

1 HB401
2 128296-1
3 By Representatives Wren, Poole, Clouse and Weaver
4 RFD: Health
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8 SYNOPSIS: Under existing federal law, the federal
9 Patient Protection and Affordable Care Act, as
10 amended by the Health Care and Education
11 Reconciliation Act of 2010, requires each state to
12 establish a health insurance exchange to provide a
13 centralized location where persons may obtain
14 comparative information on available health
15 insurance plans and facilitate the purchase and
16 sale of such health insurance plans.

17 This bill would create the Alabama Health
18 Insurance Exchange within the Department of Public
19 Health. This bill would provide that the exchange
20 would operate as an independent instrumentality of
21 the state and would be recognized as a
22 not-for-profit corporation for tax purposes. This
23 bill would provide that the exchange would be
24 governed by a board and would provide for the
25 membership terms and duties of the board.

26 This bill would require the exchange to make
27 qualified health plans available to qualified

1 individuals and qualified employers. This bill
2 would authorize the exchange to charge fees to
3 health insurance carriers in order to fund the
4 exchange.

5 This bill would authorize the department to
6 promulgate rules necessary to implement and operate
7 the exchange.

8 This bill would provide that if provisions
9 of the federal health care reform act authorizing
10 the exchange are repealed or declared
11 unconstitutional, this act would be repealed.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 To create the Alabama Health Insurance Exchange
18 within the Department of Public Health; to provide that the
19 exchange shall be operated by a board; to provide for the
20 duties, terms, and membership of the board; to provide for the
21 powers, duties, and obligations of the exchange; to authorize
22 the exchange to hire employees and enter into contracts; to
23 authorize the exchange to charge fees; and to provide that if
24 certain federal laws are repealed or declared
25 unconstitutional, this act is repealed.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Alabama Health Insurance Exchange Act.

3 Section 2. The purpose of this act is to provide for
4 the establishment of the Alabama Health Insurance Exchange to
5 facilitate the purchase and sale of qualified health plans in
6 the individual market in this state and to provide for the
7 establishment of a Small Employer Insurance Exchange to assist
8 qualified small employers in this state in facilitating the
9 enrollment of their employees in qualified health plans
10 offered in the small group market. The intent of this act is
11 to reduce the number of uninsured, provide a transparent
12 consumer driven marketplace, and assist individuals with
13 access to programs, premium assistance tax credits, and
14 cost-sharing reductions.

15 Section 3. For purposes of this act, the following
16 terms have the following meanings:

17 (1) BOARD. The Board of Directors for the Alabama
18 Health Insurance Exchange.

19 (2) DEPARTMENT. The Alabama Department of Public
20 Health.

21 (3) EDUCATED HEALTH CARE CONSUMER. An individual who
22 is knowledgeable about the health care system, and has
23 background or experience in making informed decisions
24 regarding health, medical, and scientific matters.

25 (4) EXCHANGE. The Alabama Health Insurance Exchange
26 established pursuant to Section 4.

1 (5) FEDERAL ACT. The federal Patient Protection and
2 Affordable Care Act (Public Law 111-148), as amended by the
3 federal Health Care and Education Reconciliation Act of 2010
4 (Public Law 111-152), and any amendments thereto, or
5 regulations or guidance issued under those acts.

6 (6)a. HEALTH BENEFIT PLAN. A policy, contract,
7 certificate, or agreement offered or issued by a health
8 carrier to provide, deliver, arrange for, pay for, or
9 reimburse any of the costs of health care services.

10 b. Health benefit plan does not include any of the
11 following:

12 1. Coverage only for accident or disability income
13 insurance, or any combination thereof.

14 2. Coverage issued as a supplement to liability
15 insurance.

16 3. Liability insurance, including general liability
17 insurance and automobile liability.

18 4. Workers' compensation or similar insurance.

19 5. Automobile medical payment insurance.

20 6. Credit-only insurance.

21 7. Coverage for on-site medical clinics.

22 8. Other similar insurance coverage, specified in
23 federal regulations issued pursuant to Pub. L. No. 104-191,
24 under which benefits for health care services are secondary or
25 incidental to other insurance benefits.

26 c. A health benefit plan does not include the
27 following benefits if they are provided under a separate

1 policy, certificate, or contract of insurance or are otherwise
2 not an integral part of the plan:

3 1. Limited scope dental or vision benefits.

4 2. Benefits for long-term care, nursing home care,
5 home health care, community-based care, or any combination
6 thereof.

7 3. Other similar, limited benefits specified in
8 federal regulations issued pursuant to Pub. L. No. 104-191.

