

S.B. NO. 2894

JAN 27 2016

A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE.

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

1 SECTION 1. **Findings and purpose.** The significant benefits
2 of Hawaii's Prepaid Health Care Act, enacted in 1974, are
3 evident in Hawaii's high rate of insured residents, which is
4 among the highest in the nation. Similarly, one of the key
5 purposes of the federal Patient Protection and Affordable Care
6 Act, as amended, (Affordable Care Act) is to lower the uninsured
7 rate by expanding public and private insurance coverage.

8 The Affordable Care Act required the establishment of
9 health insurance exchanges where individuals and small
10 businesses can compare and purchase private insurance plans.
11 The viability of state-based health insurance exchanges,
12 however, has been a challenge across the country, particularly
13 in small states with low numbers of uninsured residents.

14 Due to the small number of uninsured residents in Hawaii,
15 Hawaii has not been able to maintain a financially self-
16 sustaining health insurance exchange. Consequently, the Centers
17 for Medicare and Medicaid Services (CMS) found that Hawaii's
18 exchange, the Hawaii Health Connector (HHC), was not financially

1 self-sustainable by January 1, 2015, as required by the
2 Affordable Care Act.

3 Hawaii was faced with losing some of the federal funds for
4 programs under the U.S. Department of Health and Human Services
5 because the HHC was not compliant with several provisions of the
6 Affordable Care Act. The non-compliance included unresolved
7 information technology issues, a non-integrated eligibility
8 enrollment system, and lack of financial sustainability. To
9 prevent the loss of these funds, CMS initiated discussions with
10 Governor Ige to transition Hawaii from a state-based marketplace
11 to a state-based marketplace that utilizes the federal platform
12 (SBM-FP) for eligibility and enrollment of individuals and
13 families, and a State-maintained small business health options
14 program (SHOP).

15 The purpose of this Act is to preserve the benefits of the
16 Prepaid Health Care Act for Hawaii residents and to ensure a
17 smooth transition from a state-based marketplace to a state-
18 based marketplace using the federal platform for individuals and
19 families, and to develop a system to allow small businesses to
20 continue to take advantage of tax credits afforded by the
21 Affordable Care Act.

1 SECTION 2. Section 346-14, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§346-14 Duties generally. Except as otherwise provided
4 by law, the department of human services shall:

5 (1) Establish and administer programs and standards, and
6 adopt rules as deemed necessary for all public
7 assistance programs;

8 (2) Establish, extend, and strengthen services for the
9 protection and care of abused or neglected children
10 and children in danger of becoming delinquent to make
11 paramount the safety and health of children who have
12 been harmed or are in life circumstances that threaten
13 harm;

14 (3) Establish and administer programs, and adopt rules as
15 deemed necessary, for the prevention of domestic and
16 sexual violence and the protection and treatment of
17 victims of domestic and sexual violence;

18 (4) Assist in preventing family breakdown;

19 (5) Place, or cooperate in placing, abused or neglected
20 children in suitable private homes or institutions and
21 place, or cooperate in placing, children in suitable
22 adoptive homes;

- 1 (6) Have authority to establish, maintain, and operate
2 receiving homes for the temporary care and custody of
3 abused or neglected children until suitable plans are
4 made for their care; and accept from the police and
5 other agencies, for temporary care and custody, any
6 abused or neglected child until satisfactory plans are
7 made for the child;
- 8 (7) Administer the medical assistance programs for
9 eligible public welfare and other medically needy
10 individuals by establishing standards, eligibility,
11 and health care participation rules, payment
12 methodologies, reimbursement allowances, systems to
13 monitor recipient and provider compliance, and
14 assuring compliance with federal requirements to
15 maximize federal financial participation;
- 16 (8) Cooperate with the federal government in carrying out
17 the purposes of the Social Security Act and in other
18 matters of mutual concern pertaining to public
19 welfare, public assistance, and child welfare
20 services, including the making of reports, the
21 adoption of methods of administration, and the making
22 of rules as are found by the federal government, or

