

**HAWAII HEALTH CONNECTOR
INTERIM BOARD OF DIRECTORS
REPORT TO THE 2012 LEGISLATURE**

December 29, 2011

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HAWAII HEALTH CONNECTOR INTERIM BOARD OF DIRECTORS REPORT TO THE 2012 LEGISLATURE

PART I. INTRODUCTION

Act 205, Session Laws of Hawaii 2011 ("Act 205"), statutorily created the Hawaii health insurance exchange in order to comply with the requirements of the federal Patient Protection and Affordable Care Act of 2010. Act 205 also established an interim board of directors for the health insurance exchange and directed the Interim Board to begin the work of developing and implementing the health insurance exchange. The Interim Board was also tasked with preparing a report to the Legislature for the 2012 Regular Session that contains its recommendations for implementing the Hawaii health insurance exchange and any proposed legislation to facilitate the implementation of the exchange. The Interim Board met throughout the summer and fall of 2011 to develop an operations plan for the nascent health insurance exchange and to prepare an application for a federal grant from the United States Department of Health and Human Services for moneys to fund start-up costs for the exchange.

This report, prepared for the Interim Board by the Legislative Reference Bureau pursuant to Act 205, is intended to respond to the Legislature's request for recommendations and proposed legislation related to the Hawaii health insurance exchange.¹

PART II. BACKGROUND

A. Patient Protection and Affordable Care Act of 2010 and Health Insurance Exchanges

Hawaii's decision to develop a health insurance exchange comes in response to the Patient Protection and Affordable Care Act ("Federal Act") passed by Congress and signed into law in 2010.² Among the various health care reforms found in the Federal Act are the requirement to maintain minimum essential health insurance coverage and the establishment of state health insurance exchanges. The Federal Act requires individuals to maintain minimum essential health insurance coverage through eligible employer coverage, individual coverage, grandfathered plans, or an applicable public program such as Medicaid or Medicare.³ The Federal Act requires state-based health insurance exchanges to be established and begin operating by 2014 as a means for individuals and small employer groups to shop for and purchase affordable health insurance in order to meet these requirements.⁴ These health

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1. Act 205, Session Laws of Hawaii 2011, at §4(e).
 2. Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>. The Federal Act was later amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-111publ152/pdf/PLAW-111publ152.pdf>.
 3. *See generally* Patient Protection and Affordable Care Act, Subtitle F, Part I.
 4. *See generally* Patient Protection and Affordable Care Act, Subtitle D, Part I.

insurance exchanges are intended to be online marketplaces where persons may compare qualified insurance plans and choose to purchase health insurance products that meet their needs. To offset the cost of purchasing insurance, the Federal Act provides for low income persons and families above the qualifying level for Medicaid and up to four hundred percent of the federal poverty level to receive federal subsidies if they purchase a qualified health insurance plan through a health insurance exchange. The Federal Act gives states the option to establish their own state insurance exchanges or merge with other states' exchanges to create regional exchanges. If a state chooses not to create an insurance exchange, the federal government will establish an exchange in the state. It is in response to these provisions of the Federal Act that a health insurance exchange was created in Hawaii.

B. Act 205, Session Laws of Hawaii 2011

Act 205 Session Laws of Hawaii 2011, establishes Hawaii's health insurance exchange, known as the Hawaii Health Connector ("Connector"). (See Appendix A for the complete text of Act 205.) The Connector was established to create and administer a health insurance exchange in Hawaii that is compliant with the Federal Act. The Legislature specifically noted that Hawaii's population has benefitted from the Hawaii Prepaid Health Care Act and that the unique features of Hawaii's health insurance system necessitate the development of a health insurance exchange at the local level rather the federal level.⁵

Act 205 establishes the Connector as an independent nonprofit corporation and tasks the Connector with facilitating the purchase and sale of qualified health benefit plans, connecting consumers to the information necessary to make informed health insurance choices, and providing Internet-based portals for consumers to make health insurance purchases electronically. The Connector will be governed by a fifteen-member board of directors ("Board") who will be appointed by the Governor with the advice and consent of the Senate. The Board will represent diverse interests including consumers, employers, insurers, and dental benefits providers. To begin the planning and implementation of the Connector until a permanent board is appointed in 2012, Act 205 provides for the appointment of an Interim Board ("Interim Board"), also representing a wide variety of stakeholder interests.⁶ In addition, Act 205 provides for the inclusion of the Director of Commerce and Consumer Affairs, Director of Labor and Industrial Relations, Director of Human Services, and the Director of Health, or the directors' designees, as members of the Board and Interim Board.⁷

The members of the Interim Board are:⁸

5. See §2 of Act 205, Session Laws of Hawaii 2011.

6. *Id.* at §4(a).

7. *Id.* See also §435H-4(b), Hawaii Revised Statutes, which provides for the directors or their designees to be ex-officio voting members of the permanent Board.

8. The Interim Board continued the planning work that was begun by the health exchange task force that was established in the Hawaii Department of Commerce and Consumer Affairs pursuant to the Catalog of Federal Domestic Assistance number 93.525. To preserve the continuity of the task force's preliminary planning work, many of the members of the task force were appointed to the Interim Board.

Sherry Menor-McNamara, Chair⁹ (Vice-President of Business Advocacy & Government Affairs, Chamber of Commerce of Hawaii);

Robert Hirokawa, Vice-Chair (Chief Information Officer, Hawaii Primary Care Association);

Cliff Alakai, Treasurer (Administrator, Maui Medical Group);

Joan Danieley
 (Vice-President, Health Plan Service and Administration, Kaiser Foundation Health Plan, Inc.);

Jennifer Diesman (Vice-President, Government Relations, Hawaii Medical Services Association);

Kenneth Fink, MD (Director, Med-QUEST Division, Hawaii Department of Human Services);

Beth Giesting (Health Care Transformation Coordinator, Hawaii Office of the Governor);

Michael Gleason (President and Chief Executive Officer, The Arc of Hilo);

Gordon Ito (Insurance Commissioner, Hawaii Insurance Division);

John McComas (Chief Executive Officer, AlohaCare);

Mary Oneha (Chief Operating Officer, Waianae Coast Comprehensive Health Center);

Gwen Rulona (Director of Education and Legislation, UFCW Local 480);

Christine Sakuda (Executive Director, Hawaii Health Information Exchange); and

Johnrae F. Christian (Disability Compensation Division Programs Chief for PrePaid Health Care Act and Temporary Disability Insurance).¹⁰

C. Preliminary Work of the Health Insurance Exchange Task Force

In October 2010, in preparation for implementing the health insurance exchange provisions of the Federal Act, the Insurance Commissioner established a health insurance exchange task force ("Task Force") composed of twenty-five stakeholders. Representation included large and small health insurers, legislators, the hospital trade association, the primary care provider trade association, hospitals, American Association of Retired Persons, Chamber of Commerce Hawaii, the Insurance Commissioner, Department of Health, Med-QUEST Division

9. Coral Andrews (Vice-President, Healthcare Association of Hawaii), was originally elected as chair of the Interim Board and served through October 2011. She later resigned from this position in November 2011 and was later hired by the Board to be the Executive Director of the Connector beginning December 1, 2011. Sherry Menor-McNamara and Robert Hirokawa were elected to be the new chair and vice-chair, respectively, on December 12, 2011.

10. Johnrae Christian has since resigned from the Interim Board. No appointment has been made to fill the vacancy. In the interim, Edward Wang has attended Interim Board meetings as a representative of the Hawaii Department of Labor and Industrial Relations.

of the Department of Human Services, Department of Labor and Industrial Relations, and the Hawaii Employer-Union Health Benefits Trust Fund. The Task Force met monthly to discuss exchange planning issues. In addition, the Task Force formed several work groups, composed of Task Force members and community stakeholders, to plan specific details of creating and implementing the Connector. These work groups met throughout the spring and summer of 2011 and made significant strides toward planning the Connector and creating a course of action for the Interim Board to continue, following its appointment.

The Task Force work groups were:

Non-profit/Legal Issues: Responsible for the creation of the independent nonprofit entity known as the Connector, drafting governing documents, and researching various policy issues and organizational questions;

Information Technology/Data Collection: Responsible for planning, researching, and reporting on the information technology requirements for the Connector to operate, including a review of all data and reporting requirements;

Finance/Subsidy: Responsible for examining potential funding mechanisms for financing the Connector, researching how subsidies would be incorporated into the Connector, and reviewing how existing state-based subsidies will be integrated into the Connector structure; and

Exchange Operations: Responsible for developing recommendations on how the Connector may operate in compliance with federal guidelines.

These work groups have continued their work after the Interim Board was appointed, meeting on an as-needed basis to address specific issues. As the development of the Connector advances, the Interim Board expects to create additional workgroups as the need arises.

D. Organizational Foundations

After the Interim Board was appointed in August 2011, it adopted several organizational documents to guide its work. The first of these was a mission and vision statement for the Connector that expresses its goals for Hawaii:

Mission: To create a health insurance exchange that conforms to the requirements of the Patient Protection and Affordable Care Act, is responsive to the unique needs and circumstances of Hawaii, and reduces the number of uninsured by providing a transparent marketplace, conducting consumer education, and assisting individuals in gaining access to assistance programs, premium assistance tax credits, and cost-share reductions.

