

ACT 233

S.B. NO. 2470

A Bill for an Act Relating to the Hawaii Health Connector.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Health insurance exchanges are a central component of the federal Patient Protection and Affordable Care Act, and the federal act gives states broad discretion in establishing the structure and governance of their own exchanges. The legislature finds that the Hawaii health connector was established

by Act 205, Session Laws of Hawaii 2011, as Hawaii's health insurance exchange and was charged with the responsibility of implementing applicable parts of the federal act.

The successful and efficient operation of the Hawaii health connector is essential for the State, health insurers, and insured persons in Hawaii to comply with the new requirements of the federal act. The legislature also finds that the Hawaii health connector was established as a private nonprofit entity, rather than a state agency, to provide the connector with a certain degree of freedom and autonomy in establishing and operating the State's health insurance exchange.

However, the legislature believes that evolving federal health care regulations and the need for greater transparency and oversight over Hawaii's health insurance exchange necessitate that the State revise the structure of the Hawaii health connector's board of directors. The legislature also believes that it should take a proactive oversight role to monitor the connector and review its financial and operational plans.

The legislature finds that the Hawaii health connector is the health insurance exchange for the State. The legislature also finds and declares that financial support of the Hawaii health connector as a state exchange to preserve the Hawaii Prepaid Health Care Act of 1974 is a compelling interest for the public health, safety, and general welfare of the State. It is, therefore, the desire of the legislature that the Hawaii health connector be officially designated as the State of Hawaii health insurance exchange.

The designation shall not impinge on the autonomy of the Hawaii health connector, nor imply state control over its programs or policies, except as specifically provided.

The purpose of this Act is to:

- (1) Provide for greater transparency, stakeholder engagement, and legislative involvement in the activities of the Hawaii health connector; and
- (2) Appropriate general funds to provide for the sustainability of the Hawaii health connector.

SECTION 2. Chapter 435H, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

“§435H-A 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.

§435H-B 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-C and the sustainability plan pursuant to section 435H-D 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.

§435H-C 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.

§435H-D 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).

§435H-E 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.”

SECTION 3. Section 435H-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(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; ~~and~~
- (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.”

2. By amending subsection (d) to read:

“(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.”

SECTION 4. Section 435H-3, Hawaii Revised Statutes, is amended to read as follows:

~~“[§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 opera-

tions. 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."

SECTION 5. Section 435H-4, Hawaii Revised Statutes, is amended to read as follows:

"§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 [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.] 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.

[(b)] (c) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders [including consumers, employers, insurers, and dental benefit providers]. 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 [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], 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 [voting] nonvoting members of the board. The governor shall notify the chair of the connector 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. Such 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)~~ (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.

~~(d)~~ (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.

~~(e)~~ (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.

~~(f)~~ (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."

SECTION 6. Section 435H-7, Hawaii Revised Statutes, is repealed.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2014-2015 for the operations 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 the department

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of commerce and consumer affairs shall only expend the appropriated sum subsequent to the department of commerce and consumer affairs' receipt and approval of all of the Hawaii health connector's amended articles of incorporation or amended bylaws and necessary corporate resolutions and resignations, each of which shall bring the Hawaii health connector into full compliance with section 435H-4, Hawaii Revised Statutes.

SECTION 8. In codifying the new sections added by section 2 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 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2014; provided that section 5 shall take effect on October 1, 2014.

(Became law on July 8, 2014, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.