



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
www.hawaii.gov/dcca

KEALI'I S. LOPEZ  
DIRECTOR

EVERETT KANESHIGE  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Monday, March 21, 2011  
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 1348, S.D. 2, H.D. 1 – RELATING TO THE  
HAWAII HEALTH INSURANCE EXCHANGE.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department supports this bill, with requested amendments. The bill creates the initial framework to establish a health insurance exchange for Hawaii.

Under the Patient Protection and Affordable Care Act ("PPACA"), the Secretary of Health and Human Services ("HHS") is scheduled to determine Hawaii's ability to create an exchange in 2013 and the exchange must be up and running by 2014. Given the size of the task, we believe implementation should start soon and the first step is establishing the statutory framework for the exchange.

The bill proposes to establish a nonprofit organization to operate the exchange. We understand that using private sector employees affords greater flexibility to the exchange. However, we should point out that under PPACA, the exchange does the

following things: (a) certify, recertify, and decertify health plans; and (b) certify exemptions from the individual purchase mandate under PPACA.

Also, in its current form, the bill relies upon the Health Insurance Exchange Task Force to make recommendations to the 2012 Legislature regarding the qualification of the board and the operation of the exchange. In reviewing the timeframe set forth by HHS to establish an exchange, the additional level I and level II establishment grant opportunities and the requirements that must be met before the State can apply for these grants; it is advisable not to defer the establishment of a board of directors until 2012. With the establishment of a board, they can hire an executive director and begin implementation. Otherwise, implementation may be delayed and it may be difficult to meet the federal deadlines.

Based upon the concerns noted, we request the following amendments:

- 1) Create an interim board to start the establishment of the exchange;
- 2) Designate the Insurance Commissioner to determine the eligibility for inclusion of health insurers and health plans in the exchange;
- 3) Designate the Department of Human Services to determine the eligibility for applicants in Medicaid and the children's health insurance program to purchase health plans from the exchange;
- 4) Allows for the hiring of temporary staff; and
- 5) Create a new chapter instead of a new article in Chapter 431.

Attached is a proposed H.D. 2.

We thank this Committee for the opportunity to present testimony on this matter.

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# A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. This Act shall be known and may be cited as the "Hawaii Health Insurance Exchange Act".

SECTION 2. The federal Patient Protection and Affordable Care Act of 2010 provides for the establishment by January 1, 2014, of health insurance exchanges in every state to connect buyers and sellers of health insurance and to facilitate the purchase and sale of federally qualified health insurance plans. The intent of the health insurance exchange is to reduce the number of uninsured individuals, provide a transparent marketplace, conduct consumer education, and assist individuals in gaining access to assistance programs, premium assistance tax credits, and cost-share reductions.

The legislature finds that, largely because of Hawaii's current prepaid health care act, chapter 393, Hawaii Revised Statutes, the State already enjoys an overall healthier population, lower uninsured rates, and lower premium costs than

mainland states. The prepaid health care act has been and continues to be successful; it is imperative that Hawaii's health insurance exchange work in tandem with the prepaid health care act to preserve its existing benefits for the people of the State.

The legislature further finds that the people of Hawaii will be best served by a health insurance exchange that is operated locally in Hawaii. Therefore, this Act provides the framework for a private, nonprofit health exchange that conforms to the requirements of the federal law and is responsive to the unique needs and circumstances of the State.

The legislature notes that the State is already in receipt of a federal grant to plan for the design and implementation of a Hawaii-based health insurance exchange and, pursuant to federal domestic assistance grant number 93:525, a task force has been convened for this purpose. This Act establishes an interim board of directors to be appointed by the governor upon recommendation of the insurance commissioner. The interim board shall work within the policy framework of this Act to propose legislation to the 2012 legislature implementing a Hawaii health insurance exchange, to be known as the Hawaii health connector, to ensure the State's compliance with the federal act. Pursuant

to recommendations of the task force, the legislature is committed to providing policy direction and operational guidelines as the State works toward implementing a fully functional health insurance exchange to meet the federally-mandated 2014 implementation deadline.

Recently the United States Department of Health and Human Services issued a request for proposals from states for assistance in establishing state health insurance exchanges. The legislature finds that moving forward now with an enabling statute is the prudent course of action to maximize opportunities to take advantage of forthcoming federal moneys. The framework established by this Act will allow future legislatures to follow the most appropriate course in implementing the health insurance exchange.

SECTION 3. The Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER . HAWAII HEALTH INSURANCE EXCHANGE**

**§ -1 Definitions.** As used in this article:

"Board" means the board of directors of the Hawaii health connector.

"Commissioner" means the insurance commissioner of the department of commerce and consumer affairs.

"Connector" means the Hawaii health insurance exchange, known as the Hawaii health connector, established by section -2.

"Federal act" means the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and any amendments to, or regulations or guidance issued under, those Acts.

"Insurer" means any person or entity that issues a policy of accident and health or sickness insurance subject to article 10A of chapter 431, or chapters 432 or 432D.

"Interim board" means the interim board of directors of the Hawaii health connector.

"Qualified plan" means a health benefit plan offered by an insurer that meets the criteria for certification described in section 1311(c) of the federal act or a dental benefit plan as described in section 1311(d)(2)(B)(ii) of the federal act.

"Secretary" means the Secretary of the United States Department of Health and Human Services.

