

1 HB245
2 135450-1
3 By Representative Wren
4 RFD: Health
5 First Read: 09-FEB-12

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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. This bill would provide that
19 the exchange would operate as a nonprofit public
20 corporation and would be recognized as such for tax
21 purposes. This bill would provide that the exchange
22 would be governed by a board and would provide for
23 the membership, terms, and duties of the board.

24 This bill would require the exchange to make
25 qualified health plans available to qualified
26 individuals and qualified employers. This bill
27 would authorize the exchange to charge fees to

1 health insurance carriers, agents, and brokers in
2 order to fund the exchange.

3 This bill would authorize the exchange to
4 promulgate rules subject to the Administrative
5 Procedure Act necessary to implement and operate
6 the exchange.

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9 the exchange are repealed, defunded, or declared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11 act would be repealed.

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

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24 federal laws are repealed, defunded, or declared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26 repealed.

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

23 (3) EXCHANGE. The Alabama Health Insurance Exchange
24 established pursuant to Section 4.

25 (4) FEDERAL ACT. The federal Patient Protection and
26 Affordable Care Act (Public Law 111-148), as amended by the
27 federal Health Care and Education Reconciliation Act of 2010

1 (Public Law 111-152), and any amendments thereto, or
2 regulations or guidance issued under those acts.

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

7 b. Health benefit plan does not include any of the
8 following:

9 1. Coverage only for accident or disability income
10 insurance, or any combination thereof.

11 2. Coverage issued as a supplement to liability
12 insurance.

13 3. Liability insurance, including general liability
14 insurance and automobile liability.

15 4. Workers' compensation or similar insurance.

16 5. Automobile medical payment insurance.

17 6. Credit-only insurance.

18 7. Coverage for on-site medical clinics.

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

23 c. A health benefit plan does not include the
24 following benefits if they are provided under a separate
25 policy, certificate, or contract of insurance or are otherwise
26 not an integral part of the plan:

27 1. Limited scope dental or vision benefits.

1 2. Benefits for long-term care, nursing home care,
2 home health care, community-based care, or any combination
3 thereof.

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

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

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

16 2. Hospital indemnity or other fixed indemnity
17 insurance.

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

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

23 2. Coverage supplemental to the coverage provided
24 under Chapter 55 of Title 10, United States Code (Civilian
25 Health and Medical Program of the Uniformed Services
26 (CHAMPUS)).

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

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

15 (7) QUALIFIED DENTAL PLAN. A limited scope dental
16 plan that has been certified in accordance with state law.

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

23 a. Has its principal place of business in the State
24 of Alabama and elects to provide coverage through the Small
25 Employer Insurance Exchange to all of its eligible employees,
26 wherever employed.

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

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

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

10 a. Is seeking to enroll in a qualified health plan
11 or qualified dental plan offered to individuals through the
12 exchange.

13 b. Resides in the State of Alabama.

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

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

20 (11) SECRETARY. The Secretary of the federal
21 Department of Health and Human Services.

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

25 b. Beginning on January 1, 2016, small employer
26 means an employer that employed an average of not more than
27 100 employees during the preceding calendar year.

1 c. For purposes of this subdivision:

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

6 2. An employer and any predecessor employer shall be
7 treated as a single employer.

8 3. All employees shall be counted, including
9 part-time employees and employees who are not eligible for
10 coverage through the employer.

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

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

24 Section 4. (a) There is established the Alabama
25 Health Insurance Exchange as a nonprofit public corporation of
26 the State of Alabama, created to effectuate the public
27 purposes provided for in this act.

1 (b) The exchange shall operate subject to the
2 supervision and approval of a board of directors which shall
3 be comprised of the following members:

4 (1) The Alabama Commissioner of Insurance, or his or
5 her designee.

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

8 (3) The State Health Officer, or his or her
9 designee.

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

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

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

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

18 (8) One member of the House of Representatives
19 appointed by the Speaker.

20 (9) One member of the Senate appointed by the
21 President Pro Tempore.