Vision: To help the people of Hawaii live happier and healthier lives by making quality health insurance accessible to all, making the acquisition of health

insurance affordable and simpler, and improving the integration between public and private health plans.

The Interim Board also drafted and adopted articles of incorporation and bylaws to govern its ongoing operations. Finally, recognizing that the implementation of the Connector will require, among numerous other purchases, the hiring of multiple contractors for various technical and professional consulting services, the Interim Board adopted a detailed procurement policy.

E. Federal Establishment Grant

On September 30, 2011, the Interim Board submitted an application to the U.S. Department of Health and Human Services for a Level I Establishment Grant to fund the start-up and implementation of the Connector. On November 29, 2011, the Department awarded a \$14.4 million grant to the Connector for this purpose. The bulk of these moneys are expected to be used for the design and construction of the necessary information technology systems that will form the backbone of the Connector. In addition, moneys from this grant will be used to hire and train Connector staff, hire consultants to provide professional and technical services, purchase IT hardware and other necessary equipment, and fund other various costs related to Connector start-up.

PART III. OPERATIONAL FEATURES OF THE HAWAII HEALTH CONNECTOR

It is important to note that although the Interim Board has developed a foundational vision for implementing and operating the Connector, much of the Interim Board's efforts in recent months have been focused on determining basic operational and policy elements of the Connector in order to meet deadlines for applying for federal grants to fund the establishment of the Connector. The Interim Board recognized that failure to secure federal funding would severely delay the implementation of the Connector. Therefore, many of the finer points of Connector operations remain to be developed, but are expected to be thoroughly addressed in the coming months. In addition, some established details of Connector operations may evolve as additional guidance is received from the U.S. Department of Health and Human Services. For example, the Interim Board developed much of its strategy for Hawaii's health insurance exchange based upon provisions in the proposed federal regulations; however, the final regulations are not expected to be approved until June 2012 at the completion of the federal rulemaking process. If significant changes to the proposed regulations are made, the Interim Board will need to make conforming changes to its own policies for operating the Connector. The Legislature can expect to be updated on any such changes to the Connector's plan of operations in the Board's annual reports to the Legislature.

A. Governance and Staffing

As discussed earlier, the Connector will be an independent nonprofit entity, governed by an appointed Board of Directors that includes representatives of several stakeholder government agencies. The Connector will also seek considerable input from the Hawaii Insurance Division, as insurance products offered through the Connector will continue to be regulated by the Insurance Division pursuant to existing state laws and administrative rules. The Insurance Commissioner and the Connector will qualify insurance products that may be offered through the Connector pursuant to the Federal Act.¹¹

The Connector Board will draw upon volunteers who represent a diversity of experience in consumer health advocacy, health insurance policy, medical service delivery, small business ownership, community outreach, financial services, and government sponsored programs. In the interest of preserving the independence of its members and the impartiality of its decisions, the Interim Board has adopted a conflict of interest policy for the Connector that prevents a Board member from voting on any matter if the vote "directly and substantially affects:

- (1) A business or other undertaking in which he has a substantial financial interest;
- (2) A private undertaking in which he is employed;
- (3) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or agency capacity; or

11. See Patient Protection and Affordable Care Act §§1301, 1311. See also 45 C.F.R. §§1000, 1050 (proposed); and §435H-6, Hawaii Revised Statutes.

(4) A competitor of the entities listed in items 1 - 3 above."

From among its members, the Board elected a chair and vice-chair to direct the Connector. The Interim Board also elected a member to serve as its Treasurer and provide oversight of and guidance on the financial affairs of the Connector. The Interim Board recently hired an Executive Director, Coral Andrews, who will be responsible for overseeing day-to-day operations of the Connector and will be accountable to the Board. The Executive Director is expected to take an active role in filling other administrative positions within the Connector and will also oversee much of the work of contractors who will be hired to develop the early phases of the Connector. The Connector envisions employing the services of various other professionals, support staff, and technical and legal consultants over the coming year. (See the Interim Board's response to legislative inquiry (9) in Part V of this Report for a complete description of the Interim Board's proposed staffing plan.)

B. Access and Scope

As allowed under the Federal Act and required by Act 205, the Connector shall include all qualified health plans and qualified dental plans that apply to be offered for sale through the Connector.¹² The Insurance Commissioner shall determine whether prospective plans meet the federal qualifications and certify those plans for inclusion in the Connector.¹³ The Connector itself shall be divided into two programs each with a separate risk pool: an individual market and a small group market. The individual market will be accessible to individuals who wish to purchase qualifying health insurance for themselves and their dependants. The small group market (referred to in the Federal Act as the "Small Business Health Options Program" or "SHOP") will provide access for qualifying employers who wish to purchase qualifying health insurance for their employees. Initially, small employers with up to fifty full-time employees will be eligible to purchase health insurance through the small group market. By January 16, 2016, the Connector expects to expand eligibility for the small group market to include small employers with up to one hundred full-time employees.¹⁴

C. Connector Information Systems and User Interface

Much of the success of the Connector's operation will depend on the effectiveness of its information technology systems. In addition to the web-based interface between the Connector and participating insurers, the system will need a linkage to a federal hub for the purposes of verifying users' eligibility for public insurance programs and available subsidies.¹⁵ To reduce the need for staff, there will be a heavy reliance on the information system to handle many of the procedures necessary in the Connector. (See Appendix B for a flowchart of proposed Connector

12. 45 C.F.R. §§155.1000, 156.200 (proposed); §435H-6, Hawaii Revised Statutes.

13. *Id.*

14. See 45 C.F.R. §155.20 (proposed).

15. The Connector website will interface with and exchange information with databases run by the U.S. Internal Revenue Service, Social Security Administration, Department of Health and Human Services, and the Treasury Department to, among other things, determine users' subsidy eligibility and facilitate payment of advanced payment premium credits.

operations.)¹⁶ Indeed, much of the Connector's Level I Establishment Grant application focused on describing the planned IT architecture and building a robust information system to reliably handle the automated transactions that will take place. To ensure the successful development of this system and its seamless integration with planned upgrades to other state agency's IT systems, Hawaii's Chief Information Officer and the Office of Healthcare Transformation have committed to working with the Connector and its selected IT contractors in developing the Connector's information systems.

The Interim Board envisions the Connector website as providing an interface that enables consumers to compare insurance products and make informed decisions.¹⁷ Each market of the Connector will be accessible through a different area of the Connector website, i.e, two separate links that direct users to either the individual market or the small group market portal. The Connector website will be in English, and language access issues will be addressed according to state and federal law.

It is expected that the Connector website will provide users with a comprehensive and easy shopping experience. First and foremost, the website will be designed to provide a "no wrong door" approach where each applicant is assessed for eligibility for multiple programs and referred to those programs for which the user qualifies, public or private. The Connector website will feature a single streamlined application that will, among other things, provide the users with a seamless experience regarding:¹⁸

- (1) Verification of eligibility for Medicaid;
- (2) Verification of eligibility for the Basic Health program (if implemented in Hawaii);
- (3) Verification of eligibility for premium assistance subsidies to purchase a qualified health plan;
- (4) Calculation of premium assistance subsidy amount;
- (5) Comparison of cost, coverage, and quality of qualified health plans; and
- (6) Determination of whether a user's physician or provider participates in a qualified health plan's provider network.

The Connector will provide additional features to ensure a positive experience for users of the website, including tools to filter and facilitate selection of a qualified health plan. Online customer service will be available through the site to handle users' questions or complaints. The Connector will also maintain a toll-free hotline to assist users. Because the Connector website

16. The flowchart of proposed operations was developed by the Operations Workgroup, chaired by Joan Danieley.

17. The Connector also plans to develop a method by which persons who do not have internet access may purchase qualified health plans through the Connector.

18. See Patient Protection and Affordable Care Act §1311 and 45 C.F.R. §155.205 (proposed) for a complete listing of the requirements for a health insurance exchange website.

will link through to the various qualified health plans that a user may select, the Board will adopt rules to govern the features and inclusions of qualified health plan websites for insurers that participate in the Connector. The Connector website will also be ADA-compliant and provide meaningful access to persons with limited English proficiency. Finally, the Connector will track website usage patterns so that it may continue to refine and improve users' experiences over time.

D. Operational Issues: Individual Market vs. Small Group Market

Individual Market. For participants in the individual market, the Interim Board plans for users' eligibility decisions to be made through the Connector website. However, the Connector website is expected to display links that take the user to the website of the qualified health plan that the user selects. Once a user chooses a qualified health plan, the user will have the option to either enroll and purchase the plan at the health plan website directly from the participating insurer or purchase the plan through the Connector's website. The Connector will allow an enrolled user's insurance premiums to either flow through the Connector or be paid directly to the insurer through the qualified health plan's website. Note, however, that the Board may make changes to this planned operational feature once work has begun on the IT infrastructure of the Connector and more is known about the technological challenges of creating the system.

Small Group Market. Eligibility determinations will also be made through the Connector website for small employers using the small group component of the Connector. In contrast to the individual market operations, however, small employers will enroll and pay insurance premiums through the Connector website instead of paying premiums directly through the qualified health plan website.

