



GOV. MSG. NO. 1309

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 8, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 8, 2011, the following bill was signed into law:

SB1348 SD2 HD3 CD1

RELATING TO THE HAWAII HEALTH
INSURANCE EXCHANGE
Act 205 (11)

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUL 8 2011

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 205
S.B. NO. 1348
S.D. 2
H.D. 3
C.D. 1

A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE.

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

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

3 SECTION 2. The federal Patient Protection and Affordable
4 Care Act of 2010 provides for the establishment by January 1,
5 2014, of health insurance exchanges in every state to connect
6 buyers and sellers of health and dental insurance and to
7 facilitate the purchase and sale of federally qualified health
8 insurance plans and qualified dental plans. The intent of the
9 health insurance exchange is to reduce the number of uninsured
10 individuals, provide a transparent marketplace, conduct consumer
11 education, and assist individuals in gaining access to
12 assistance programs, premium assistance tax credits, and cost-
13 share reductions.

14 The legislature finds that, largely because of the Hawaii
15 Prepaid Health Care Act, chapter 393, Hawaii Revised Statutes,
16 the State already enjoys an overall healthier population, lower
17 uninsured rates, and lower premium costs than mainland states.
18 The Hawaii Prepaid Health Care Act has proven to be successful.

2011-2266 SB1348 CD1 SMA-2.doc



1 It is imperative that Hawaii's health insurance exchange work in
2 tandem with the Hawaii Prepaid Health Care Act to preserve its
3 existing benefits for the people of the State.

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

10 The legislature notes that the State is already in receipt
11 of a federal grant to plan for the design and implementation of
12 a Hawaii-based health insurance exchange and, pursuant to the
13 Catalog of Federal Domestic Assistance number 93.525, a task
14 force has been convened for this purpose. This Act establishes
15 an interim board of directors to be appointed by the governor
16 upon recommendation of the insurance commissioner. The interim
17 board shall work within the policy framework of this Act to
18 propose legislation to the 2012 legislature implementing a
19 Hawaii health insurance exchange, to be known as the Hawaii
20 health connector, to ensure the State's compliance with the
21 Patient Protection and Affordable Care Act. Pursuant to
22 recommendations of the task force, the legislature is committed



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

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

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

11 "Insurer" means any person or entity that issues a policy
12 of accident and health or sickness insurance subject to article
13 10A of chapter 431, or chapters 432 or 432D.

14 "Interim board" means the interim board of directors of the
15 Hawaii health connector established under section 4 of Act
16 Session Laws of Hawaii 2011.

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

19 "Qualified plan" means a health benefit plan offered by an
20 insurer that meets the criteria for certification described in
21 Section 1311(c) of the Federal Act.



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

3 § -2 Establishment of the Hawaii health insurance
4 exchange; purpose. (a) There is established the Hawaii health
5 insurance exchange to be known as the Hawaii health connector.
6 The connector shall not be an agency of the State and shall not
7 be subject to laws or rules regulating rulemaking, public
8 employment, or public procurement. The connector shall be a
9 Hawaii nonprofit corporation organized and governed pursuant to
10 chapter 414D, the Hawaii nonprofit corporations act.

11 (b) The purposes of the connector shall include:

12 (1) Facilitating the purchase and sale of qualified plans
13 and qualified dental plans;

14 (2) Connecting consumers to the information necessary to
15 make informed health care choices; and

16 (3) Enabling consumers to purchase coverage and manage
17 health and dental plans electronically.

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

21 (d) The connector shall be audited annually by the state
22 auditor who shall submit the results of each annual audit to the



1 commissioner no later than thirty days after the connector
2 receives the results. The connector shall retain all annual
3 audits on file, along with any documents, papers, books,
4 records, and other evidence that is pertinent to its budget and
5 operations for a period of ten years and shall permit the state
6 auditor, the commissioner, the state legislature, or their
7 authorized representatives to have access to, inspect, and make
8 copies of any documents retained pursuant to this subsection.

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

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

16 (g) The connector shall make qualified plans and qualified
17 dental plans available to qualified individuals and qualified
18 employers beginning with effective dates on or before January 1,
19 2014.

