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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

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

Introduced By: Representatives Corvese, Azzinaro, Ucci, O'Brien, and Hull

Date Introduced: February 14, 2013

Referred To: House Finance

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 155

4 THE RHODE ISLAND HEALTH BENEFIT EXCHANGE ACT

5 **42-155-1. Short title. --** This chapter shall be known as "The Rhode Island Health  
6 Benefit Exchange Act."

7 **42-155-2. 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 **42-155-3. 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 42-155-4.

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  
30 subparagraph 42-155-4 (C).

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           **42-155-4. 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           **42-155-5. 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 **42-155-6. 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           **42-155-7. 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 **42-155-8. 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 **42-155-9. 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 **42-155-10. 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 **42-155-11. 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 2014, 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           **42-155-12. 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, 2016.

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 **42-155-13. 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 **42-155-14. 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 **42-155-15. 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 **42-155-16. Financial accountability.** -- (a) The board shall ensure that the  
21 establishment, operation, and administrative functions of the exchange do not exceed the  
22 combination of federal funds, private donations, and other non-state general revenue funds  
23 available for this purpose. In accordance with the federal act, effective January 1, 2017, no state  
24 general revenue monies shall be used for the purposes of this chapter; and no liability incurred by  
25 the exchange or any of its officers or employees may be satisfied using moneys from state general  
26 revenue.

27 (b) The implementation of the provisions of the chapter, other than section 42-155-4 and  
28 subdivision 42-155-5(10) shall be contingent on a determination by the board that sufficient  
29 financial resources exist or will exist to fund the exchange. The determination shall be based on at  
30 least the following:

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

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



1           (3) The financial projections demonstrate the sufficiency of resources for at least the first  
2 two (2) years of operation under this chapter.

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

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

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

17          **42-155-17. Audit. --** (a) The exchange shall cause a financial and/or performance audit of  
18 its functions and operations in compliance with the generally acceptable governmental auditing  
19 standards and conducted by the auditor general or a certified public accounting firm qualified in  
20 performance audits.

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

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

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

27          **42-155-18. Relation to other laws. –** Nothing in this chapter, and no action taken by the  
28 exchange pursuant to this chapter, shall be construed to preempt or supersede the authority of the  
29 health insurance commissioner to regulate the business of insurance within this state, the director  
30 of the department of health to oversee the licensure of health care providers, the certification of  
31 health plans under chapter 23-17.13, or the licensure of utilization review agents under chapter  
32 23-17.12, or the director of the department of human services to oversee the provision of medical  
33 assistance under chapter 40-8. Except as expressly provided to the contrary in this chapter, all  
34 insurers offering qualified health plans or qualified dental plans in this state shall comply fully

1 [with all applicable health insurance laws and regulations of this state.](#)  
2 **42-155-19. Severability.** -- [The provisions of this chapter are severable, and if any](#)  
3 [provision hereof shall be held invalid in any circumstances, any invalidity shall not affect any](#)  
4 [other provisions or circumstances. This chapter shall be construed in all respects so as to meet](#)  
5 [any constitutional requirements. In carrying out the purposes and provisions of this chapter, all](#)  
6 [steps shall be taken which are necessary to meet constitutional requirements.](#)

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

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

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1           This act would create the Rhode Island health benefit exchange, a quasi-government  
2           which would facilitate the purchase and sale of health plans and dental plans for qualified small  
3           employers in this state in the enrollment of their employees; reduce the number of uninsured; and  
4           assist individuals with access to programs, tax credits and subsidies. This act would also spell out  
5           the administrative authority of the executive board, how the members are selected and the manner  
6           in which they would operate.

7           This act would take into effect upon passage.

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