

**ASSEMBLY BILL NO. 2171  
(Second Reprint)**

To the General Assembly:

In March of 2010, after significant public debate and discourse, a sharply divided Congress passed the Patient Protection and Affordable Care Act, which was swiftly signed into law. The "Affordable Care Act" represents a far-reaching and expansive alteration of the nation's health care system. Among its many provisions is the requirement that every person across the country obtain and maintain basic health insurance. To achieve this goal, the Affordable Care Act imposes sweeping revisions to almost every facet of private health insurance and public health infrastructure at the national, state, and local levels. Critical to these changes is the directive that a "health insurance exchange" must be established in each state. While states have the option to craft their own version of these exchanges, they must be consistent with the terms and limitations imposed by the Affordable Care Act. If a state fails to act to adopt these requirements, the federal government will step into the state to establish programs it deems acceptable, with the costs of these programs passed along to the state's citizens.

Faced with these new federal laws, both the New Jersey Legislature and my Administration have appropriately worked to identify the most balanced, cost-effective, and medically sound approach towards compliance. Assembly Bill No. 2171, passed by the Legislature on March 15 of this year, seeks to address some of these challenges by creating the "New Jersey Health Benefits Exchange Act" to implement the core provision in the federal Affordable Care Act: the requirement that every citizen in New Jersey purchase and maintain health care coverage.

Prudently, throughout the process leading to the passage of Assembly Bill No. 2171, the scope of the Affordable Care Act and its central component - the "individual mandate" - were deeply debated and thoughtfully examined by members of the Legislature, health care experts, private insurers, academics, and the citizens of New Jersey who will finance the bill's provisions. Critically, the robust debate in our State echoed the national conversation between policy makers and the people about the effectiveness of many of the Affordable Care Act's provisions. Then, on March 26 of this year, just ten days after the passage of Assembly Bill No. 2171, the Supreme Court of the United States began an unprecedented three days of hearings, where the same arguments and questions concerning the lawfulness of both the individual mandate, and the health care exchanges necessary to deliver that coverage, were presented to the highest Court in the land for resolution.

While I appreciate the Legislature's attempt to find steady policy footing in these shifting legal sands, I am concerned that a hastily created exchange in New Jersey will impose unnecessary obligations upon the State's citizens. Indeed, the very constitutionality of the Affordable Care Act is cloaked in uncertainty, as both the individual mandate to procure health insurance as well as the jurisdictional mandate to establish an exchange may not survive scrutiny by the Supreme Court. Because it is not known whether the Affordable Care Act will remain, in whole or in part, it would be imprudent for New Jersey now to create an exchange before these critical threshold issues are decided with finality by the Court.

The uncertainty created by the litigation challenging the Affordable Care Act is reflected in many aspects of Assembly

Bill No. 2171. For instance, the bill commits New Jersey to establishing and operating a new Medicaid-like program for individuals between 133% and 200% of the federal poverty level, without any assurance of the level of federal funding that will be available to support such a plan. Moreover, the bill's mechanism for certifying health plan participation in the exchange limits the pool of plan participants, which will likely reduce options and increase costs. Likewise, the composition of the proposed exchange's board of directors lacks representation by all stakeholders and improvidently provides a salary of \$50,000 to each board member, further increasing implementation expense. In all, with basic issues regarding the future of the Affordable Care Act unresolved, it is impossible to know whether this legislation best suits the interests and needs of all New Jerseyans who will be required to finance these policy choices.

The fundamental uncertainties inherent in the Affordable Care Act during the Supreme Court's deliberations counsel against premature action, just as they should have slowed the rush to pass this bill. Indeed, while many have publicly questioned both the future of the Affordable Care Act and the corresponding efficacy of the bill's provisions, the Legislature nonetheless pushed this bill forward to my desk. I believe that the better course of action for New Jersey is to continue to monitor the ever-changing landscape surrounding the implementation of the Affordable Care Act, and to refrain from imposing its mandates upon our citizens until outstanding issues are settled, and the required course of action is clear.

While I am unwilling to approve the establishment of a statewide health insurance exchange at this time, I am mindful

that the requirements of the Affordable Care Act still stand today and I intend to fully oversee New Jersey's compliance in a responsible and cost-effective manner should its constitutionality ultimately be upheld by the Supreme Court. Despite the serious questions of legality that have followed the Affordable Care Act since its signing, my Administration has been studying sensible approaches towards ensuring New Jersey's compliance with the federal law since the spring of 2010. At that time, I directed the establishment of an interdepartmental working group, which includes the Departments of Banking and Insurance, Health and Senior Services, and Human Services to meet regularly and to coordinate the State's efforts towards implementing the Affordable Care Act. My Administration will continue this work and stands ready to implement the Affordable Care Act if its provisions are ultimately upheld.

For all these reasons, committing New Jersey to the establishment of a statewide exchange under the provisions of this bill is premature. Accordingly, pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2171 (Second Reprint) without my approval.

Respectfully,

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/s/Chris Christie  
Governor

Attest:

/s/Charles B. McKenna  
Chief Counsel to the Governor