

STATE OF RHODE ISLAND  
WASHINGTON, SC

SUPERIOR COURT

RHODE ISLAND STATE RIGHT TO LIFE  
COMMITTEE,

and

RHODE ISLAND STATE REPRESENTATIVES  
JON D. BRIEN, SAMUEL A. AZZINARO,  
MICHAEL W. CHIPPENDALE, JOHN M. CARNEVALE,  
ARTHUR J. CORVESE, DOREEN M. COSTA,  
JOHN G. EDWARDS, DEBORAH A. FELLELA,  
RAYMOND A. HULL, KAREN L. MACBETH, JAN MALIK,  
JOHN J. MCCAULEY, JR., JAMES N. MCLAUGHLIN,  
LEO MEDINA, RENE R. MENARD, PATRICIA L. MORGAN  
JARED R. NUNES, BRIAN C. NEWBERRY,  
PETER G. PALUMBO, ROBERT D. PHILLIPS,  
DANIEL P. REILLY, WILLIAM SAN BENTO, JR.,  
JOHN A. SAVAGE, GREGORY J. SCHADONE,  
SCOTT A. SLATER, JOSEPH A. TRILLO, and STEPHEN R. UCCI

W.C. No. 11-773

and

RHODE ISLAND STATE SENATORS  
LOUIS P. DiPALMA, FRANK A. CICCONE,  
MARC A. COTE, JAMES E. DOYLE II,  
WALTER S. FELAG, JR., NICHOLAS D. KETTLE,  
FRANCIS T. MAHER, HAROLD M. METTS,  
MICHAEL J. PINGA, GLENFORD J. SHIBLEY,  
and WILLIAM A. WALASKA,

v.

LINCOLN D. CHAFEE, in his official capacity  
as Governor of the State of Rhode Island

**AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

In its last session, the General Assembly considered and rejected legislation (Senate version attached) that would have created a State Health Benefit Exchange (optional under the federal Patient Protection And Affordable Care Act, the "Act"), exercising broad State governmental power by acting as a clearinghouse for the purchase and sale of qualified health and dental plans to Rhode Islanders and small businesses. The legislation provided for the creation and operation of the Exchange by a board with the number of members, qualifications, terms and powers all set by law – and all gubernatorial appointees subject to advice and consent of the Senate in accordance with the Rhode Island Constitution.

In the wake of the failed legislation, on September 19, 2011, the Governor issued an executive order ("EO") (attached), purporting to create a State Exchange with the power to receive and spend tens of millions of dollars, enter into expansive "contracts with [health insurance] carriers," and "carry out the functions and responsibilities required under" the federal Act and "do all that is necessary or desirable to implement and comply with federal regulations issued under the" Act. As authority, the Governor primarily relies upon a 1974 statute (unrelated to the Exchange contemplated by the Act) and which would provide unfettered and unlimited power to the Director of Health to exercise all executive power over the Exchange. Moreover, the EO created a thirteen member governing board (which the Governor has already appointed) and a director to be appointed by the Governor. None of these positions were authorized by the General Assembly and none received Senate advice and consent.

Plaintiffs bring this declaratory judgment action seeking a declaration that the Governor's unilateral creation of an Exchange and its governing board (and director)

violates the separation of governmental powers provisions of the Rhode Island Constitution. Rhode Island most certainly may create a state health benefits exchange. The Rhode Island Constitution, however, requires that any Exchange be created through, and its governing board established by, authorizing legislation to be passed by the Rhode Island General Assembly, 38 members (over one-third) of which are Plaintiffs in this action. The fact that the General Assembly has not yet chosen to legislate an exchange does not enable to the Governor to legislate one himself, in subversion of the Rhode Island Constitution's separation of powers.

#### *PARTIES, JURISDICTION AND VENUE*

1. Plaintiff Rhode Island State Right to Life Committee is a Rhode Island nonprofit, nonpartisan pro-life organization with a unique and substantial interest in certain coverage and funding provisions of the government subsidized health care plans to be offered through the Exchange and successfully obtained inclusion of an amendment to the pending Senate bill regarding same.
2. Plaintiff Jon D. Brien is a duly elected member of the Rhode Island House of Representatives who represents District 50.
3. Plaintiff Samuel A. Azzinaro, is a duly elected member of the Rhode Island House of Representatives who represents District 37 and resides at 24 1<sup>st</sup> Street in Westerly.
4. Plaintiff John M. Carnevale, is a duly elected member of the Rhode Island House of Representatives who represents District 13.
5. Plaintiff Michael W. Chippendale, is a duly elected member of the Rhode

Island House of Representatives who represents District 40.

6. Plaintiff Arthur J. Corvese, is a duly elected member of the Rhode Island House of Representatives who represents District 55.

7. Plaintiff Doreen M. Costa, is a duly elected member of the Rhode Island House of Representatives who represents District 31 and resides at 39 Dyer Avenue in North Kingston.

8. Plaintiff John G. Edwards, is a duly elected member of the Rhode Island House of Representatives who represents District 70.

9. Plaintiff Deborah A. Fellela, is a duly elected member of the Rhode Island House of Representatives who represents District 43.

10. Plaintiff Raymond A. Hull is a duly elected member of the Rhode Island House of Representatives who represents District 6.

11. Plaintiff Jan Malik, is a duly elected member of the Rhode Island House of Representatives who represents District 67.

12. Plaintiff Karen L. MacBeth, is a duly elected member of the Rhode Island House of Representatives who represents District 52.

13. Plaintiff John J. McCauley, Jr., is a duly elected member of the Rhode Island House of Representatives who represents District 1.

14. Plaintiff James N. McLaughlin, is a duly elected member of the Rhode Island House of Representatives who represents District 57.

15. Plaintiff Leo Medina, is a duly elected member of the Rhode Island House of Representatives who represents District 12.