§ -2 Establishment of the Hawaii health insurance

exchange; purpose. (a) There is established the Hawaii health insurance exchange, a Hawaii nonprofit organization, to be known as the Hawaii health connector. The connector shall not be an agency of the State and shall not be subject to laws or rules regulating rulemaking, public employment, or public procurement. The connector shall be a Hawaii nonprofit corporation organized and governed pursuant to chapter 414D, the Hawaii nonprofit corporations act.

(b) The purposes of the connector shall include:

- (1) Facilitating the purchase and sale of qualified plans in compliance with the federal act;
- (2) Connecting consumers to the information necessary to make informed health care choices; and
- (3) Enabling consumers to purchase coverage and manage health and dental plans electronically.

(c) The connector shall serve as a clearinghouse for information on all qualified plans listed or included in the connector.

(d) The connector shall be audited annually by the state auditor and shall submit the results of each annual audit to the commissioner no later than thirty days after the connector

receives the results. The connector shall retain all annual audits on file, along with any documents, papers, books, records, and other evidence that is pertinent to its budget and operations for a period of ten years and shall permit the state auditor, the commissioner, the state legislature, or their authorized representatives to have access to, inspect, and make copies of any documents retained pursuant to this subsection.

(e) The board of directors of the connector shall submit an annual report to the legislature that shall include the most recent audit report received pursuant to subsection (d) no later than twenty days prior to the convening of each regular session of the legislature.

(f) The connector shall offer consumer assistance in a culturally and linguistically appropriate manner.

(g) The connector shall make qualified plans available to qualified individuals and qualified employers beginning with effective dates on or before January 1, 2014.

§ -3 **Funding.** The connector may receive contributions, grants, endowments, fees, or gifts in cash or otherwise from public and private sources including corporations, businesses, foundations, governments, individuals, and other sources subject to rules adopted by the board. The State may appropriate moneys



to the connector. As required by Section 1311(d)(5)(A) of the federal act, the exchange shall be self-sustaining by January 1, 2015, and may charge assessments or user fees to participating health carriers, or may otherwise generate funding to support its operations. Moneys received by or under the supervision of the connector shall not be placed into the state treasury and the State shall not administer any moneys of the connector nor be responsible for the financial operations or solvency of the connector.

§ -4 **Board of directors; composition; operation.** (a)

The Hawaii health connector shall be a nonprofit entity governed by a board of directors that shall be comprised of fifteen members appointed by the governor and with the advice and consent of the senate pursuant to HRS 26-34; provided that the governor shall submit nominations to the senate for advice and consent no later than February 1, 2012; and provided further that the senate shall timely advise and consent to nominations for terms to begin July 1, 2012. Members of the interim board shall be eligible for appointment to the board.

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders including consumers, employers, and insurers; the director of commerce and

consumer affairs or the director's designee the director of health or the director's designee, the director of human services or the director's designee, and the director of labor and industrial relations or the director's designee shall be ex-officio, voting members of the board.

(c) Board members shall serve staggered terms and the interim board shall recommend an appropriate schedule for staggered terms; provided that this subsection shall not apply to ex-officio members, who shall serve during their entire term of office.

(d) The board shall adopt policies prohibiting conflicts of interest and procedures for recusal of a member in the case of an actual or potential conflict of interest, including policies prohibiting a member from taking part in official action on any matter in which the member had any financial involvement or interest prior to the commencement of service on the board. Members of the board may retain private counsel for matters relating to service on the board according to rules recommended by the board.

(e) The board shall manage the budget of the connector according to generally accepted accounting principles and a plan

for financial organization adopted by the legislature based on recommendations of the interim board.

(f) The board shall maintain transparency of board actions, including public disclosure and posting of board minutes on the connector's website according to provisions adopted by the legislature based on recommendations of the interim board.

§ -5 **Officers and employees of the Hawaii health connector.** (a) The board shall appoint officers and employ staff, including an executive director who shall be responsible for the day-to-day operations and management of the exchange, according to a staffing plan that shall be submitted to the legislature. Officers and employees of the board shall not be employees of the State and shall serve at the pleasure of the board.

(b) The board may hire consultants, outside experts, and professional specialists as needed for its efficient operations.

§ -6 **Eligibility of health insurers and plans.** (a) the commissioner shall determine eligibility for the inclusion of health insurers and plans; provided that all qualified plans that apply for inclusion shall be included in the connector.

§ -7 **Eligibility determination for applicants in Medicaid adult and children's health insurance program.** The Department of Human Services shall be the agency to determine qualifications and eligibility of individuals to participate in Medicaid adult or children's health insurance programs. The agency's determination of eligibility shall enable qualified individuals and authorized adults on behalf of qualified children to purchase qualified plans from the connector. Department of Human Services shall verify for the connector individuals and children able to participate in subsidized plans purchased through the connector.

§ -8 **Oversight; rate regulation.** (a) The commissioner shall retain full regulatory jurisdiction pursuant to the authority granted to the commissioner by part II of article 2 of chapter 431 over all insurers and qualified plans included in the Hawaii health connector.

(b) Rate regulation for qualified plans included in the Hawaii health connector shall be pursuant to applicable state and federal law.

§ -9 **Effect on the prepaid health care act.** Nothing in this article shall in any manner diminish or limit the consumer protections contained in or alter the provisions of chapter 393.

§ -10 Rules. The board shall adopt rules to implement the provisions of this article. Rules adopted pursuant to this section shall not conflict with or prevent the application of regulations promulgated by the Secretary under the federal act.