1 any properly constituted authority thereunder, to be
2 necessary or desirable for the efficient operation of
3 the plans for public welfare, assistance, and child
4 welfare services or as may be necessary or desirable
5 for the receipt of financial assistance from the
6 federal government;

7 (9) Carry on research and compile statistics relative to
8 public and private welfare activities throughout the
9 State, including those dealing with dependence,
10 defectiveness, delinquency, and related problems;

11 (10) Develop plans in cooperation with other public and
12 private agencies for the prevention and treatment of
13 conditions giving rise to public welfare problems;

14 (11) Adopt rules governing the procedure in hearings,
15 investigations, recording, registration, determination
16 of allowances, and accounting and conduct other
17 activities as may be necessary or proper to carry out
18 this chapter;

19 (12) Supervise or administer any other activities
20 authorized or required by this chapter, including the
21 development of the staff of the department through in-
22 service training and educational leave to attend

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1 schools and other appropriate measures, and any other
2 activities placed under the jurisdiction of the
3 department by any other law;

4 (13) Make, prescribe, and enforce policies and rules
5 governing the activities provided for in section 346-
6 31 it deems advisable, including the allocation of
7 moneys available for assistance to persons assigned to
8 work projects among the several counties or to
9 particular projects where the apportionment has not
10 been made pursuant to other provisions of law, if any,
11 governing expenditures of the funds;

12 (14) Determine the appropriate level for the Hawaii security
13 net, by developing a tracking and monitoring system to
14 determine what segments of the population are not able
15 to afford the basic necessities of life, and advise
16 the legislature annually regarding the resources
17 required to maintain the security net at the
18 appropriate level;

19 (15) Subject to the appropriation of state funds and
20 availability of federal matching assistance, expand
21 optional health care to low-income persons as follows:

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1 (A) Pregnant women and infants under one year of age
2 living in families with incomes up to one hundred
3 eighty-five per cent of the federal poverty level
4 and without any asset restrictions;

5 (B) Children under six years of age living in
6 families with incomes up to one hundred thirty-
7 three per cent of the federal poverty level and
8 without any asset restrictions;

9 (C) Older children to the extent permitted under
10 optional federal medicaid rules;

11 (D) Elder persons;

12 (E) Aliens;

13 (F) The homeless; and

14 (G) Other handicapped and medically needy persons;

15 [~~and~~]

16 (16) Subject to the appropriation of state funds and
17 availability of federal matching assistance, establish
18 the income eligibility level for the medically needy
19 program at one hundred thirty-three per cent of the
20 assistance allowance[-]; and

21 (17) Subject to the appropriation of state funds and the
22 availability of federal funds, develop and administer

1 outreach as required by the Patient Protection and
2 Affordable Care Act of 2010, P.L. 111-148, as
3 amended."

4 SECTION 3. There is created a Hawaii Health Insurance
5 Programs in the Department of Labor and Industrial Relations to
6 conform Hawaii law with the federal Patient Protection and
7 Affordable Care Act, P.L. 111-148, as amended.

8 SECTION 4. Definitions.

9 "Commissioner" means the insurance commissioner.

10 "Department" means the department of labor and industrial
11 relations.

12 "Director" means the director of labor and industrial
13 relations.

14 "Federal act" means the federal Patient Protection and
15 Affordable Care Act, P.L. 111-148, as amended, or regulations or
16 guidance issued under that Act.

17 "Insurer" means any person or entity that issues a policy
18 of accident and health or sickness insurance subject to article
19 1 of chapter 431, mutual benefit societies under article 1 of
20 chapter 432, health maintenance organizations under chapter
21 432D, and dental carriers under chapter 432G, and any other
22 entity offering or providing providing accident and health or

1 sickness insurance in this State, except an insurer licensed to
2 offer accident and health or sickness insurance under article
3 431:10A-102.5.