16. Plaintiff Rene R. Menard, is a duly elected member of the Rhode

Island House of Representatives who represents District 45.

17. Plaintiff Patricia L. Morgan, is a duly elected member of the Rhode Island House of Representatives who represents District 26.

18. Plaintiff Jared R. Nunes, is a duly elected member of the Rhode Island House of Representatives who represents District 25.

19. Plaintiff Brian C. Newberry, is a duly elected member of the Rhode Island House of Representatives who represents District 48.

20. Plaintiff Peter G. Palumbo, is a duly elected member of the Rhode Island House of Representatives who represents District 16.

21. Plaintiff Robert D. Phillips, is a duly elected member of the Rhode Island House of Representatives who represents District 51.

22. Plaintiff Daniel P. Reilly, is a duly elected member of the Rhode Island House of Representatives who represents District 72.

23. Plaintiff William San Bento, Jr., is a duly elected member of the Rhode Island House of Representatives who represents District 58.

24. Plaintiff John A. Savage, is a duly elected member of the Rhode Island House of Representatives who represents District 65.

25. Plaintiff Gregory J. Shadone, is a duly elected member of the Rhode Island House of Representatives who represents District 54.

26. Plaintiff Scott A. Slater, is a duly elected member of the Rhode Island House of Representatives who represents District 10.

27. Plaintiff Joseph A. Trillo, is a duly elected member of the Rhode Island House of Representatives who represents District 24.

28. Plaintiff Stephen R. Ucci, is a duly elected member of the Rhode Island House of Representatives who represents District 42.
29. Plaintiff Louis P. DiPalma, is a duly elected member of the Rhode Island Senate who represents District 12.
30. Plaintiff Frank A. Ciccone, is a duly elected member of the Rhode Island Senate who represents District 7.
31. Plaintiff Marc A. Cote, is a duly elected member of the Rhode Island Senate who represents District 24.
32. Plaintiff James E. Doyle II, is a duly elected member of the Rhode Island Senate who represents District 8.
33. Plaintiff Walter S. Felag, Jr. is a duly elected member of the Rhode Island Senate who represents District 10.
34. Plaintiff Nicholas D. Kettle, is a duly elected member of the Rhode Island Senate who represents District 21.
35. Plaintiff Francis T. Maher, is a duly elected member of the Rhode Island Senate who represents District 34
36. Plaintiff Harold M. Metts, is a duly elected member of the Rhode Island Senate who represents District 6.
37. Plaintiff Michael J. Pinga, is a duly elected member of the Rhode Island Senate who represents District 9.
38. Plaintiff Glenford J. Shibley, is a duly elected member of the Rhode Island Senate who represents District 33.
39. Plaintiff William A. Walaska, is a duly elected member of the Rhode

Island Senate who represents District 30.

40. This Court has jurisdiction over the subject matter of this action pursuant to R.I. Gen. Laws § 9-30-1, and § 9-30-5.

41. Venue is proper in this Court pursuant to R.I. Gen. Laws § 9-4-3 because at least one plaintiff resides and represents constituents in Washington County.

### *FACTS*

42. In 2010, Congress passed “The Federal Patient Protection and Affordable Care Act” as amended by “The Federal Health Care and Education Reconciliation Act of 2010,” (collectively, the “Act”).

43. The Act contemplates that states provide legal authority to create and operate a state Health Care Benefits Exchange under state law by January 1, 2013 and that such Exchange become operational by January 1, 2014.

44. Such an Exchange would serve as a centralized marketplace for Rhode Islanders and small businesses to purchase health care coverage, claim federal tax credits, and comply with the individual mandate to purchase health insurance contained in the Act.

45. The Senate passed “The Rhode Island Health Benefit Exchange Act” (attached) on April 5, 2011.

46. In the legislation it passed, the Senate made certain “legislative findings.” The very first finding was that: “Statutory changes to Rhode Island law are necessary in order to establish an American health benefit exchange in Rhode Island and its administrative authority that is consistent with the federal . . . act.”

47. The House also introduced a similar bill that contained an identical “legislative finding.”

48. As was its right under federal law, the passed Senate bill was amended, *inter alia*, to include certain language restricting government subsidies in plans that include most abortions. Plaintiff Rhode Island State Right to Life Committee was instrumental in seeking the inclusion of this language. As a result of the amendment, the passed Senate bill was not voted on by the House and the House bill was not voted on by either the House or Senate. The bill is still pending in the House.

49. Consistent with the legislative finding that the legislation was necessary to provide legal authority to establish and operate a Rhode Island Health Benefits Exchange, both the State Health Insurance Commissioner (the “general assembly” would decide “the authorization and design of a Rhode Island health insurance exchange”) and the Governor’s own health care task force likewise envisioned that creation and governance of a health benefits exchange would require legislation. Indeed, both had a role in the drafting of the legislation.

50. Approximately eleven states have established an Exchange and its governing structure. All have done so through legislative action. (Executive orders have been issued in three other states, but only to “study” whether to establish an exchange, or in one case to “conditionally” establish an exchange, subject to subsequent governmental legislation.).

51. Nonetheless, on September 19, 2011, the Governor issued Executive Order 11-09, entitled “Establishment of the Rhode Island Health Benefits Exchange.” The EO purports to create a “Rhode Island Health Benefits Exchange” and a thirteen member board to operate it.



52. The Exchange will exercise vast State governmental power, including the receipt and expenditure of tens of millions of dollars, entering into contracts with health care insurers, determining which products and plans shall be offered to Rhode Island residents, purchasing reinsurance, and “carry out the functions and responsibilities under” the federal Act and “do all that is necessary and desirable to implement and comply with federal regulations” issued pursuant to the federal Act.

