

**"CHAPTER 435H  
HAWAII HEALTH INSURANCE EXCHANGE**

**REPEALED.** L 2016, c 44, §3.

**Note**

L 2016, c 58, §6 purports to amend §435H-4.

" **[§435H-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 435H-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 established under section 4 of Act 205, Session Laws of Hawaii 2011.

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

"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.

"Secretary" means the Secretary of the United States Department of Health and Human Services. [L 2011, c 205, pt of §3]

" **§435H-2 Establishment of the Hawaii health insurance exchange; purpose.** (a) There is established the Hawaii health insurance exchange 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. The debts

and liabilities of the connector shall not constitute the debts and liabilities of the State.

(b) The purposes of the connector shall include:

- (1) Facilitating the purchase and sale of qualified plans and qualified dental plans;
- (2) Connecting consumers to the information necessary to make informed health care choices;
- (3) Enabling consumers to purchase coverage and manage health and dental plans electronically; and
- (4) Performing any and all other duties required of a health insurance exchange pursuant to the Federal Act.

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

(d) The connector shall be audited annually by the state auditor who shall submit the results of each annual audit to the commissioner and the legislature no later than thirty days after the connector receives the results. The audit shall comply with standard accounting practices for reviewing nonprofit corporations. The connector shall provide the state auditor with the opportunity to inspect and make copies of documents for the purposes of providing a financial audit for the legislature. 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 and qualified dental plans available to qualified individuals and qualified employers beginning with effective dates on or before January 1, 2014. [L 2011, c 205, pt of §3; am L 2014, c 233, §3]

" **[§435H-2.5] Hawaii health connector.** The official designation of the Hawaii health connector shall be the State of Hawaii health insurance exchange. The qualifying standards and conditions relating to the receipt of funds contained in chapter

42F shall apply to the funds received by the State of Hawaii health insurance exchange. [L 2014, c 233, pt of §2]

" **§435H-3 Funding.** (a) 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 connector 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 non-insurer based 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.

(b) In addition to any other means of generating revenue pursuant to subsections (a) and (c), the connector may sell or lease its information technology infrastructure and services to other separate non-connector programs; provided that the sale or lease is in compliance with federal regulations.

(c) In addition to any other means of generating revenue pursuant to subsections (a) and (b), the connector may also charge fees for displaying advertisements for ancillary services on the connector's website.

(d) All plans to generate revenue for the connector shall be in compliance with federal law. [L 2011, c 205, pt of §3; am L 2014, c 233, §4]

" **[§435H-3.5] Hawaii health connector annual sustainability plan.** (a) Until June 30, 2018, the board shall submit a sustainability plan to the connector legislative oversight committee no later than ninety days prior to the start of each fiscal year of the connector. The sustainability plan shall specify the amount of funding required to finance the operations and cash reserve of the connector for each ensuing fiscal year beginning on July 1; provided that the balance of the cash reserves shall not exceed the value of the cost of six months of administering and operating the connector.

(b) The sustainability plan submitted pursuant to subsection (a) shall include:

- (1) A detailed itemized budget based upon zero-based budgeting principles for the upcoming fiscal year; and

- (2) A detailed sustainability plan that includes a three-year budget projection for the upcoming three fiscal years.

For the purposes of formulating the budget, "zero-based budgeting principles" means that the Hawaii health connector shall justify all projected allocations and expenditures, starting with an initial balance of zero dollars to spend.

(c) After June 30, 2018, the board shall not be required to file a sustainability plan pursuant to subsection (a). [L 2014, c 233, pt of §2]

" **§435H-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 composed of nine voting members and five ex officio members. There shall be no board members representing insurers or dental benefit providers; provided that the board may establish a subcommittee of representatives from all providers of health care insurance and dental benefits to provide technical assistance and other information to the connector on relevant insurance matters. The board may establish other subcommittees to assist the connector with implementation of the Federal Act, as appropriate.

(b) For each vacant position on the board, the board, speaker of the house of representatives, and the president of the senate shall each submit to the governor the names of two qualified nominees. The governor shall appoint members of the board, subject to the advice and consent of the senate and pursuant to section 26-34, from this list of qualified nominees. Board members whose terms are expiring may be reappointed for an additional term to assist with continuity of the board.

(c) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders. Each person appointed to the board shall have education, training, or professional experience in at least one of the following areas:

- (1) Health care policy;
- (2) Health benefits plan administration, including medicaid administration;
- (3) Health insurance; provided that no employee of an insurer shall be appointed to the board;
- (4) Health care financing and purchasing;
- (5) Labor-management committee organization;
- (6) Information technology;
- (7) Native Hawaiian health care organizations;
- (8) Public health; or
- (9) Health care policy issues related to the small group and individual markets and the uninsured.

In making appointments, the appointing authorities shall consider the background and expertise of all members of the board and the geographic, socioeconomic, and other characteristics of the State, so that the board's composition reflects a diversity of expertise, skills, and backgrounds relevant to the State; provided that the representative designated by the governor pursuant to subsection (d) shall be the only state employee to serve as a voting member of the board.

