

\$38 Million or Zero?

Why Rhode Island Should Defund Its ACA Health Benefits Exchange

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THE ISSUE

\$38 Million or Zero

Largely without public input, elected and appointed Rhode Island officials have committed the Ocean State to massive and unnecessary expenditures for operations and benefit distribution. Passing the state's health benefits exchange under the federal Affordable Care Act (ACA) back to the federal government would eliminate a looming \$23 million annual expense. Halting a project to tie all public-assistance programs together through the exchange would save the state its additional \$15 million investment in the governor's proposed budget.

Introduction

To comply with President Obama's Affordable Care Act (ACA), often referred to as ObamaCare, each state had the option of establishing its own insurance exchange, financed initially with federal funds, or leaving it to the federal government to set up and maintain the complex network of insurance carriers, products, and subsidies.

In Rhode Island, Governor Lincoln Chafee established a state exchange by executive order in 2011,¹ after the state's legislative body *opted against* its creation earlier that year.

The federal funds that have paid for development of the exchange were due to expire at the end of 2014, midway through the state's fiscal year 2015 (FY15) budget. Whether or not the state should find a way to pay for the ongoing annual expense for the exchange, called HealthSource RI, is the topic of this analysis.

The time to act is now, so proper planning can make the transition orderly before federal money runs out.

As the Center projected in a 2012 report discouraging creation of the exchange,² the cost to Rhode Island of operating it is set to become a budgetary problem. As the Center also projected, in a 2013 report detailing the incentives surrounding the exchange,³ HealthSource RI will not meet its goal of providing coverage to most uninsured Ocean Staters.

The combination of high costs with low enrollment levels creates an extreme challenge of identifying funding sources for the state's exchange.

Bipartisan, bicameral legislation to prohibit state revenue from being used to fund the ongoing operations of the Rhode Island health benefits exchange has been introduced in both the House and Senate in the 2014 General Assembly session.⁴ The legislation would also halt the unified health infrastructure project (UHIP), a \$209 million initiative with the core purpose of making it easier for the state to find recipients for government assistance programs.⁵

Following the governor's State of the State address in January 2014 and a review of his FY15 budget, the Rhode Island Center for Freedom and Prosperity immediately called on public officials to consider defunding the state's operation of the HealthSource

RI exchange and, instead, add its management to the pool of exchanges in dozens of other states run by the federal government.

This policy paper, *\$38 Million or Zero?*, developed by two health care experts who serve as adjunct scholars to the Center, explores the many reasons that Rhode Islanders should choose not to pay for this federally mandated behemoth.

The arguments for legislators to seriously consider returning funding and management of the exchange to the federal government include:

- No loss of benefits for existing or future enrollees
- Compliance with the governor's executive order, which forbade the use of state funds to pay for the exchange's costs
- Avoidance of unsustainably high costs that cannot be absorbed by enrollees or insurance companies
- Decision-making responsibility returned to a more appropriate body
- No catches, according to an initial analysis of the ACA federal law as well as contracts between the state and the federal government
- Decreasing future financial risk to the state
- Decreasing the future liabilities of the state
- Early movement in trend of states' preventing similar burdens on taxpayers

Defunding the exchange and transferring its management to the feds would do little to change the way Rhode Islanders would obtain coverage and subsidies through it. The federal government would simply assume operations; Ocean Staters would continue to be eligible for tax credits; the plans sold would not have to change; and the state would save tens of millions of dollars every year.

This bureaucracy was mandated by Washington, D.C, and it should be paid for by Washington, D.C.

NO LOSS OF BENEFITS ANTICIPATED

Action Required Now to Ensure Smooth Transfer

An initial review of federal law and the relevant agreements with the state found no provision that would indicate that Rhode Island residents currently enrolled or considering future enrollment in plans through HealthSource RI would suffer any loss of the choice, services, or subsidies available to them if the state transfers responsibility for its ongoing operation to the federal government.

