett**

DEMOCRAT-GAZETTE ONLINE

Did state government now under full Republican control set out to throw a bunch of people off Medicaid whether rightly or wrongly?

Pretty much.

That sounds harsh. So what's your point?

The most conservative Republicans—of which the Arkansas General Assembly has a substantial and influential contingent—tend to think Medicaid is either dubious or rampantly abused or both.

They think we squander too much taxpayer money taking care of too many people who need to be weaned from the trough.

Asset-depleted old people with dementia or terminal illness who can't take care of themselves or pay for long-term care? Well, that's different. Disabled people, too. Rare is the conservative who wouldn't help them.

But conservatives say that able-bodied people in their vibrant years who are simply poor—and who have been enrolled in droves in this new private-option form of health-insurance expansion—are perhaps that way by their own fault and need to be weeded out.

Maybe they're not trying to do better. Maybe it's their sinister scheme to be slothful.

Or maybe they're not slothful, but so industrious as to be cheating. Maybe they're staying on the dole while they're not entitled. Maybe they sneak around and make an amount of money that would lift them above the eligibility limit if they got caught making it.

And if we don't stop them, these most conservative of the Republicans insist, then our government will keep costing us prohibitive sums. Our culture will become one of dependence rather than responsibility.

So now the most conservative of the Republicans exercise this sudden urge to purge about 50,000 or so private-option participants.

Gov. Asa Hutchinson, no longer on the far-right wing himself, if he ever was, must oblige from time to time these significant forces in his party. If he is to keep Common Core, then he must at least give the right wing a different standardized test. If he has any hope of continuing into 2017 an adapted version of the private option, he must make the private option lean and mean.

So we behold this great purge of the summer of 2015, which began with 35,000 poor people having health insurance they do not now have. We're on our way to 50,000.

Most of these people aren't purged because they certifiably bettered their economic condition, which would be cause for celebration. They are purged because they didn't respond to a piece of mail.

And state regulators admit they've probably purged some people who are, in fact, eligible—some, even, with no incomes at all, or so the Arkansas Times blog was told by a state official, because a software program used to “ping” questionable cases had issues.



One other thing the most conservative Republicans always like to say is that government can't be trusted to do anything. And here the government is proving them right. And yet here they cheer the government. Because now it's their government, doing what they want.

The federal government has always required—and should require—annual income-verification reviews for all Medicaid cases. And Arkansas has always thrown people off in 10 days of their notice of suspected ineligibility, which is the minimum notice required by the federal government.

What's different here goes back to the conception of the private option mainly by three regularly conservative and mildly pragmatic Republican legislators—Sens. Jonathan Dismang and David Sanders and former Rep. John Burriss.

It was their idea to tell the federal government we'd take that bad old Obamacare money for Medicaid expansion if—and only if—we could spend it our way for premium support for private insurance, impose our own restrictions and show the world how such programs could be reformed in Paul Ryan's glorious image.

The federal government said go ahead, knock yourselves out. They needed at least one Southern state that would play ball.

But these innovative Republicans had to attend to political pressure from their right flank. So they—Dismang, primarily—insisted that, in exchange for creating the private option, the state would conduct a full “redetermination” of Medicaid eligibility. That would be an audit, an inventory-taking, something beyond the usual income-verification cycle.

So finally the state Human Services Department designed the method for this “redetermination,” and began the process, and applied the standard 10-day rule, and so now we have this purge and a spectacular and heartless mess.

State agency officials can tell you with seeming blitheness how it came to be that some people clearly eligible got notices and didn't respond and now have no coverage. And these state agency officials act as if that's simply collateral damage.

They say, hey, the federal government gives 90 days to appeal, so we'll probably end up putting a lot of these people back on.

Swell. You can break a lot of legs and contract a lot of diseases in 90 days.

Let's take state legislators off the state health-insurance system for 90 days and then put them back on.

And the governor's office can tell you with a straight face that it doesn't get what the big deal is—that we've always had a 10-day notice and that we've always been required to verify incomes, and ought to do that, and that we have this new state law requiring this “redetermination,” and that, OK, maybe there has been some anecdotal evidence of people unfairly purged, but the problem is information overload at the state agency.

So Hutchinson has called a twoweek moratorium to catch on the paperwork, not reconsider the process, after which the mad purge will start again.

State officials also did one other thing: They asked private insurers, the ones getting the money, to help them figure out whom they were purging, and whether they were right or wrong, and instruct potentially wronged people in how to respond.