22 (10) Two representatives of insurance companies that
23 are licensed by the Department of Insurance, specialize in
24 health insurance, and are participating or have committed to
25 participate in the Alabama Health Insurance Exchange and Small
26 Employer Insurance Exchange, one of whom shall be a
27 not-for-profit company organized pursuant to Chapter 3 of

1 Title 10A of the Code of Alabama 1975, to be appointed by the
2 Speaker of the House of Representatives and one of which shall
3 be a for-profit company to be appointed by the President Pro
4 Tempore of the Senate.

5 (11) One member who is an insurance agent or broker
6 who is duly licensed in accordance with Chapter 7 of Title 27
7 of the Code of Alabama 1975, and who has experience in the
8 health insurance industry appointed by the Lieutenant Governor
9 from a list of up to three names recommended by the
10 Independent Insurance Agents of Alabama.

11 (12) One member who is an insurance agent or broker
12 and who is an independent health and life agent licensed in
13 the state and not affiliated with any health carrier or entity
14 that delivers health care services appointed by the Lieutenant
15 Governor from a list of up to three names recommended by the
16 Alabama Health Underwriters Association.

17 (13) Two members appointed by the Governor.

18 (14) One health care provider appointed by the
19 Speaker of the House of Representatives from a list of up to
20 three names recommended by the Medical Association of the
21 State of Alabama.

22 (15) One member appointed by the President Pro
23 Tempore of the Senate from a list of up to three names
24 recommended by the Alabama Hospital Association.

25 (16) One health care provider appointed by the
26 Speaker of the House of Representatives from a list of up to
27 three names recommended by the Alabama Pharmacy Association.

1 (17) One health care provider appointed by the
2 President Pro Tempore of the Senate from a list of up to three
3 names recommended by the Alabama Dental Association.

4 (18) One health care provider appointed by the
5 Speaker of the House from a list of up to three names
6 recommended by the Alabama Optometric Association.

7 (c) The terms of legislative members of the board
8 shall run concurrent with the legislative quadrennium. The
9 remaining members of the board shall serve at the pleasure of
10 their appointing authorities and until a successor is named
11 and qualified.

12 (d) The membership of the board shall be inclusive
13 and reflect the racial, gender, geographic, urban/rural, and
14 economic diversity of the state.

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

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

22 (g) The board shall elect from its membership a
23 chair and vice chair who shall serve as the presiding officers
24 of the board.

25 (h) 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 Speaker of the House of Representatives within
4 60 days of the effective date of this act.

5 (i) The board shall adopt articles, bylaws, and
6 operating rules within 90 days after the appointment of the
7 board.

8 (j) The board, pursuant to the Administrative
9 Procedure Act, may promulgate rules necessary for the
10 implementation and operation of the exchange and shall have
11 the authority to enforce any and all state and federal laws
12 and rules concerning the exchange.

13 (k) The board may apply for and expend any state,
14 federal, or private grant funds available to assist with the
15 implementation and operation of the exchange. The board may
16 elect to allow the exchange to apply for and expend federal
17 grant funds on its behalf and the board may apply for and
18 expend the funds on behalf of the exchange.

19 (l) The board may contract with any and all vendors
20 necessary to assist with the implementation and operation of
21 the exchange.

22 (m) (1) The board may appoint an executive director
23 who shall:

24 a. Be an unclassified employee of the exchange.

25 b. Administer all of the activities and contracts of
26 the exchange.

27 c. Supervise the staff of the exchange.

1 d. Advise the board on all matters related to the
2 exchange.

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

4 (2) The board shall determine the appropriate
5 compensation to be paid to the executive director.

6 (3) The executive director may hire additional
7 employees necessary to operate the exchange.

8 (n) The exchange shall:

9 (1) In cooperation with the Department of Insurance
10 and the Medicaid Agency, create and maintain an Internet
11 website through which enrollees and prospective enrollees of
12 qualified health plans and qualified dental plans may obtain
13 standardized comparative information on such plans and enroll
14 in such plans.

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

17 (3) Facilitate the purchase and sale of qualified
18 health plans.