While there is also no apparent provision in the ACA describing the process for such a transfer, careful planning by state and federal officials can ensure a smooth transition. With federal funds not set to expire before January 2015 or later, action this spring by RI lawmakers would allow ample time for the details to be worked out.

Legislators in Rhode Island could vote to defund the state-run exchange with no threat of being accused of "taking away" health insurance or subsidies from their constituents. Defunding and transferring management of the exchange to Washington, D.C., simply means that Rhode Islanders would shop for insurance, and receive subsidies when eligible, on a federally run Web portal.

Full Functionality of Federal Exchange Expected

It is not anticipated that any Rhode Island enrollee, current or future, will suffer any loss of choice, services, or subsidies. Nor should concerns about the functionality of the federal Web site, HealthCare.gov, be a deterrent to action.

Despite its disastrous initial roll-out, the primary federal Web site has dramatically improved its functionality, with remaining bugs and other issues being addressed every day by the federal Department of Health and Human Service. We take the federal government at its word that the federal exchange would be fully operational and largely error-free in the near future, certainly by 2015 when the proposed transfer from Rhode Island would take place.

As an additional option, there is no apparent provision in the law to preclude the federal government from simply taking over management and funding of HealthSource RI and maintaining its operation exactly as today.

SMALL STATE CANNOT ABSORB BIG COSTS

Officials at HealthSource RI have indicated that the exchange proper will require approximately \$23 million for its continued annual operation. The governor's FY15 budget lists this line item as being funded entirely with federal taxpayer dollars.⁶ Despite assurances, that's more of an assumption than an expectation.

Speaking before the RI Senate Finance Committee, exchange director Christine Ferguson gave "better than 50:50" odds that the federal government would

With a population of one million and only tens of thousands of enrollees (most of them signing up for Medicaid), the Ocean State is too small to be able to absorb the high costs of operating an ACA exchange.

keep the money flowing.⁷ Whether that coin toss works out for FY15, the full cost of the exchange will fall on Rhode Island's shoulders in the very near future.

Tag-Along Project Adds to Expense

The governor's budget includes an additional \$15 million of state money in his revised FY14 and proposed FY15 budgets to pay for a related program, the Unified Health Infrastructure Project (UHIP). The object of this project is "to build a fully integrated and interoperable system of eligibility determination spanning multiple programs of public assistance and the Exchange."

In brief, the system would tie together all public-assistance programs to ensure that the state hands out as much as possible to as many recipients as possible. The RI Center for Freedom & Prosperity has called this sort of system a "dependency portal" because its effect would be to make it an easy matter for hard-working residents to find themselves relying on government support.⁸

Basically, the state would leverage its health benefits exchange to enroll people in one government program when they apply for another. The initial goal is to maximize recipients, but advocates envision a seamless, invasive system in which personal information is tracked to proactively enroll people in programs whenever they become eligible.

Making matters worse, the state government committed its constituents to the \$209 million project with little awareness and less public debate. Defunding UHIP is also provided for in the legislation under consideration.⁹

While the federal government is promising to pick up the majority of the tab for putting UHIP together, the state of Rhode Island cannot afford this project for two reasons:

- Near-term development costs of over \$50 million out of state funds¹⁰
- The long-term increases in public assistance costs it is designed to generate

Taxpayers Cannot Afford Costs, Unfair to Ask to Pay

In a state that already has one of the highest tax burdens in the country and that faces a persistent economic stagnancy and massive structural budget deficits, coming up with \$23 million (let alone much more) per year from the general fund represents a huge drain on other essential state services, such as education, aid to cities and towns, and infrastructure. Alternately, it may require an additional tax levy.