20 § -3 **Funding.** The connector may receive contributions,
21 grants, endowments, fees, or gifts in cash or otherwise from
22 public and private sources including corporations, businesses,



1 foundations, governments, individuals, and other sources subject
2 to rules adopted by the board. The State may appropriate moneys
3 to the connector. As required by Section 1311(d)(5)(A) of the
4 Federal Act, the connector shall be self-sustaining by January
5 1, 2015, and may charge assessments or user fees to
6 participating health and dental carriers, or may otherwise
7 generate funding to support its operations. Moneys received by
8 or under the supervision of the connector shall not be placed
9 into the state treasury and the State shall not administer any
10 moneys of the connector nor be responsible for the financial
11 operations or solvency of the connector.

12 § -4 Board of directors; composition; operation. (a)
13 The Hawaii health connector shall be a nonprofit entity governed
14 by a board of directors that shall comprise fifteen members
15 appointed by the governor and with the advice and consent of the
16 senate pursuant to section 26-34; provided that the governor
17 shall submit nominations to the senate for advice and consent no
18 later than February 1, 2012; and provided further that the
19 senate shall timely advise and consent to nominations for terms
20 to begin July 1, 2012. Members of the interim board shall be
21 eligible for appointment to the board.



1 (b) The membership of the board shall reflect geographic
2 diversity and the diverse interests of stakeholders including
3 consumers, employers, insurers, and dental benefit providers.
4 The director of commerce and consumer affairs or the director's
5 designee, the director of health or the director's designee, the
6 director of human services or the director's designee, and the
7 director of labor and industrial relations or the director's
8 designee shall be ex-officio, voting members of the board.

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

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



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

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

10 § -5 Officers and employees of the Hawaii health
11 connector. (a) The board shall appoint officers and employ
12 staff, including an executive director who shall be responsible
13 for the day-to-day operations and management of the exchange,
14 according to a staffing plan that shall be submitted to the
15 legislature. Officers and employees of the board shall not be
16 employees of the State and shall serve at the pleasure of the
17 board.

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

20 § -6 Eligibility of insurers and plans. The
21 commissioner shall determine eligibility for the inclusion of
22 insurers and plans; provided that all qualified plans and



1 qualified dental plans that apply for inclusion shall be
2 included in the connector.

3 **§ -7 Eligibility determination for applicants in**
4 **medicaid adult and children's health insurance program.** The
5 department of human services shall be the agency to determine
6 qualifications and eligibility of individuals to participate in
7 medicaid adult or children's health insurance programs. The
8 agency's determination of eligibility shall enable qualified
9 individuals and authorized adults on behalf of qualified
10 children to purchase qualified plans and qualified dental plans
11 from the connector. The department of human services shall
12 verify for the connector individuals and children able to
13 participate in subsidized plans purchased through the connector.

14 **§ -8 Oversight; rate regulation.** (a) The commissioner
15 shall retain full regulatory jurisdiction pursuant to the
16 authority granted to the commissioner by part II of article 2 of
17 chapter 431 over all insurers and qualified plans and qualified
18 dental plans included in the connector.

19 (b) Rate regulation for qualified plans and qualified
20 dental plans included in the connector shall be pursuant to
21 applicable state and federal law.



1 § -9 Effect on the prepaid health care act. Nothing in
2 this chapter shall in any manner diminish or limit the consumer
3 protections contained in or alter the provisions of chapter 393.

4 § -10 Rules. The board shall adopt rules to implement
5 the provisions of this chapter. Rules adopted pursuant to this
6 section shall not conflict with or prevent the application of
7 regulations promulgated by the Secretary under the Federal Act."

8 SECTION 4. (a) There shall be an interim board of the
9 Hawaii health connector in the department of commerce and
10 consumer affairs for administrative purposes only that shall
11 recommend to the legislature policies and procedures to further
12 define and operate the Hawaii health connector established under
13 section 3 of this Act. The interim board shall consist of
14 fifteen members who are representative of the stakeholders in
15 the Hawaii health connector and shall include members with
16 expertise in the financial, health care, information technology,
17 organizational management, and nonprofit industries. Members of
18 the interim board shall be designated by the governor based upon
19 recommendations by the insurance commissioner and to the extent
20 possible shall come from the members of the task force
21 established in the department of commerce and consumer affairs



1 pursuant to the Catalog of Federal Domestic Assistance number
2 93.525 and shall include:

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

5 (2) One member representing a health care provider group
6 that is located on a neighbor island and that employs
7 a wide range of licensed health care providers
8 including physicians, nurse practitioners, nurses, and
9 physician assistants;

10 (3) One representative of a hospital trade association;

11 (4) One representative of an organization that represents
12 health care consumers;

13 (5) One representative from a labor-management committee
14 organization;

15 (6) One representative of a native Hawaiian health care
16 organization;

17 (7) One representative of an organization representing
18 federally qualified health care centers;

19 (8) One representative of an organization representing
20 businesses or employers;

21 (9) One representative of a health information exchange;

22 (10) The director of health or the director's designee;



1 (11) The director of human services or the director's
2 designee;

3 (12) The director of labor and industrial relations or the
4 director's designee; and

5 (13) The director of commerce and consumer affairs or the
6 director's designee.