19 (4) Establish a Small Employer Insurance Exchange
20 through which qualified employers may access coverage for
21 their employees.

22 (5) As deemed necessary by the board, create
23 advisory committees to the board consisting of stakeholders
24 relevant to carrying out the activities required under this
25 act.

26 (o) The exchange may do both of the following:

1 (1) Contract with an eligible entity to perform any
2 of its functions described in this act. An eligible entity
3 includes, but is not limited to, an entity that has experience
4 in individual and small group health insurance, benefit
5 administration, or other experience relevant to the
6 responsibilities to be assumed by the entity.

7 (2) Enter into information-sharing agreements with
8 state agencies to carry out its responsibilities under this
9 act provided such agreements include adequate protections with
10 respect to the confidentiality of the information to be shared
11 and comply with all state and federal laws, rules, and
12 regulations.

13 (p) The exchange may not do either of the following:

14 (1) Regulate health insurers, health insurance
15 plans, or health insurance producers.

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

18 (q) The exchange shall meet the following financial
19 integrity requirements:

20 (1) Keep an accurate accounting of all activities,
21 receipts, and expenditures and annually submit to the
22 Governor, the commissioner, and the Legislature a written
23 report concerning the accountings by December 1 of each year.

24 (2) In carrying out its activities under this act,
25 not use any funds intended for the administrative and
26 operational expenses of the exchange for staff retreats,

1 promotional giveaways, excessive executive compensation or
2 promotion of state legislative and regulatory modifications.

3 Section 5. (a) The exchange shall make qualified
4 health plans available to qualified individuals and qualified
5 employers beginning with effective dates on or before January
6 1, 2014.

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

9 (2) The exchange may allow a health carrier to offer
10 a plan that provides limited scope dental benefits meeting the
11 requirements of Section 9832(c) (2) (A) of the Internal Revenue
12 Code of 1986 through the exchange, either separately or in
13 conjunction with a qualified health plan, if the plan provides
14 pediatric dental benefits meeting the requirements of state
15 law and rules of the department.

16 (c) A qualified health plan is not required to
17 provide essential benefits that duplicate the minimum benefits
18 of qualified dental plans as required by Public Law 111-148,
19 as amended, and state law if both of the following
20 requirements are met:

21 (1) The exchange has determined that at least one
22 qualified dental plan is available to supplement the plan's
23 coverage.

24 (2) The carrier makes prominent disclosure at the
25 time it offers the plan, in a form approved by the exchange,
26 that the plan does not provide the full range of essential

1 pediatric benefits, and that qualified dental plans are
2 offered through the exchange.

3 (d) Neither the exchange nor a carrier offering
4 health benefit plans through the exchange may charge an
5 individual a fee or penalty for termination of coverage.

6 Section 6. (a) The exchange may receive
7 appropriations from the Legislature, federal or state grant
8 moneys, or other contributions from any source to fund the
9 establishment and operation of the exchange.

10 (b) The exchange may charge assessments or user fees
11 to health insurance carriers, agents, or brokers offering
12 qualified health plans or qualified dental plans, or otherwise
13 may generate funding necessary to support its operations
14 provided under this act.

15 (c) The exchange shall be self-sustaining by January
16 1, 2015.

17 Section 7. Nothing in this act, and no action taken
18 by the exchange pursuant to this act, shall be construed to
19 preempt or supersede the authority of the Commissioner of
20 Insurance to regulate the business of insurance within this
21 state. Except as expressly provided to the contrary in this
22 act, all health insurance carriers offering qualified health
23 plans in this state shall comply fully with all applicable
24 health insurance laws of this state and rules adopted and
25 orders issued by the department.

26 Section 8. If the Patient Protection and Affordable
27 Care Act (Public Law 111-148), or any part thereof requiring

1 the operation of the exchange provided in this act, is
2 repealed, defunded, or declared unconstitutional by the United
3 States Supreme Court, this act shall be repealed.

4 Section 9. This act shall become effective
5 immediately following its passage and approval by the
6 Governor, or its otherwise becoming law.