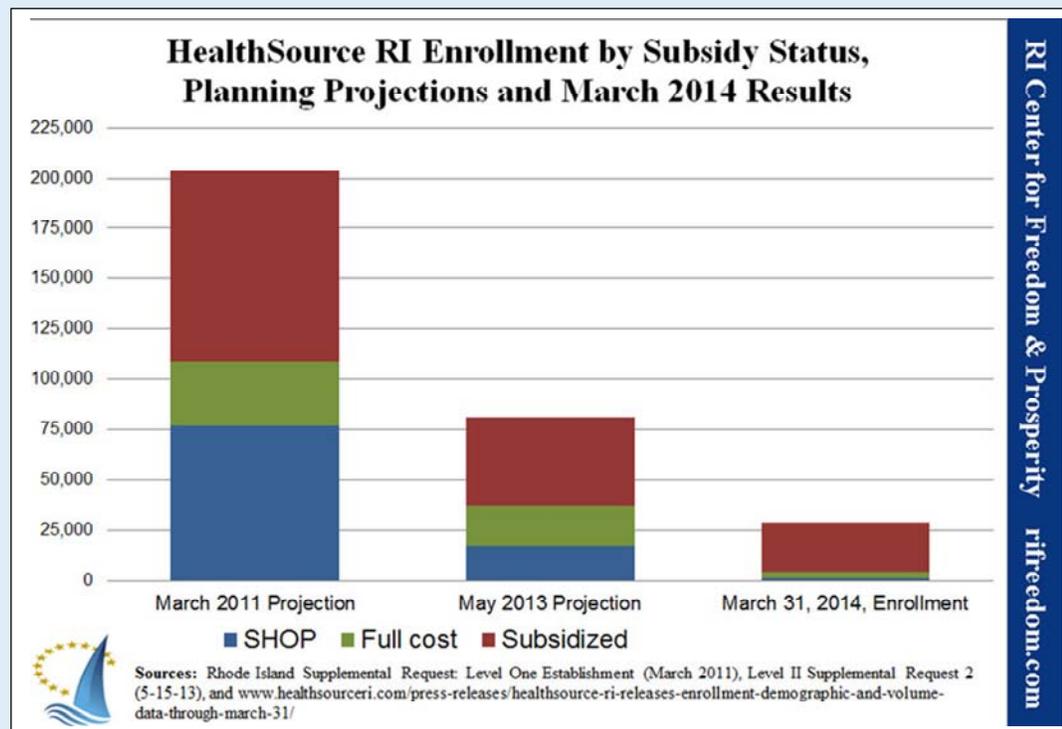
Furthermore, it would be unfair to ask taxpayers who provide for their own health insurance outside of the exchange to bear the burden of these costs.

A Massive Miscalculation: Plan to Assess Policy Holders Not Realistic

The original funding applications that agents of the state sent to the federal government suggest that the governor's plan, when he created the exchange, was to pass on related costs to insurance companies and policyholders via increased fees and assessments.¹¹

HealthSource RI Far Short of Expectations

The enrollment projected in grant applications was enormously optimistic.



However, given the disappointingly low enrollment figures, the high costs for the operation of HealthSource RI cannot realistically be funded by an assessment on current policyholders. Significantly higher enrollment levels would have effectively spread the costs of the exchange over a much larger base, with a lower cost per person or per family. This did not happen.

A grant application to the federal government in March 2011, by Deb Faulkner, the state's Exchange Project Coordinator, projected that 2014 would find 127,000 Rhode Islanders enrolled in private health plans through the exchange, with 32,000 of them paying the full cost of their coverage (i.e., with no state or federal subsidies). Another 77,000 people were expected to be enrolled through the business-focused component of the exchange, called the Small Business Health Options Program (SHOP).¹²

The latest enrollment figures, from March 31,¹³ indicate that only around 14% of the Governor's original expectations were met, with only 27,961 individuals having selected a plan and with only 21,097 actually paying the premium. A far cry from the 127,000 originally projected.

Based on this data, a potential scenario for the exchange in 2014 could mean that there may be no more than 25,000 individuals actually paying for private exchange-based plans.