Insurer Participation in Both Markets. The Interim Board recommends that insurers that offer qualified health plans through the small group market of the Connector should also be required to offer qualified health plans through the individual market of the Connector. The Interim Board believes that this requirement will support the goals of the Federal Act by increasing the overall health insurance choices available to all consumers, individual and small business alike. In addition, the Interim Board believes that requiring participation in both markets of the Connector under these circumstances will prevent possible market distortion that may occur if insurers selectively participate in parts of the Connector that they perceive to offer lower risk. The Interim Board acknowledges that this requirement may raise solvency concerns among some niche insurers currently in Hawaii's market. Therefore, the Interim Board recommends that the Insurance Commissioner be empowered to grant waivers from this requirement to insurers who demonstrate that compliance with this requirement will increase their risk of insolvency or other financial hardship. (See Comment 1 and proposed statutory amendments in Part VI of this Report.)

E. Funding

The Connector is required by the Federal Act to be self-funding beginning January 1, 2015. To support its ongoing operations, the Connector is authorized to charge assessments or user fees to participating insurers.¹⁹ The Connector may also receive grants, fees, and other contributions from public and private sources, including appropriations from the State.²⁰ The Connector anticipates that it will support its ongoing operation through the use of fees and assessments as permitted by the Federal Act; however, the Connector has yet to determine the amounts and types of fees that it will implement. The Interim Board plans to analyze a variety of funding strategies over the coming year to ensure the self-sufficiency of the Connector, and it anticipates making more concrete funding decisions as progress is made toward implementing the Connector and the budgetary needs of the Connector are more fully developed. In the interim, however, start-up and implementation of the Connector will be funded through the Level I Exchange Establishment Grant recently awarded (see earlier discussion in Part II of this Report). The Interim Board also anticipates applying for any additional federal grant moneys that are made available to the states for establishing health insurance exchanges.

F. Role of Medicaid

The Interim Board intends for the Connector to integrate closely with Medicaid to fulfill the Connector's commitment to the "no wrong door" experience for Connector users. The Department of Human Services, Med-QUEST Division, and the Board will work in consultation to ensure that the eligibility functions of the Connector and Medicaid work in collaboration. As currently planned, the Med-QUEST Division's eligibility system will interface with the Connector and be responsible for making Medicaid eligibility determinations and managing enrollment of Medicaid eligible individuals into a contracted health plan. The Board will also work with the Department of Human Services and the Med-QUEST Division to ensure that transitions of persons between Medicaid plans and private qualified health plans purchased through the Connector are handled smoothly and in a manner that provides continuity of coverage and care for those persons. The Interim Board envisions that over time there will be a seamless integration between the IT systems of the Connector and planned upgrades to the State's Medicaid eligibility system that will provide an efficient and effective experience for insurance applicants.

G. Navigator Program and the Role of Insurance Producers

The Interim Board views public outreach and education as an important component of the Connector that will encourage enrollment and help achieve the goal of expanded insurance coverage for persons in Hawaii. Accordingly, the Connector will establish a Navigator program that meets the requirements of the Federal Act.²¹ The Interim Board envisions the Navigator program as creating relationships in the community and establishing an outreach network among

19. Patient Protection and Affordable Care Act §1311(d)(5)(A). *See also* 45 C.F.R. §155.160 (proposed).

20. §435H-3, Hawaii Revised Statutes.

21. Patient Protection and Affordable Care Act §1311(i) and 45 C.F.R. §155.210 (proposed).

likely users of the Connector, such as small employers, self-employed individuals, and uninsured or under-insured individuals. Navigators will conduct public education activities about the Connector's services, distribute fair and impartial information about qualified health plans, and facilitate enrollment in qualified health plans. To avoid conflicts of interest, the Interim Board recommends that eligibility to be a navigator be restricted to nonprofit organizations in Hawaii. (See Comment 2 and proposed statutory amendments in Part VI of this Report.)

With specific regard to insurance producers in Hawaii, the Interim Board takes the view that they should not act as Navigators because of their direct conflict of interest in the sale of insurance products. (See Comment 2 and proposed statutory amendments in Part VI of this Report.) Despite this recommendation, the Interim Board recognizes the role that insurance producers play in Hawaii with regard to selling insurance products to small business owners. Accordingly, the Interim Board does not believe that insurance producers should be prohibited from selling insurance products that are available through the Connector.

At this time, there is no funding, federal or state, that is allocated for the Navigator program. Funding for the Navigator program may come from grants from the operational funds of the Connector; however, federal funds that are received by the State or the Connector to establish the Connector may not be used.²² The Interim Board expects that it will address this issue over the coming year as its discussion of the Connector's budgetary needs and available funding sources evolve.

H. Preserving the Hawaii Prepaid Health Care Act²³

The Interim Board intends that the small group market of the Connector will coexist with the requirements of and not adversely affect the Hawaii Prepaid Health Care Act ("PPHCA"). The Legislature was careful to ensure that the Connector requirements would not diminish the rights or consumer protections provided by Chapter 393, Hawaii Revised Statutes, and the Board will work to preserve the PPHCA and create a framework where the two may work in tandem when possible.²⁴ The Interim Board has expressed to the U.S. Department of Health and Human Services the importance of PPHCA in Hawaii and the great strides that this law has made toward increasing the number of insured persons in the State. The Department of Health and Human Services has responded with an opinion that the health insurance exchange program under the Federal Act may co-exist with PPHCA because the PPHCA is an employer mandate and not an insurer mandate. At this time, the Interim Board continues to craft its policies relating to required health plan benefits in the small business market of the Connector in relation to the mandated benefits under the PPHCA. Further, as work on the Connector proceeds, the Interim Board intends to seek waivers from the Department of Health and Human Services from requirements of the Federal Act when it believes that a waiver may be necessary to preserve the protections provided to Hawaii's insured persons under PPHCA.

22. Patient Protection and Affordable Care Act §1311(i).

23. See Chapter 393, Hawaii Revised Statutes.

24. See §435H-9, Hawaii Revised Statutes, ("Nothing in this chapter shall in any manner diminish or limit the consumer protections contained in or alter the provisions of chapter 393.")

I. Data Collection

There will be numerous data collection and feedback mechanisms necessary between the Connector and participating health plans, the Department of Human Services, Med-QUEST Division, and the Insurance Division. The Interim Board expects that the Connector will have the responsibility for aggregating certain kinds of data originating from these various sources. Anticipating this need, the Interim Board plans to work collaboratively within existing data collection projects in Hawaii, including the Hawaii Health Information Exchange.

J. Essential Benefits Requirements

The Federal Act directs the U.S. Department of Health and Human Services to define essential benefits that will be included in qualified health plans offered through each state's health insurance exchange.²⁵ The essential benefits package must cover the following general categories of services:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance abuse disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventative and wellness services and chronic disease management; and
- Pediatric services, including oral and vision care.²⁶

The Federal Act further requires the Department of Health and Human Services to determine the scope of the essential health benefits to be provided and requires them to be equal to the scope of benefits under a typical employer-based plan.²⁷

On December 16, 2011, the U.S. Department of Health and Human Services released a bulletin outlining its proposed approach for rulemaking to define essential benefits and

25. Patient Protection and Affordable Care Act §1302(b).

26. *Id.* at §1302(b)(1).

27. *Id.* at §1302(b)(2).

requesting comments from the states.²⁸ The Department would allow states to select an existing health plan to set the benchmark for items and services to be included in the essential benefits package. Under the Department's proposed approach, states would be able to choose one of the following health insurance plans as a benchmark:

- One of the three largest small group plans in the state;
- One of the three largest state employee health plans;
- One of the three largest federal employee health plan options; or
- The largest HMO plan offered in the state's commercial market.²⁹

Each state would have the flexibility to select a plan that represents the typical employer-based plan in that state. The benefits and services included in the health insurance plan selected by the state would be that state's essential health benefits package for qualified health plans sold through its health insurance exchange. States will also have the flexibility require benefits in addition to the essential benefits package; however, the Federal Act requires that states defray the cost of any additional essential benefits that they mandate.³⁰

Given the recent nature of the U.S. Department of Health and Human Services' announcement concerning the essential benefits package, Interim Board has not had an opportunity at this point in time to discuss a benchmark plan for Hawaii's essential benefits package or the addition of extra mandated benefits in Hawaii. The Interim Board expects to submit comments to the Department in response to its proposed approach and consider the issue of essential benefits over the coming year.

28. See Essential Health Benefits Bulletin, Center for Consumer Information and Insurance Oversight, Dec. 16, 2011, available at http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf. See also <http://www.hhs.gov/news/press/2011pres/12/20111216b.html>.

29. *Id.*

30. Patient Protection and Affordable Care Act §1311(d)(3)(B).

PART IV. DEVELOPMENT TIMELINE

Over the course of its discussion, the Interim Board has developed a preliminary timeline for implementing the Hawaii Health Connector. The dates and events presented here represent the major milestones in the technological, business, and policy development of the Connector.

