



## **For Immediate Release**

MID HAS ISSUED THE FOLLOWING STATEMENT REGARDING HEALTH AND HUMAN SERVICES DENIAL OF THE STATE'S HEALTH INSURANCE BLUEPRINT. THE DEPARTMENT WAS NOTIFIED THURSDAY AND RECEIVED THE ATTACHED LETTER THE MORNING OF FEBRUARY 8, 2013.

**February 8, 2013**

### **OFFICIAL STATEMENT FROM MISSISSIPPI INSURANCE COMMISSIONER MIKE CHANEY**

The federal Department of Health and Human Services, lead agency for health care exchanges in the country, said Thursday that Mississippi's long-running plans to develop a state-based health insurance marketplace, was denied.

Mississippi has long led the nation in plans to develop a free market exchange.

To be successful, the Mississippi exchange would need working relationships with other state agencies, which is not possible. HHS stated, "The exchange blueprint requires that a state-based exchange has developed and documented a coordination strategy with other agencies administering Insurance Affordability Programs." The letter goes on to say that with a lack of support from the governor and no formal commitment to coordinate with other state agencies, HHS "does not see a feasible pathway to conditionally approving a state-based exchange in Mississippi."

Under the federal health law enacted in 2010, every state is required to have a health insurance exchange so people can get coverage starting in January 2014, much of it federally subsidized. States that don't create their own will have one run by Washington, with enrollment beginning October 1, 2013.

Commissioner Chaney submitted an exchange proposal to the U.S. Department of Health and Human Services in mid-November which was praised by HHS in the

denial letter. “We are impressed with the work you have completed to date,” Cohen says in the letter.

The Mississippi Insurance Department will continue to work with HHS in the future to develop a free market state-operated small business exchange independent of and not connected to any Federal program. This would be an effort to alleviate some of the health insurance problems faced by the state’s small business owners. This would be a free-market approach to solving some of the state’s insurance problems faced by small businesses.

**TEXT OF LETTER FROM HEALTH AND HUMAN SERVICES DATED 2-8-13:**

1.

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information and Insurance Oversight  
Independence Avenue SW  
Washington, DC 20201



February 8, 2013

*CENTERS for MEDICARE & MEDICAID SERVICES*

Mike Chaney  
Commissioner of Insurance, Mississippi Insurance Department  
501 N. West Street, Suite 1001  
Woolfolk Building  
Jackson, Mississippi 39201

Rc: Mississippi State-based Exchange Blueprint Application

Dear Commissioner Chaney,

Thank you for submitting a State-based Exchange Blueprint application on behalf of the State of Mississippi. We completed our review and have determined that we will not be able to conditionally approve your application at this time, because of the Mississippi Governor's stated intent to oppose implementation of a State-based Exchange.

Based on the authority in section 1321(b) of the Affordable Care Act, the Exchange Blueprint details requirements for approval as a State-based Exchange. As stated in the Exchange Blueprint, "[a] State's Declaration Letter must be signed by the State's Governor". In addition

to this, the Exchange Blueprint requires that a State-based Exchange has developed and documented a coordination strategy with other agencies administering Insurance Affordability Programs and the SHOP that enables the Exchange to carry out the eligibility and enrollment activities.' With a lack of support from your Governor and no formal commitment to coordinate from other State agencies, we do not see a feasible pathway to conditionally approving a State-based Exchange in Mississippi for 2014.

Although we are unable to conditionally approve your application at this time, we are impressed by the work you have completed to date and encourage you to submit an application for the Partnership Exchange model by February 15, 2013. The work your Insurance Department has done thus far to ensure that Mississippi maintains broad authority over its health insurance market makes Mississippi an excellent candidate for a State Partnership Exchange.

Thank you again for submitting a State-based Exchange Blueprint application on behalf of the State of Mississippi. We look forward to having discussions with you and your staff about the

<sup>1</sup> See Blueprint at p. 6. <http://cciio.cms.gov/resources/files/hie-blueprint-11162012.pdf>

<sup>2</sup> See Blueprint at p. 26 (Table Section 3 .2). <http://cciio.cms.gov/resources/files/hie-blueprint-11162012.pdf>

Partnership Exchange model and believe that this provides an additional opportunity for Mississippi's Insurance Department to take part in the implementation of a health insurance Exchange.

2.

Sincerely,



Gary Cohen  
Director  
Center for Consumer Information and Insurance Oversight

**TEXT OF LETTER FROM GOVERNOR PHIL BRYANT TO  
DEPARTMENT OF HEALTH AND HUMAN SERVICES DATED  
JANUARY 18, 2013:**



PHIL  
BRYANT  
GOVERNOR  
January 18, 2013

Secretary Kathleen Sebelius  
U.S. Department of Health & Human  
Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Secretary Sebelius,

I understand that the Mississippi Insurance Department ("MID") recently forwarded you the Mississippi Attorney General's opinion that MID has the necessary authority under Mississippi law to establish and operate a "State-based Exchange" pursuant to the so-called Affordable Care Act ("ACA"). In Mississippi, an attorney general's opinion "is merely persuasive authority." *State ex rel. Holmes v. Griffin*, 667 So.2d 1310, 1326 (Miss. 1995). It is "his opinion," Miss. Code Ann. § 7-5-25, "not controlling law." *In Interest of T-L. W.*, 75 1 So. 2d 1033, 1034 (Miss, 1999).

After reviewing the Attorney General's conclusions on this issue, my own opinion and my attorneys' opinion that MID lacks the necessary statutory and constitutional authority to establish and operate an exchange remain unchanged. At your agency's request, I briefly explained my office's position by letter of December 28, 2012, and we explained the basis of our opinion in more detail in a subsequent letter to Attorney General Hood, which I have enclosed for your reference. Because I continue to believe that MID lacks the necessary authority under Mississippi law to establish and operate an exchange under the ACA, I do not believe that HHS should approve MID's application. In this regard, HHS should take into account that any further action by MID toward the establishment or operation of an exchange may ultimately be deemed null and void as a matter of state law.

In addition, I must advise you that I am instructing the Mississippi Division of Medicaid not to assist or cooperate with a "State-based Exchange" or "Federally-facilitated Exchange" established pursuant to the ACA, unless clearly required to do so by validly enacted and mandatory federal Medicaid laws or regulations. While the Division will of course comply with valid and mandatory federal laws and regulations, I am not aware of any statute or rule that would require it to cooperate with an exchange. In our opinion, any such law or regulation would necessarily be among the ACA's Medicaid provisions that

were rendered optional by the Supreme Court's ruling *in NFIB v. Sebelius*. Please: advise my office if HHS has a different opinion on this issue.

Sincerely,  
  
Phil Bryant  
GOVERNOR

Enclosure

cc: The Hon. Mike Chaney,  
Mississippi Commissioner of Insurance

STATE OF MISSISSIPPI • OFFICE OF THE GOVERNOR

POST OFFICE BOX 139 • JACKSON, MISSISSIPPI 39205 • TELEPHONE: (601) 359,3150 • FAX, (601) 359,3741 •

[www.governorbryant.com](http://www.governorbryant.com)