

## ACT 205

S.B. NO. 1348

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 the Hawaii 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 Hawaii Prepaid Health Care Act has proven to be successful. It is imperative that Hawaii’s health insurance exchange work in tandem with the Hawaii 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 the Catalog of Federal Domestic Assistance 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 Patient Protection and Affordable Care 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 established under section 4 of Act , 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.

**§ -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.

(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; 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 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 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 and qualified dental 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 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 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 comprise fifteen members appointed by the governor and with the advice and consent of the senate pursuant to section 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, insurers, and dental benefit providers. 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 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.

**§ -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 and qualified dental plans from the connector. The 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 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.

**§ -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.

**§ -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."

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 established under section 3 of this Act. 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 insurance 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 the Catalog of Federal Domestic Assistance 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 a 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 qualified plans and qualified dental plans as defined in § 410-1, Hawaii Revised Statutes, 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 and qualified dental 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 and qualified dental 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, qualified plans, and qualified dental 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 and dental plans, including by the online purchase of a qualified plan and qualified dental 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 the Catalog of Federal Domestic Assistance number 93.525 the sum of \$750,000 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; provided that expenditures under this Act shall not be subject to chapter 103D, Hawaii Revised Statutes.

**SECTION 6.** This Act shall take effect upon its approval; provided that section 5 of this Act shall take effect on July 1, 2011.

(Approved July 8, 2011.)