

# Enrolled Senate Bill 99

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CHAPTER .....

AN ACT

Relating to Oregon Health Insurance Exchange; appropriating money; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Definitions.** As used in sections 1 to 11 and 13 to 23 of this 2011 Act:

(1) "Essential health benefits" means the health care services identified by the United States Secretary of Health and Human Services pursuant to 42 U.S.C. 18022 or approved by the secretary pursuant to a waiver granted under 42 U.S.C. 18052.

(2) "Health care service contractor" has the meaning given that term in ORS 750.005.

(3) "Health insurance" has the meaning given that term in ORS 731.162, excluding disability income insurance.

(4) "Health insurance exchange" or "exchange" means an American Health Benefit Exchange as described in 42 U.S.C. 18031, 18032, 18033 and 18041 that is operated by the Oregon Health Insurance Exchange Corporation.

(5) "Health plan" means health insurance or health care coverage offered by an insurer.

(6) "Insurer" means an insurer as defined in ORS 731.106 that offers health insurance, a health care service contractor or a prepaid managed care health services organization.

(7) "Insurance producer" has the meaning given that term in ORS 731.104.

(8) "Prepaid managed care health services organization" has the meaning given that term in ORS 414.736.

(9) "State program" means a program providing medical assistance, as defined in ORS 414.025, and any health plan offered through the Public Employees' Benefit Board or the Oregon Educators Benefit Board.

**SECTION 2. Oregon Health Insurance Exchange Corporation.** (1) The Oregon Health Insurance Exchange Corporation is established as a public corporation performing governmental functions and exercising governmental powers. The corporation shall exercise and carry out statewide all the powers, rights and privileges that are expressly conferred upon the corporation, are implied by law or are incident to such powers. Nothing in this section or section 3 or 11 of this 2011 Act is intended to affect the regulatory responsibilities of the Department of Consumer and Business Services under the Insurance Code.

(2) The mission of the corporation is to:

(a) Incorporate the goals of improving the lifelong health of all Oregonians, increasing the quality, reliability and availability of health insurance for all Oregonians and lowering or containing the cost of health insurance so that health insurance is affordable to everyone.

(b) Administer a health insurance exchange in the public interest for the benefit of the people and businesses that obtain health insurance coverage for themselves, their families and their employees through the exchange.

(c) Empower Oregonians by giving them the information and tools they need to make health insurance choices that meet their needs and values.

(d) Improve health care quality and public health, mitigate health disparities linked to race, ethnicity, primary language and similar factors, control costs and ensure access to affordable, equitable and high-quality health care throughout this state.

(e) Be accountable to the public.

(f) Encourage the development of new health insurance products that offer innovative:

(A) Benefit packages for the coverage of health care services;

(B) Health care delivery systems; and

(C) Payment mechanisms.

**SECTION 3. Oregon Health Insurance Exchange Corporation duties, powers and functions.** (1) The duties of the Oregon Health Insurance Exchange Corporation are to:

(a) Administer a health insurance exchange in accordance with federal law to make qualified health plans available to individuals and groups throughout this state.

(b) Provide information in writing, through an Internet-based clearinghouse and through a toll-free telephone line that will assist individuals and small businesses in making informed health insurance decisions, including:

(A) The grade of each health plan as determined by the corporation and the grading criteria that were used;

(B) Quality and enrollee satisfaction ratings; and

(C) The comparative costs, benefits, provider networks of health plans and other useful information.

(c) Establish and make available an electronic calculator that allows individuals and employers to determine the cost of coverage after deducting any applicable tax credits or cost-sharing reduction.

(d) Using procedures approved by the corporation's board of directors and adopted by rule by the corporation under section 11 of this 2011 Act, screen, certify and recertify health plans as qualified health plans according to federal and state standards and ensure that qualified health plans provide choices of coverage.

(e) Decertify or suspend, in accordance with ORS chapter 183, the certification of health plans that fail to meet federal and state standards in order to exclude them from participation in the exchange.

(f) Promote fair competition of carriers participating in the exchange by certifying multiple health plans as qualified under section 11 of this 2011 Act.

(g) Grade health plans in accordance with criteria established by the United States Secretary of Health and Human Services and by the corporation.

(h) Establish open and special enrollment periods for all enrollees, and monthly enrollment periods for Native Americans in accordance with federal law.

(i) Assist individuals and groups to enroll in qualified health plans, including defined contribution plans as defined in section 414 of the Internal Revenue Code and, if appropriate, collect and remit premiums for such individuals or groups.