9 d. A health benefit plan does not include the
10 following benefits if the benefits are provided under a
11 separate policy, certificate, or contract of insurance, there
12 is no coordination between the provision of the benefits and
13 any exclusion of benefits under any group health plan
14 maintained by the same plan sponsor, and the benefits are paid
15 with respect to an event without regard to whether benefits
16 are provided with respect to such an event under any group
17 health plan maintained by the same plan sponsor:

18 1. Coverage only for a specified disease or illness.

19 2. Hospital indemnity or other fixed indemnity
20 insurance.

21 e. A health benefit plan does not include the
22 following if offered as a separate policy, certificate, or
23 contract of insurance:

24 1. Medicare supplemental health insurance as defined
25 under Section 1882(g)(1) of the Social Security Act.

26 2. Coverage supplemental to the coverage provided
27 under Chapter 55 of Title 10, United States Code (Civilian

1 Health and Medical Program of the Uniformed Services
2 (CHAMPUS)).

3 3. Similar supplemental coverage provided to
4 coverage under a group health plan.

5 (7) HEALTH CARRIER or CARRIER. An entity subject to
6 the insurance laws of this state and rules of the Department
7 of Insurance, or subject to the jurisdiction of the
8 department, that contracts or offers to contract to provide,
9 deliver, arrange for, pay for, or reimburse any of the costs
10 of health care services, including, but not limited to, a
11 sickness and accident insurance company, a health maintenance
12 organization, a nonprofit hospital and health service
13 corporation, an entity organized pursuant to Article 6,
14 Chapter 20 of Title 10A, to provide a health care services
15 plan, or any other entity providing a plan of health
16 insurance, health benefits, or health services.

17 (8) QUALIFIED DENTAL PLAN. A limited scope dental
18 plan that has been certified in accordance with state law.

19 (9) QUALIFIED EMPLOYER. A small employer that elects
20 to make its full-time employees eligible for one or more
21 qualified health plans offered through the Small Employer
22 Insurance Exchange, and at the option of the employer, some or
23 all of its part-time employees, provided that the employer
24 meets either of the following requirements:

25 a. Has its principal place of business in the State
26 of Alabama and elects to provide coverage through the Small

1 Employer Insurance Exchange to all of its eligible employees,
2 wherever employed.

3 b. Elects to provide coverage through the Small
4 Employer Exchange to all of its eligible employees who are
5 principally employed in this state.

6 (10) QUALIFIED HEALTH PLAN. A health benefit plan
7 that has in effect a certification that the plan meets the
8 criteria for certification set by state law and rules of the
9 Department of Insurance.

10 (11) QUALIFIED INDIVIDUAL. An individual, including
11 a minor, who meets all of the following requirements:

12 a. Is seeking to enroll in a qualified health plan
13 offered to individuals through the exchange.

14 b. Resides in the State of Alabama.

15 c. At the time of enrollment, is not incarcerated,
16 other than incarceration pending the disposition of charges.

17 d. Is, and is reasonably expected to be, for the
18 entire period for which enrollment is sought, a citizen or
19 national of the United States or an alien lawfully present in
20 the United States.

21 (12) SECRETARY. The Secretary of the federal
22 Department of Health and Human Services.

23 (13)a. SMALL EMPLOYER. An employer that employed an
24 average of not more than 50 employees during the preceding
25 calendar year.

1 b. Beginning on January 1, 2016, small employer
2 means an employer that employed an average of not more than
3 100 employees during the preceding calendar year.

4 c. For purposes of this subdivision:

5 1. All persons treated as a single employer under
6 subsection (b), (c), (m), or (o) of Section 414 of the
7 Internal Revenue Code of 1986 shall be treated as a single
8 employer.

9 2. An employer and any predecessor employer shall be
10 treated as a single employer.

11 3. All employees shall be counted, including
12 part-time employees and employees who are not eligible for
13 coverage through the employer.

14 4. If an employer was not in existence throughout
15 the preceding calendar year, the determination of whether that
16 employer is a small employer shall be based on the average
17 number of employees that is reasonably expected that employer
18 will employ on business days in the current calendar year.

19 5. An employer that makes enrollment in qualified
20 health plans available to its employees through the Small
21 Employer Insurance Exchange, and would cease to be a small
22 employer by reason of an increase in the number of its
23 employees, shall continue to be treated as a small employer
24 for purposes of this act as long as it continuously makes
25 enrollment through the Small Employer Exchange available to
26 its employees.

1 (14) STATE HEALTH OFFICER. The head of the Alabama
2 Department of Public Health.