4 SECTION 5. Hawaii health insurance programs; purpose. (a)

5 There is established in the department a state health insurance
6 exchange, named the Hawaii health insurance programs (HHIP),
7 pursuant to the federal act. The purpose of the Hawaii health
8 insurance programs is to enable the provision of health
9 insurance to comply with the federal act.

10 (b) The department is authorized to take any action
11 necessary to operate a small business health options program
12 pursuant to the federal act to assist qualified employers and to
13 facilitate enrollment of qualified employees into qualified
14 health plans.

15 (c) The commissioner shall determine qualifications for
16 the inclusion of insurers and plans in the exchange; provided
17 that all health plans and dental plans that are qualified by the
18 commissioner and certified by the director shall be included in
19 the state exchange.

20 (d) Eligibility appeals under the small business health
21 options program shall comply with the requirements of the

1 federal act and shall not be subject to chapter 91. Decisions
2 shall not be subject to judicial review.

3 (e) The department shall be exempt from chapter 103D for
4 purposes of this Act.

5 SECTION 6. **Issuer Fees.** (a) The department shall collect
6 fees up to the amount allowed by the federal act, without the
7 necessity of a rule, from each qualified health and dental plan
8 certified by the director and participating in the state
9 exchange pursuant to this Act from January 1, 2016 to January 1,
10 2018.

11 SECTION 7. **Affordable Care Act legislative oversight**
12 **committee.** (a) There is established the Affordable Care Act
13 legislative oversight committee.

14 (b) The oversight committee shall consist of seven members
15 who shall include:

16 (1) The chair of the house standing committee on consumer
17 protection and commerce;

18 (2) The chair of the house standing committee on health;

19 (3) The chair of the house standing committee on finance;

20 (4) The chair of the senate standing committee on
21 commerce, consumer protection and health;

1 (5) The chair of the senate standing committee on ways and
2 means;

3 (6) One member of the minority party of the house, to be
4 selected by the minority party leader; and

5 (7) One member of the minority party of the senate, to be
6 selected by the minority party leader.

7 (c) The chairs of the house committee on consumer
8 protection and commerce and the senate committee on commerce,
9 consumer protection and health shall serve as the co-chairs of
10 the committee.

11 (d) The committee shall meet at least annually as agreed
12 upon by the co-chairs.

13 (e) The committee shall make recommendations as needed to
14 the house committee on finance and the senate committee on ways
15 and means.

16 SECTION 8. Oversight; rate regulation. (a) The
17 commissioner shall retain full regulatory jurisdiction pursuant
18 to the authority granted to the commissioner by part II of
19 article 2 of chapter 431 over all insurers and qualified plans
20 and qualified dental plans included in the state health
21 insurance exchange.

1 (b) Rate regulation for qualified plans and qualified
2 dental plans included in the state health insurance exchange
3 shall be pursuant to applicable state and federal law.

4 SECTION 9. Effect on the Prepaid Health Care Act. Nothing
5 in this Act shall in any manner diminish or limit the
6 protections contained in or alter the provisions of chapter 393.

7 SECTION 10. The departments of commerce and consumer
8 affairs, labor and industrial relations, and human services may
9 adopt rules pursuant to chapter 91 to effectuate the purposes of
10 this Act, provided that the departments may adopt interim rules,
11 which shall be exempt from chapters 91 and 201M, to effectuate
12 the purposes of this Act. The interim rules shall remain in
13 effect until January 1, 2018, or until rules are adopted
14 pursuant to chapter 91, whichever occurs sooner.

15 SECTION 11. Chapter 435H, Hawaii Revised Statutes, is
16 repealed.

17 SECTION 12. All records, equipment, machines, files,
18 supplies, books, papers, documents, maps, and other personal
19 property heretofore made, used, acquired, or held by the Hawaii
20 health connector shall be transferred to the department of labor
21 and industrial relations to the extent that such records,
22 equipment, machines, files, supplies, books, papers, documents,

1 maps and other personal property heretofore made, used,
2 acquired, or held were purchased with federal or state funds and
3 to the extent permitted by federal law.