(j) Facilitate community-based assistance with enrollment in qualified health plans by awarding grants to entities that are certified as navigators as described in 42 U.S.C. 18031(i).

(k) Provide information to individuals and employers regarding the eligibility requirements for state medical assistance programs and assist eligible individuals and families in applying for and enrolling in the programs.

(L) Provide employers with the names of employees who end coverage under a qualified health plan during a plan year.

(m) Certify the eligibility of an individual for an exemption from the individual responsibility requirement of section 5000A of the Internal Revenue Code.

(n) Provide information to the federal government necessary for individuals who are enrolled in qualified health plans through the exchange to receive tax credits and reduced cost-sharing.

(o) Provide to the federal government:

(A) Information regarding individuals determined to be exempt from the individual responsibility requirement of section 5000A of the Internal Revenue Code;

(B) Information regarding employees who have reported a change in employer;

(C) Information regarding individuals who have ended coverage during a plan year; and

(D) Any other information necessary to comply with federal requirements.

(p) Take any other actions necessary and appropriate to comply with the federal requirements for a health insurance exchange.

(q) Work in coordination with the Oregon Health Authority, the Oregon Health Policy Board and the Department of Consumer and Business Services in carrying out its duties.

(2) The corporation may sue and be sued.

(3) The corporation may:

(a) Acquire, lease, rent, own and manage real property.

(b) Construct, equip and furnish buildings or other structures as are necessary to accommodate the needs of the corporation.

(c) Purchase, rent, lease or otherwise acquire for the corporation's use all supplies, materials, equipment and services necessary to carry out the corporation's duties.

(d) Sell or otherwise dispose of any property acquired under this subsection.

(4) Any real property acquired and owned by the corporation under this section shall be subject to ad valorem taxation.

(5) The corporation may adopt rules necessary to carry out its mission, duties and functions.

**SECTION 4. Board of directors; appointment; membership; removal of members.** (1) The Oregon Health Insurance Exchange Corporation shall be governed by a board of directors consisting of two ex officio members and seven members who are appointed by the Governor and subject to confirmation by the Senate in the manner prescribed by ORS 171.562 and 171.565.

(2) The ex officio voting members of the board are:

(a) The Director of the Oregon Health Authority or the director's designee; and

(b) The Director of the Department of Consumer and Business Services or the director's designee.

(3)(a) The term of office of each member who is not an ex officio member is four years. The Governor may remove any member at any time for incompetence, neglect of duty or malfeasance in office, after notice and a hearing that shall be open to the public, but the Governor may not remove more than three members within any four-year period except for corrupt conduct in office.

(b) Before the expiration of the term of a member who is not an ex officio member, the Governor shall appoint a successor whose term begins on January 1 next following. A member who is not an ex officio member is eligible for no more than two reappointments. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) The members who are not ex officio members must be individuals who:

(a) Are United States citizens and residents of the State of Oregon;

(b) Have demonstrated professional and community leadership skills and experience;

(c) To the greatest extent practicable, represent the geographic, ethnic, gender, racial and economic diversity of this state; and

(d) Subject to subsections (5) and (6) of this section, collectively offer expertise, knowledge and experience in individual insurance purchasing, business, finance, sales, health benefits administration, individual and small group health insurance and use of the health insurance exchange.

(5) No more than two of the members who are not ex officio members may be individuals who are:

(a) Employed by, consultants to or members of a board of directors of:

(A) An insurer or third party administrator;

(B) An insurance producer; or

(C) A health care provider, health care facility or health clinic;

(b) Members, board members or employees of a trade association of:

(A) Insurers or third party administrators; or

(B) Health care providers, health care facilities or health clinics; or

(c) Health care providers, unless they receive no compensation for rendering services as health care providers and do not have ownership interests in professional health care practices.

(6)(a) At least two of the members who are not ex officio members shall be consumer members.

(b) One consumer member must be an individual consumer purchasing a qualified health plan through the exchange.

(c) One consumer member must be a small business employer purchasing a qualified health plan through the exchange.

(7) The board of directors shall adopt a formal business plan for the corporation, which shall include a plan for developing metrics to measure customer service and provider satisfaction, and shall establish the policies for the operation of the exchange, consistent with state and federal law.

**SECTION 5. Transition and implementation.** (1) Notwithstanding the term of office specified by section 4 of this 2011 Act, of the members first appointed to the Oregon Health Insurance Exchange Corporation board of directors who are not ex officio members:

(a) Two shall serve for terms ending December 31, 2013.