3 Section 4. (a) There is established the Alabama
4 Health Insurance Exchange as a body corporate and an
5 independent instrumentality of the State of Alabama, created
6 to effectuate the public purposes provided for in this act,
7 but with a legal existence separate from that of the State of
8 Alabama.

9 (b) The exchange is hereby recognized as a
10 not-for-profit corporation in accordance with Chapter 3 of
11 Title 10A, Code of Alabama 1975, and shall seek recognition of
12 the same status by the United States Treasury in accordance
13 with the United States Internal Revenue Code (26 U.S.C,
14 §501(6)).

15 (c) The exchange shall operate subject to the
16 supervision and approval of a board of directors which shall
17 consist of 11 members, as follows:

18 (1) The Alabama Commissioner of Insurance, or his or
19 her designee.

20 (2) The Commissioner of the Alabama Medicaid Agency,
21 or his or her designee.

22 (3) The State Health Officer, or his or her
23 designee.

24 (4) The chair of the House Insurance Committee, or
25 his or her designee.

26 (5) The chair of the Senate Banking and Insurance
27 Committee, or his or her designee.

1 (6) The chair of the House Health Committee, or his
2 or her designee.

3 (7) The chair of the Senate Health Committee, or his
4 or her designee.

5 (8) Two representatives of insurance companies that
6 are licensed by the Department of Insurance, specialize in
7 health insurance, and are participating or have committed to
8 participate in the Alabama Health Insurance Exchange and Small
9 Employer Insurance Exchange, one of whom represents an
10 insurance company that has a small percentage of lives in the
11 state health insurance market and each of whom have actuarial
12 experience, one to be appointed by the Speaker of the House of
13 Representatives and the other to be appointed by the President
14 Pro Tempore of the Senate.

15 (9) One member who is an insurance producer
16 recommended by the Independent Insurance Agents of Alabama and
17 appointed by the Lieutenant Governor, who is duly licensed in
18 accordance with Chapter 7 of Title 27 of the Code of Alabama
19 1975, and who has experience in the health insurance industry.

20 (10) One member who represents consumers either as
21 an individual participant in the Alabama Health Insurance
22 Exchange or an employer participant in the Small Employer
23 Insurance Exchange, to be appointed by the Governor.

24 (d) The initial term for all appointed members shall
25 be for three years and shall commence on the effective date of
26 this act, except for legislative members who shall serve until
27 the end of the quadrennium in which each was appointed.

1 Following this initial term, all appointed members shall serve
2 one additional term as follows:

3 (1) The representatives of insurance companies
4 specializing in health insurance shall serve terms of one year
5 each.

6 (2) The insurance producer shall serve a term of two
7 years.

8 (3) The individual or employer participant shall
9 serve a term of two years.

10 (e) Following the second term, all appointed members
11 may be reappointed for subsequent terms of three years at the
12 will and pleasure of the appointing authority. During each
13 term, appointed members may be dismissed from the board and
14 replaced by the appointing authority as determined by the
15 appointing authority.

16 (f) Individual board members shall not be liable for
17 action within the scope of their authority performed in good
18 faith.

19 (g) Board members may be reimbursed from funds of
20 the exchange for actual expenses and shall receive the same
21 per diem as provided to state employees but shall not
22 otherwise be compensated for their services.

23 (h) The board shall elect from its membership a
24 chair who shall serve as the presiding officer of the board.

25 (i) The board shall adopt rules governing times and
26 places for meetings and the manner of conducting its business.
27 The board shall not meet less frequently than once each

1 quarter and at such other times as determined to be necessary.
2 The first meeting of the initial members of the board shall be
3 called by the State Health Officer within 60 days of the
4 effective date of this act.

5 (j) The board shall adopt a plan in accordance with
6 this act and submit its articles, bylaws, and operating rules
7 to the department for approval within 90 days after the
8 appointment of the board.

9 (k) The department, with the approval of the board
10 and pursuant to the Administrative Procedure Act, may
11 promulgate rules necessary for the implementation and
12 operation of the exchange and shall have the authority to
13 enforce any and all state and federal laws and rules
14 concerning the exchange. The department may investigate the
15 affairs of the exchange, examine the properties and records of
16 the exchange, and require the exchange to provide periodic
17 reporting to the department in relation to the activities
18 undertaken by the exchange.

19 (l) The board may apply for and expend any state,
20 federal, or private grant funds available to assist with the
21 implementation and operation of the exchange. The board may
22 elect to allow the department to apply for and expend federal
23 grant funds on its behalf and the department may apply for and
24 expend the funds at the direction of, and on behalf of, the
25 exchange.