53. The EO states that the very purpose of creating an Exchange under the federal Act is to “provid[e] near-universal health insurance coverage.” EO 11-09, 1. According to the EO, the Exchange “must have authority to utilize cost-containment and quality-improvement strategies.” *Id.* at 2. These authorities include “aggregating the purchasing power of individuals and small businesses,” “payment reforms that reform healthcare delivery,” and “standardizing products to provide manageable and meaningful choices.” *Id.* at 2-3; *see also* EO, 5-6, 11. The EO specifically empowers the Exchange to administer and expend funds toward these goals. *Id.* at 3, 2. The EO also empowers the Exchange to “contract with carriers so as to provide healthcare coverage choices” that it determines are “in the interests of qualified individuals and qualified employers.” *Id.* at 5, 11.

54. The Exchange will determine the manner and amount of funding that insurers are to pay into the Exchange. *Id.* at 6, 12. The Exchange is also empowered to apply for “any and all federal grant funds available for Exchange planning and establishment” and required to comply with any federal requirements attached to these grants. *Id.* at 6, 14.

55. The EO also contemplates the reordering of other State priorities and

reorganization of other Rhode Island agencies in order to facilitate the Exchange. The EO requires all other state agencies, departments, boards and offices to “cooperate with the RIHBE and furnish to the RIHBE such . . . support as the Rhode Island Healthcare Reform Commission may deem necessary or advisable, which may include the transfer of full-time equivalent positions to the RIHBE.” *Id.* at 6-7, 17.

56. The EO also purports to confer broad rulemaking authority on the Health Director “governing the establishment and operation of the RIHBE.” *Id.* at 7, 18. It provides no guidelines to confine this grant of rulemaking power by the Governor.

57. These powers could include requiring Rhode Island insurers to provide benefits beyond those mandated by the federal Act itself and obligating the State of Rhode Island to defray the costs of the additional coverage. Pub. Law 111-148, §1311(d)(3). The Exchange would also be empowered and obligated to implement procedures for certifying and decertifying “qualified health plans” under PPACA, determine eligibility for and enroll individuals in various federal health programs, and determine individual eligibility for waivers from the individual mandate, among other functions. Pub. Law 111-148, §1311(d)(4). It could also include the purchase of “reinsurance” that is required under federal regulations.

58. As such, the EO purports to create a new and extensive executive department agency to manage the healthcare decisions for Rhode Island families and small businesses without the involvement of the Rhode Island General Assembly.

59. The EO states that neither the governing Board, nor the director or any employee of the Exchange shall possess “executive power” and that the Board shall only make recommendations “on all matters relating to the establishment and operation of the

RIHBE.”

60. These provisions, however, are directly belied by the vast executive power of the Exchange required by the federal Act and contained in the EO itself.

61. If, as these provisions profess, no person or state officer mentioned in the EO may exercise executive power (advisory only), then the EO attempts to grab that executive power elsewhere in old statutes that do not mention or discuss an Exchange. The attempted massive expansion of the executive power is neither contemplated nor authorized by this prior legislation.

62. As purported legislative authority for the Exchange, the EO cobbles together an amalgam of old laws stretching from 1974 to 1994 – none of which authorize or even mention a health benefits exchange.

63. The EO relies primarily upon a law R.I. Gen. Laws § 42-62-1 *et seq.* entitled the “Catastrophic Health Insurance Plan (‘CHIP’) Act” passed in 1974 – some thirty-seven years prior to the attempted creation of the Exchange.

64. Section 42-62-16 of the 1974 CHIP Act – which authorized the creation of a health resources development fund – does not empower the Governor in 2011 to unilaterally create a Rhode Island Health Benefits Exchange.

65. The EO purports to establish the “Exchange to meet the purposes of administering the Fund,” thus falsely equating the “Fund” with the “Exchange.”

66. All monies expended from the “Fund” and thus (according to the EO) the Exchange are spent under the sole and absolute discretion of the director of the Department of Health (“Health Director”) under section 17(a) of the CHIP Act (“The director of health is authorized to expend from the health resources development fund

any monies . . . ).

67. Under the EO, the level of funding for, *inter alia*, contracts, benefits, and services, under the sole and absolute discretion of the Health Director to expend may total several hundred million dollars. For example, on November 29, 2011, the State received a federal grant of \$58 million dollars to be spent on “consultants” and “develop the exchange’s business operations” before it even becomes operative.

68. Likewise, under the EO, the Health Director has sole and absolute discretion to exercise “all powers and duties that may be necessary to effectuate [its] purposes.” EO 11-09, 3, 2. It further provides that : “[t]he RIHBE shall, at a minimum, carry out the functions and responsibilities required under the 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).”

69. The Rhode Island General Assembly never voted to grant this extraordinary governmental power over tens of millions of dollars – as well as the extraordinary executive and legislative powers detailed in this complaint *supra* – to one individual – the Health Director.

70. Providing sole and unilateral executive power to the Director of the Department of Health over all aspects of the Exchange is directly contrary to the State legislation creating an Exchange that was passed by the Senate and introduced by the House, which would provide executive power to a Board appointed by the Governor with Senate advice and consent.

71. The 1974 CHIP Act does not grant this extraordinary governmental power over tens of millions of dollars – as well as the extraordinary executive and legislative

powers detailed in this complaint *supra* – to one individual – the Health Director.

72. The EO also relies upon broad precatory language in R.I. Gen. Laws §42-12.3-2, a 1993 enactment of the General Assembly that provides only certain goals to provide healthcare services for pregnant women and children under the age of 8 – a far cry from the massive reorganization of health insurance for Rhode Islanders of all ages as contemplated by federal Act, and to be implemented in large part by the Exchange.

