State of Rhode Island and Providence Plantations
State House, Room 224
Providence, Rhode Island 02903
401-222-2080

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SECRETARY OF STATE

Lincoln D. Chafee
Governor

EXECUTIVE ORDER

11-09

September 19, 2011

ESTABLISHMENT OF THE RHODE ISLAND HEALTH BENEFITS EXCHANGE

WHEREAS, the Patient Protection and Affordable Care Act (P.L. 111-148) (the "Affordable Care Act") provides for the establishment of a Health Benefits Exchange (an "Exchange") for purposes of—

1. Providing near-universal health insurance coverage;
2. Organizing a transparent health insurance marketplace to help consumers and small businesses shop for, select, and enroll in affordable, high-quality, private health insurance products from a selection of easily comparable choices;
3. Providing one-stop shopping by helping eligible individuals enroll in qualified health plans offered through the Exchange or coverage through other federal or state health care programs; and
4. Enabling eligible individuals to receive premium tax credits and cost-sharing reductions and eligible small businesses to receive tax credits;

and therefore an Exchange is an essential component of federal health care reform; and

WHEREAS, consistent with Rhode Island General Laws § 42-62-16(b), an Exchange provides benefits for persons lacking adequate insured coverage, and is an innovation designed to lower costs and improve the quality, availability, and accessibility of health services; and

WHEREAS, consistent with Rhode Island General Laws § 42-62-16(e), the development and implementation of an Exchange is in conformance with state plans for comprehensive health and health services, as reflected by the 2011 Work Plan of the Rhode Island Healthcare Reform Commission (established by Executive Order 11-04); and

WHEREAS, pursuant to Affordable Care Act § 1321(c), if a state does not elect to establish an Exchange, the United States Department of Health and Human Services ("HHS") shall establish and operate such Exchange within the state; and

WHEREAS, the advantages of an Exchange established and operated by the State of Rhode Island as compared to a Federal Exchange include—

1. Maintaining state regulatory authority over the commercial health insurance market;
2. Consistency and alignment of rules and regulations across health insurance markets both inside and outside the Exchange to minimize risk selection against the Exchange;
3. Greater coordination of benefits and eligibility across health insurance coverage programs;
4. Greater coordination and integration of eligibility determinations and enrollment with the State Medicaid program;
5. Potential for promotion and alignment of state health delivery system reform strategies and priorities through the Exchange;
6. Greater adaptability to changes in the local insurance and provider markets;
7. Development of cooperative working relationships with insurers, brokers and agents, and other business partners; and
8. Accountability to the citizens of Rhode Island; and

WHEREAS, pursuant to Affordable Care Act § 1321(c)(1)(B), HHS must determine on or before January 1, 2013 whether a state has taken the actions necessary to implement federal standards for the establishment and operation of an Exchange; and

WHEREAS, any further delay in obtaining additional federal funding for Exchange planning and establishment will adversely impact the State of Rhode Island's planning and readiness to meet key milestones; and

WHEREAS, state applicants for Level Two Establishment federal grants must have "the necessary legal authority to establish and operate an Exchange that complies with Federal requirements" and, in the absence of such authority, the State of Rhode Island will forfeit millions of dollars in federal funding; and

WHEREAS, given that increases in health insurance premiums for consumers and small businesses are primarily caused by underlying medical cost trends, an Exchange will not be able to offer affordable products over the long term in the absence of payment reforms and innovative benefit designs that incentivize the efficient delivery of quality health care; and

WHEREAS, cost containment and ensuring quality are priorities for both individual and small business purchasers who will use an Exchange, and thus an Exchange must have authority to utilize cost-containment and quality-improvement strategies, including but not limited to:

1. Aggregating the purchasing power of individuals and small businesses to leverage high-quality and affordable products, and payment reforms that reform health care delivery;
2. Aligning purchasing strategies with state agencies; and
3. Standardizing products to provide manageable and meaningful choices; and

WHEREAS, the stated goals of Rhode Island General Laws §§ 42-12.3-2, 42-14.5-2, 23-17.13-3, and 42-7.2-2 are: to assure access to comprehensive health care by providing affordable health insurance options to all Rhode Islanders who are uninsured; to protect the interests of health care consumers, encourage policies that improve the quality and efficiency of health care delivery, and direct insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access; to ensure that health plans provide availability and accessibility; and to design strategies and implement best practices that foster service access, and maximize and leverage funds from all available public sources; and

WHEREAS, consistent with Rhode Island General Laws § 42-62-18(b), the functions of the Health Resources Development Fund (the "Fund") need to be removed to the Executive Department for purposes of more efficient administration, and a new Division needs to be established within such Department to meet the purposes of such Fund.