1 (m) The board may contract with any and all vendors
2 necessary to assist with the implementation and operation of
3 the exchange.

4 (n) (1) The board may appoint an executive director
5 who shall:

6 a. Be an employee of the exchange.

7 b. Administer all of the activities and contracts of
8 the exchange.

9 c. Supervise the staff of the exchange.

10 d. Advise the board on all matters related to the
11 exchange.

12 e. Serve at the will and pleasure of the board.

13 (2) The board shall determine the appropriate
14 compensation to be paid to the executive director and shall
15 approve all compensation to be paid to any and all other
16 employees of the exchange.

17 (o) The exchange shall:

18 (1) In cooperation with the Department of Insurance
19 and the Medicaid Agency, create and maintain an Internet
20 website through which enrollees and prospective enrollees of
21 qualified health plans may obtain standardized comparative
22 information on such plans and enroll in such plans.

23 (2) Use a standardized format for presenting health
24 benefit options in the exchange.

25 (3) Facilitate the purchase and sale of qualified
26 health plans.

1 (4) Establish a Small Employer Insurance Exchange
2 through which qualified employers may access coverage for
3 their employees.

4 (5) As deemed necessary by the board, create
5 advisory committees to the board consisting of stakeholders
6 relevant to carrying out the activities required under this
7 act.

8 (p) The exchange may do both of the following:

9 (1) Contract with an eligible entity to perform any
10 of its functions described in this act. An eligible entity
11 includes, but is not limited to, an entity that has experience
12 in individual and small group health insurance, benefit
13 administration, or other experience relevant to the
14 responsibilities to be assumed by the entity, but a health
15 carrier or an affiliate of a health carrier is not an eligible
16 entity.

17 (2) Enter into information-sharing agreements with
18 state agencies to carry out its responsibilities under this
19 act provided such agreements include adequate protections with
20 respect to the confidentiality of the information to be shared
21 and comply with all state and federal laws, rules, and
22 regulations.

23 (q) The exchange may not do either of the following:

24 (1) Regulate health insurers, health insurance
25 plans, or health insurance producers.

26 (2) Act as an appeals entity for resolving disputes
27 between a health insurer and an insured.

1 (r) The exchange shall meet the following financial
2 integrity requirements:

3 (1) Keep an accurate accounting of all activities,
4 receipts, and expenditures and annually submit to the
5 Governor, the commissioner, and the Legislature a written
6 report concerning the accountings by December 1 of each year.

7 (2) In carrying out its activities under this act,
8 not use any funds intended for the administrative and
9 operational expenses of the exchange for staff retreats,
10 promotional giveaways, excessive executive compensation or
11 promotion of state legislative and regulatory modifications.

12 Section 5. (a) The exchange shall make qualified
13 health plans available to qualified individuals and qualified
14 employers beginning with effective dates on or before January
15 1, 2014.

16 (b) (1) The exchange shall not make available any
17 health benefit plan that is not a qualified health plan.

18 (2) The exchange may allow a health carrier to offer
19 a plan that provides limited scope dental benefits meeting the
20 requirements of Section 9832(c) (2) (A) of the Internal Revenue
21 Code of 1986 through the exchange, either separately or in
22 conjunction with a qualified health plan, if the plan provides
23 pediatric dental benefits meeting the requirements of state
24 law and rules of the department.

25 (c) Neither the exchange nor a carrier offering
26 health benefit plans through the exchange may charge an
27 individual a fee or penalty for termination of coverage.

1 Section 6. (a) The exchange shall be self-sustaining
2 by January 1, 2015.

3 (b) The exchange may charge assessments or user fees
4 or otherwise may generate funding necessary to support its
5 operations provided under this act.

6 Section 7. Nothing in this act, and no action taken
7 by the exchange pursuant to this act, shall be construed to
8 preempt or supersede the authority of the Commissioner of
9 Insurance to regulate the business of insurance within this
10 state. Except as expressly provided to the contrary in this
11 act, all health carriers offering qualified health plans in
12 this state shall comply fully with all applicable health
13 insurance laws of this state and rules adopted and orders
14 issued by the department.

15 Section 8. If the Patient Protection and Affordable
16 Care Act (Public Law 111-148), or any part thereof requiring
17 the operation of the exchange provided in this act, is
18 repealed by the United States Congress or declared
19 unconstitutional by the U.S. Supreme Court in a final
20 decision, this act shall be void.

21 Section 9. This act shall become effective October
22 1, 2011.