73. Rhode Island General Laws § 42-14.5-2, also cited as authority, simply provides the basic goals of a health insurance commissioner – whom the EO does not even make Director of Exchange. Indeed, the actual powers delegated to the health insurance commissioner in the subsequent code section § 42-14.5-3 provide no support for the EO's broad claim of executive authority (providing certain duties to analyze and provide guidance and recommendations, but no rulemaking or similar authority).

74. Likewise, statutory provisions concerning Rhode Island insurance plan requirements, Rhode Island General Laws §23-17.13-3, and typically broad purpose language used by the General Assembly in establishing an Executive Office of Health and Human Services, show no evidence of any delegation of authority by the General Assembly to the Governor for the creation of a health benefits exchange.

75. Neither the Rhode Island Constitution, nor any statute passed by the General Assembly provides the Governor with the power to issue an executive order exercising governmental power concerning the provision of health care benefits.

76. Neither the Rhode Island Constitution, nor any statute passed by the General Assembly provides the Governor with the power to issue an executive order exercising governmental power concerning the establishment of a State Health Benefits

Exchange.

77. The legality of the federal Act under the Constitution of the United States is before the United States Supreme Court, with a decision expected by June 30, 2012.

78. A declaration by this Court concerning the constitutional validity of the Governor's Executive Order 11-09 to create and govern the operation of a Rhode Island Health Benefits Exchange (and conversely, the General Assembly's power to determine the powers of and limitations on such an Exchange) will terminate this controversy and remove the uncertainty concerning its validity.

**COUNT I**  
**VIOLATION OF SEPARATION OF POWERS**  
**RI. CONST. ART 5, ART. 6, SEC. 2, and ART. 9, SEC. 14**

79. The allegations contained in paragraphs 1 - 68, *supra*, are restated and incorporated as if contained herein.

80. The Rhode Island Supreme court has ruled that: "The doctrine of separation of powers, which is now expressly established in the Rhode Island Constitution, declares that governmental powers at the state level are divided among 'three separate and distinct departments.' In practice, this doctrine operates to confine legislative powers to the legislature, executive powers to the executive department, and judicial powers to the judiciary, precluding one branch of the government from usurping the powers of another."

81. Under the Constitution, the Governor may not create laws, he may only administer and carry out laws passed and authority delegated by the Rhode Island General Assembly.

82. Lawful establishment of the Rhode Island Health Benefits Exchange established by the EO requires the exercise of lawmaking power by the Rhode Island General Assembly.

83. The Exchange was created without the vote of any of the 38 legislator plaintiffs in this action, nor any other member of the General Assembly. All were effectively denied their constitutional right to vote.

84. The unilateral creation of the Exchange by Executive Order nullifies the right of General Assembly Plaintiffs to vote whether or not to create an Exchange in Rhode Island and, if so, upon what terms and conditions.

85. The Governor, by executive order or otherwise, possesses no constitutional or statutory power to create a Rhode Island Health Benefits Exchange that exercises governmental power.

86. The Rhode Island Health Benefits Exchange created by the Executive Order is intended to and does exercise substantial governmental power.

87. The Rhode Island General Assembly has not authorized the creation or operation of the Rhode Island Health Care Exchange contained in the Executive Order.

88. The Executive Order violates the separation of powers doctrine of the Rhode Island Constitution.

**COUNT II**  
**VIOLATION OF NONDELEGATION DOCTRINE**

89. The allegations contained in paragraphs 1 - 68, *supra*, are restated and incorporated as if contained herein.

90. The Executive Order relies on several statutes as authority for the Governor to create and operate a Rhode Island Health Benefits Exchange, possessing substantial executive and quasi-legislative governmental power.

91. If these statutes, individually or in total, somehow provide legislative authorization for the Exchange, then the Exchange established violates the nondelegation doctrine of the Rhode Island Constitution.

92. The General Assembly may not properly delegate to an administrative entity such as the Exchange the legislative responsibility for determining, in the exercise of discretion, what the law shall be.

93. The statutes relied upon, in particular the CHIP Act, provide sole and absolute discretion to the Director of Health to exercise all governmental power of the Exchange.

94. The unfettered discretion, and lack of meaningful guidelines, contained in the Executive Order and statutes relied upon therein provided to the Director of Health to determine all matters relating to the Exchange presents an unconstitutional delegation of legislative power.

95. This grant of governmental power to the Health Director through Executive Order and statutes therein – including the unlimited rulemaking power “governing the establishment and operation of the RIHBE” – violates the Constitution’s nondelegation doctrine.

96. The Executive Order violates the nondelegation doctrine of the Rhode Island Constitution.



**COUNT III**  
**VIOLATION OF APPOINTMENT POWER, ARTICLE 9, SECTION 5**

97. The allegations contained in paragraphs 1 - 68 *supra*, are restated and incorporated as if contained herein.

98. The United States Supreme Court, quoting James Madison, has held that “The Legislature creates the office, defines the powers, limits its duration and annexes a compensation.”

99. Likewise, our Supreme Court has held that, under the Rhode Island Constitution, with respect to State boards and commissions that exercise executive power, that it is the role of the General Assembly, not the Governor, to “provide specific criteria with respect to [board] membership composition and qualifications” and that no gubernatorial appointment to such boards is valid without “the advice and consent of the Senate.”

100. Article 9, Section 5 of the Rhode Island Constitution mandates in relevant part that: “The governor shall, by and with the advice and consent of the senate, appoint all officers of the state whose appointment is not herein otherwise provided for and all members of any board, commission or other state or quasi-public entity which exercises executive power under the laws of this state . . . .”

101. The thirteen member Exchange Board was not established by any act of the General Assembly.

102. Pursuant to the Executive Order, the Exchange exercises substantial executive power under the laws of the State.

103. None of the Governor’s appointments to the Board were sent to the Senate

for advice and consent.