(b) Two shall serve for terms ending December 31, 2014.

(c) Three shall serve for terms ending on the earlier of four years after appointment or December 31, 2015.

(2) Notwithstanding section 4 (6) of this 2011 Act, until qualified health plans become available for purchase through the health insurance exchange, the consumer members shall be individuals or small business employers that will be eligible under section 11 (1) of this 2011 Act to purchase qualified health plans through the exchange. One of the consumer members shall serve for one of the terms ending December 31, 2013, and one shall serve for one of the terms ending December 31, 2014.

(3) Notwithstanding section 6 (1) of this 2011 Act, the Governor shall select from the membership of the board the chairperson and the vice chairperson, who shall serve for the first two years of the board's operation.

(4) Notwithstanding section 9 of this 2011 Act, the Governor may appoint an interim executive director of the corporation, who may serve for a period of no more than 120 days.

(5) The President of the Senate, the Senate Minority Leader, the Speaker of the House of Representatives and the House Minority Leader shall each select one member from their respective chambers to serve on a committee that will provide advice to and legislative oversight of the corporation during the implementation of the corporation and the exchange. In the event that there are Co-Presidents or Co-Speakers, each Co-President or Co-Speaker shall select one member to serve on the committee. The committee may:

(a) Recommend individuals for nomination to the board;

(b) Review the development of the formal business plan of the corporation, including proposals developed by the staff of the corporation or the Oregon Health Authority to be presented to the board; and

(c) Advise the corporation and the Oregon Health Authority on any other matters concerning the implementation of the health insurance exchange.

(6) The Oregon Health Authority shall regularly report to the Legislative Fiscal Office on the implementation of an information technology system for the exchange, including:

(a) The business case for the project;

(b) Requirements analyses;

(c) Any requests for proposals and statements of work;

(d) The project charter;

(e) The project work plan or schedule;

(f) The project financial plan;

(g) The hiring of the quality assurance contractor; and

(h) All quality assurance reports.

(7) The corporation shall report the information described in subsection (6) of this section to the appropriate interim committees of the Legislative Assembly no later than October 3, 2011, and to the Joint Committee on Ways and Means during the 2012 regular session of the Legislative Assembly.

(8) The corporation shall deliver and report to the appropriate interim committees and to the Joint Committee on Ways and Means before the convening of the 2012 regular session of the Legislative Assembly:

(a) The formal business plan adopted by the board of directors of the corporation; or

(b) If the board has not adopted the formal business plan, the draft business plan to be considered or under consideration by the board.

(9) No later than February 1, 2012, the corporation shall deliver to the Legislative Assembly the formal business plan adopted by the board in accordance with section 4 (7) of this 2011 Act.

**SECTION 6. Meetings of board.** (1) The Oregon Health Insurance Exchange Corporation board of directors shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of those offices as the board determines.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at least once every three months at a place, day and hour determined by the board. The board shall meet at such other times and places specified by the call of the chairperson or of a majority of the members of the board.

(4)(a) Whenever a member of the board has a conflict of interest on an issue that is before the board, the member shall declare to the board the nature of the conflict and the declaration shall be recorded in the official records of the board. The member may participate in any discussion on the issue but may not vote on the issue.

(b) As used in this subsection:

(A) "Business" has the meaning given that term in ORS 244.020.

(B) "Business with which the member or the member's relative is associated" has the meaning given the term "business with which the person is associated" in ORS 244.020.

(C) "Conflict of interest" means that by taking any action or making any decision or recommendation on an issue, the member, the member's relative, or any business with which the member or the member's relative is associated, would receive a private pecuniary benefit or detriment, unless the pecuniary benefit or detriment would affect to the same degree a class consisting of all consumers of or payers for health care in this state.

(5) A member of the board is entitled to compensation and expenses as provided in ORS 292.495, subject to the availability of funds in the Oregon Health Insurance Exchange Fund.

(6) ORS 192.610 to 192.690 apply to the board, to the Individual and Employer Consumer Advisory Committee established by section 7 of this 2011 Act and to any advisory and technical committees established by the board under section 8 of this 2011 Act.