4th Qtr. 2011

Key Dates

September 30, 2011 - Establishment grant submitted to U.S. Department of Health and Human Services,

November 30, 2011 - \$14.4 Level I Establishment Grant awarded to Connector.

Other Activities

- Select IT vendor to create IT architecture for Connector.
- Contract with attorney or CPA firm to help obtain tax exempt status ruling from IRS.
- Contract with attorney to research and develop possible request for waiver to U.S. Department of Health and Human Services on matters relating to the Hawaii Prepaid Health Care Act.

1st Qtr. 2012

- Hire key Connector staff.
- Finalize IT system requirements in light of all business operations requirements.
- Select information systems vendor to handle information systems implementation and begin systems development.
- Coordinate with Medicaid program on IT project and how Medicaid will interface with the Connector IT architecture.
- Draft IT request for proposals (RFP) and solicit bids from IT vendors to handle IT implementation.
- Develop internal control procedures for maintaining financial and management control.
- Initiate acquisition of office space and equipment.

- Connector legislation introduced and monitored during 2012 Regular Session.

2nd Qtr. 2012

Key Dates

February 1, 2012 - Nominations for Connector Board of Directors submitted to Senate for confirmation.³¹

June 2012 - Federal health insurance exchange regulations expected to be finalized by U.S. Department of Health and Human Services.

June 30, 2012 - Application for Level II Establishment grant funding from U.S. Department of Health and Human Services submitted.

July 1, 2012 - Terms for permanent Connector Board members begin.³²

Other Activities

- Statewide stakeholder meetings to solicit public input on the exchange.
- Adopt guidelines for linking the health plan websites to the Connector website.
- Finalize standards for certification of a health plan into the Connector, including a timeline for application submission, evaluation, and selection.
- Solicitation of participating health plans.
- Finalize memoranda of understanding with sister agencies to facilitate work needed for the integration of the exchange with their information systems.

3rd Qtr 2012

- Develop procedures for appeals functions; determine staffing needs for appeals; establish a process for reviewing consumer complaint information; establish process for referrals to consumer assistance programs.
- Prepare certification documents for submission to U.S. Department of Health and Human Services to review the Connector and receive certification or provisional certification.

31. §435H-4, Hawaii Revised Statutes.

32. *Id.*

- Determine organizations in the State that qualify to function as Navigators.

4th Qtr. 2012

- Submit required documentation to U.S. Department of Health and Human Services to receive certification for the Connector.
- Solicit applications for the certification of qualified health plans to be sold through the Connector.
- Finalize outreach and education plan, including performance metrics and evaluations plan.
- Purchase computer hardware for IT system.
- Develop amendatory legislation for the enabling statute, as needed, including detail on the funding mechanism.
- Assess adequacy of accounting and financial reporting systems. Conduct a third party objective review of all systems of internal control. Demonstrate capability to manage the finances of the Connector soundly, including the ability to publish all expenses, receivables, and expenditures consistent with Federal requirements.

1st Qtr. 2013

- Federal decision on certification of Connector plan.
- Collect submissions from the qualified health plan solicitation and begin evaluating proposals.
- Finalize procedures for eligibility and enrollment procedures for manual operation and information systems operation.

2nd Qtr 2013

- Launch outreach and education strategy and refine message based upon response and feedback from consumers.
- Begin hiring of the remainder of Connector staff.

- Complete final development of baseline system, including software, hardware, interfaces, code reviews, and unit-level testing.
- Develop training materials for Navigators.

3rd Qtr 2013

- Complete the certification of qualified health plans. Complete any negotiations and execute contracts to health plan issuers who applied for qualified health plan issuer status. Issue an announcement to the public on the selection of qualified health plans. Conduct plan readiness reviews/activities.
- Complete systems development and finalize testing of IT system.
- Develop call center customer service representative protocols. Develop protocols for accommodating the hearing impaired and those with other disabilities and foreign language and translation services.
- Determine Navigator grantee organizations and award contracts or grants funded from the operational funds of the exchange. Train Navigators.

4th Qtr 2013

Key Dates

October 1, 2013 - Initial open enrollment period for Connector begins.

Other Activities

- Begin receiving and adjudicating eligibility determinations.
- Collaborate on testing of Connector and other applicable state health subsidy programs systems. Coordinate launch of Exchange open enrollment.
- Begin enrollment into qualified health plans.
- Launch call center functionality and publicize 1-800 number. Prominently post information on the Connector website relating to contacting the call center for assistance.
- Begin operations of Navigators.

- Complete user testing, including full end-to-end integration testing with other components. Complete pre-operational readiness review to validate readiness of all system components. Complete testing of security control validations. Prepare and deploy all system complements to production environment. Obtain security accreditation.

1st Qtr 2014

Key Dates

January 1, 2014 - Connector operations begin.

2nd Qtr 2014

- Demonstrate capability for the Connector and the Insurance Commissioner to monitor the practices and conduct, as well as the pricing and benefits of health insurers offering products in the Connector with regard to their products inside and outside the Connector.

3rd Qtr 2014

- Implement financial assessment pursuant to statute.

4th Qtr 2014

- Post information related to Connector financial management on its website and identify other means to make financial activities associated with the management of the Connector transparent. Submit the required accounting report to U.S. Department of Health and Human Services.
- Continually update quality rating information on the Connector website and update information for call center representatives, so they have the most up to date information on qualified health plans.

PART V. RESPONSES TO LEGISLATIVE INQUIRIES

Section 4(b) Act 205, Session Laws of Hawaii 2011, which creates the Hawaii Health Connector, directs the Interim Board to make recommendations to the Legislature on specific operational issues that are expected to be encountered as the Connector is implemented. Accordingly, the Interim Board offers the following responses and recommendations to the Legislature's inquiries (excerpted language from Act 205 appears in italics):

...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.

The Federal Act requires each state's exchange to be self-funding by 2015. The Interim Board recognizes that it has several funding mechanisms available to it, as allowed by both the Federal Act and Act 205, including grants and user fees. However, given that the Hawaii Health Connector is still in its start-up phase, it is not yet clear what the specific ongoing operational expenses will be of the Connector. Currently, the Connector's start-up costs are being financed by federal grants that are designated for the specific purpose of assisting states with starting their own health exchanges. The Interim Board will have a better understanding of what its ongoing budgetary needs will be once it is fully staffed and has begun building the information technology system necessary to support the Connector. Accordingly, the Interim Board expects to create a more thorough funding plan over the coming year.

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

The Connector will be audited annually, as required by Act 205, and in addition to submitting its annual audit report to the Legislature, the Connector will make the audit report available to the public on its website. The Connector will also publish online an accounting of its administrative costs, including funds lost to waste, fraud, and abuse.

The Interim Board plans to hire a Chief Financial Officer who will oversee staff accountants in the day-to-day financial management of the exchange. In addition, the bylaws of the Connector authorize the creation of an Audit Committee to oversee the Connector's financial affairs. The Interim Board has designated a Board member (Cliff Alakai) to serve as the Connector's Treasurer. The Treasurer will have direct oversight over the financial aspects of the Connector and will conduct periodic examinations of the Connector finances to ensure that there is no fraud, waste, or abuse.

(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 [435H] -1, Hawaii Revised Statutes, that are qualified according to the requirements of federal law and regulations and national quality measures shall be included.

The Insurance Division of the Department of Commerce and Consumer Affairs will be responsible for developing criteria and qualifying insurers and insurance products for inclusion in the Connector, in accordance with federal law. The Insurance Division will be working with the Connector to develop criteria and procedures for qualifying insurers that are effective in achieving the goals of a health exchange and compliant with the Federal Act and federal regulations. Once this process is fully developed, the Insurance Commissioner is expected to make recommendations for codifying qualification criteria and procedures, particularly any that may supplement the federal requirements, in state law.

(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.

The Interim Board believes that both risk pools within the Connector, individual and small group, are equally vital to achieving the Connector's goal of increasing the number of persons in Hawaii who are covered by health insurance and thus intends to place an equal priority on offering qualified plans to the individual market and to the small group market. With specific regard to the small group component of the Connector, the Interim Board has agreed that, in accordance with the Federal Act, in the early stages of the Connector, the small group component of the Connector will be limited to employers with up to fifty employees. The small group size will increase to up to one hundred employees by the federal deadline of January 1, 2016.

(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...;

The Connector website will be designed to determine levels of eligibility for all users and direct them toward appropriate insurance choices, including publicly funded coverage. Because of this "no wrong door" model, there is expected to be some transition between publicly funded coverage and private plans. The Interim Board is committed to developing a strategy to ease these transitions, as well as those among private insurance providers. The Board expects to continue to refine its methods of ensuring smooth transitions for individual consumers between public and private plans.

At this time, however, it is not known exactly what the level of transition will be of individuals moving among insurance plans and providers. The Interim Board and future Board members will develop an ongoing strategy to work with insurance purchasers and consumers to ease transitions among carriers once more information is available. It is hoped that close integration between the Connector's web interface and the information technology systems used by Medicaid will aid in this effort. The Interim Board anticipates that transitions can be managed on the Connector website in the same way that initial enrollments and purchases are made and that the Connector and participating health plans will cooperate to provide notice to enrollees in advance of changes in their eligibility or plan status. Some considerations include providing Medicaid continuous eligibility until an individual's next eligibility review and requiring all QUEST health plans to offer a qualified health plan through the Connector.

