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# 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 However, the viability of state-based health insurance exchanges  
12 has been a challenge across the country, particularly in small  
13 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



1 exchange, the Hawaii Health Connector (HHC), was not financially  
2 self-sustainable by January 1, 2015, as required by the  
3 Affordable Care Act.

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

16 The purpose of this Act is to preserve the benefits of the  
17 Hawaii Prepaid Health Care Act for Hawaii residents and to  
18 ensure a smooth transition from a state-based marketplace to a  
19 state-based marketplace using the federal platform for  
20 eligibility and enrollment of individuals and families, and to



1 develop a system to allow small businesses to continue to take  
2 advantage of tax credits afforded by the Affordable Care Act.

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

5 "§346-14 Duties generally. Except as otherwise provided  
6 by law, the department of human services shall:

- 7 (1) Establish and administer programs and standards, and  
8 adopt rules as deemed necessary for all public  
9 assistance programs;
- 10 (2) Establish, extend, and strengthen services for the  
11 protection and care of abused or neglected children  
12 and children in danger of becoming delinquent to make  
13 paramount the safety and health of children who have  
14 been harmed or are in life circumstances that threaten  
15 harm;
- 16 (3) Establish and administer programs, and adopt rules as  
17 deemed necessary, for the prevention of domestic and  
18 sexual violence and the protection and treatment of  
19 victims of domestic and sexual violence;
- 20 (4) Assist in preventing family breakdown;



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



- 1 matters of mutual concern pertaining to public  
2 welfare, public assistance, and child welfare  
3 services, including the making of reports, the  
4 adoption of methods of administration, and the making  
5 of rules as are found by the federal government, or  
6 any properly constituted authority thereunder, to be  
7 necessary or desirable for the efficient operation of  
8 the plans for public welfare, assistance, and child  
9 welfare services or as may be necessary or desirable  
10 for the receipt of financial assistance from the  
11 federal government;
- 12 (9) Carry on research and compile statistics relative to  
13 public and private welfare activities throughout the  
14 State, including those dealing with dependence,  
15 defectiveness, delinquency, and related problems;
- 16 (10) Develop plans in cooperation with other public and  
17 private agencies for the prevention and treatment of  
18 conditions giving rise to public welfare problems;
- 19 (11) Adopt rules governing the procedure in hearings,  
20 investigations, recording, registration, determination  
21 of allowances, and accounting and conduct other



- 1 activities as may be necessary or proper to carry out  
2 this chapter;
- 3 (12) Supervise or administer any other activities  
4 authorized or required by this chapter, including the  
5 development of the staff of the department through in-  
6 service training and educational leave to attend  
7 schools and other appropriate measures, and any other  
8 activities placed under the jurisdiction of the  
9 department by any other law;
- 10 (13) Make, prescribe, and enforce policies and rules  
11 governing the activities provided for in section 346-  
12 31 it deems advisable, including the allocation of  
13 moneys available for assistance to persons assigned to  
14 work projects among the several counties or to  
15 particular projects where the apportionment has not  
16 been made pursuant to other provisions of law, if any,  
17 governing expenditures of the funds;
- 18 (14) Determine the appropriate level for the Hawaii  
19 security net, by developing a tracking and monitoring  
20 system to determine what segments of the population  
21 are not able to afford the basic necessities of life,



1 and advise the legislature annually regarding the  
2 resources required to maintain the security net at the  
3 appropriate level;

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

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

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

15 (C) Older children to the extent permitted under  
16 optional federal medicaid rules;

17 (D) Elder persons;

18 (E) Aliens;

19 (F) The homeless; and

20 (G) Other handicapped and medically needy persons;

21 [and]



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

6       (17) Subject to the appropriation of state funds and the  
7            availability of federal funds, develop and administer  
8            outreach as required by the Patient Protection and  
9            Affordable Care Act, Public Law 111-148, as amended."

10       SECTION 3. There is created a Hawaii health insurance  
11        programs within the department of labor and industrial relations  
12        to conform Hawaii law with the federal Patient Protection and  
13        Affordable Care Act, Public Law 111-148, as amended.

14       SECTION 4. Definitions.

15        "Commissioner" means the insurance commissioner.

16        "Department" means the department of labor and industrial  
17        relations.

18        "Director" means the director of labor and industrial  
19        relations.



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

4 "Insurer" means any person or entity that issues a policy  
5 of accident and health or sickness insurance subject to article  
6 10A of chapter 431, Hawaii Revised Statutes, mutual benefit  
7 societies under article 1 of chapter 432, Hawaii Revised  
8 Statutes, health maintenance organizations under chapter 432D,  
9 Hawaii Revised Statutes, and dental carriers under chapter 432G,  
10 Hawaii Revised Statutes, and any other entity offering or  
11 providing accident and health or sickness insurance in this  
12 State, except an insurer licensed to offer accident and health  
13 or sickness insurance under section 431:10A-102.5, Hawaii  
14 Revised Statutes.

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

16 There is established within the department a state health  
17 insurance exchange, named the Hawaii health insurance programs,  
18 pursuant to the federal act.

19 The purpose of the Hawaii health insurance programs is to  
20 enable the provision of health insurance to comply with the  
21 federal act.