**SECTION 7. Individual and Employer Consumer Advisory Committee.** (1) The Oregon Health Insurance Exchange Corporation board of directors shall establish an Individual and Employer Consumer Advisory Committee for the purpose of facilitating input from a variety of stakeholders on issues related to the duties of the corporation, the operation of the health insurance exchange and related issues. The board shall determine the membership, terms and organization of the committee and shall appoint the members. Members of the committee shall be representative of:

- (a) Individuals and employers that purchase health plans through the exchange;
- (b) Individuals who enroll in state medical assistance through the exchange;
- (c) Racial and ethnic minorities in this state;
- (d) All geographic regions of this state; and
- (e) Organizations that help individuals to enroll in health plans through the exchange, including insurance producers and advocates for hard-to-reach populations.

(2) Members of the committee who are not members of the board are not entitled to compensation, but at the discretion of the board may be reimbursed from funds available to the board for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amount provided in ORS 292.495.

**SECTION 8. Authority of board to establish advisory and technical committees.** (1) In addition to the Individual and Employer Consumer Advisory Committee established under section 7 of this 2011 Act, the Oregon Health Insurance Exchange Corporation board of directors may establish such advisory and technical committees as the board considers necessary to aid and advise the board in the performance of the board's functions. These committees may be continuing or temporary committees. The board shall determine the representation, membership, terms and organization of the committees and shall appoint the members of the committees. In lieu of establishing an advisory or technical committee, the board may directly solicit input and assistance from insurance producers that assist small businesses, carriers that offer qualified health plans through the exchange and health care professionals.

(2) Members of the committees who are not members of the board are not entitled to compensation, but at the discretion of the board may be reimbursed from funds available to the board for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amount provided in ORS 292.495.

**SECTION 9. Executive director; appointment; functions.** (1) The Oregon Health Insurance Exchange Corporation is under the supervision of an executive director appointed by the corporation board of directors. The executive director serves at the pleasure of the board. The executive director shall be paid a salary as prescribed by the board.

(2) Before assuming the duties of the office, the executive director shall:

(a) Give to the state a fidelity bond, with one or more corporate sureties authorized to do business in this state, in a penal sum prescribed by the Director of the Oregon Department of Administrative Services, but not less than \$50,000. The premium for the bond shall be paid from the Oregon Health Insurance Exchange Fund.

(b) Subscribe to an oath that the executive director faithfully and impartially will discharge the duties of the office and that the executive director will support the Constitution of the United States and the Constitution of the State of Oregon. The executive director shall file a copy of the signed oath with the Secretary of State.

(3) The executive director may establish a line of credit under ORS 293.214 and has such other powers as are necessary to carry out the duties of the corporation, subject to policy direction by the board.

(4) The executive director may employ, supervise and terminate the employment of such staff as the executive director deems necessary. The executive director shall prescribe their duties and fix their compensation, in accordance with the personnel policies adopted by the board. Employees of the corporation may not be individuals who are:

(a) Employed by, consultants to or members of a board of directors of:

(A) An insurer or third party administrator;

(B) An insurance producer; or

(C) A health care provider, health care facility or health clinic;

(b) Members, board members or employees of a trade association of:

(A) Insurers or third party administrators; or

(B) Health care providers, health care facilities or health clinics; or

(c) Health care providers, unless they receive no compensation for rendering services as health care providers and do not have ownership interests in professional health care practices.

(5) The board shall adopt personnel policies, subject to ORS 236.605 to 236.640, for any transferred public employees. The board may elect to provide for participation in a health benefit plan available to state employees pursuant to ORS 243.105 to 243.285 and may elect to participate in the state deferred compensation plan established under ORS 243.401 to 243.507. If the board so elects, employees of the corporation shall be considered eligible employees for purposes of ORS 243.105 to 243.285 and eligible state employees for purposes of ORS 243.401 to 243.507.

(6) With respect to the Public Employees Retirement System, employees of the corporation shall be considered employees for purposes of ORS chapter 238 and eligible employees for purposes of ORS chapter 238A.

(7) Employees of the corporation may participate in collective bargaining in accordance with ORS 243.650 to 243.782.

**SECTION 10. Operational assistance by the Oregon Health Authority.** (1) The Oregon Health Authority shall provide staff and resources and take actions the authority deems necessary or appropriate to develop and assist in the organization and implementation of the Oregon Health Insurance Exchange Corporation and to ensure compliance with the requirements for an American Health Benefit Exchange under 42 U.S.C. 18031, 18032, 18033 and 18041 and other applicable federal laws.

(2) The authority may apply for and accept federal grants, other federal funds and grants from nongovernmental organizations for purposes of developing and implementing the health insurance exchange and carrying out the functions and duties described in subsection (1) of this section. Moneys received by the authority under this section are continuously appropriated to the authority for purposes of this section.