Further, to ensure that the Connector effectively addresses this churn between public and private health plans, the Interim Board expects to form a subgroup to monitor this specific issue as the Connector is implemented and address concerns that arise during Connector operations.

(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.

Several measures will be taken to increase transparency of the Hawaii Health Connector and increase opportunities for public participation. Among these will be:

- (1) Public meetings of the Connector Board;
- (2) Access to the Connector website to provide standardized comparative information on qualified health benefits plans;
- (3) A toll-free consumer assistance hotline; and
- (4) The establishment of a navigator program, using local non-profit community organizations, to conduct outreach and assist individuals in determining health plans that are appropriate for their needs and steering potential applicants to appropriate insurance choices offered through the Connector.

In addition, the Executive Director of the Connector will share progress reports with stakeholders through periodic public meetings, to ensure that the Connector and its administrators remain aware of public concerns and work to craft the Connector's operations and insurance options to reflect the needs of those who will use the Connector most frequently. Groups that will be specifically targeted for input will be small business employers, Native Hawaiians, immigrants, residents of underserved communities, and sub-area council members for the State Health Planning and Development Administration.

The Connector also will coordinate with the Office of Healthcare Transformation within the Office of the Governor to make use of outreach teams and appropriate culturally linguistic materials to raise awareness of the Connector's services that are available to our communities. The Connector's Level I Exchange Establishment Grant application specifically budgeted for funds to be used for these community outreach functions.

Qualification of insurers for inclusion in the Connector will be handled through the Insurance Division of the Department of Commerce and Consumer Affairs, as will the overall regulation of insurers and dental plans in Hawaii. Opportunities that currently exist for public participation in Insurance Division regulatory proceedings will remain in place.

(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 is entitled to private counsel for a board related issue.

As required by Act 205, the Interim Board has adopted a conflict of interest policy for Connector board members. The policy states:

A member of the Board shall not vote on any matter if the vote directly and substantially affects:

- (1) A business or other undertaking in which he has a substantial financial interest;
- (2) A private undertaking in which he is employed;
- (3) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or agency capacity; or
- (4) A competitor of the entities listed in items 1-3 above.

Conflicts of interest are further addressed in the Connector's bylaws which provide for disclosure of potential conflicts and abstinence from voting or discussion by those members who have a potential conflict. In addition, the bylaws provide for annual review of the conflict of interest policy and periodic review of Connector activities to ensure compliance with the conflict of interest policy.

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

Act 205 provides that Board members shall be appointed by the Governor to serve four-year terms in accordance with sections 435H-4 and 26-34, Hawaii Revised Statutes. In order to stagger the terms of board members, the Interim Board recommends that, of the initial appointees to the permanent board, five members be appointed for a two-year term, five members be appointed for a three-year term, and the remaining five members be appointed for the normal four-year term. This will result thereafter in the appointment of one-third of the board members each year. In accordance with this recommendation, the Interim Board has included in this report a draft of proposed amendments to section 435H-4, Hawaii Revised Statutes.

(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.

The proposed staffing plan for the Connector, including proposed salaries, for the Connector is attached to this report as Appendix C. The Interim Board anticipates the following staffing needs:

- (1) **Executive Director:** The Executive Director will serve as the chief executive for the Connector and answer to the Board. Duties include responsibility for the overall administration of the Connector, including all policy, financial, personnel, and operational requirements of the Connector, advising and assisting the Connector's Interim Board and permanent Board on all policy matters requiring Board decision, and serving as the liaison between the Connector and the U.S. Department of Health and Human Services and all other federal, state, other governmental, and community entities. (In November 2011, the Interim Board hired Coral Andrews to be the Executive Director of the Connector.)
- (2) **Administrative Assistant:** The Administrative Assistant reports to and provides administrative and secretarial support to the Executive Director and assists the Executive Director with the management of the Connector's office. Duties include clerical assistance, coordination of meetings, attending meetings with the Executive Director, assisting with the establishment and implementation of office function policies and procedures, and maintaining a records management system for the office.
- (3) **Project Coordinators (x2):** These positions report to and assist the Executive Director with the coordination and establishment of business operations and exchange functions of the Connector. As assigned by the Executive Director, Project Coordinators will research, recommend, and develop specified operational systems to implement certain Connector functions that may include, but need not be limited to: certification, recertification, and decertification requirements for qualified health plans; call centers; a quality rating system; a navigator program; the administration of advance payment of premium tax credits and cost-sharing reductions; Free Choice Vouchers; the enrollment process; a seamless eligibility/enrollment process with Medicaid; public application and notice requirements; individual responsibility determinations; appeals of eligibility determinations; risk adjustment and transitional reinsurance program; and functions specific to the small group market.
- (4) **Policy Analyst:** The Policy Analyst will assist the Executive Director with research and analysis required for the establishment of the administration and operations of the Connector, including federal and state legislation and regulations related to the Federal Act and the Connector and any other issues as may be required by the Executive Director or its designee. It is anticipated that the Policy Analyst will provide both written and verbal reports and summaries of analyses, participate in meetings related to those work products, and draft proposed state legislation relating to the Connector and healthcare and human services issues.
- (5) **IT Administrator:** The IT Administrator will report to the Executive Director and serve as the chief information officer for the Connector. The IT Administrator has the overall responsibility for planning, organizing, coordinating, directing, and managing the information and telecommunications

systems in the Connector. Duties include: managing all information technology staff and all IT consultant and vendor contracts for the Connector; initiating feasibility and other studies; coordinating and evaluating IT and telecommunications projects; maintaining liaison with governmental agencies and private entities involved with IT and telecommunications generally, as well as specifically as they relate to the implementation of the provisions of the Federal Act and the Connector; preparing program and budget recommendations; and keeping abreast of changes in HIPAA and federal and state statutes and regulations affecting the Connector.

- (6) **Web Specialist:** The Web Specialist will report to the IT Administrator and is responsible for assisting with the development and maintenance of the Connector's website, including the web portal required under the Federal Act. As requested by the IT Administrator, the Web Specialist may be required to work with consultants and vendors retained by the Connector for the development and maintenance of the Connector's web portal.
- (7) **Chief Operating Officer/Finance Director:** The Chief Operating Officer/Finance Director reports to the Executive Director and will assist the Executive Director with day-to-day administration and management of the Connector and serve as the administrative head of the Connector in the Executive Director's absence. The Chief Operating Officer/Finance Director also serves as the chief financial officer for the Connector. In this capacity, the Chief Operating Officer/Finance Director will be responsible for all financial aspects of the Connector, including but not limited to: financial administration of the Connector; development and administration of the premium tax credit and cost-sharing reduction program; Free Choice Vouchers; development and implementation of the risk adjustment, risk corridor, and reinsurance programs; development and implementation of all financial transactions required by the Connector's small group exchange; supervision and management of contracts related to the payroll, benefits, and tax preparation services; preparation of the Connector's financial statements and all financial reports; and serving as the Connector's liaison on all financial audits by any federal and state agency.
- (8) **Human Resources Consultant:** A request for proposals will be issued to retain a consultant to advise the Interim Board, permanent Board, and Executive Director on the establishment of an efficient staffing plan, compensation plan, personnel policies, and personnel administration plan for the Connector. The consultant will attend and participate in all meetings, including legislative hearings, as may be requested by the Executive Director. The consultant will be retained for calendar year 2012.
- (9) **Public Relations Consultant:** A request for proposals will be issued to retain a public relations consultant. The consultant will assist the Executive Director in planning, designing, and executing a multi-media plan to unveil the Connector to the public. The plan will inform the public about the Federal Act, the Connector,

and how individuals and small employers may purchase healthcare insurance through the Connector. The consultant will attend and participate in all meetings as may be requested by the Executive Director. The consultant will be retained by mid-2012 and will be required through 2013.

- (10) **Legal Services Consultant:** A request for proposals was issued in October 2011 to retain the services of legal counsel to the Interim Board, permanent Board, and the Executive Director. Counsel will be required to advise the Board, draft memoranda and reports, and draft proposed legislation for the Connector on matters related to: the Federal Act and regulations promulgated to implement the Act; state statutory and regulatory requirements; and the development and administration of the Connector. Counsel specifically will be required in the last quarter of 2011 and first quarter of 2012 to draft and assist with legislation required to implement the Connector. Counsel will attend and participate in meetings, including legislative hearings, as requested by the Executive Director. In lieu of in-house counsel, contracted counsel will be retained annually.
- (11) **IT Consultant:** A request for proposals will be issued to retain consultant services for information technology requirements of the Connector. The IT consultant will assist the Executive Director and IT Administrator in the planning, design, and implementation of all IT requirements for the Connector, including all work necessary to implement the web portal required under the Federal Act for individuals and small businesses to purchase healthcare insurance. The IT consultant also will ensure that the Connector's IT system is capable of interfacing with the U.S. Department of Health and Human Services and all state agencies, as may be required either under the Federal Act or by the State or as directed by the Executive Director. The IT consultant will ensure that its architectural design allows for the Connector to interface with Hawaii's Medicaid system. The Connector anticipates applying for future grant funding for the Connector's share of costs specifically related to the eligibility determination for Medicaid/CHIP and the premium subsidy. The IT consultant will attend and participate in meetings, including legislative hearings, as may be requested by the Executive Director. The IT consultant will be retained in 2012 and will continue through 2013.
- (12) **Risk Consultant:** A request for proposals will be issued to retain the services of a risk consultant to assist the Executive Director in planning, designing, and implementing risk corridor, risk adjustment, and reinsurance programs for the Connector, as by the Federal Act. The risk consultant will review and advise the Executive Director on risk-related provisions in the Federal Act and implementing regulations. The risk consultant will communicate and work with federal and state agencies as may be required. The risk consultant will attend and participate in meetings, including legislative hearings, as may be requested by the Executive Director. The risk consultant will work through 2012.