104. The Senate has not provided its advice and consent to any member of the Board.

105. The Governor's appointees to the Board may not lawfully exercise governmental power.

106. The Governor believes that no provision of the Executive Order violates any provision of the Rhode Island Constitution.

107. This court should resolve this dispute by declaring the rights and obligations of the Governor and Plaintiff General Assembly members by declaring whether provisions of the Executive Order violate the Rhode Island Constitution.

**WHEREFORE,** Plaintiffs request that this Court:

(a) Declare that the Executive Order's provisions establishing a Rhode Island Health Benefits Exchange is an unconstitutional usurpation of the legislative power contained in the Rhode Island Constitution.

(b) Declare that the R.I. Gen. Laws § 42-62-1, *et seq.* "The Catastrophic Health Insurance 'CHIP' Act" of 1974 does not provide legal authorization for the creation and operation of the Health Benefits Exchange contained in the Executive Order.

(c) Declare that no existing provision of law cited in the Executive Order provides legal authorization for the creation and operation of the Health Benefits Exchange.

(d) Declare that Executive Order cannot authorize the Director of the Department of Health to exercise executive power governing the operation of the

Exchange.

(e) Declare that the Governor's appointments to the Exchange Board, including its director, may not exercise executive power governing the operation of the Exchange.

(f) Make any other declaration this Court deems proper regarding the unconstitutionality of the Executive Order and its provisions.

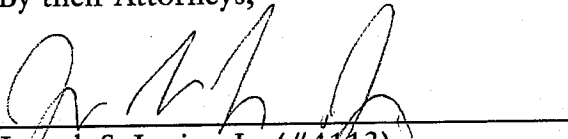
(g) Provide preliminary and permanent injunctive relief.

(h) Grant judgment against the Governor in the amount of the Plaintiffs' costs of suit; and

(I) Grant such other relief as this Court deems just and proper.

PLAINTIFFS,

By their Attorneys,



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Date: March 20, 2012

2011 -- S 0087 SUBSTITUTE A

LC00316/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT -- HEALTH CARE--HEALTH  
BENEFIT EXCHANGE

Introduced By: Senators Paiva Weed, Algieri, Perry, Ruggiero, and Lynch

Date Introduced: January 27, 2011

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND  
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 154

4 THE RHODE ISLAND HEALTH BENEFIT EXCHANGE ACT

5 42-154-1. Short title. -- This chapter shall be known as "The Rhode Island Health Benefit  
6 Exchange Act."

7 42-154-2. Legislative Findings. -- It is hereby found that:

8 (1) Statutory changes to Rhode Island law are necessary in order to establish an American  
9 health benefit exchange in Rhode Island and its administrative authority in a manner that is  
10 consistent with the federal patient protection and affordable care act (public law 111-148), as  
11 amended by the federal health care and education reconciliation act of 2010 (public law 111-152).

12 In doing so, it is the intent of the legislature to do all of the following:

13 (i) Reduce the number of uninsured Rhode Island citizens by creating an organized,  
14 transparent marketplace for the citizens of Rhode Island to purchase affordable, quality health  
15 care coverage, to claim available federal tax credits and cost-sharing subsidies, and to meet the  
16 personal responsibility requirements imposed under the federal act.

17 (ii) Strengthen the health care delivery system.

18 (iii) Guarantee the availability and renewability of health care coverage through the

1 private health insurance market to qualified individuals and qualified small employers.

2 (iv) Require that health care service plans and health insurers issuing coverage in the  
3 individual and small employer markets compete on the basis of price, quality, and service, and  
4 not on risk selection.

5 (v) Meet the requirements of the federal act and all applicable federal guidelines and  
6 regulations.

7 (vi) Explore the role of exchange as part of a robust health planning process that  
8 optimizes efficiency, coordinated care delivery, and financing of the health care system.

9 **42-154-3. Definitions.** – As used in this chapter, the following words and terms shall  
10 have the following meanings, unless the context indicates another or different meaning or intent:

11 (1) "Employee" has the same meaning as defined in section 27-50-3.

12 (2) "Exchange" means the Rhode Island Health Benefit Exchange established by section  
13 42-154-4.

14 (3) "Federal act" means the federal Patient Protection and Affordable Care Act (Public  
15 Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010  
16 (Public Law 111-152), and any amendments to, or regulations or guidance issued under, those  
17 acts.

18 (4) "Health plan" and "qualified health plan" have the same meanings as those terms are  
19 defined in Section 1301 of the federal act.

20 (5) "Health care provider" means a person licensed or certified in this state to practice  
21 medicine, pharmacy, chiropractic, nursing, physical therapy, podiatry, dentistry, optometry,  
22 occupational therapy, or other healing arts.

23 (6) "Insurer" means every medical service corporation, hospital service corporation,  
24 accident and sickness insurer, dental service corporation, and health maintenance organization  
25 licensed under title 27, or as defined in section 42-62-4.

26 (7) "Secretary" means the secretary of the federal department of health and human  
27 services.

28 (8) "Small employer" has the same meaning as defined in section 27-50-3.

29 (9) "SHOP" means the Small Business Health Options Program established by section  
30 42-154-13.

31 (10) "Qualified dental plan" means a dental plan as described in section 1311(d)(2)(B)(ii)  
32 of the federal act.

33 (11) "Qualified individuals" and "qualified employers" shall have the same meaning as  
34 defined in the federal act.

1           **42-154-4. Establishment of exchange--Purpose.** – (a) There is hereby authorized,  
2 created, and established a public corporation of the state having a distinct legal existence from the  
3 state and not constituting a department of state government to be known as “the Rhode Island  
4 health benefit exchange.” The corporation is constituted a public instrumentality exercising public  
5 and essential governmental functions, and the exercise by the corporation of the powers conferred  
6 by this chapter shall be deemed and held to be the performance of an essential governmental  
7 function of the state.