The numbers are fairly straightforward from there: \$23 million spread over 25,000 enrollees would add

about \$920 to the cost per person. For a family of four, this assessment would translate to almost \$3,700 per year, undoubtedly driving many people out of the market. Under the law, this additional assessment cannot be covered by subsidies or federal funds.

By all appearances, the governor's original plan dramatically miscalculated the number of paid enrollees. Following the early projections, the necessary assessment would have been \$181 per person per year, or \$724 per family of four, five times less than the likely costs policyholders will soon be facing.

Federal Option Less Costly to RI Users

According to a March 2014 presentation of the Rhode Island House Fiscal staff, the federal government assesses a 3.5% fee to users who enroll on its federal portal.¹⁴

These federal fees, because they can be spread out over millions of Americans nationally, would be substantially lower than the fees Rhode Islanders would have to bear, if the state chooses to retain responsibility for funding the exchange. On a federal exchange, fees would amount to only a few hundred dollars per year for a family of four, as opposed to the multiple thousands of dollars discussed in the previous section of this report via assessments by the state.

Lack of Transparency: Enrollment Could Fall During 2014

Many national and state reports of enrollment through the exchanges lack the transparency necessary to make more-accurate calculations and projections. Many reports continue to count people as “enrolled” in an ACA exchange if they merely selected a health insurance plan, but until people pay the first month’s health insurance premium, they do not have coverage.

This is a critical distinction. The *New York Times* on February 13, 2014, stated that about 20% of people who signed up by the beginning of this year never paid their January premiums.¹⁵ One industry analyst reported anecdotal evidence that an additional 2–5% failed to pay their second monthly premiums. A recent McKinsey & Company survey found that just 53% of previously uninsured people who selected a plan actually paid their first monthly premiums.¹⁶ The payment rate was significantly higher (86%) among people who were previously insured.

For similar reasons, the enrollment numbers in Rhode Island could actually fall in the coming months, making the option of a user assessment even more impractical. As of March 31, 6,864 (25%) HealthSource RI “enrollees” had not yet paid for their plans.¹⁷

Other Funding Sources Not Practical

Other funding sources are problematic, as well. Rhode Island already has high taxes, and the focus in recent years, as confirmed in the governor’s proposed FY15 budget, has been to hold the line on major taxes, not to raise them.

The Governor’s 2011 Executive Order establishing the exchange prohibited state funds from being used for its operation.

The exchange’s high costs have not escaped the attention of lawmakers. A number of legislative bills have been submitted in the 2014 General Assembly session, proposing alternative means to pay for the high costs of the exchange, for example:

- House bill 7662 would provide that the costs of operating the health benefits exchange would be determined and passed on as assessments to those insurers that issue health insurance through it. Such assessment would be made based upon the amount of income the insurer generates through the exchange.¹⁸ As with premium surcharges, asking **insurance companies to absorb a major portion of these costs** is not scalable to small numbers of claims and could drive insurance companies out of an already limited government marketplace, reducing choices for Rhode Islanders.
- Senate bill 2511 would to create a **new individual health insurance mandate** here in the Ocean State, in addition to the mandate already imposed by the federal government, with any state penalty payments being allocated to pay for the state exchange.¹⁹

Any assessment that might include **employer-provided plans** would face substantial business opposition. In January 2014, four major groups

representing Rhode Island businesses joined forces and issued a statement arguing that HealthSource RI should be financed solely by those who use it.

In a position paper distributed to legislators and the Chafee administration, the Rhode Island Business Group on Health, the Rhode Island Manufacturers Association, the National Federation of Independent Business, and the Greater Providence Chamber of Commerce rejected other possible alternatives — such as a fee on all insurance claims — to pay for the health benefits exchange.²⁰

Clearly, for reasons presented earlier in this paper, a user assessment fee is not practical.