4 SECTION 13. There shall be no cause of action, claim for
5 damages or relief, charge, or any other liability of any kind
6 whatsoever created against the State, or any of its agencies,
7 agents, or employees, which relates to or arises out of the
8 Hawaii health connector's performance of or failure to perform
9 its duties during its existence as the Hawaii health insurance
10 exchange. Furthermore, there shall be no cause of action, claim
11 for damages or relief, charge, or any other liability of any
12 kind whatsoever created against the State, or any of its
13 agencies, agents, or employees, which relates to the State's
14 assumption, retention, and reporting of any information, or the
15 accuracy thereof, collected or created by the Hawaii health
16 connector, or that the Hawaii health connector did not collect,
17 create, retain, or report, during its existence as the Hawaii
18 health insurance exchange.

19 SECTION 14. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the Act that can be given effect without the

1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 15. If any part of this Act is found to be in
4 conflict with federal requirements that are a prescribed
5 condition for the allocation of federal funds to the State, the
6 conflicting part of this Act is inoperative solely to the extent
7 of the conflict and with respect to the agencies directly
8 affected, and this finding does not affect the operation of the
9 remainder of this Act in its application to the agencies
10 concerned. The governor may modify the strict provisions of this
11 Act, to the extent, and only to the extent, necessary to
12 effectuate the intent of this Act.

13 SECTION 16. This Act shall not be applied so as to impair
14 any contract existing as of the effective date of this Act in a
15 manner violative of either the Hawaii Constitution or Article 1,
16 section 10, of the United States Constitution.

17 SECTION 17. This Act shall be liberally construed to
18 effectuate its purpose.

19 SECTION 18. The director of labor and industrial relations
20 may establish six additional temporary positions in the office
21 of community service, without regard to chapters 76 and 89,
22 Hawaii Revised Statutes, to carry out the purposes of this Act.

1 The positions may include an accountant V, two program
2 specialist IV, a secretary V, program manager, information
3 technology specialist VII, and any other position the director
4 deems necessary for the purposes of this Act.

5 SECTION 19. The director of human services may establish
6 nine additional permanent positions in the Med-QUEST Division,
7 without regard to chapters 76 and 89, Hawaii Revised Statutes,
8 to carry out the purposes of this Act. The positions may
9 include a premium assistance clerk, purchasing specialist III,
10 communications specialist, outreach manager, four outreach
11 coordinators, outreach clerical staff, and any other position
12 the director deems necessary for the purposes of this Act.

13 SECTION 20. The director of labor and industrial relations
14 shall submit a report to the legislature on the status of the
15 Hawaii health insurance programs including revenues, how many
16 policies were subject to the issuer fees, expenditures, and
17 program results pursuant to section 3 of this Act not less than
18 twenty days prior to the 2018 session.

19 SECTION 21. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$1,165,000 or so much
21 thereof as may be necessary for operating expenses, including

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1 the hiring of staff, for fiscal year 2016-2017 to carry out the
2 purpose of this Act.

3 The sum appropriated shall be expended by the department of
4 labor and industrial relations.

5 SECTION 22. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$2,918,788 or so much
7 thereof as may be necessary for operating expenses, including
8 the hiring of staff, for fiscal year 2016-2017 to carry out the
9 purpose of this Act.

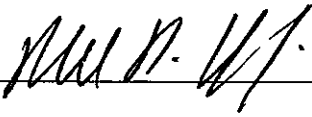
10 The sum appropriated shall be expended by the department of
11 human services.

12 SECTION 23. This Act, upon its approval, shall take effect
13 on July 1, 2016, provided that section 3 of this Act is repealed
14 on January 1, 2018.

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INTRODUCED BY: 
BY REQUEST

Report Title:

Hawaii Health Insurance Programs; Department of Labor and Industrial Relations, Department of Human Services

Description:

Establishes the Hawaii State Health Insurance Programs, and a State Health Insurance Exchange for the purpose of the State effectuating the Patient Protection and Affordable Care Act and the Prepaid Health Care Act; Repeals the Hawaii Health Connector Law; provides appropriations to the Department of Labor and Industrial Relations and the Department of Human Services.