- (13) **IT Vendor:** A request for proposals will be issued to retain a vendor to design and maintain the Connector's web portal to include all information and capabilities required under the Federal Act. It is anticipated that, after the web portal is designed and implemented, an ongoing annual maintenance budget will be required.
- (14) **Additional DCCA Positions (x4):** The Insurance Division expects to hire two temporary researchers, a temporary IT specialist, and a program assistant to address the expected additional workload of the Insurance Division related to the start-up and implementation of the Connector.

This proposed staffing plan is expected to support the operations of the Interim Board and the Connector through 2012. These staffing levels were budgeted in the Connector's Level I Exchange Establishment Grant application and are subject to revision based on the actual amount of the grant awarded by the U.S. Department of Health and Human Services. At this time, the full scope of staffing needed for ongoing operations past 2012 is not clear.

With regard to procurement criteria, the Interim Board has adopted a comprehensive procurement policy for the purchase of goods and services.

(10) A plan of financial organization of the board of the Hawaii health connector and requirements for financial management by its board.

As noted previously (see discussion on staffing plan) the Interim Board plans to hire a Chief Operating Officer/Finance Director to serve as the chief financial officer for the Connector.³³

The Interim Board has also created a Treasurer position, to be filled by a Board member, who will be responsible for day-to-day financial oversight until the Chief Operating Officer has been hired. Following that, the Treasurer shall have oversight of all funds of the Connector, assist in the preparation of financial reports and audits, and make financial information available to the Board and the public. The Interim Board elected Cliff Alakai from among its members to serve as the first Treasurer of the Connector.

(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.

The Connector will adhere to the requirements of the Federal Act in the design and operation of a secure and easy-to-use Americans with Disabilities Act-compliant website. Among other things, the Connector website will:

- Offer a user-friendly shopping experience;

33. The Chief Operating Officer's duties are discussed in detail at page 24.

- Allow users to compare qualified insurance plans using the website's features, such as searching whether their provider is included in a given health plan network;
- Allow individual consumers and small businesses to access an electronic calculator to calculate an estimated cost of their coverage once the premium tax credits have been applied to their premiums;
- Determine users' eligibility and provide access to eligible Connector health plans or, if needed, allow eligible users to access public health coverage programs through the Connector website;
- Provide links for enrollment of individual users in decentralized health plan websites, and provide enrollment eligible small employers directly through the Connector website; and
- Comply with federal standards for information security and information processing in order to safeguard users' health, financial, and personal information.

PART VI. RECOMMENDED PROPOSED LEGISLATION FOR THE 2012 REGULAR SESSION

After considerable discussion and debate, the Interim Board decided upon a reserved approach to proposing legislation for consideration during the upcoming session. The Interim Board recognizes that the Connector is still very much in the start-up phase and that as it develops over the next year, the Interim Board expects to have more statutory recommendations to aid in its operation. The Interim Board and subsequent permanent Board expect to take the opportunity afforded by their annual reports to the Legislature to recommend legislation when necessary.

After completing the initial stages of planning and development for the Connector, the Interim Board recommends the following amendments to chapter 435H, Hawaii Revised Statutes, relating to the Hawaii Health Insurance Exchange. *(A complete draft of the proposed House Bill follows these annotated amendments).*

COMMENT 1.

The Federal Act provides states the option to elect to operate a unified exchange or separate exchanges for the individual market and the small employer market. The Interim Board recommends operating the Connector as a single entity, but with two markets separated into separate risk pools for each the individual market and the small group market. The Interim Board further recommends that each side of the Connector, individual and small group markets, be accessible to purchasers through separate access points via one main Connector website. These proposed amendments to chapter 435H, HRS, are consistent with the Interim Board's recommendation.

The Interim Board also recommends that insurers who offer qualified health plans through the Connector's small group market should also be required to offer plans to the individual market. The Interim Board believes that this requirement will ensure greater insurance choices for consumers. Mandating participation in both markets will also discourage insurers from selectively participating only in markets that pose a lower risk. The Interim Board recognizes that participation in both markets may create a solvency risk for some niche insurers of small businesses. Accordingly, the Interim Board recommends that the Insurance Commissioner be empowered to grant waivers to an insurer who demonstrates that the sale of its products in both markets of the Connector creates an insolvency threat or other financial hardship for the insurer.

The Interim Board further recommends that insurers who offer qualified health plans through the Connector be required to offer plans to consumers in all areas of the State, and not limit coverage to persons who reside in specific geographic areas. The Interim Board also believes that this requirement will prevent insurers from selectively participating in areas of the State that have lower risk.

Accordingly, the Interim Board recommends adding a new section to chapter 435H, HRS, to specify that:

- (1) **The Connector elects to establish and administer risk pools for the individual market and the small group market;**
- (2) **Insurers that offer plans through the small group market of the Connector must also participate in the individual market of the Connector. Insurers may apply to the Insurance Commissioner for a waiver if participation in both parts of the Connector will result in insolvency; and**
- (3) **Insurers that participate in the Connector shall offer qualified plans in all geographic areas of the State.**

"§435H- Separate programs for individual market and small group market; participation by insurers. (a) The connector shall establish and administer a separate program and risk pool to serve each the individual market and the small group market, which shall operate in a manner consistent with the provisions of this chapter and the Federal Act.

(b) Any insurer that offers a qualified plan or qualified dental plan to the small group market of the connector shall also offer qualified plans or qualified dental plans, respectively, to the individual market of the connector; provided that the insurance commissioner may grant a waiver to this requirement to an insurer that demonstrates that compliance with this provision will likely result in insolvency or other extreme economic hardship for that insurer.

(c) Any insurer that participates in the exchange shall offer qualified plans that are available to all properly qualified residents of this State."

COMMENT 2.

Section 1311(i) of the Federal Act describes the role of navigators in states' insurance exchanges.³⁴ Among their duties, navigators shall:

- (1) **Conduct public education activities to raise consumer awareness of the availability of qualified health plans through the Connector;**
- (2) **Distribute fair and impartial information about enrollment in qualified health plans; and**
- (3) **Facilitate enrollment in qualified health plans.**

34. See discussion of navigators on pp. 10-11.

The Interim Board recognizes the need for navigators in conducting public outreach and expanding access to insurance coverage.³⁵ The Interim Board recommends that, in addition to the requirements in the Federal Act, navigators should be limited to nonprofit organizations. The Interim Board believes that this will ensure the impartiality of navigators as they facilitate enrollment in qualified health plans through the Connector. Also, in the interest of preserving impartiality, the Interim Board recommends prohibiting insurance producers from serving as navigators in the State.

Accordingly, the Interim Board recommends adding a new section to chapter 435H, HRS, to clarify qualifications for serving as a navigator, specifically, limiting eligibility to state nonprofit organizations and prohibiting insurance producers from serving as navigators.

§435H- Navigator program. (a) The board shall establish a navigator program that is consistent with the section 1311(i) of the Federal Act.

(b) The connector may award grants to entities that are selected by the board to serve as navigators; provided that recipients of navigator grants shall:

- (1) Be nonprofit entities organized under chapter 414D;
- (2) Meet requirements for navigators specified in section 1311(i) of the Federal Act; and
- (3) Meet any additional requirements established by the board;

provided further, that an insurance producer or insurance broker shall not serve as a navigator.

(c) Federal funds received by the State to establish the connector shall not be used to fund grants to navigators."

COMMENT 3.

A definition for "health benefit plan" should be added to section 435H-1, HRS, to clarify the types of plans that may be offered through the Connector. This proposed definition was modeled after the definition found in the National Association of Insurance Commissioners model act for states' health insurance exchanges.³⁶

"Health benefit plan" means a policy, contract, certificate, or agreement offered, delivered, issued for delivery, renewed, amended, or continued in the State by an insurer to provide, deliver, arrange, pay for, or reimburse any of the costs of health care services. "Health benefit plan" shall not include:

35. See Patient Protection and Affordable Care Act of 2010 at §1311.

36. Available at http://www.naic.org/documents/committees_b_exchanges_adopted_health_benefit_exchanges.pdf.

- (1) Coverage only for accident or disability income insurance, or any combination thereof;
- (2) Coverage issued as a supplement to liability insurance;
- (3) Liability insurance, including general liability insurance and motor vehicle liability insurance;
- (4) Workers compensation or similar insurance;
- (5) Motor vehicle personal injury protection insurance;
- (6) Credit-only insurance;
- (7) Coverage for on-site medical clinics; and
- (8) Other insurance coverage under which benefits for health care services are secondary or incidental to other insurance benefits;
- (9) The following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:
 - (A) Limited scope dental or vision benefits; and
 - (B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
- (10) The following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same insurer:
 - (A) Coverage only for a specified disease or illness; and
 - (B) Hospital indemnity or other fixed indemnity insurance; and
- (11) The following if offered as a separate policy, certificate, or contract of insurance:
 - (A) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;
 - (B) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code, as amended; and
 - (C) Similar coverage provided to supplement coverage under a group health plan."