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

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

12 (1) A sustainable, fee-based financing mechanism that may
13 incorporate private and public funding for initial
14 start-up costs, but that shall achieve financial
15 self-sustainability by January 1, 2015, as required by
16 federal law;

17 (2) Measures to ensure transparency of the Hawaii health
18 connector's finances and for public disclosure of
19 funding sources and expenditures;

20 (3) Procedures for the application for inclusion by
21 insurers in the Hawaii health connector; provided that
22 all applicant qualified plans and qualified dental



1 plans as defined in -1, Hawaii Revised Statutes,
2 that are qualified according to the requirements of
3 federal law and regulations and national quality
4 measures shall be included;

5 (4) A phased process of including qualified plans and
6 qualified dental plans, which may include initially
7 prioritizing qualified plans that target individuals
8 and small businesses over large group plans;

9 (5) Policies and procedures to ensure continuity of care
10 for consumers transitioning between carriers,
11 including between publicly funded coverage and private
12 qualified plans and qualified dental plans; provided
13 that the interim board shall form a subgroup to make
14 recommendations for the integration of state
15 subsidized plans with the Hawaii health connector to
16 ensure that consumers who move between publicly funded
17 coverage and unsubsidized private coverage are able to
18 maintain continuity of coverage and continuity of
19 care;

20 (6) Measures to increase transparency and opportunities
21 for public participation in determinations of insurer
22 eligibility for inclusion in the Hawaii health



1 connector and the regulation of insurers, qualified
2 plans, and qualified dental plans;

3 (7) Criteria for determining whether a conflict of
4 interest exists for a board member and policies and
5 procedures for avoiding or mitigating conflicts of
6 interest, including when recusal of the board member
7 is appropriate and when a board member shall be
8 entitled to private counsel for a matter relating to
9 the board;

10 (8) A schedule of the terms of board members including
11 provisions for staggering terms to ensure continuity;

12 (9) A staffing plan including organization, duties, wages,
13 and responsibilities of employees of the board of
14 directors of the Hawaii health connector and criteria
15 for hiring contractors, consultants, and outside
16 experts;

17 (10) A plan of financial organization of the board of the
18 Hawaii health connector and requirements for financial
19 management by its board; and

20 (11) Policies for the use of electronic media to publicly
21 disseminate information, increase transparency, and
22 allow members of the public to manage their health and



1 dental plans, including by the online purchase of a
2 qualified plan and qualified dental plan.

3 (c) The interim board shall submit a report of its
4 findings and recommendations, including any proposed
5 legislation, to the legislature, no later than twenty days prior
6 to the convening of the 2012 regular session, and shall
7 participate in joint informational sessions upon the request of
8 the legislature.

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

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



1 (e) The legislative reference bureau shall assist the
2 interim board in preparing its findings, recommendations, and
3 proposed legislation; provided that the chairperson of the
4 interim board shall submit the interim board's proposals to the
5 legislative reference bureau for drafting no later than
6 November 1, 2011, for the report to the 2012 regular session of
7 the legislature.

8 (f) The interim board shall cease to exist on June 30,
9 2012.

10 SECTION 5. There is appropriated out of federal funds
11 received pursuant to the Catalog of Federal Domestic Assistance
12 number 93.525 the sum of \$750,000 or so much thereof as may be
13 necessary for fiscal year 2011-2012 to support the operations of
14 the interim board of the Hawaii health connector.

15 The sum appropriated shall be expended by the department of
16 commerce and consumer affairs for the purposes of this Act;
17 provided that expenditures under this Act shall not be subject
18 to chapter 103D, Hawaii Revised Statutes.

19 SECTION 6. This Act shall take effect upon its approval;
20 provided that section 5 of this Act shall take effect on July 1,
21 2011.



S.B. NO.

1348
S.D. 2
H.D. 3
C.D. 1

APPROVED this 8 day of JUL, 2011

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a horizontal line underlining the name.

GOVERNOR OF THE STATE OF HAWAII