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

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations
Human Services

TITLE: A BILL FOR AN ACT RELATING TO HEALTH
INSURANCE.

PURPOSE: To preserve the benefits of the Prepaid
Health Care Act (PHCA) for Hawaii residents
and to ensure a smooth transition from a
state-based marketplace to a state-based
marketplace using the federal platform for
individuals and families, and to develop a
system to allow small businesses to continue
to take advantage of tax credits afforded by
the Affordable Care Act (ACA).

MEANS: Session law, repeal chapter 435H, Hawaii
Revised Statutes.

JUSTIFICATION: The significant benefits of Hawaii's Prepaid
Health Care Act, enacted in 1974, are evident
in Hawaii's high rate of insured residents,
which is among the highest in the nation.
Similarly, one of the key purposes of the ACA
is to lower the uninsured rate by expanding
public and private insurance coverage.

The ACA required the establishment of health
insurance exchanges where individuals and small
businesses can compare and purchase private
insurance plans. The viability of state-based
health insurance exchanges, however, has been a
challenge across the country, particularly in
small states with low numbers of uninsured
residents.

Due to the small number of uninsured residents
in Hawaii, Hawaii has not been able to maintain
a financially self-sustaining health insurance
exchange. Consequently, the Centers for
Medicare and Medicaid Services (CMS) found that
Hawaii's exchange, the Hawaii Health Connector
(HHC), was not financially self-sustainable by

January 1, 2015, as required by the Affordable Care Act.

Hawaii was faced with losing some of the federal funds for programs under the U.S. Department of Health and Human Services because the HHC was not compliant with several provisions of the Affordable Care Act. The non-compliance included unresolved information technology issues, a non-integrated eligibility enrollment system, and lack of financial sustainability. To prevent the loss of these funds, CMS initiated discussions with Governor Ige to transition Hawaii from a state-based marketplace to a state-based marketplace that utilizes the federal platform (SBM-FP) for eligibility and enrollment of individuals and families, and a State-maintained small business health options program (SHOP).

The general fund appropriation included in this measure has been made in accordance with the statutorily defined appropriation ceiling for the Executive Branch pursuant to section 37-92, Hawaii Revised Statutes. Including appropriations made up to and including the regular session of 2015, the Executive Branch appropriation ceiling for fiscal year 2016-17 has already been exceeded by \$14,892,787 or 0.2 percent. Funding requested in this measure will ensure a smooth transition from a state-based marketplace to a state-based marketplace using the federal platform for individuals and families, and to develop a system to allow small businesses to continue to take advantage of tax credits afforded by the Affordable Care Act, will result in the appropriation ceiling for the Executive Branch to now be exceeded in fiscal year 2016-17 by an additional \$4,083,788 or 0.0059 percent. This current declaration takes into account additional general fund appropriations authorized for fiscal year 2016-17 in this measure only, and does not include other general fund appropriations for fiscal year 2016-17 that may be authorized for the Executive Branch in other legislation submitted

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to the Legislature during the regular session of 2016.

Impact on the public: The measure, if enacted, would help preserve the salubrious benefits of the PHCA, which provides health insurance coverage for a majority of Hawaii's people. Passage would also help ensure small businesses access to affordable health care insurance and tax credits from the Internal Revenue Service.

Impact on the department and other agencies: The DLIR will have increased responsibilities and functions, and the Department of Human Services will need to maintain levels of service, both of which will require sufficient resources to successfully implement the change in the law.

GENERAL FUND: \$4,083,788 in Fiscal Year 2016-2017.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR903, HMS401.

OTHER AFFECTED
AGENCIES: Department of Commerce & Consumer Affairs
Department of Human Resources Development
Department of Human Services
Office of Information Management Technology

EFFECTIVE DATE: July 1, 2016.