8           (b) It is the intent of the general assembly by the passage of this chapter to vest in the  
9 exchange all powers, authority, rights, privileges, and titles that may be necessary to enable it to  
10 accomplish the purposes herein set forth, and this chapter and the powers herein granted shall be  
11 liberally construed in conformity with those purposes.

12           (c) The exchange is created, established, and incorporated for the following purposes: to  
13 facilitate the purchase and sale of qualified health plans and qualified dental plans in the  
14 individual market in this state to provide for the establishment of a small business health options  
15 program (SHOP exchange) to assist qualified small employers in this state in facilitating the  
16 enrollment of their employees in qualified health plans offered in the small group market; to  
17 reduce the number of uninsured; to provide a transparent marketplace and consumer education;  
18 and to assist individuals with access to programs, tax credits and subsidies.

19           **42-154-5. General powers.** – The exchange shall have the following powers, together  
20 with all powers incidental thereto or necessary for the performance of those stated in this chapter:

21           (1) To have perpetual succession.

22           (2) To sue and be sued, complain and defend, in its corporate name.

23           (3) To have a corporate seal which may be altered at its pleasure, and to use the seal by  
24 causing it, or a facsimile of the seal, to be impressed or affixed or in any other manner  
25 reproduced.

26           (4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and  
27 otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

28           (5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of  
29 all or any part of its property and assets.

30           (6) To make and enter into all contracts, agreements, and guarantees and incur liabilities,  
31 borrow money at those rates of interest that the corporation may determine, issue its notes, and  
32 other obligations, and secure any of its obligations by mortgage or pledge of all or any of its  
33 property, and income, necessary or incidental to the performance of its duties and the execution  
34 of its powers under this chapter.

1           (7) To conduct its business, carry on its operations, and have offices and exercise the  
2 powers granted by this chapter.

3           (8) To elect or appoint officers and agents of the exchange, and to define their duties,  
4 including authority to employ attorneys, accountants, consultants and such other employees or  
5 agents as the exchange shall deem necessary in its judgment.

6           (9) To make and alter by-laws, not inconsistent with this chapter.

7           (10) To accept grants, donations, loans of funds, and contributions in money, services,  
8 materials, or otherwise, from the United States or any of its agencies, from this state and its  
9 agencies or from any other source, and to use or expend those moneys, services, materials, or  
10 other contributions in carrying out the purposes of this chapter.

11           (11) To have and exercise all powers necessary or convenient to effect its purposes;  
12 provided however, that the corporation shall not have any power to create, empower or otherwise  
13 establish any corporation, subsidiary corporation, corporate body, any form of partnership, or  
14 other separate entity without the express approval and authorization of the general assembly.

15           **42-154-6. Appointment of directors.** – (a) The exchange shall be governed by an  
16 executive board which shall consist of eleven (11) members as follows:

17           (1) The director of the department of administration or his or her designee;

18           (2) The commissioner of the office of the health insurance commissioner or his or her  
19 designee;

20           (3) The secretary of the executive office of health and human services or his or her  
21 designee; and,

22           (4) Eight (8) shall be appointed by the governor from the general public, with the advice  
23 and consent of the senate, two (2) of whom shall represent a consumer organization and two (2)  
24 of whom shall represent small businesses. Appointments to the board shall be made to provide  
25 demonstrated and acknowledged expertise in a diverse range of health care areas including, but  
26 not limited to, the following:

27           (i) Individual health care coverage;

28           (ii) Small employer health care coverage;

29           (iii) Health benefits plan administration;

30           (iv) Health care finance and accounting;

31           (v) Administering a public or private health care delivery system;

32           (vi) Purchasing health plan coverage;

33           (vii) Labor-management relations;

34           (viii) State employee health purchasing;

1           (ix) Electronic commerce; and

2           (x) Promoting health and wellness.

3           (b) The governor shall consider the expertise of the other members of the board and  
4 attempt to make appointments so that the board's composition reflects a range and diversity of  
5 skills, backgrounds, and geographic and stakeholder perspectives.

6           (c) Each member of the board shall have the responsibility and duty to meet the  
7 requirements of this chapter, the federal act, and all applicable state and federal laws and  
8 regulations, to serve the public interest of the individuals and small businesses seeking health care  
9 coverage through the exchange, and to ensure the operational well-being and fiscal solvency of  
10 the exchange.

11           (d) A member of the board or of the staff of the exchange shall not be employed by, a  
12 consultant to, a member of the board of directors of, affiliated with, or otherwise a representative  
13 of, an insurer, a health insurance agent or broker, a health care provider, or a health care facility  
14 or health clinic while serving on the board or on the staff of the exchange. A member of the board  
15 or of the staff of the exchange shall not be a member, a board member, or an employee of a trade  
16 association of insurers, health facilities, health clinics, or health care providers while serving on  
17 the board or on the staff of the exchange. A member of the board or of the staff of the exchange  
18 shall not be a health care provider unless he or she receives no compensation for rendering  
19 services as a health care provider and does not have an ownership interest in a professional health  
20 care practice.

21           (e) A board member shall not receive compensation for his or her service on the board  
22 but may receive a per diem and reimbursement for travel and other necessary expenses, while  
23 engaged in the performance of official duties of the board.

24           (f) Each board member shall, before entering upon his or her duties, take an oath to  
25 administer the duties of his or her office faithfully and impartially, and the oath shall be filed in  
26 the office of the secretary of state.

27           (g) There shall not be any liability in a private capacity on the part of the board or any  
28 member of the board, or any officer or employee of the board, for or on account of any act  
29 performed or obligation entered into in an official capacity, when done in good faith, without  
30 intent to defraud, and in connection with the administration, management, or conduct of this title  
31 or affairs related to this title.