SECTION 4. (a) There shall be an interim board of the Hawaii health connector in the department of commerce and consumer affairs for administrative purposes only that shall recommend to the legislature policies and procedures to further define and operate the Hawaii health connector. The interim board shall consist of fifteen members who are representative of the stakeholders in the Hawaii health connector and shall include members with expertise in the financial, health care, information technology, organizational management, and nonprofit industries. Members of the interim board shall be designated by the governor based upon recommendations by the commissioner and to the extent possible shall come from the members of the task force established in the department of commerce and consumer affairs pursuant to federal domestic grant number 93:525 and shall include:

- (1) Three members representing health or dental insurance plans that provide insurance throughout the State;

- (2) One member representing a health care provider group that is located on a neighbor island and that employs a wide range of licensed health care providers including physicians, nurse practitioners, nurses, and physician assistants;
- (3) One representative of a hospital trade association;
- (4) One representative of an organization that represents health care consumers;
- (5) One representative from a labor-management committee organization;
- (6) One representative of a native Hawaiian health care organization;
- (7) One representative of an organization representing federally qualified health care centers;
- (8) One representative of an organization representing businesses or employers;
- (9) One representative of the Hawaii health information exchange;
- (10) The director of health or the director's designee;
- (11) The director of human services or the director's designee;

- (12) The director of labor and industrial relations or the director's designee; and
- (13) The director of commerce and consumer affairs or the director's designee.

The interim board may form working groups that include members of the interim board and other persons as necessary to assist with the implementation of the Hawaii health connector.

(b) The interim board shall make recommendations to the legislature for:

- (1) A sustainable, fee-based financing mechanism that may incorporate private and public funding for initial start-up costs, but that shall achieve financial self-sustainability by January 1, 2015, as required by federal law;
- (2) Measures to ensure transparency of the Hawaii health connector's finances and for public disclosure of funding sources and expenditures;
- (3) Procedures for the application for inclusion by insurers in the Hawaii health connector; provided that all applicant plans that are qualified according to the requirements of federal law and regulations and national quality measures shall be included;

- (4) A phased process of including qualified plans, which may include initially prioritizing qualified plans that target individuals and small businesses over large group plans;
- (5) Policies and procedures to ensure continuity of care for consumers transitioning between carriers, including between publicly funded coverage and private qualified plans; provided that the interim board shall form a subgroup to make recommendations for the integration of state subsidized plans with the Hawaii health connector to ensure that consumers who move between publicly funded coverage and unsubsidized private coverage are able to maintain continuity of coverage and continuity of care;
- (6) Measures to increase transparency and opportunities for public participation in determinations of insurer eligibility for inclusion in the Hawaii health connector and the regulation of insurers and qualified plans;
- (7) Criteria for determining whether a conflict of interest exists for a board member and policies and procedures for avoiding or mitigating conflicts of



interest, including when recusal of the board member is appropriate and when a board member shall be entitled to private counsel for a matter relating to the board;

- (8) A schedule of the terms of board members including provisions for staggering terms to ensure continuity;
  - (9) A staffing plan including organization, duties, wages, and responsibilities of employees of the board of directors of the Hawaii health connector and criteria for hiring contractors, consultants, and outside experts;
  - (10) A plan of financial organization of the board of the Hawaii health connector and requirements for financial management by its board; and
  - (11) Policies for the use of electronic media to publicly disseminate information, increase transparency, and allow members of the public to manage their health or dental plans, including by the online purchase of a qualified plan.
- (c) The interim board shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature, no later than twenty days prior

to the convening of the 2012 regular session, and shall participate in joint informational sessions upon the request of the legislature.

(d) At the request of the interim board, the department of commerce and consumer affairs may employ temporary staff not subject to chapter 76, Hawaii Revised Statutes, to assist in carrying out the requirements of this section including:

- (1) A project manager or interim executive director;
- (2) Information technology professionals to begin construction of the internet-based Hawaii health connector system;
- (3) A grant writer to pursue additional sources of federal or private funding to assist the operations of the interim board; and
- (4) Any other staff that the interim board or the commissioner deems necessary to carry out the duties of the interim board.

(e) The legislative reference bureau shall assist the interim board in preparing its findings, recommendations, and proposed legislation; provided that the chairperson of the interim board shall submit the interim board's proposals to the legislative reference bureau for drafting no later than November

1, 2011, for the report to the 2012 regular session of the legislature.

(f) The interim board shall cease to exist on June 30, 2012.

SECTION 5. There is appropriated out of federal funds received pursuant to federal domestic assistance grant number 93:525 the sum of \$                    or so much thereof as may be necessary for fiscal year 2011-2012 to support the operations of the interim board of the Hawaii health connector.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act. The disbursement made pursuant to this Act shall not be subject to chapter 103D.

SECTION 6. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. This Act shall take effect upon approval.

**Report Title:**

Hawaii Health Insurance Exchange

**Description:**

Establishes the Hawaii health connector to create a health insurance exchange pursuant to the federal Patient Protection and Affordable Care Act of 2010; creates Hawaii health insurance exchange council under a board of directors; creates board of directors; creates an interim board to recommend policies and procedures to implement the governance of the health insurance exchange. ( HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

# HDS

Hawaii Dental Service

March 18, 2011

The Honorable Robert N. Herkes  
Hawaii State House of Representatives  
House Committee on Consumer Protection & Commerce

Re: SB 1348, SD 2, HD 1- Relating to the Hawaii Health Insurance Exchange

Dear Chair Herkes and Members of the Committee:

Hawaii Dental Service (HDS) appreciates the opportunity to testify on SB 1348, SD 2, HD 1. We support the bill with an amendment, directed at including stand alone dental plans as one of the product offerings in the Health Insurance Exchange. We felt that the amendment we previously submitted may have been ambiguous and are resubmitting with an amendment which will achieve the same goal with clearer language. The amendment defines "Qualified dental plan" and includes Qualified dental plans in the offerings of the Hawaii Insurance Exchange. We have attached a copy of the bill with our proposed amendments to this testimony.

