



MEMORANDUM

From: Dean Clancy, Legislative Counsel and Vice President, Health Care Policy
Subject: **Why Republican Governors Should Oppose State Exchanges**
Date: July 23, 2012

Each Governor should work to stop the creation of a PPACA exchange in his or her state, for two reasons:

1. *Doing so will stop PPACA's health insurance "market reforms" cold.* PPACA's health insurance tax credits and subsidies, and employer mandate, cannot operate in those states that don't set up an exchange. This is true even in states where the federal government has set up the exchange.¹ The law was drafted this way intentionally.²

2. *Exchanges are unnecessary and harmful.* The market can and does supply convenient comparison-shopping information (for example, via ehealth.com). The only purpose of a government-run exchange is to impose government mandates—specifically, guaranteed issue and community rating—on the individual market. States that have adopted those mandates have found they drive up costs dramatically, in the absence of a mandate on individuals to purchase coverage.

3. *Many states refuse to establish an exchange.* Currently, only 14 states have passed legislation to implement PPACA exchanges. Another 12 appear to lean in favor of doing so. Twenty-four states are opposed to creating an exchange, or are internally divided or noncommittal.³ Every Governor should want his or her state to be firmly in the "opposed" column.

Therefore:

1. States that have begun to set up health exchanges should stop.
2. States that have already approved legislation/funding for an exchange should rescind it.
3. States that have been offered money for exchange implementation should refuse it.
4. States that have received such money should, if possible, return it.

¹ PPACA makes tax credits and subsidies available to individuals only where the state has set up the exchange, not the federal government. PPACA's employer mandate is enforced by penalties that are triggered by even one employee's receipt of PPACA tax credits or subsidies. Therefore, in a state that has failed or declined to set up an exchange, the tax credits and subsidies cannot flow and thus the employer mandate cannot operate. Because the statute and legislative history are clear (see footnote 2, below), the IRS regulation issued on May 18, 2012, extending tax credits and subsidies through either a state- or federally run exchange, is in violation of law, and states are advised not to base their decisions on it.

² The law's authors sought to encourage states to set up exchanges, rather than leaving the job to the federal Department of Health and Human Services (HHS), by making the subsidies available only in states with a state-run exchange. That this was intentional is clearly seen not only in the plain text of the statute but also in antecedent bill drafts and public statements by the drafters in favor of state-run over federally run exchanges.

³ For an up-to-date list of where each state stands on state exchanges, visit FreedomWorks' FullRepealHQ.com and click on the red button marked "1."

More Information

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[Cannon, Michael F. "States Should Flatly Reject ObamaCare Exchanges," Youtube.com, 2012-05-31.](#)

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[Graham, John R. "Should Your State Establish an ObamaCare Exchange?" PacificResearch.org, 2010-10-25.](#)

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[Heal, Loren, "Full Repeal 1: Do Not Implement a PPACA Exchange," FreedomWorks.org, 2012-07-16.](#)