32           42-154-7. Members--Term of Office--Vacancies. -- (a) Three (3) of those new members  
33 first appointed by the governor pursuant to subdivision (a)(4) shall serve initial terms of three (3)  
34 years; two (2) of those new members first appointed by the governor pursuant to subdivision



1 (a)(4) shall serve an initial term of two (2) years; and two (2) of those new members, appointed  
2 by the governor pursuant to subdivision (a)(4), shall serve an initial term of one year. Thereafter,  
3 all appointed members of the board shall be appointed to serve for terms of three (3) years.

4 (b) The board members are eligible to succeed themselves.

5 (c) A vacancy other than by expiration shall be filled in the manner of the original  
6 appointment but only for the unexpired portion of the term.

7 (d) Members of the board shall be removable by the governor pursuant to the provisions  
8 of section 36-1-7 of the general laws and for cause only, and removal solely for partisan or  
9 personal reasons unrelated to capacity or fitness for the office shall be unlawful.

10 **42-154-8. Officers--Quorum and vote required for action--Executive director. -- (a)**  
11 The governor, upon the appointment of the appointed members of the board, shall select from the  
12 appointed members a chairperson and vice chairperson. The board shall thereupon select a  
13 secretary from among its membership. A quorum shall consist of six (6) members of the board. A  
14 majority vote of those present shall be required for action.

15 (b) The governor shall appoint an executive director, subject to the advice and consent of  
16 the senate, to organize, administer, and manage the operations of the exchange. The executive  
17 director shall be exempt from civil service and shall serve at the pleasure of the governor.

18 **42-154-9. Training requirements. --** The board shall conduct a training course for newly  
19 appointed and qualified members within six (6) months of their qualification or designation. The  
20 course shall be developed by the chair or the executive director of the exchange. The board may  
21 approve the use of any board and/or staff member and/or individuals to assist with training. The  
22 training course shall include instruction in the following areas: the provisions of chapters 42-46,  
23 36-14, and 38-2; and the board's rules and regulations. The director of the department of  
24 administration shall, within ninety (90) days of the effective date of this act, prepare and  
25 disseminate training materials relating to the provision of chapters 42-46, 36-14, and 38-2.

26 **42-154-10. Advisory committee. --** The board shall form an advisory committee,  
27 comprised of experts in the health care field, including, but not limited to, health insurers,  
28 insurance brokers, and health care providers. The advisory committee shall provide advice, data,  
29 and suggestions to the board, and shall provide input into the board recommendations to the  
30 governor and general assembly as required in this chapter.

31 **42-154-11. Planning, establishment, and recommendations. -- (a)** The board shall  
32 apply for any and all grants made available to the exchange pursuant to Section 1311 or other  
33 sections of the federal act. The exchange shall use the services of the office of the health  
34 insurance commissioner as needed.

1           **(b) The board shall be responsible for using the funds awarded by the United States**  
2 **secretary of health and human services for the planning and establishment of the exchange,**  
3 **consistent with subdivision (b) of Section 1311 of the federal act. The exchange shall use the**  
4 **services of the office of the health insurance commissioner as needed.**

5           **(c) The functions and operations of the exchange shall not expand beyond the minimum**  
6 **requirements of the federal act without further action by the legislature. No later than January 1,**  
7 **2012, the board shall submit a report to the governor and general assembly addressing the**  
8 **following, at a minimum:**

9           **(1) Progress organizing the exchange and the plan for implementation of each of the**  
10 **duties articulated in section 1311 of the federal act, including any perceived obstacles to full**  
11 **implementation;**

12           **(2) Plans for the information technology that will support the exchange, including any**  
13 **joint purchasing arrangements and opportunities for federal financing;**

14           **(3) Data analysis and recommendations regarding the costs, benefits, and market impacts**  
15 **associated with any expansion of the exchange functions and scope beyond the duties articulated**  
16 **in section 1311 of the federal act. Include in this analysis an assessment of the basic health plan**  
17 **option, as well as the estimated impact on premiums associated with mandating expanded**  
18 **participation in the exchange by groups not included in section 1311 of the federal act;**

19           **(4) Recommendations to achieve financial self-sufficiency for the exchange, and an**  
20 **analysis of the costs and benefits to purchasers, and market impacts of each recommendation.**

21           **(5) The exchange shall consider the extent to which benefits for Christian Scientist**  
22 **spiritual care services are made available under the exchange so long as such benefits do not**  
23 **result in additional cost to the state pursuant to the federal act.**

24           **42-154-12. General requirements. – (a) The exchange shall make qualified health plans**  
25 **available to qualified individuals and qualified employers beginning with effective dates on or**  
26 **before January 1, 2014.**

27           **(b) The exchange shall not make available any health benefit plan that is not a qualified**  
28 **health plan.**

29           **(c) The exchange shall allow an insurer to offer a plan that provides limited scope dental**  
30 **benefits meeting the requirements of section 9832 (c)(2)(A) of the internal revenue code of 1986**  
31 **through the exchange, either separately or in conjunction with a qualified health plan, if the plan**  
32 **provides pediatric dental benefits meeting the requirements of section 1302(b)(1)(J) of the federal**  
33 **act, provided that the limited scope dental benefits, the pediatric dental benefits, and the other**  
34 **health benefits coverage provided by the carrier are priced separately and are also made available**

1 for purchase at the same price.

2 (d) No health plan under which coverage is purchased in whole or in part with any state  
3 or federal funds through the exchange, shall provide coverage for induced abortions, except  
4 where the life of the mother would be endangered if the fetus were carried to term or where the  
5 pregnancy resulted from rape or incest. Coverage is deemed to be purchased with state or federal  
6 funds if any tax credit or cost sharing credit is applied toward the health plan. This subsection  
7 does not prevent an insurer from providing any person or entity with an optional rider, for which  
8 there must be paid a separate premium for induced abortions; providing, however, that such  
9 coverage is not purchased in whole or part with any state or federal funds.