NOW, THEREFORE, I, LINCOLN D. CHAFEE, by virtue of the authority vested in me as Governor of the State of Rhode Island and Providence Plantations, do hereby order as follows:

1. Designation. Pursuant to Rhode Island General Laws § 42-62-18(b)—
   a. The functions of the Fund, as established under Rhode Island General Laws § 42-62-16, shall be removed from the Department of Health and transferred to the Executive Department for the purposes of more efficient administration; and
   b. There is hereby established a Division within the Executive Department, which shall be known as the Rhode Island Health Benefits Exchange (the "RIHBE"), to meet the purposes of administering the Fund.

2. Purposes. Consistent with Rhode Island General Laws § 42-62-16(b), the RIHBE shall establish and operate an Exchange to provide benefits for persons lacking adequate insured coverage and to lower costs or improve the quality, availability, and accessibility of health services. The RIHBE shall administer and expend moneys in the Fund for such purposes, and shall have all powers and authorities that may be necessary to effectuate such purposes.

3. Approval of State Plan. As required by Rhode Island General Laws § 42-62-16(e), moneys from the Fund shall be disbursed for purposes in conformance with the 2011 Work Plan of the Rhode Island Healthcare Reform Commission, which is hereby approved for purposes of Rhode Island General Laws § 42-62-16(e).

4. Board—Establishment. There is hereby established within the Division of the RIHBE a Board, which shall consist of thirteen members as follows: the Director of the Department of Administration or his or her designee; the Health Insurance Commissioner or his or her designee; the Secretary of the Executive Office of Health and Human Services or his or her designee; the Director of the Department of Health (the "Health Director") or his or her designee; and nine members to be appointed by the Governor from the general public, two of whom shall represent consumer organizations and two of whom shall represent small businesses. The balance of the appointments to the Board shall be made to provide demonstrated and acknowledged expertise in a diverse range of health care areas including, but not limited to, the following: individual health care coverage; small employer health care coverage; health benefits plan administration; health care finance and accounting; administering a public or private health care delivery system; state employee health purchasing; electronic commerce; and promoting health and wellness. The expertise of the other members of the Board shall be considered and appointments shall be made so that the Board's composition reflects a range and diversity of relevant expertise, skills, backgrounds, and geographic and stakeholder perspectives.

5. Board—Conflicts of Interest. No member of the Board or of the staff of the RIHBE shall be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, an insurer, a health insurance agent or broker, a health care provider, or a health care facility or health clinic while serving on the Board or on the staff of the RIHBE. No member of the Board or of the staff of the RIHBE shall be a member, a board member, or an employee of a trade association of insurers, health facilities, health clinics, or health care providers while serving on the Board or on the staff of the RIHBE. No member of the Board or of the staff of the RIHBE shall be a health care provider, unless he or she receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice.

6. Board—Terms and Compensation. Three of the Board members first appointed shall serve initial terms of three years; three of the Board members first appointed shall serve an initial term of two years; and three of the Board members first appointed shall serve an initial term of one year. Thereafter, all appointed Board members shall be appointed to serve for not more than two terms of three years. The Board members are eligible to succeed themselves. A vacancy other than by expiration shall be filled in the manner of the original appointment but only for the

unexpired portion of the term. No Board member shall receive compensation for his or her service on the Board.

7. Board—Functions. The Board shall make recommendations on all matters relating to the establishment and operation of the RIHBE. In making such recommendations, each Board member shall: be guided by the requirements of this Order, the Affordable Care Act, and all applicable state and federal laws and regulations; serve the public interest of the individuals and small businesses seeking health care coverage through the RIHBE; and ensure the operational well-being and fiscal solvency of the RIHBE. Nothing in this Order shall be construed as vesting executive power in the Board under the laws or Constitution of the state.

8. Board Officers; Director. Upon the appointment of the appointed Board members, a chairperson and vice chairperson shall be selected from the appointed members by the Governor. A Director of the Division of the RIHBE (the "Division Director") shall be appointed by the Governor to organize, administer, and manage the operations of the RIHBE. The Division Director and any employees of the RIHBE shall be in the unclassified service and shall serve at the pleasure of the Governor. Nothing in this Order shall be construed as vesting executive power in the Division Director or any employee of the RIHBE under the laws or Constitution of the state.