A suggestion that HealthSource RI seek new **funding from the federal government** is not a sure bet either, given the budget crisis in Washington, D.C., the anti-ACA sentiment in the U.S. House of Representatives, and the can of worms that additional federal funding to one state would likely open. In an election year, such a strategy is especially risky.

EXECUTIVE ORDER AND A 2014 LAW'S NECESSITY

Original Order Prohibits State Funding

When Governor Chafee issued his executive order in 2011 to establish the agency then known as the Rhode Island Health Benefits Exchange (RIHBE), his order explicitly prohibited spending from the state's general fund to pay for its development or ongoing operation. Item 12 of the order reads (emphasis added):

In 2014, RI lawmakers should re-assume their legislative and fiscal authority ... circumvented in 2011 by the Governor.

Funding. The costs and expenses 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 the purposes of the RIHBE, and no liability incurred by the RIHBE or any of its employees may be satisfied using state general revenues.²¹

Return Authority to the General Assembly

In 2011, the Rhode Island legislature rejected legislation authorizing an exchange, in part because of the cost and in part because of the objections of a sizeable pro-life contingent. Instead, the governor signed an **executive order** later that fall establishing the exchange, allowing it to receive more than \$100 million from the federal government to construct its costly infrastructure, but the order did nothing to account for future, ongoing operational costs.

By taking up bills in 2014 to defund the health benefits exchange, the Rhode Island General Assembly would reassume the legislative and fiscal authority that Governor Chafee circumvented in 2011 when he issued an executive order that

directly countered the earlier wishes of the state's primary legislative body.

There is good reason to believe the proposed defunding solution would be embraced in Rhode Island. In addition to avoiding having to find millions of dollars to fund the exchange, legislators are likely to have a rather low sense of responsibility for it, given that they did not approve its creation.

TRANSFER TO FEDS NOT BARRED BY ACA

In April 2014, the Center expects to publish a more-detailed technical analysis of the provisions in the ACA and related agreements with the State of Rhode Island that are relevant to the idea of transferring an established state-based exchange to the federal government. This report may also provide recommendations on the mechanics of transferring Ocean State enrollees to the federal exchange.

Other States Also Taking Action

The federal law does not appear to forbid states from withdrawing from operation and/or funding of their exchanges, and similar efforts are currently being considered in Maryland and Oregon as a result of the botched rollouts of their state exchange Web sites.

In 2010, New Hampshire passed legislation that prohibited the state or any contractor from planning, creating, participating in, or enabling a state-based exchange, although it did allow state agencies and departments to interact with the federal government

in its creation of a federally facilitated exchange for New Hampshire.²²

In transferring its exchange to the federal government, Rhode Island lawmakers would be pursuing an almost identical policy, simply after the fact of the exchange's creation.

No provision for RI to Pay Back Funds

The federal law does not appear to contain any provision that would obligate Rhode Island to return the money it has received to plan and establish the exchange should the state later choose to abandon it.

RISKS TO STATE OPERATION OF THE EXCHANGE

Financial Risks

Given the ever-changing nature of the federal ACA law and the volatility of the politics surrounding it, whether by the president's administration or by opponents who seek to repeal or de-tooth it, Rhode Island could face two types of financial risk if the state chooses to fund its own exchange:

- *Additional costs* above and beyond those currently projected to deal with major alterations to the ACA.
- *Return-on-investment risk* if the ACA is repealed by a newly elected Congress after the 2014 elections or a new administration after 2016. Under either of these scenarios, local funding of the exchange could all have been for naught.

Liability Risk

As contemplated by Governor Chafee's own executive order establishing Rhode Island's health benefits exchange, the risk of incurring civil liabilities by the exchange, or its employees or vendors, is a distinct possibility, given the sensitive nature of the personal, financial, and medical information it collects.

As one example, the *Minneapolis Star Tribune* reported in March 2014 that an ObamaCare exchange employee in Minnesota accidentally sent out an email containing 2,400 Americans' Social Security numbers.²³

The *Star Tribune* wrote: "A MNsure employee accidentally sent an e-mail file to an Apple Valley insurance broker's office on Thursday that contained Social Security numbers, names, business addresses and other identifying information on more than 2,400 insurance agents."