HDS is proposing the amendments for the following reasons:

- One of the stated purposes of the federal Patient Protection and Affordable Care Act (PPACA) is to offer a variety of plans to make healthcare benefits affordable and offer a variety of choices to the consumer. Giving the consumer the option of choosing a standalone dental plan is consistent with the intent and purpose of the PPACA.
- The intent of the PPACA is to maintain the choices currently available in the marketplace and expand options if possible. Currently HDS provides dental benefits to over 60% of the Hawaii commercial marketplace. Only 11% of these people obtain their dental benefits in conjunction with their medical benefits. All other HDS members receive their HDS coverage through standalone policies, either directly with HDS or via their employer. Thus providing standalone dental as an option in the Exchange supports the choices currently available in the marketplace.
- The PPACA language requires that States allow "limited scope dental benefits" plans to offer their plans through the Exchange.

We appreciate the opportunity to provide these comments and request that our amendment be incorporated in SB 1348, SD 2, HD1. Thank you for the opportunity to testify today.

Sincerely,



Faye W. Kurren  
President and CEO

Hawaii Dental Service  
700 Bishop Street, Suite 700  
Honolulu, Hawaii 96813-4196

Telephone: 808-521-1431  
Toll Free: 800-232-2533  
Fax: 808-529-9368

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## A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. This Act shall be known and may be cited as the "Hawaii Health Insurance Exchange Act".

SECTION 2. The federal Patient Protection and Affordable Care Act of 2010 provides for the establishment by January 1, 2014, of health insurance exchanges in every state to connect buyers and sellers of health ~~and dental~~ insurance and to facilitate the purchase and sale of federally-qualified health insurance plans ~~and qualified dental plans~~. The intent of the health insurance exchange is to reduce the number of uninsured individuals, provide a transparent marketplace, conduct consumer education, and assist individuals in gaining access to assistance programs, premium assistance tax credits, and cost-share reductions.

The legislature finds that, largely because of Hawaii's current prepaid health care act, chapter 393, Hawaii Revised Statutes, the State already enjoys an overall healthier

population, lower uninsured rates, and lower premium costs than mainland states. The prepaid health care act has been and continues to be successful; it is imperative that Hawaii's health insurance exchange work in tandem with the prepaid health care act to preserve its existing benefits for the people of the State.

The legislature further finds that the people of Hawaii will be best served by a health insurance exchange that is operated locally in Hawaii. Therefore, this Act provides the framework for a private, nonprofit health exchange that conforms to the requirements of the federal law and is responsive to the unique needs and circumstances of the State.

The legislature notes that the State is already in receipt of a federal grant to plan for the design and implementation of a Hawaii-based health insurance exchange and, pursuant to federal domestic assistance grant number 93:525, a task force has been convened for this purpose. This Act formally authorizes the task force to work collaboratively with stakeholders and within the policy framework of this Act to propose legislation to the 2012 legislature implementing a Hawaii health insurance exchange, to be known as the Hawaii health connector, to ensure the State's compliance with the federal act. Pursuant to recommendations of the task force, the legislature is committed to providing policy direction and

operational guidelines as the State works toward implementing a fully functional health insurance exchange to meet the federally-mandated 2014 implementation deadline.

Recently the United States Department of Health and Human Services issued a request for proposals from states for assistance in establishing state health insurance exchanges. The legislature finds that moving forward now with an enabling statute is the prudent course of action to maximize opportunities to take advantage of forthcoming federal moneys. The framework established by this Act will allow future legislatures to follow the most appropriate course in implementing the health insurance exchange.

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**"ARTICLE**

**HAWAII HEALTH INSURANCE EXCHANGE**

**§431: -101 Definitions.** As used in this article:

"Board" means the board of directors of the Hawaii health connector.

"Commissioner" means the insurance commissioner of the State.



"Connector" means the Hawaii health insurance exchange, known as the Hawaii health connector, established by section 431: -102.

"Federal act" means the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and any amendments to, or regulations or guidance issued under, those Acts.

"Insurer" means any person or entity that issues a policy of accident and health or sickness insurance subject to article 10A of chapter 431, or chapters 432 or 432D, or dental benefits subject to chapter 433.

"Qualified health plan" means a health benefit plan offered by an insurer that meets the criteria for certification described in Section 1311(c) of the Federal Act and a dental benefit plan as described in Section 1311(c)(2)(D) of the Federal Act.

Qualified dental plan means a dental benefit plan as described in section 1311(d)(2)(b)(i) of the Federal Act.

"Secretary" means the Secretary of the United States Department of Health and Human Services.

"Task force" means the state health insurance exchange task force established within the department of commerce and consumer

affairs in compliance with federal domestic assistance grant number 93:525.

**§431: -102 Establishment of the Hawaii health insurance exchange; purpose.** (a) There is established the Hawaii health insurance exchange, a Hawaii nonprofit organization, to be known as the Hawaii health connector. The connector is not an entity of the State and shall not be subject to laws or rules regulating rulemaking, public employment, or public procurement.