(d) The governor shall designate one representative to serve as the State's official representative on the board from among the following: the director of commerce and consumer affairs, the director of health, the director of human services, the director of labor and industrial relations, a representative from the office of healthcare transformation, or a representative from the office of information management and technology.

The governor's designated representative shall be an ex officio, voting member of the board. The remaining state officials shall be ex officio, nonvoting members of the board. The governor shall notify the chair of the board regarding the selection of the designated voting and nonvoting state members of the board.

The director of commerce and consumer affairs, the director of health, the director of human services, and the director of labor and industrial relations may select a designee for a specified meeting or meetings. The selection of the designee shall be submitted in writing to the board of directors prior to or at the meeting in which the designee will serve.

(e) 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 or until the governor names a replacement.

(f) Any changes to the board structure and governance shall be in compliance with federal law.

(g) 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.

(h) 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.

(i) 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. [L 2011, c 205, pt of §3; am L 2013, c 75, §1; am L 2014, c 233, §5; am L 2015, c 35, §16]

" **[\$435H-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. [L 2011, c 205, pt of §3]

" **[\$435H-6] Eligibility of insurers and plans.** The commissioner shall determine eligibility for the inclusion of insurers and plans; provided that all qualified plans and qualified dental plans that apply for inclusion shall be included in the connector. [L 2011, c 205, pt of §3]

" **§435H-7 REPEALED.** L 2014, c 233, §6.

" **[\$435H-7.5] Connector legislative oversight committee.**

(a) There is established the connector legislative oversight committee.

(b) The oversight committee shall consist of eight members who shall include:

- (1) The chair of the house standing committee on consumer protection and commerce;
- (2) The chair of the house standing committee on health;
- (3) The chair of the house standing committee on finance;
- (4) The chair of the senate standing committee on commerce and consumer protection;
- (5) The chair of the senate standing committee on health;
- (6) The chair of the senate standing committee on ways and means;

- (7) One member of the minority party of the house, to be selected by the minority party leader; and
- (8) One member of the minority party of the senate, to be selected by the minority party leader.

(c) The chairs of the house committee on consumer protection and commerce and the senate committee on commerce and consumer protection shall serve as the co-chairs of the committee.

(d) The committee shall meet at least annually as agreed upon by the co-chairs; provided that the committee shall meet no later than December 1 of each year.

(e) The committee shall annually review the report pursuant to section 435H-7.6 and the sustainability plan pursuant to section 435H-3.5 that are submitted by the board and shall make recommendations as needed to the house committee on finance and the senate committee on ways and means. [L 2014, c 233, pt of §2]

" **[§435H-7.6] Reports; submission to the connector**

**legislative oversight committee.** (a) No later than twenty days prior to the convening of the regular session of 2015, the board shall prepare and submit a report to the connector legislative oversight committee with updates on the sustainability plan of the connector, including specific efforts to reduce costs related to contracted services and other actions.

(b) No later than twenty days prior to the convening of the regular session of 2016 and the convening of each regular session thereafter, the board shall prepare and submit a report to the connector legislative oversight committee updating the committee on the connector's sustainability plan and the results of efforts to reduce costs related to contracted services and other actions.

(c) No later than twenty days prior to the start of each fiscal year of the connector, the board shall submit a copy of any federal audit reports to the connector legislative oversight committee; provided that if a federal audit report cannot be provided by this date, the board shall submit a copy of the federal audit report as soon as the federal audit report is complete.

(d) No later than twenty days prior to the start of each fiscal year of the connector, the board shall submit a copy of the annual financial statements of the connector to the connector legislative oversight committee. [L 2014, c 233, pt of §2]

" **[\$435H-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 and qualified dental plans included in the connector.

(b) Rate regulation for qualified plans and qualified dental plans included in the connector shall be pursuant to applicable state and federal law. [L 2011, c 205, pt of §3]

" **[\$435H-9] Effect on the prepaid health care act.** Nothing in this chapter shall in any manner diminish or limit the consumer protections contained in or alter the provisions of chapter 393. [L 2011, c 205, pt of §3]

" **[\$435H-10] Rules.** The board shall adopt rules to implement the provisions of this chapter. Rules adopted pursuant to this section shall not conflict with or prevent the application of regulations promulgated by the Secretary under the Federal Act. [L 2011, c 205, pt of §3]

" **[\$435H-11] Network adequacy.** The commissioner shall provide the Hawaii health connector with a list of qualified health plans that meet network adequacy standards as determined by the commissioner. [L 2013, c 192, §3]

" **[\$435H-12] Agents and brokers.** (a) Connector-certified insurance agents and brokers may enroll individuals and employers in qualified plans through the connector and assist individuals and employers in applying for applicable premium tax credits and cost-sharing reductions for which they may be eligible.

(b) If a health insurance plan utilizes and compensates an insurance agent or broker, the Hawaii health connector shall not be responsible for any compensation to that agent or broker that sells a qualified health plan through the connector. The issuer of the qualified health plan shall bear all compensation to an agent or broker that sells a qualified health plan through the connector. [L 2014, c 233, pt of §2]