9. Advisory Committees. The RIHBE shall form an advisory committee comprised of health industry experts, including representatives of insurers, agents and brokers, providers, and such other experts as are deemed necessary. For purposes of meeting the requirements of Affordable Care Act § 1311(d)(6) and associated federal regulations relating to stakeholder consultation, the RIHBE shall consult on an ongoing basis with the Exchange Work Group of the Rhode Island Healthcare Reform Commission, which shall convene on a regular basis and provide recommendations to the Board, the Division Director, and the Health Director.

10. General Requirements. The RIHBE shall, at a minimum, carry out the functions and responsibilities required under Affordable Care Act § 1311 and do all that is necessary or desirable to implement and comply with federal regulations issued under Affordable Care Act § 1321(a).

11. Additional Considerations. Pursuant to Affordable Care Act § 1311(e)(1) and the Initial Guidance to States on Exchanges issued by HHS, the RIHBE shall have the discretion to determine whether health plans offered through the Exchange are in the interests of qualified individuals and qualified employers. The RIHBE shall seek to contract with carriers so as to provide health care coverage choices that offer the optimal combination of choice, value, quality, and service. In selecting products that provide value to consumers and small businesses, the RIHBE shall

seek to promote cost containment and quality improvement through all available means including, but not limited to: payment reforms that incentivize the efficient delivery of quality health care; aligning purchasing strategies with other state agencies; and standardizing products.

12. Funding. Consistent with Rhode Island General Laws § 42-62-17, the Fund shall receive funds from insurers or other entities, including HHS. The RIHBE shall determine the manner in which funds are to be received from insurers and the amounts of such funds.

13. Financial Accountability. The costs and expense of establishing, operating, and administering the RIHBE shall not exceed the combination of federal funds, private donations, and other non-state general revenue funds available for such purposes. No state general revenues shall be used for purposes of the RIHBE, and no liability incurred by the RIHBE or any of its employees may be satisfied using state general revenues.

14. Federal Funds. The RIHBE shall apply for any and all federal grant funds available for Exchange planning and establishment, including under a Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges. The RIHBE shall be responsible for using federal funds consistent with Affordable Care Act § 1311.

15. Prohibition on Diversion. Pursuant to Affordable Care Act § 1311(a)(3) and the prohibited uses of grant funds in the Funding Opportunity Announcement for a Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges, federal grant funds received in the Fund shall not be diverted to activities unrelated to Exchange planning and establishment.

16. Audit. The RIHBE shall cause a financial and/or performance audit of its functions and operations in compliance with the generally acceptable governmental auditing standards and conducted by the Auditor General or a certified public accounting firm qualified in performance audits. The audit shall be performed as often as deemed appropriate by the Auditor General. The Auditor General shall determine the scope of the audit. If the audit is not directly performed by the Office of the Auditor General, the selection of the auditor and the scope of the audit shall be subject to the approval of the Auditor General. The results of the audit shall be made public upon completion, posted on the RIHBE's website and otherwise made available for public inspection.

17. State Support. All departments, offices, boards, and agencies of the state shall cooperate with the RIHBE and furnish to the RIHBE such administrative and staff support, advice, technical assistance, information, data, data analysis, and other

support as the Executive Committee of the Rhode Island Healthcare Reform Commission may deem necessary or desirable, which may include the transfer of full-time equivalent positions to the RIHBE.

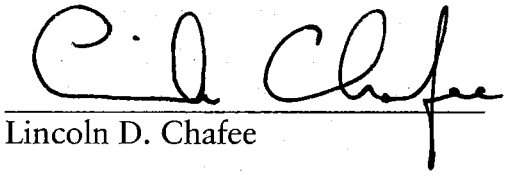
18. Rules and Regulations. Pursuant to Rhode Island General Laws § 23-1-17, the Health Director shall promulgate regulations governing the establishment and operation of the RIHBE.

19. Applicability of Other Laws. In addition to any other applicable laws, rules, or regulations, the RIHBE shall be subject to the provisions of: the Open Meetings Act (Chapter 46 of Title 42 of the Rhode Island General Laws); the Public Records Act (Chapter 2 of Title 38 of the Rhode Island General Laws); the State Purchases Act (Chapter 2 of Title 37 of the Rhode Island General Laws); and the Code of Ethics (Chapter 14 of Title 36 of the Rhode Island General Laws).

20. Relation to Other Laws. Nothing in this Order, and no action taken by the RIHBE pursuant to this Order, shall preempt, supersede, limit, or otherwise restrict—
    a. The statutory authorities, duties, and functions of the Department of Health, the Department of Business Regulation, the Office of the Health Insurance Commissioner, or other Departments; or
    b. Any applicable health insurance laws or regulations of this state.

This Order shall take effect immediately and shall remain in effect until terminated.

So Ordered:



Lincoln D. Chafee