(b) The purposes of the connector shall include:

- (1) Facilitating the purchase and sale of qualified health plans ~~and qualified dental plans~~ in compliance with the federal act;
- (2) Connecting consumers to the information necessary to make informed health care choices; and
- (3) Enabling consumers to purchase coverage and manage health ~~and dental~~ plans electronically.

(c) The connector shall serve as a clearinghouse for information on all qualified health plans ~~and qualified dental plans~~ listed or included in the connector. The connector shall determine eligibility for the inclusion of health ~~and dental~~ plans according to the recommendation of the insurance commissioner; provided that all qualified health plans ~~and qualified dental plans~~ that apply for inclusion shall be included in the connector.

(d) The connector shall be audited annually by the state auditor and shall submit the results of each annual audit to the insurance commissioner no later than thirty days after the connector receives the results. The connector shall retain all annual audits on file, along with any documents, papers, books, records, and other evidence that is pertinent to its budget and operations for a period of three years and shall permit the state auditor, the insurance commissioner, the legislature, or their authorized representatives to have access to, inspect, and make copies of any documents retained pursuant to this subsection.

(e) The board of directors of the connector shall submit an annual report to the legislature that shall include the most recent audit report received pursuant to subsection (d) no later than twenty days prior to the convening of each regular session of the legislature.

**§431: -103 Funding.** The connector may receive contributions, grants, endowments, fees, or gifts in cash or otherwise from public and private sources including corporations, businesses, foundations, governments, individuals, and other sources subject to rules adopted by the board. The State may appropriate moneys to the connector. As required by Section 1311(d)(5)(A) of the federal act, the exchange shall be self-sustaining by January 1, 2015, and may charge assessments

or user fees to participating health ~~and dental~~ carriers, or may otherwise generate funding to support its operations. Moneys received by or under the supervision of the connector shall not be placed into the state treasury and the State shall not administer any moneys of the connector nor be responsible for the financial operations or solvency of the connector.

**§431: -104 Board of directors; composition; operation.**

(a) The Hawaii health connector shall be a nonprofit entity governed by a board of directors that shall be comprised of fifteen members appointed subject to section 26-34. The Hawaii health connector task force shall recommend qualifications and requirements for board members, which shall include high ethical standards and knowledge or experience in the fields of health care, health insurance, business, or finance.

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders including consumers, employers, health care providers, insurers, ~~dental~~ ~~benefits providers~~ and government entities; provided that if representatives of government or public bodies are appointed to the board in other than an ex officio capacity, the majority of board members shall represent the interests of the private sector.

(c) Board members shall serve staggered terms and the task force shall recommend an appropriate schedule for staggered terms.

(d) The task force shall recommend policies prohibiting conflicts of interest and procedures for recusal of a member in the case of an actual or potential conflict of interest, including policies prohibiting a member from taking part in official action on any matter in which the member had any financial involvement or interest prior to the commencement of service on the board. Members of the board may retain private counsel for matters relating to service on the board according to rules recommended by the task force.

(e) The board shall manage the budget of the connector according to generally accepted accounting principles and a plan for financial organization adopted by the legislature based on recommendations of the task force.

(f) The board shall maintain transparency of board actions, including public disclosure and posting of board minutes on the connector's website according to provisions adopted by the legislature based on recommendations of the task force.

**§431: -105 Officers and employees of the Hawaii health connector.** (a) The board shall appoint and employ officers and employees, including an executive director who shall be

responsible for the day-to-day operations and management of the exchange, according to a staffing plan recommended by the task force and adopted by the legislature. Officers and employees of the board shall not be employees of the State and shall serve at the pleasure of the board.

(b) Subject to approval of the staffing plan by the 2012 legislature based on recommendations of the task force, the board may hire consultants, outside experts, and professional specialists as needed for its efficient operations.

**§431: -106 Oversight; rate regulation.** (a) The insurance commissioner shall retain full regulatory jurisdiction pursuant to the authority granted to the commissioner by part II of article 2 of chapter 431 over all insurers and qualified health plans included in the Hawaii health connector.

(b) Rate regulation for qualified health plans included in the Hawaii health connector shall be pursuant to applicable state and federal law.

**§431: -107 Effect on the prepaid health care act.** Nothing in this article shall in any manner diminish or limit the consumer protections contained in or alter the provisions of chapter 393.

**§431: -108 Rules.** The board shall adopt rules to implement the provisions of this article. Rules adopted pursuant to this section shall not conflict with or prevent the

application of regulations promulgated by the Secretary under the federal act."

SECTION 4. (a) The state health insurance exchange task force established pursuant to federal domestic assistance grant number 93:525 in the department of commerce and consumer affairs for administrative purposes shall recommend to the legislature policies and procedures to further define and operate the Hawaii health connector.