COMMENT 4.

A definition for "individual market" should be added to section 435H-1, HRS, to support the creation of the individual market and small group market risk pools within the Connector.³⁷

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan."

COMMENT 5.

A definition of "qualified employer" should be added to section 435H-1, HRS, to support the creation of the individual market and small group market risk pools within the Connector.³⁸

"Qualified employer" means a small employer that elects to make, at a minimum, all of its full-time employees eligible for one or more qualified plans in the small group market offered through the connector."

COMMENT 6.

The definition of "small employer" should be added to section 435H-1, HRS, to support the creation of the individual market and small group market risk pools within the Connector. In addition, the new definition reflects the Interim Board's election, pursuant to the Federal Act, to phase in the small group market by increasing the size of employers who may participate in the Connector, from 1-50 employees prior to January 1, 2016, to 1-100 employees after that date.³⁹

"Small employer" means an employer who employed an average of at least one and not more than fifty employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Beginning January 1, 2016, "small employer" means an employer who employed an average of at least one and not more than one hundred

37. See Patient Protection and Affordable Care Act of 2010 at §1304(2). The proposed definition of "individual market" is modeled after the definition found in the Federal Act.

38. The proposed definition of "qualified employer" is modeled after the definition in the National Association of Insurance Commissioners model act for health insurance exchanges *available at* http://www.naic.org/documents/committees_b_exchanges_adopted_health_benefit_exchanges.pdf.

39. See Patient Protection and Affordable Care Act of 2010 at §1304(b)(2). The proposed definition of "small employer" is modeled after the definition in the Federal Act and the National Association of Insurance Commissioners model act for health insurance exchanges *available at* http://www.naic.org/documents/committees_b_exchanges_adopted_health_benefit_exchanges.pdf.

employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year."

COMMENT 7.

The definition of "small group market" should be added to section 435H-1, HRS, to support the creation of the individual market and small group market risk pools within the Connector.⁴⁰

"Small group market" means the health insurance market under which individuals obtain health insurance coverage on behalf of themselves and their dependents through a group health plan maintained by a small employer."

COMMENT 8.

Act 205, Session Laws of Hawaii, 2011, requires the Interim Board to recommend a plan to stagger the terms of Board members. The Interim Board recommends that members serve four-year terms (consistent with section 26-34, HRS), and that five of the fifteen members of the Board should be appointed each year. The Interim Board intends for this to create continuity among the majority of Board members from year to year. In addition, the Interim Board recommends that of the initial appointments, five members be appointed to two year terms, five members be appointed to three year terms, and the remaining five members be appointed to the normal four year term.

Accordingly, the Interim Board recommends that section 435H-4(c), HRS, should be amended to reflect the recommendation for staggering the terms of members of the Connector Board of Directors, excluding the ex officio members.

"(c) Board members shall serve staggered terms [and the interim board shall recommend an appropriate schedule for staggered terms; provided that] and shall be appointed to terms of four years; provided that of the initial appointees, five shall be appointed to a two-year term, and five shall be appointed to a three-year term. Each member shall hold office until the member's successor is appointed and qualified. This subsection shall not apply to ex-officio members, who shall serve during their entire term of office."

40. See Patient Protection and Affordable Care Act of 2010 at §1304(2). The proposed definition of "small group market" is modeled after the definition in the Federal Act.

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

4 "§435H-A Separate programs for individual market and small
5 group market; participation by insurers. (a) The connector
6 shall establish and administer a separate program and risk pool
7 to serve each the individual market and the small group market,
8 which shall operate in a manner consistent with the provisions
9 of this chapter and the Federal Act.

10 (b) Any insurer that offers a qualified plan or qualified
11 dental plan to the small group market of the connector shall
12 also offer qualified plans or qualified dental plans,
13 respectively, to the individual market of the connector;
14 provided that the insurance commissioner may grant a waiver to
15 this requirement to an insurer that demonstrates that compliance

H.B. NO.

1 with this provision will likely result in insolvency or other
2 extreme economic hardship for that insurer.

3 (c) Any insurer that participates in the exchange shall
4 offer qualified plans that are available to all properly
5 qualified residents of this State.

6 **§435H-B Navigator program.** (a) The board shall establish
7 a navigator program that is consistent with the section 1311(i)
8 of the Federal Act.

9 (b) The connector may award grants to entities that are
10 selected by the board to serve as navigators; provided that
11 recipients of navigator grants shall:

- 12 (1) Be nonprofit entities organized under chapter 414D;
13 (2) Meet requirements for navigators specified in section
14 1311(i) of the Federal Act; and
15 (3) Meet any additional requirements established by the
16 board;

17 provided further, that an insurance producer or insurance broker
18 shall not serve as a navigator.

19 (c) Federal funds received by the State to establish the
20 connector shall not be used to fund grants to navigators."

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1 SECTION 2. Section 435H-1, Hawaii Revised Statutes, is
2 amended by adding five new definitions to be appropriately
3 inserted and to read:

4 "Health benefit plan" means a policy, contract,
5 certificate, or agreement offered, delivered, issued for
6 delivery, renewed, amended, or continued in the State by an
7 insurer to provide, deliver, arrange, pay for, or reimburse any
8 of the costs of health care services. "Health benefit plan"
9 shall not include:

- 10 (1) Coverage only for accident or disability income
11 insurance, or any combination thereof;
- 12 (2) Coverage issued as a supplement to liability
13 insurance;
- 14 (3) Liability insurance, including general liability
15 insurance and motor vehicle liability insurance;
- 16 (4) Workers compensation or similar insurance;
- 17 (5) Motor vehicle personal injury protection insurance;
- 18 (6) Credit-only insurance;
- 19 (7) Coverage for on-site medical clinics; and

H.B. NO.

- 1 (8) Other insurance coverage under which benefits for
2 health care services are secondary or incidental to
3 other insurance benefits;
- 4 (9) The following benefits if they are provided under a
5 separate policy, certificate, or contract of insurance
6 or are otherwise not an integral part of the plan:
- 7 (A) Limited scope dental or vision benefits; and
8 (B) Benefits for long-term care, nursing home care,
9 home health care, community-based care, or any
10 combination thereof;
- 11 (10) The following benefits if the benefits are provided
12 under a separate policy, certificate, or contract of
13 insurance, there is no coordination between the
14 provision of the benefits and any exclusion of
15 benefits under any group health plan maintained by the
16 same plan sponsor, and the benefits are paid with
17 respect to an event without regard to whether benefits
18 are provided with respect to the event under any group
19 health plan maintained by the same insurer:

H.B. NO.

1 (A) Coverage only for a specified disease or illness;
2 and

3 (B) Hospital indemnity or other fixed indemnity
4 insurance; and

5 (11) The following if offered as a separate policy,
6 certificate, or contract of insurance:

7 (A) Medicare supplemental health insurance as defined
8 under section 1882(g)(1) of the Social Security
9 Act;

10 (B) Coverage supplemental to the coverage provided
11 under Chapter 55 of Title 10, United States Code,
12 as amended; and

13 (C) Similar coverage provided to
14 supplement coverage under a group health plan.

15 "Individual market" means the market for health insurance
16 coverage offered to individuals other than in connection with a
17 group health plan.

18 "Qualified employer" means a small employer that elects to
19 make, at a minimum, all of its full-time employees eligible for
20 one or more qualified plans in the small group market offered
21 through the connector.

H.B. NO.

1 "Small employer" means an employer who employed an average
2 of at least one and not more than fifty employees on business
3 days during the preceding calendar year and who employs at least
4 one employee on the first day of the plan year. Beginning
5 January 1, 2016, "small employer" means an employer who employed
6 an average of at least one and not more than one hundred
7 employees on business days during the preceding calendar year
8 and who employs at least one employee on the first day of the
9 plan year.

10 "Small group market" means the health insurance market
11 under which individuals obtain health insurance coverage on
12 behalf of themselves and their dependents through a group health
13 plan maintained by a small employer."

14 SECTION 3. Section 435H-4, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) Board members shall serve staggered terms [~~and the~~
17 ~~interim board shall recommend an appropriate schedule for~~
18 ~~staggered terms; provided that]~~ and shall be appointed to terms
19 of four years; provided that of the initial appointees, five
20 shall be appointed to a two-year term, and five shall be
21 appointed to a three-year term. Each member shall hold office

H.B. NO.

1 until the member's successor is appointed and qualified. This
2 subsection shall not apply to ex-officio members, who shall
3 serve during their entire term of office."