I often think in terms of newspaper headlines, such as this one: State government asks Blue Cross to figure out what state government is doing.

The more compassionate and reasonable among us stand accused of opposing integrity in the program, although that's precisely what we want to protect.

And there is widely shared thought on the right wing that sob stories and liberal hand-wringing are simply tired and predictable ploys to pay if we are to have any hope of tightening these wasteful programs.

Those on the hard right will tell you that 50,000 disqualifications just go to show that the program was inept and wasteful.

The program may indeed be inept and wasteful. But you surely couldn't prove it from the inept and wasteful manner

in which state government is setting about ostensibly to prove it.

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# This is compassion?

**John Brummett**

"We're a compassionate state," Gov. Asa

Hutchinson said Sunday, perhaps forgetting where he was.

What happened last week suggested a decided lack of compassion in Arkansas, led by the governor himself.

The federal Health and Human Services Department told the Hutchinson administration to stop throwing poor people off Medicaid on uncertain income eligibility findings with only a 10-day period to object, and to grant 30 days instead.

Hutchinson responded with a tersely unpleasant statement about how he hoped this episode would represent the last "change in guidance" from the feds.

His administration responded formally by saying it could not apply the new federal edict retroactively to the 55,000 thrown off dubiously already. The state Human Services Department said its computers weren't smart enough to do that.

So maybe our kind hearts are being held hostage by this insurance-eating monster computer.

Or maybe we could figure out how to start over for those 55,000 if we really wanted to do it. Maybe a computer that can identify people one day can identify those people the next. And maybe the federal government should have ordered us to start over.

Well, there's no maybe about that. The federal government is as complicit as Arkansas on that point.

Apparently the feds were trying to keep Asa as happy as possible so he'll not be deterred in trying to save Medicaid expansion. And apparently the feds thought Asa's happiness would be disturbed if those 55,000 poor people got fair play extended to them over the objections of the burdensome right-wing base that Asa constantly seeks to assuage or finesse.

And maybe the federal government will yet order retroactivity, despite Asa's being on record as having endured just about enough of this dadgummed federal guidance.

If all of this is confusing to you, let me try to simplify: It's a clear-cut case of irresponsible meanness.

Arkansas got in a mad rush to throw people off Medicaid. The Hutchinson administration wanted to placate the right wing in hopes of getting the vital private-option form of Medicaid expansion renewed. Make it lean and mean and maybe the right wing will go along—that was the idea.

The state sent a first batch of 60,000 letters to people based on a difference exceeding 10 percent in their income as listed in Human Services records and Workforce Education records. Then it kicked most of those people off—based on that difference in agency records, not a credible or valid determination of income—if they didn't object in 10 days.

The process was so draconian that two big insurance carriers said they'd cover drug charges anyway for 30 days.

So on Thursday the Centers for Medicare and Medicaid Services sent the state a letter saying essentially as follows: Yes, it's true, we permit a minimum 10-day response period under federal regulations, but that's for individual income verification outside the usual renewal process. But what the state was doing in this case amounted to a mass renewal process, and, on those, recipients must get 30 days under different federal regulations.

So now the Hutchinson administration is planning to give the 30 days only prospectively. It's not proposing to do anything about those 55,000 who got purged under a system that the federal government has now determined to have been in violation of federal regulation.

So you have one set of 55,000 people who have lost health insurance based on unclear government records of their income and their failure to respond with clarifying data within a time frame the federal government declares is too short under the relevant regulation.

You have a different set of tens of thousands who haven't yet received their notices and will now get 30 days.

Is there a lawyer in the house?

Couldn't someone work up a lawsuit here in behalf of the first 55,000? Couldn't it argue that they were treated unequally under the law or without due process of law? Couldn't a lawyer handling such a suit call as his first witness the federal government?

The Hutchinson administration stresses that any of those 55,000 may still object up to 90 days under a federal rule allowing after-the-fact appeals.

That's true. It's also true that a lot of poor people—a lot of people generally—aren't well-equipped by time or expertise to fight proverbial city hall.

Meantime, the Hutchinson administration fears that the federal government's action of last week could make it harder to persuade conservative legislators to go along with the governor's scheme to continue the private option.

Hutchinson proposes keeping the private option into 2017 only with new conservatizing "flexibility" granted by a waiver from the same federal government acting in this case without flexibility.

But at some point you need to turn from politics to policy. Sometimes you must take the pacifier out of the right wing's mouth and simply do the right thing in the matter before you.

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