



# State of New York

## Executive Chamber

No. 167

### EXECUTIVE ORDER

#### BAN ON INSURERS THAT WITHDRAW FROM NY STATE OF HEALTH, NEW YORK'S OFFICIAL HEALTH PLAN MARKETPLACE

**WHEREAS**, the House of Representatives has recently passed the American Health Care Act, which would reduce financial assistance for health insurance coverage, particularly for people with low or moderate incomes.

**WHEREAS**, the American Health Care Act will be disastrous for New York in that it will leave 2.7 million New Yorkers without health care coverage, cut \$4.7 billion from the State's Medicaid budget, put at risk 7 million people who rely on Medicaid services and other programs created under the Affordable Care Act, and threaten the entire New York State health care system which serves 19.5 million New Yorkers.

**WHEREAS**, the American Health Care Act would also enable insurers to charge more for people with preexisting conditions in some states, rolling back a key achievement of the Affordable Care Act, removing protections for people with pre-existing conditions, and resulting in individuals paying high premiums, and forcing those who cannot afford it to lose coverage.

**WHEREAS**, New York established NY State of Health, the state's official health plan marketplace, in accordance with the Affordable Care Act to lower premiums for individuals and decrease the number of uninsured New Yorkers.

**WHEREAS**, since NY State of Health became operational in 2013, the uninsured rate in New York has been cut in half from 10 percent to 5 percent, the lowest level in decades, and the number of individuals who purchase insurance has increased by 270 percent.

**WHEREAS**, 3.6 million New Yorkers, 18 percent of the State's population, are enrolled in affordable health insurance through NY State of Health in a continuum of programs based on household income and other eligibility criteria including Qualified Health Plans, Medicaid, the Essential Plan and Child Health Plus.

**WHEREAS**, New Yorkers must enroll in health insurance through NY State of Health in order to receive an estimated \$400 million annually in federal financial assistance to reduce premiums, as well as cost sharing credits that reduce the cost of health care services.

**WHEREAS**, the American Health Care Act, along with statements made by elected representatives in Washington, D.C., has created uncertainty in the health insurance market that has the potential to cause unnecessary price increases and other adverse impacts on New Yorkers.

**WHEREAS**, withdrawal by insurers from the Individual Marketplace would have a significant and detrimental impact on hundreds of thousands of New Yorkers and is grossly irresponsible, as it puts the health of our most vulnerable New Yorkers at risk.

**WHEREAS**, it is therefore critical that the State of New York take action to ensure that New Yorkers have uninterrupted access to affordable health insurance coverage.

**NOW, THEREFORE, I, ANDREW M. CUOMO**, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

## **I. DEFINITIONS**

- A.** "Affected State Entities" means (i) all agencies and departments over which the Governor has executive authority, and (ii) all public-benefit corporations, public authorities, boards, and commissions, for which the Governor appoints the Chair, the Chief Executive, or the majority of Board Members, except for the Port Authority of New York and New Jersey.
- B.** "Commissioner" means the Commissioner of Health of the State of New York.
- C.** "Department" means the Department of Health of the State of New York.
- D.** "Insurer" means an insurer, and any affiliates of such insurer, that is licensed to write accident and health insurance pursuant to Article 32 of the Insurance Law; a corporation organized pursuant to Article 43 of the Insurance Law; or a health maintenance organization certified pursuant to Article 44 of the Public Health Law.
- E.** "Marketplace" means the Individual Marketplace within NY State of Health, The Official Health Plan Marketplace located within the Department. Pursuant to the federal Patient Protection and Affordable Care Act (Affordable Care Act), the Individual Marketplace qualifies eligible individuals and families to buy affordable qualified health plans and access to federal financial assistance to pay for such coverage.

## **II. PUBLICLY AVAILABLE LIST OF INSURERS**

- A.** The Commissioner is hereby directed to notify Marketplace insurers that on or before September 1 of each year, or an alternative date as specified by the Commissioner, each insurer intending to withdraw from the Marketplace must notify the Marketplace of its intention to withdraw from offering qualified health plans on the Marketplace for the following plan year.
- B.** Upon receipt of such notice, the Commissioner shall provide to the particular insurer written notice of the Commissioner's intent to include the insurer on a publicly available list of insurers that have provided notice of their intent to withdraw from the Marketplace. Insurers shall have a period of 30 days from receipt of the Commissioner's notice to present the Commissioner with evidence that the insurer has not withdrawn from the Marketplace.
- C.** The publicly available list of insurers that have provided a notice of intent to withdraw from the Marketplace shall be posted on the website of the Department. Where, pursuant to Section II (B) above, the Commissioner makes a good faith determination that the insurer has not withdrawn from the Marketplace, the Commissioner shall not include the insurer on the list.
- D.** The Commissioner shall notify an insurer that has been included on the Commissioner's list that the insurer may request removal from the list by submitting written evidence to the Commissioner within 30 days of the Commissioner's publication of the list on the Department's website that the insurer has not withdrawn from the Marketplace. If the

Commissioner makes a good faith determination that the insurer provides coverage on the Individual Marketplace, the Commissioner shall remove the insurer from the list.

### III. PROHIBITION ON CONTRACTING BY AFFECTED STATE ENTITIES

All Affected State Entities are hereby directed not to enter into any new contracts or extend existing contracts with any insurer that is included on the Commissioner's list pursuant to Section II above.

### IV. NO FURTHER PARTICIPATION IN OTHER MARKETPLACE PROGRAMS

The Department is hereby directed not to permit any insurer that is included on the Commissioner's list pursuant to Section II above, having withdrawn from the Marketplace, from offering plans in any other program offered on the Marketplace, including Medicaid, Child Health Plus, and the Essential Plan.

### V. COMMISSIONER'S DISCRETION

Notwithstanding Sections III and IV above, Affected State Entities and the Marketplace may enter into or extend a contract for services with an insurer on the Commissioner's list but only when the head of the Affected State Entity or Marketplace makes a written determination that the services to be provided by such insurer are necessary to the performance of an essential state function and that such contract is otherwise in the best interests of the State. Such written determination shall be provided to the Secretary to the Governor and the Counsel to the Governor not fewer than 10 days prior to the date that the Affected State Entity or the Marketplace enters into or extends such contract.

FURTHER, this Order shall take effect immediately.



BY THE GOVERNOR

*Mr. C*

Secretary to the Governor

G I V E N under my hand and the Privy Seal of the  
State in the City of Albany this ninth  
day of June in the year two thousand  
seventeen.

A handwritten signature in black ink, appearing to read "A. Cuomo".