(b) The task force shall make recommendations to the legislature for:

- (1) Qualifications of the members of the board of directors of the Hawaii health connector, which shall include requirements for equitable representation across the stakeholder community, including consumers, employers, insurers, and government entities, as well as requirements for knowledge and experience in the fields of health care, insurance, or finance;
- (2) A sustainable, fee-based financing mechanism that may incorporate private and public funding for initial start-up costs, but that shall achieve financial self-sustainability by January 1, 2015, as required by federal law;

- (3) Measures to ensure transparency of the Hawaii health connector's finances and for public disclosure of funding sources and expenditures;
- (4) Procedures for the application for inclusion by insurers in the Hawaii health connector; provided that all applicant health ~~and dental~~ plans that are qualified according to the requirements of federal law and regulations and national quality measures shall be included;
- (5) A phased process of including qualified plans, which may include initially prioritizing qualified plans that target individuals and small businesses over large group plans;
- (6) Policies and procedures to ensure continuity of care for consumers transitioning between carriers, including between publicly funded coverage and private qualified health plans ~~and non-subsidized dental plans~~; provided that the task force shall form a subgroup to make recommendations for the integration of state subsidized plans with the Hawaii health connector to ensure that consumers who move between publicly funded coverage and unsubsidized private coverage are able to maintain continuity of coverage and continuity of care;



- (7) Measures to increase transparency and opportunities for public participation in determinations of insurer eligibility for inclusion in the Hawaii health connector and the regulation of insurers and qualified health plans;
- (8) Criteria for determining whether a conflict of interest exists for a board member and policies and procedures for avoiding or mitigating conflicts of interest, including when recusal of the board member is appropriate and when a board member shall be entitled to private counsel for a matter relating to the board;
- (9) A schedule of the terms of board members including provisions for staggering terms to ensure continuity;
- (10) A staffing plan including organization, duties, wages, and responsibilities of employees of the board of directors of the Hawaii health connector and criteria for hiring contractors, consultants, and outside experts;
- (11) A plan of financial organization of the board of the Hawaii health connector and requirements for financial management by its board; and
- (12) Policies for the use of electronic media to publicly disseminate information, increase transparency, and

allow members of the public to manage their health ~~and~~  
~~dental~~ plans, including by the online purchase of a  
qualified health plan and ~~qualified dental plan~~.

(c) The task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature, no later than twenty days prior to the convening of the 2012 regular session, and shall participate in joint informational sessions upon the request of the legislature.

(d) At the request of the task force, the department of commerce and consumer affairs may employ temporary staff not subject to chapter 76, Hawaii Revised Statutes, to assist in carrying out the requirements of this section including:

- (1) A facilitator for task force meetings;
- (2) Information technology professionals to begin construction of the Internet-based Hawaii health connector system;
- (3) A grant writer to pursue additional sources of federal or private funding to assist the operations of the task force; and
- (4) Any other staff that the task force or the insurance commissioner deems necessary to carry out the duties of the task force.

(e) The legislative reference bureau shall assist the task force in preparing its findings, recommendations, and proposed

legislation; provided that the chairperson of the task force shall submit the task force's proposals to the legislative reference bureau for drafting no later than November 1, 2011, for the report to the 2012 regular session of the legislature.

(f) The task force shall cease to exist on December 31, 2012.

SECTION 5. There is appropriated out of federal funds received pursuant to federal domestic assistance grant number 93:525 the sum of \$                    or so much thereof as may be necessary for fiscal year 2011-2012 to support the operations of the state health insurance exchange task force.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 2040.

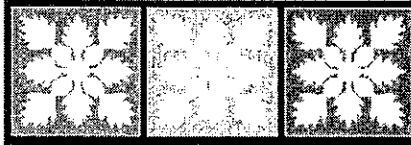
**Report Title:**

Hawaii Health Insurance Exchange

**Description:**

Establishes the Hawaii health connector to create a health insurance exchange pursuant to the federal Patient Protection and Affordable Care Act of 2010; creates Hawaii Health Insurance Exchange Council under a board of directors; creates board of directors; creates task force to recommend policies and procedures to implement the governance of the health insurance exchange. Effective July 1, 2040. (SB1348 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



## Hawaii Association of Health Plans

March 21, 2011

The Honorable Robert Herkes, Chair  
The Honorable Ryan Yamane, Vice Chair

House Committee on Consumer Protection and Commerce

*Comments*

**Re: SB 1348 SD2 HD1 – Relating to the Hawaii Health Insurance Exchange**

Dear Chair Herkes, Vice Chair Yamane and Members of the Committee:

My name is Howard Lee and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of eight (8) member organizations:

AlohaCare  
Hawaii Medical Assurance Association  
HMSA  
Hawaii-Western Management Group, Inc.

Kaiser Permanente  
MDX Hawai‘i  
University Health Alliance  
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to provide testimony on SB 1348 SD2 HD1 which would set up the framework in the state for the creation of an Exchange. The Affordable Care Act (ACA) requires that all states set up a health insurance Exchange by 2014 with the caveat that if a state has not made sufficient progress by 2013, the federal Department of Health and Human Services will take over the state’s efforts and put an Exchange in place.

While 2014 seems to be a far off date, health plans which recently were given a six-month timeframe to enact numerous consumer-related provisions under the ACA know that extensive work is needed in order to ensure the state maintains control over Hawaii’s Exchange.

HAHP plans have come to consensus on a set of guiding principles regarding Exchanges and we have attached that document. We would respectfully urge the Committee to take into account these principles in the discussions on Hawaii’s Exchange.

• AlohaCare • HMAA • HMSA • HWMG • Kaiser Permanente • MDX Hawaii • UHA • UnitedHealthcare •  
HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813  
[www.hahp.org](http://www.hahp.org)

Thank you for the opportunity to offer comments today.

Sincerely,

A handwritten signature in black ink that reads "Howard Lee". The signature is written in a cursive style with a large initial 'H' and a stylized 'L'.

