

SENATE RESOLUTION NO. 60

WHEREAS, Governor Nixon designated John Huff, the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration and a member of the Missouri Health Insurance Pool, to serve as the project director of Missouri's Health Insurance Exchange Establishment Grant to provide executive leadership to the development of the exchange infrastructure and to oversee grant administration; and

WHEREAS, Governor Nixon, upon the advice of Director Huff and the Health Insurance Exchange Coordinating Committee, designated the Missouri Health Insurance Pool to receive an Establishment Grant from the federal government on behalf of the State of Missouri to plan and implement a health insurance exchange under the direction of Director Huff; and

WHEREAS, on August 12, 2011, the Department of Health and Human Services announced the award of approximately \$21 million in the form of a Level One Exchange Establishment Grant to the Missouri Health Insurance Pool to help establish a state health insurance exchange; and

WHEREAS, on September 15, 2011, the board of directors of the Missouri Health Insurance Pool considered adopting a resolution establishing the "MHIP/Show-Me HIX" as a distinct organizational unit within the Missouri Health Insurance Pool and undertaking responsibility for implementing the tasks described in the Missouri Establishment Grant; and

WHEREAS, the board of directors of the Missouri Health Insurance Pool also considered accepting a \$21 million federal grant to help build the technological infrastructure for a health insurance exchange; and

WHEREAS, after consulting with some key senators from the Senate Interim Committee on Health Insurance Exchanges, the board of directors of the Missouri Health Insurance Pool postponed action on the resolution to establish an exchange and accept the federal grant; and

WHEREAS, counsel retained by the Missouri Health Insurance Pool has stated that the Missouri Health Insurance Pool has the statutory authority to accept the federal monies and take the preliminary steps to establish a health insurance exchange; and

WHEREAS, several members of the Senate Interim Committee on Health Insurance Exchanges have asked the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration to state the legal authority that allows the Missouri Health Insurance Pool to accept Exchange Establishment Grants and to undertake precursory steps to establish a state-based health insurance exchange; and

WHEREAS, as to date, the legal basis for the Missouri Health Insurance Pool to engage in the preliminary steps of establishing a health insurance exchange has not been provided to the members of the Senate Interim Committee on Health Insurance Exchanges; and

WHEREAS, the statutes establishing the Missouri Health Insurance Pool do not authorize its board to accept federal grants or undertake activities relating to the establishment of a health insurance exchange; and

WHEREAS, the Patient Protection and Affordable Care Act requires states to establish their own health insurance exchanges or otherwise cede this authority to the federal government; and

WHEREAS, the decision to establish a state-based health insurance exchange or to allow the federal government to operate an exchange within Missouri is a policy decision left to the General Assembly and not the Missouri Health Insurance Pool or any other member of the executive branch; and

WHEREAS, the Missouri General Assembly would need to pass legislation before any state-controlled exchange were to be implemented in Missouri, giving the citizens of Missouri a right to be heard on this matter through their constitutionally elected representatives; and

WHEREAS, Article II of the Missouri Constitution mandates that the powers of government shall be divided into three distinct departments with each department exercising its own powers; and

WHEREAS, it is the power of Governor, as the head of the executive department, to faithfully execute the laws and not to make laws or choose to ignore the laws that do not suit his political agenda; and

WHEREAS, accepting federal monies to preliminarily establish a state-based health insurance exchange invades the province of the General Assembly in that the decision to establish or not establish a health insurance exchange is a policy decision - a power entrusted to the General Assembly by the Missouri Constitution, and

WHEREAS, the legislative authority of Missouri is vested in the General Assembly and in the absence of a statute or

constitutional provision that authorizes the Governor to establish a state-based health insurance exchange, the Governor cannot create obligations, responsibilities, conditions or processes having the force and effect of law by the issuance of an executive order or other actions; and

WHEREAS, the potential decision of the Missouri Health Insurance Pool to establish a health insurance exchange within the Missouri Health Insurance Pool is without legal foundation and usurps the power of the General Assembly; and

WHEREAS, the potential decision of the Missouri Health Insurance Pool to establish a health insurance exchange within the Missouri Health Insurance Pool runs afoul of the wishes of the Missouri voters in that one of the core functions of a federally-approved exchange is to establish a process to determine whether an individual is exempt from the individual mandate penalty:

NOW THEREFORE BE IT RESOLVED that the members of the Missouri Senate, Ninety-sixth General Assembly, First Extraordinary Session, hereby urge the Governor of Missouri, the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, and the board of directors of the Missouri Health Insurance Pool to return all Exchange Establishment Grant monies to Health and Human Services Secretary, Kathleen Sebelius; refrain from applying for any other federal grants relating to the establishment of a health insurance exchange as envisioned under the Patient Protection and Affordable Care Act; and refrain from adopting any policies relating to the establishment of a health insurance exchange which by their very nature blatantly disregard the time-honored separation of powers between the legislative and executive branches; and

BE IT FURTHER RESOLVED that the Secretary of the Missouri Senate be instructed to send a copy of this resolution to the Governor of Missouri, the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, and each member of the board of directors of the Missouri Health Insurance Pool.

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