



**PHIL BRYANT**  
GOVERNOR

January 9, 2013

Commissioner Mike Chaney  
MS Department of Insurance  
Woolfolk Building, 10<sup>th</sup> Floor  
501 North West Street  
Jackson, MS 39201

Dear Commissioner Chaney,

This letter responds to your letter of January 4, to which you requested a timely response.

The “[f]irst and foremost” point of your letter is that “no State taxpayer funds will be spent on the development of an exchange” because your work to date has been funded by federal grants. With all respect, I do not find this point at all compelling. Federal grants are not free. They are paid for by taxpayers, including Mississippians. I don’t believe that we should be eager participants in a massive expansion of government simply because it will be funded with federal dollars. This is one reason why the Personal Services Contract Review Board has blocked a contract under which the Insurance Department would have paid nearly \$3 million for “education and outreach” related to the exchange. You have repeatedly objected to the Board’s refusal to approve this contract, but I simply do not consider it a wise use of taxpayer dollars, no matter which level of government collected them.

Your letter next argues at length that the Insurance Department has the necessary legal authority to establish an exchange. We obviously disagree on this issue. Without belaboring the point, I note that your letter fails to acknowledge that in 2010 the Insurance Department sought this authority from the Legislature, but the Legislature did not grant it. In addition, the Constitution vests the “chief executive power of this state” in the Governor and certain specific executive powers in other constitutional officers. Neither the Insurance Department nor the Insurance Commissioner is granted any constitutional powers. Therefore, consistent with the Constitution, the Insurance Department cannot exercise executive authority wholly independent of and contrary to the chief executive. No more could I issue an executive order establishing a new agency with wholly independent legislative power over insurance matters.

The rest of your letter makes a variety of arguments as to why an Obamacare-style insurance exchange would be a good thing. Again, we simply disagree on this issue. You argue that Mississippi should establish an exchange in order to retain control over its operation. However, it is clear that such an exchange would be “State-based” in name only. Its details will be heavily regulated and effectively controlled by the Federal Government, not by the State. The Obama administration’s treatment of Utah proves this point. Utah has had a market-oriented exchange

since 2006. Utah asked the Federal Government to approve its exchange as is—without the parts of Obamacare that that state’s leaders find objectionable, such as the responsibility for distributing federal subsidies and enforcing the individual mandate. On January 3, HHS “conditionally approved” Utah’s exchange—conditional, that is, on Utah’s acceptance and implementation of all the aspects of Obamacare that the state expressly opposes. The administration’s decision on Utah makes one thing clear: a state will be free to run its exchange only as long as it acts as a mere agent of the Federal Government.

Your letter also argues that I have supported exchanges in the past. But while I have supported the concept of a free-market exchange, I have never supported exchanges as they will operate under Obamacare. You reference a website (“ontheissues.org”) that accurately reports that I oppose Obamacare and support insurance exchanges as long as they are market-based and do not depend on government subsidies. It is now clear that federally approved exchanges will not be market-based in any significant sense, and, as you are well aware, massive and unaffordable federal subsidies are the very backbone of the Obamacare exchange system.

Finally, your letter dismisses the threat that a “State-based Exchange” poses to Mississippi employers in the form of a substantial new tax known as the “employer mandate” or, euphemistically, the “shared responsibility payment.” You—like the IRS—assert that this tax will apply regardless and is not triggered by a state’s establishment of an exchange. Your position is contrary to the plain language of the so-called Affordable Care Act, which makes clear that this tax applies only in states that set up their own exchanges. The IRS disagrees, but an agency cannot ignore a statute’s plain language. Ultimately this issue will be decided by the courts, and until it is, the State should take appropriate steps to oppose this onerous new tax on Mississippi employers—rather than simply submitting to it.

For these and other reasons that I have expressed consistently, I remain opposed to the State’s assistance in implementing Obamacare, including the massive new entitlement program associated with Obamacare-style insurance exchanges. I simply cannot agree that there is “nothing lost” by taking an active role in that effort. In addition, my office’s legal opinion that the Insurance Department lacks authority to take this step remains unchanged. As you know, our opinion was provided to HHS at their request and forwarded to your office the same day.

I appreciate your letter and do not doubt that your views are sincerely held. While we disagree on this issue as a matter of policy, I hope and trust that this will not keep us from working together on other issues that are important to Mississippians.

With best regards, I remain,

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Bryant", with a long horizontal flourish extending to the right.

Phil Bryant  
Governor

PB/dm