10 (e) The exchange shall do all that is necessary to implement the requirements of section  
11 1311 of the federal act.

12 **42-154-13. Purchases.** – The exchange shall be considered a public agency and subject  
13 to the provisions of chapter 2 of title 37 entitled, “state purchases.”

14 **42-154-14. Rules and regulations.** – The exchange may adopt rules and regulations or  
15 any amendments to rules and regulations according to the provisions of chapter 35 of title 42.

16 **42-154-15. Applicability of other laws.** – The exchange shall be subject to the  
17 provisions of chapter 2 of title 38 (“access to public records”) and chapter 46 of this title (“open  
18 meetings”) and, in addition, the members of the board shall be subject to the provisions of chapter  
19 14 of title 36 (“code of ethics”).

20 **42-154-16. Financial accountability.** – (a) The board shall ensure that the establishment,  
21 operation, and administrative functions of the exchange do not exceed the combination of federal  
22 funds, private donations, and other non-state general revenue funds available for this purpose. In  
23 accordance with the federal act, effective January 1, 2015, no state general revenue monies shall  
24 be used for the purposes of this chapter; and no liability incurred by the exchange or any of its  
25 officers or employees may be satisfied using moneys from state general revenue.

26 (b) The implementation of the provisions of the chapter, other than section 42-154-4 and  
27 subdivision 42-154-5(10) shall be contingent on a determination by the board that sufficient  
28 financial resources exist or will exist to fund the exchange. The determination shall be based on at  
29 least the following:

30 (1) Financial projections identifying that sufficient resources exist or will exist to  
31 implement the exchange.

32 (2) A comparison of the projected resources available to support the exchange and the  
33 projected costs of activities required by this chapter.

34 (3) The financial projections demonstrate the sufficiency of resources for at least the first

1 two (2) years of operation under this chapter.

2 (c) The board shall provide notice to the governor, the speaker of the house and the  
3 senate president that sufficient financial resources exist in the fund to implement this chapter.

4 (d) If the board determines that the level of resources cannot support the actions and  
5 responsibilities described in subsection (a), it shall provide the governor, the speaker of the house  
6 and the senate president a detailed report on the changes to the functions, contracts, or staffing  
7 necessary to address the fiscal deficiency along with any contingency plan should it be impossible  
8 to operate the exchange without the use of state general revenue moneys.

9 (e) The board, working with the executive office of health and human services, shall  
10 assess the impact of the exchange's operations and policies on other publicly funded health  
11 programs administered by the state and the impact of publicly funded health programs  
12 administered by the state on the exchange's operations and policies. This assessment shall  
13 include, at a minimum, an analysis of potential cost shifts or cost increases in other programs that  
14 may be due to exchange policies or operations. The assessment shall be completed on at least an  
15 annual basis and submitted to the governor, the speaker of the house and the senate president.

16 **42-154-17. Audit.** – (a) The exchange shall cause a financial and/or performance audit of  
17 its functions and operations in compliance with the generally acceptable governmental auditing  
18 standards and conducted by the auditor general or a certified public accounting firm qualified in  
19 performance audits.

20 (b) The audit shall be performed as often as deemed appropriate by the auditor general.  
21 The auditor general shall determine the scope of the audit.

22 (c) If the audit is not directly performed by his or her office, the selection of the auditor  
23 and the scope of the audit shall be subject to the approval of the auditor general.

24 (d) The results of the audit shall be made public upon completion, posted on the  
25 exchange's website and otherwise made available for public inspection.

26 **42-154-18. Relation to other laws.** – Nothing in this chapter, and no action taken by the  
27 exchange pursuant to this chapter, shall be construed to preempt or supersede the authority of the  
28 health insurance commissioner to regulate the business of insurance within this state, the director  
29 of the department of health to oversee the licensure of health care providers, the certification of  
30 health plans under chapter 23-17.13, or the licensure of utilization review agents under chapter  
31 23-17.12, or the director of the department of human services to oversee the provision of medical  
32 assistance under chapter 40-8. Except as expressly provided to the contrary in this chapter, all  
33 insurers offering qualified health plans or qualified dental plans in this state shall comply fully  
34 with all applicable health insurance laws and regulations of this state.

1           **42-154-19. Severability.** — The provisions of this chapter are severable, and if any  
2 provision hereof shall be held invalid in any circumstances, any invalidity shall not affect any  
3 other provisions or circumstances. This chapter shall be construed in all respects so as to meet  
4 any constitutional requirements. In carrying out the purposes and provisions of this chapter, all  
5 steps shall be taken which are necessary to meet constitutional requirements.

6           SECTION 2. This act shall take effect upon passage.

=====  
LC00316/SUB A  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

AN ACT  
RELATING TO STATE AFFAIRS AND GOVERNMENT -- HEALTH CARE--HEALTH  
BENEFIT EXCHANGE

\*\*\*

- 1 This act would establish the Rhode Island Health Insurance Exchange and the method by
- 2 which members to its executive board are appointed.
- 3 This act would take into effect upon passage.

LC00316/SUB A



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

2011 SEP 19 AM 8:40

SECRETARY OF STATE  
PUBLIC INFORMATION

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.

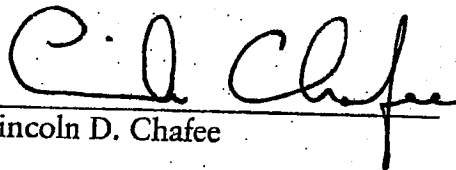
12. **Funding.** Consistent with Rhode Island General Laws § 42-62-17, the Fund shall receive funds from insurers or other entities, including HHS. The RIHBE shall determine the manner in which funds are to be received from insurers and the amounts of such funds.
13. **Financial Accountability.** The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