Howard Lee  
President

## Hawaii Association of Health Plans Guiding Principles for a Successful Health Insurance Exchange in Hawaii

The Hawaii Association of Health Plans (HAHP) believes that the unique employer healthcare coverage environment created by Hawaii's Prepaid Health Care Act (PHCA) is valuable and worth sustaining. Together with the State's Medicaid plans and other federal programs, PHCA assures that roughly 90 percent of Hawaii residents have health plan coverage that is robust, affordable, and accessible. The Hawaii employer healthcare coverage marketplace offers:

- The least expensive and richest PPO and HMO coverage offered in the United States and overall, the best value to employers and members of any state;
- The greatest number of participating providers in any state in private health plan coverage options;
- The nation's lowest growth rate in employer-sponsored health care coverage costs over the past 20 years; and
- Robust small, medium and large employer markets with multiple competitive products which are rate regulated and guaranteed issue.

Thus, we believe that the employer-employee marketplace for health care in Hawaii does not need to be reformed, but rather may be enriched by the Affordable Care Act.

We also believe that the Affordable Care Act can help Hawaii address its coverage gap - the roughly 10 percent of Hawaii residents (primarily individuals and sole proprietors) who either cannot afford or choose not to purchase coverage - through the establishment of a health insurance Exchange. The Exchange will create a marketplace where people in Hawaii can shop for health insurance, apply for tax subsidies and enroll in health plans.

HAHP believes the following principles should guide the development of this Exchange:

- **Primary Mission.** The Exchange should supplement, but not replace, existing individual markets and offer affordable health plan options to uninsured Hawaii residents.
- **Governance.** The Exchange should be governed through an independent, transparent and non-politicized entity with a Board of Directors consisting of consumer representatives, employers, health plans, providers, and other Stakeholders.
- **Rule Making.** The Exchange should promulgate and apply rules predictably, fairly and consistently to all health plans to create a level playing field.
- **Uniform Standards.** To minimize unnecessary costs while maximizing participation, uniform federal standards and national accreditation policies should be adopted to certify Exchange participants.
- **Regulatory Efficiency.** The Exchange should avoid, where possible, duplication of State licensing, rate review and other existing regulatory functions.
- **Pricing.** To support pricing accuracy, the Exchange must develop risk adjustment and reinsurance processes that are actuarially sound.
- **Consumer affordability.** Individual plan benefit design should meet minimum Federal standards in order to provide maximum affordability.
- **Enrollment.** The affordability and viability of individual products depends upon adoption of enrollment rules that encourage consumers to obtain and maintain continuous coverage and discourage enrollment/disenrollment around high health care cost events.



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Robert Herkes, Chair

Conference Room 325  
March 21, 2011 at 2:00 p.m.

**Supporting SB 1348 SD 2 HD 1.**

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. Our members employ more than 40,000 people statewide, delivering quality care to the people of Hawaii. Thank you for this opportunity to testify in support of SB 1348 SD 2 HD 1, which establishes an insurance exchange for Hawaii.

The federal Affordable Care Act (ACA) requires each state to have an insurance exchange. Each state may create its own insurance exchange; otherwise, the federal government will create one. In Hawaii a task force to develop an insurance exchange has been established, and the Healthcare Association is represented on the task force.

SB 1348 SD 2 HD 1 creates the legal structure for an exchange and requires it to work with the task force to develop policies and the legislation necessary to comply with the ACA, while also being aware of Hawaii's Prepaid Health Care Act. Hawaii should take the opportunity to create its own exchange, rather than allow the federal government to create one, because it will enable Hawaii to pursue its own objectives while taking into consideration Hawaii's unique characteristics.

For the foregoing reasons, the Healthcare Association supports SB 1348 SD 2 HD 1.





*The Official Sponsor of Birthdays*

March 19, 2011

Committee on Consumer Protection & Commerce  
Representative Robert Herkes, Chair  
Representative Ryan Yamane, Vice Chair

**Hearing:**

March 21, 2011, 2:00 p.m.  
Hawaii State Capitol, Conference Rm. 325

**RE: SB 1348, SD2, HD1 – Relating to the Hawaii Health Insurance Exchange**

**Testimony in Strong Support**

Chair Herkes, Vice Chair Yamane, and members of the Committee on Consumer Protection & Commerce. Thank you for the opportunity to offer this testimony in strong support of SB1348, SD2, HD1, which would establish the Hawaii Health Connector to create a health insurance exchange pursuant to the recently passed federal Patient Protection and Affordable Care Act.

For over thirty years, Hawaii's prepaid health care act has served our state well. As you know, it became the model and blueprint for the nation's endeavor to reform health care. Because of our prepaid health care act, Hawaii has one of the healthiest populations and one of the lowest rates for uninsured individuals in the country. Nonetheless, Hawaii has not been immune to many of the health care challenges that the rest of the country faces and is attempting to address accessibility, quality, and cost. Although our individual health care costs are low when compared to the rest of the nation, they have been rising. These include increases in health insurance premium, co-pays, and prescription drug cost.

We see the creation of the Health Insurance Exchange as an effective way to address these and other challenges. We are certain that a well-run health insurance exchange in Hawaii will allow people to find other affordable health care options in an expanded and competitive market place.

We applaud the legislature for addressing the insurance exchange creation early on. We also support the creation of a nonprofit entity for its operation. There are certain efficiencies within a nonprofit corporation that will allow it to respond rapidly to the many changes that will be encountered as the Health Insurance Exchange evolves.