In November, the *Ocean State Current* reported that the state has no requirement that HealthSource "navigators" have background checks, even though their work gives them access to sensitive personal financial and medical information. Of the 20 organizations working with the state to supply such navigators, the Current found one that did not independently require background checks, and 14 did not respond to the inquiry.²⁴

While more learned legal opinions are required to assess the true scope of this risk, it goes without saying that the potential for lawsuits against the State of Rhode Island as a result of potential security breaches could be virtually eliminated by transferring management of the exchange to the federal government.

Would the potential leak of highly sensitive personal, financial, or medical information put the Ocean State at legal risk?

OTHER CONSIDERATIONS

Social Issues

Additionally, debates over social issues will likely continue. Currently, there are no health plans available on the Rhode Island exchange that do not cover abortion. This appears to be an intentional choice by the state leadership running the exchange. By handing operational authority of the exchange back to the federal government, it is possible that insurance carriers will be able to offer insurance coverage that better balances Rhode Islanders' conscience rights.

State Insurance Regulation

Transferring operation of the exchange to the federal government does little to diminish the state's role in insurance regulation. Plans offered on a federally run exchange would have to adhere to all the mandates in Rhode Island law, as well as all of the benefits mandated by ObamaCare. This is not a matter of the federal government infringing on Rhode Island's sovereignty; it's a matter of allowing the federal government to operate a federal program that it created and mandated.

CONCLUSION

HealthSource RI currently reports that approximately 20,000 individuals have signed up for private plans, well below original projections. Simultaneously, Medicaid enrollment via the exchange is approaching 50,000, well above original expectations.

This combination of miscalculations could prove to be enormously costly for Rhode Island taxpayers, even in the early years — perhaps as much as \$100 million per year, between the cost of the exchange and the increased cost of new Medicaid recipients. Low numbers of no-subsidy enrollments in private plans means that more costs of the exchange may be shifted to the taxpayer. If the federal government reduces or eliminates subsidies, that number can be expected to climb.

Meanwhile, high numbers of “non-paying” enrollments in Medicaid, a public assistance program, mean Rhode Island taxpayers will foot an increasingly costly expanded entitlement program.²⁵

Additionally, the small-businesses sector does not appear to see much benefit in HealthSource RI, and remarkably few have signed up. In fact, in order to deliver insurance products that small businesses may actually want to purchase, UnitedHealthcare of New England, one of the state’s major insurers, plans to directly compete against HealthSource RI by launching its own private exchange for businesses and their employees in Rhode Island.²⁶

For a state of just over a million people, and with a little over 10% of the population uninsured before the implementation of the Affordable Care Act, it is not a good investment for Rhode Island to maintain such an expensive system.

Should Rhode Island spend another \$38 million largely to enroll people in Medicaid, when that process was already in place?

About two-thirds of the people signing up are enrolling in Medicaid, a pure public assistance program, which operates with its own eligibility system at the state’s human services department. Why spend tens of millions of dollars per year of hard-earned Rhode Island taxpayer dollars when most recipients could have enrolled through the previous process established by the Department of Health and Human Services and when most small businesses don’t seem to be interested?

About the Author

Gary Alexander, an adjunct scholar to the Center and a nationally recognized healthcare expert and welfare reformer, was former Secretary of the R.I. Executive Office of Health and Human Services. More recently, he served as Secretary of Public Welfare for the Commonwealth of Pennsylvania. Gary is the architect of the landmark RI Medicaid “Global waiver.” Alexander formerly served as policy director for RI’s Lieutenant Governor and as a healthcare budget analyst for the Massachusetts Senate Committee on Ways and Means. He currently operates a healthcare consulting firm in the Ocean State and is writing a book on a new social compact for America.

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