1           (b) The department is authorized to take any action  
2 necessary to operate a small business health options program  
3 pursuant to the federal act to assist qualified employers and to  
4 facilitate enrollment of qualified employees into qualified  
5 health plans.

6           (c) The commissioner shall determine qualifications for  
7 the inclusion of insurers and plans in the exchange; provided  
8 that all health plans and dental plans that are qualified by the  
9 commissioner and certified by the director shall be included in  
10 the state exchange.

11           (d) Eligibility appeals under the small business health  
12 options program shall comply with the requirements of the  
13 federal act and shall not be subject to chapter 91, Hawaii  
14 Revised Statutes. Decisions shall not be subject to judicial  
15 review.

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

18           SECTION 6. Issuer fees. (a) The department shall collect  
19 fees up to the amount allowed by the federal act, without the  
20 necessity of a rule, from each qualified health and dental plan  
21 certified by the director and participating in the state



1 exchange pursuant to this Act from January 1, 2016, to January  
2 1, 2018.

3 SECTION 7. Affordable Care Act legislative oversight  
4 committee. (a) There is established the Affordable Care Act  
5 legislative oversight committee.

6 (b) The oversight committee shall consist of the following  
7 seven members:

- 8 (1) The chair of the house standing committee on consumer  
9 protection and commerce;
- 10 (2) The chair of the house standing committee on health;
- 11 (3) The chair of the house standing committee on finance;
- 12 (4) The chair of the senate standing committee on  
13 commerce, consumer protection and health;
- 14 (5) The chair of the senate standing committee on ways and  
15 means;
- 16 (6) One member of the minority party of the house, to be  
17 selected by the House minority leader; and
- 18 (7) One member of the minority party of the senate, to be  
19 selected by the Senate minority leader.

20 (c) The chairs of the house committee on consumer  
21 protection and commerce and the senate committee on commerce,



1 consumer protection and health shall serve as the co-chairs of  
2 the committee.

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

5 (e) The committee shall make recommendations as needed to  
6 the house committee on finance and the senate committee on ways  
7 and means.

8 SECTION 8. Oversight; rate regulation. (a) The  
9 commissioner shall retain full regulatory jurisdiction pursuant  
10 to the authority granted to the commissioner by chapters 431,  
11 432, 432D, and 432G, Hawaii Revised Statutes, over all insurers  
12 and qualified plans and qualified dental plans included in the  
13 state health insurance exchange.

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

17 SECTION 9. Effect on the Hawaii Prepaid Health Care Act.  
18 Nothing in this Act shall in any manner diminish or limit the  
19 protections contained in or alter the provisions of chapter 393,  
20 Hawaii Revised Statutes.



1 SECTION 10. The department of commerce and consumer  
2 affairs, department of labor and industrial relations, and  
3 department of human services may adopt rules pursuant to chapter  
4 91, Hawaii Revised Statutes, to effectuate the purposes of this  
5 Act, provided that the departments may adopt interim rules,  
6 which shall be exempt from chapters 91 and 201M, Hawaii Revised  
7 Statutes, to effectuate the purposes of this Act. The interim  
8 rules shall remain in effect until January 1, 2018, or until  
9 rules are adopted pursuant to chapter 91, Hawaii Revised  
10 Statutes, whichever occurs sooner.

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

13 SECTION 12. All records, equipment, machines, files,  
14 supplies, books, papers, documents, maps, and other personal  
15 property heretofore made, used, acquired, or held by the Hawaii  
16 health connector shall be transferred to the department of labor  
17 and industrial relations to the extent that such records,  
18 equipment, machines, files, supplies, books, papers, documents,  
19 maps and other personal property heretofore made, used,  
20 acquired, or held were purchased with federal or state funds and  
21 to the extent permitted by federal law.



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

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



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

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

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

17 SECTION 18. The director of labor and industrial relations  
18 may establish six or more additional temporary positions in the  
19 office of community services, without regard to chapters 76 and  
20 89, Hawaii Revised Statutes, to carry out the purposes of this  
21 Act. The positions may include an accountant V, two program



1 specialist IV, a secretary V, program manager, information  
2 technology specialist VII, and any other position the director  
3 deems necessary for the purposes of this Act.

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

12 SECTION 20. The director of labor and industrial relations  
13 shall submit a report to the legislature no later than twenty  
14 days prior to the convening of the regular session of 2018, on  
15 the status of the Hawaii health insurance programs including  
16 revenues, how many policies were subject to the issuer fees,  
17 expenditures, and program results pursuant to section 3 of this  
18 Act.

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



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

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

12 SECTION 23. This Act shall take effect on July 1, 2070,  
13 provided that section 3 of this Act shall be repealed on January  
14 1, 2018.



**Report Title:**

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

**Description:**

Establishes the Hawaii State Health Insurance Programs. Requires the Department of Human Services to develop and administer outreach as required by the Affordable Care Act. Establishes the Affordable Care Act Legislative Oversight Committee. Repeals the Hawaii Health Insurance Exchange Law. Appropriates funds to the Department of Labor and Industrial Relations and the Department of Human Services. Requires the submittal of a report to the Legislature on the status of the Hawaii Health Insurance Programs prior to the 2018 Regular Session. (HB2365 HD1)

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