We would note for the committee that SB1348, SD2, HD1, is alignment with the Society's vision of what an effective Health Insurance Exchange should look like. It provides for consumer representation on the board thus insuring greater transparency. In addition, **Section 4. (d)** Permits DCCA to hire temporary staff outside the constraints of the civil service. **Because of short timeline to have the exchange up and running by the end of 2013, those employed by the exchange will need flexibility to respond quickly to the myriad of changes that they will most certainly encounter?**

As we move forward we have two thoughts regarding the powers that the exchange should have, and the source of sustainable funding.

**Powers** – We believe that exchange must possess the power to drive improvements in the quality of care, and generate cost savings for consumers and businesses, especially our small business community. To accomplish this, the exchange will need the authority to limit participation in the exchange, and to negotiate rates and other components of plan offerings. Specifically:

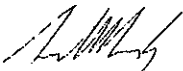
- Authority to limit the number of plans in the exchange based on established criteria;
- Ability to negotiate rates or other components of plan offering, such as provider networks, or reimbursement of transportation cost for care gives; and
- Ability to quickly remove a carrier for poor performance or unacceptable premium increases.

**Funding** – We recommend that an exchange fee be levied against all insures in the market place (not just those in the exchange). By doing so, the sustainability of the exchange is assured.

The implementation of Hawaii's Health Exchange will be critical in harmonizing the various benefits of our Prepaid Health Care Act with those of the Patient Protection and Affordable Care Act. If done correctly, our residents will experience real improvement in their ability to access, choose, and purchase comprehensive and affordable health coverage that meets their specific needs.

Thank you for the opportunity to offer this testimony here today.

Respectfully,



George S. Massengale, JD  
Director of Government Relations

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 21, 2011

The Honorable Robert N. Herkes, Chair  
The Honorable Ryan I. Yamane, Vice Chair  
House Committee on Consumer Protection and Commerce

**Re: SB 1348 SD2, HD1 – Relating to the Hawaii Health Insurance Exchange**

Dear Chair Herkes, Vice Chair Yamane and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1348 SD2, HD1 which would establish the Hawaii Health Connector. HMSA supports this Bill.

Pursuant to the federal Affordable Care Act (ACA), by January 1, 2014, each state must have created a fully operable health insurance exchange, through which individuals will “shop” for their health plans. If, by January 2013, a state has not made sufficient progress in creating its exchange, the U. S. Department of Health and Human Services (HHS) will move to establish an exchange for that state, effectively taking over the state’s health care system.

Given that expedited timetable, prudence dictates this State establishes an exchange that has sufficient flexibility so that it may employ staff; develop and execute rules and procedures; contract for necessary services such as creating a website through which the public will shop the Exchange; and procure the plans for inclusion in the Exchange. We are concerned that a State agency subject to civil service, procurement, and administrative statutes and rules will not be able to successfully meet that challenge. This Bill offers an alternative model - a nonprofit agency to be known as the Hawaii Health Connector – which shall serve as Hawaii’s health exchange.

While this independent Connector would be responsive to the exchange mandate of the ACA, the system also must be responsible to the State, which ultimately is accountable to HHS. To address this, this Bill provides for an already established State health insurance task force, chaired by the Insurance Commissioner, to propose details to the 2012 Legislature on the governance of the Connector, administration of the Connector, the Connector’s role and responsibilities, short and long-term financing mechanisms for the Connector, and policies governing the inclusion of plans offered via the Connector.

This measure also provides for the use of already secured federal monies to provide staffing for the task force and to procure resources needed to expedite the establishment of the Connector and its purposes. This is critical for Hawaii’s successfully meeting the ACA’s deadlines. Thank you for the opportunity to testify today in support of SB 1348 SD2, HD1.

Sincerely,

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

Jennifer Diesman  
Vice President, Government Relations

Hawaii Medical Service Association

818 Keeaunoku St. • P.O. Box 860  
Honolulu, HI 96808-0860

(808) 948-5110

Branch offices located on  
Hawaii, Kauai and Maui

Internet address  
[www.HMSA.com](http://www.HMSA.com)



**HAWAII MEDICAL ASSOCIATION**

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814  
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

**Mon**

**Monday, March 21, 2011, 2:00 pm, Conference Room 325**

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Robert N. Herkes, Chair  
Rep. Ryan I. Yamane, Vice Chair

From: Hawaii Medical Association  
Dr. Morris Mitsunaga, MD, President  
Linda Rasmussen, MD, Legislative Co-Chair  
Dr. Joseph Zobian, MD, Legislative Co-Chair  
Dr. Christopher Flanders, DO, Executive Director  
Lauren Zirbel, Community and Government Relations

Re: SB 1348 SD 2 HD 1 RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE.

In Support

Chairs & Committee Members:

Hawaii Medical Association supports this measure. The HMA is very grateful for the inclusion of health care providers under the constitution of the board.

HMA recognizes that it is vitally important to create a well functioning Hawaii health benefit exchange.

We hope that the provider community will have a meaningful place in the discussion about which benefits are necessary for patients to lead healthy and productive lives and how we can improve access to affordable health insurance for self employed and part-time workers.

Thank you for the opportunity to testify.

**OFFICERS**

**PRESIDENT - MORRIS MITSUNAGA, MD PRESIDENT-ELECT -ROGER KIMURA, MD  
SECRETARY - THOMAS KOSASA, MD IMMEDIATE PAST PRESIDENT - DR. ROBERT C. MARVIT, MD TREASURER  
- STEPHEN KEMBLE, MD EXECUTIVE DIRECTOR - CHRISTOPHER FLANDERS, DO**