4 SECTION 4. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 5. In codifying the new sections added by section
11 1 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2012.

17

INTRODUCED BY: _____

Report Title:

Hawaii Health Insurance Exchange

Description:

Specifies that the Hawaii health connector shall establish separate risk pools for the individual market and the small group market. Establishes staggered terms for board members. Clarifies qualifications of and restrictions on navigators. Effective 7/1/12.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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Appendix A



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)

A handwritten signature in black ink that reads "Neil Abercrombie". The signature is written in a cursive style and is positioned above the printed name.

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

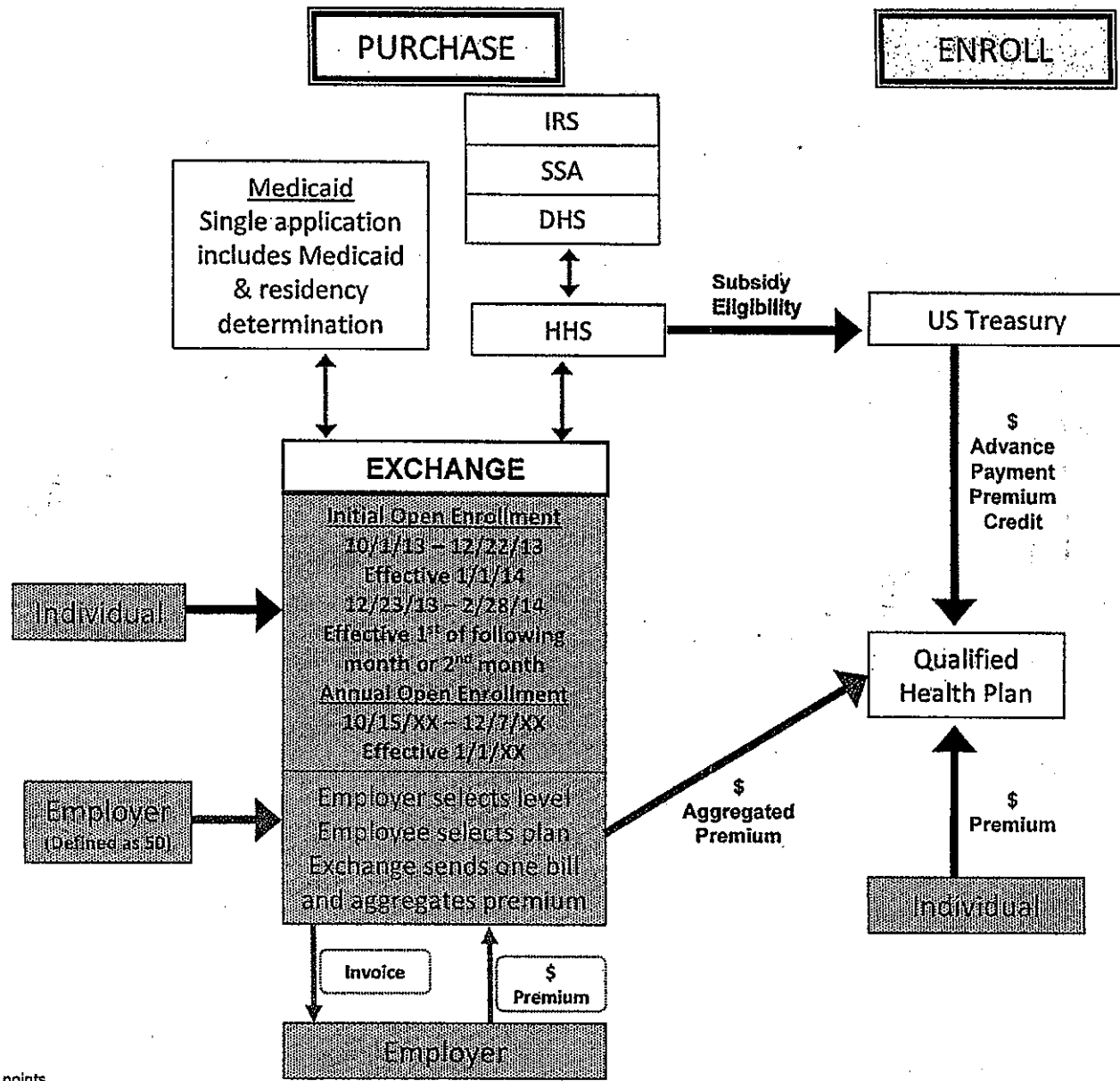
APPROVED this 8 day of JUL , 2011

A handwritten signature in cursive script that reads "Neil Abernethy". The signature is written in black ink and is positioned above the printed name of the Governor.

GOVERNOR OF THE STATE OF HAWAII

- SHOP**
- 2 Exchanges
2 Risk Pools
One Board
One Operation
- Call Center
Required
- Qualified Health
Plans
- Website
Required data &
search filters
- Who will serve
as Navigators?
- What is the role
of Brokers?

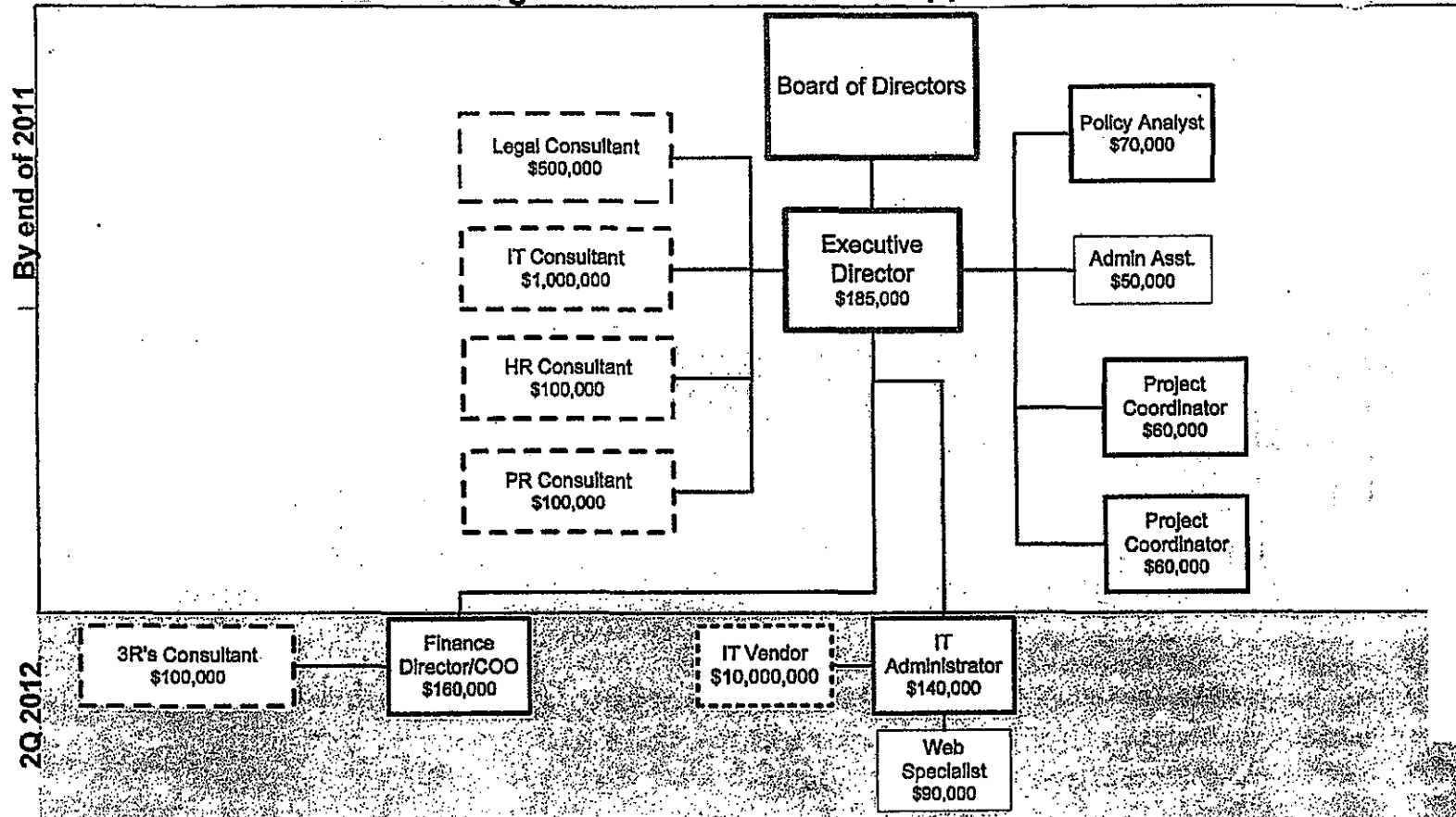
Interim Regulations @ 45 CFR
Interim Regulations will change
Includes some Hawaii-specific decision points



PROPOSED OPERATIONS FLOW CHART

Appendix B

Hawaii Connector Staffing Chart – Level Grant Application



PROPOSED HAWAII CONNECTOR STAFFING CHART

Appendix C

Note: Base salaries provided by Insurance Commissioner's office