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December 3, 2012

Dear Governor Scott, Speaker Weatherford and Senate President Gaetz:

On behalf of more than 115,000 Americans for Prosperity activists in the state of Florida, I am writing in strong opposition to creating a state-based health insurance exchange in Florida. Creating a state-based exchange would introduce an unworkable structure for consumers, insurers and the state of Florida.

Health insurance exchanges, in theory, are free-market tools for the effective and efficient provision of health insurance. Insurance companies are supposed to be able to market their various offerings while consumers compare options and determine the best plan to purchase. Supporters describe the experience as “Travelocity-like.” They claim the purchasing decisions will be no harder than booking an airline ticket or hotel room on the Internet.

Unfortunately, the health insurance exchanges, as created by the Patient Protection and Affordable Care Act (PPACA), fail to meet this low standard. Created by PPACA and implemented by the federal Department of Health and Human Services, these exchanges consolidate tremendous power in Washington, D.C, piling thousands of pages of regulation on state insurance markets. These regulations work to increase costs to consumers—the opposite goal of these so-called reforms. This has even been acknowledged by supporters of the law. Jonathan Gruber, MIT economist and chief architect of PPACA, showed that individual insurance premiums in the state of Wisconsin would increase 30%. Similar studies showed a 55% increase in Ohio.

### **Lack of Flexibility**

Since passage of PPACA, Secretary Kathleen Sebelius has issued numerous statements describing the unprecedented amount of “flexibility” afforded to states like Florida if they create an exchange. However, a flexible structure for implementation does not exist. Regulation after regulation and guidance after guidance has transferred large sources of state control over insurance markets to HHS.

The final rule issued on exchange creation, released in March, is a prime example. The regulation totaled 650 pages, including countless requirements for state officials to implement. The words “must” and “require” appear an astounding 1,300 times. The rule also makes sure to point out that all of these requirements serve as a “floor” and not a “ceiling.”

Even if Florida wanted to create a free-market based exchange matching the unique and varied needs of her residents, she would be unable to do so. Every decision must be approved by the

Secretary by January 2013 and all subsequent “significant changes” would need further Secretarial approval. Secretary Sebelius, not the State of Florida, will control Florida’s exchange.

As a result, any attempt to create an exchange not meeting the desired outcome of HHS can and will be blocked.

### **Lack of Guidance and Time**

If Florida decides to ignore the lack of “flexibility” and moves forward with implementation, its task would be nearly impossible. Florida must submit its exchange blueprint to HHS by December 14, 2012 and be ready for open enrollment in 10 months. Even with the best of intentions, creating a fully-functioning, consumer-friendly exchange in a year is an extremely difficult task.

But further complicating Florida’s efforts are the lack of timely and clear guidance from HHS. According to recent testimony given to the House of Representative Committee on Ways and Means, HHS’ final rule on exchange creation from March included approximately 100 references to future rulemakings and guidance. An overwhelming majority of these rulemakings are still pending.

Other states are feeling the delays as well. Multiple states have submitted questions to HHS asking for clarification and further delays, yet HHS responds with only vague answers promising responses soon.

When HHS does release guidance on exchange creation and implementation, the results are lengthy, obtuse requirements. For instance, in August, HHS in conjunction with the Internal Revenue Service issued guidance to define “full-time employment” in accordance with PPACA standards for employer requirements and exchange eligibility. A seemingly simple definition required 18 pages of text with multiple competing eligibility tests. For comparison, the federal Bureau of Labor Statistics defines “full-time employment” in a single sentence.

Florida’s best attempts to create an exchange will be stymied by HHS’ late and unclear rules.

### **Funding for an Exchange**

Florida’s efforts to create and operate an exchange will place tremendous pressure on its already tight budget. PPACA granted HHS limitless funds to aid states in set-up of an exchange, and, as of today, HHS has provided \$1.8 billion in grants to states. Florida has received its original \$1 million planning grant. HHS will continue to provide Florida funding through the first full year of implementation, 2014. But, starting in 2015, the exchange must be “self-funding.”

Creating and funding an exchange is an expensive task. No one truly knows the cost to a state to create or operate an exchange, but average annual state costs are estimated to run between \$10 and \$100 million, but given Florida’s size and population the costs will surely be at the upper end of that spectrum. Florida cannot afford to operate such an exchange.

### **Taxes on Florida Residents and Businesses**

Finally, and most importantly, creating and implementing an exchange will raise taxes on Florida residents and businesses. PPACA contains 21 tax increases totaling over \$500 billion in revenue for the federal government according to the Congressional Budget Office. By creating an exchange, Florida will subject residents to two additional taxes.

As mentioned previously, an exchange needs to be “self-funding” by 2015 per HHS’ requirements. This bill seeks to create a funding stream by placing a “uniformed surcharge” on all qualified health plans sold via the exchange. A “uniformed surcharge” simply put is a tax on all insurance plans, a tax that will almost surely be passed along to Florida residents.

Creating an exchange will subject Florida businesses to a new tax costing up to \$3,000 per employee. In addition to the requirement that all employers with more than 50 full-time employees provide health insurance, PPACA contains a second employer mandate. Not only must the employer provide insurance, the insurance must be deemed “affordable.” If an employee does not have “affordable” insurance, he or she will be eligible to purchase insurance via the exchange and is eligible for federal tax credits if his or her income is below 400% of the federal poverty level. An employer is subsequently fined \$3,000 for each employee meeting this definition. However, due to a glitch in PPACA, only state-based insurance exchanges provide eligibility to federal tax credits and therefore, only state-based exchange trigger such a tax. Refusing to create an exchange protects Florida businesses from such a tax.

HHS and IRS have tried through recent guidance to fix this issue, saying that all exchanges will provide tax credits, but this is far from settled. The U.S. House of Representative and U.S. Senate are considering resolutions to overturn the guidance, and Oklahoma recently filed suit against IRS’ actions.

### **Florida’s Best Option**

Finally, proponents of state creation often argue that Florida would be better off if it created an exchange than abdicating to the federal government. Unfortunately, this presents a false distinction. As highlighted above, HHS, not Florida will drive exchange creation and any such exchange will meet HHS’ desires outcomes, not those of Florida. Florida will do the federal government’s bidding in creation and in exchange she will be left to finance for this expensive bureaucracy.

By rejecting an exchange, Florida will join a growing chorus of states. Almost twenty states have announced they will not create an exchange and more are poised to make such a decision.

Americans for Prosperity strongly opposes the creation of state-based exchanges. I urge you to protect Florida consumers, taxpayers and businesses by rejecting this federal takeover of our healthcare.

I look forward to working with you in the future.

Sincerely,

Slade O'Brien

State Director

Americans for Prosperity-Florida

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