**SECTION 11. Operations of the health insurance exchange.** (1) The following individuals and groups may purchase qualified health plans through the health insurance exchange:

(a) Beginning January 1, 2014, individuals and employers with no more than 50 employees.

(b) Beginning January 1, 2016, employers with 51 to 100 employees.

(2)(a) Only individuals who purchase health plans through the exchange may be eligible to receive premium tax credits under section 36B of the Internal Revenue Code and reduced cost-sharing under 42 U.S.C. 18071.

(b) Only employers that purchase health plans through the exchange may be eligible to receive small employer health insurance credits under section 45R of the Internal Revenue Code.

(3) Only an insurer that has a certificate of authority to transact insurance in this state and that meets applicable federal requirements for participating in the exchange may offer a qualified health plan through the exchange. Any qualified health plan must be certified under subsection (4) of this section. Prepaid managed care health services organizations

that do not have a certificate of authority to transact insurance may serve only medical assistance recipients through the exchange and may not offer qualified health plans.

(4) The Oregon Health Insurance Exchange Corporation shall adopt by rule uniform requirements, standards and criteria for the certification of qualified health plans, including requirements that a qualified health plan provide, at a minimum, essential health benefits and have acceptable consumer and provider satisfaction ratings. The corporation may limit the number of qualified health plans that may be offered through the exchange as long as the same limit applies to all insurers.

(5) Notwithstanding subsection (4) of this section, the corporation shall certify as qualified a dental only health plan as permitted by federal law.

(6) The corporation shall establish one streamlined and seamless application and enrollment process for both the exchange and the state medical assistance program.

(7) The corporation, in collaboration with the appropriate state authorities, may establish risk mediation programs within the exchange.

(8) The corporation shall establish by rule a process for certifying insurance producers to facilitate the transaction of insurance through the exchange, in accordance with federal standards and policies.

(9) The corporation shall ensure, as required by federal laws, that an insurer charges the same premiums for plans sold through the exchange as for identical plans sold outside of the exchange.

(10) The corporation is authorized to enter into contracts for the performance of duties, functions or operations of the exchange, including but not limited to contracting with:

(a) All insurers that meet the requirements of subsections (3) and (4) of this section, to offer qualified health plans through the exchange; and

(b) Navigators certified by the corporation under section 3 of this 2011 Act.

(11) The corporation is authorized to apply for and accept federal grants, other federal funds and grants from nongovernmental organizations for purposes of developing, implementing and administering the exchange. Moneys received under this subsection shall be deposited in and credited to the Oregon Health Insurance Exchange Fund established under section 18 of this 2011 Act.

**SECTION 12.** Section 11 of this 2011 Act is amended to read:

**Sec. 11.** (1) [*The following individuals and groups*] **Individuals and employers with no more than 100 employees** may purchase qualified health plans through the health insurance exchange[.].

[*(a) Beginning January 1, 2014, individuals and employers with no more than 50 employees.*]

[*(b) Beginning January 1, 2016, employers with 51 to 100 employees.*]

(2)(a) Only individuals who purchase health plans through the exchange may be eligible to receive premium tax credits under section 36B of the Internal Revenue Code and reduced cost-sharing under 42 U.S.C. 18071.

(b) Only employers that purchase health plans through the exchange may be eligible to receive small employer health insurance credits under section 45R of the Internal Revenue Code.

(3) Only an insurer that has a certificate of authority to transact insurance in this state and that meets applicable federal requirements for participating in the exchange may offer a qualified health plan through the exchange. Any qualified health plan must be certified under subsection (4) of this section. Prepaid managed care health services organizations that do not have a certificate of authority to transact insurance may serve only medical assistance recipients through the exchange and may not offer qualified health plans.

(4) The Oregon Health Insurance Exchange Corporation shall adopt by rule uniform requirements, standards and criteria for the certification of qualified health plans, including requirements that a qualified health plan provide, at a minimum, essential health benefits and have acceptable consumer and provider satisfaction ratings. The corporation may limit the number of qualified health plans that may be offered through the exchange as long as the same limit applies to all insurers.



(5) Notwithstanding subsection (4) of this section, the corporation shall certify as qualified a dental only health plan as permitted by federal law.

(6) The corporation shall establish one streamlined and seamless application and enrollment process for both the exchange and the state medical assistance program.

(7) The corporation, in collaboration with the appropriate state authorities, may establish risk mediation programs within the exchange.

(8) The corporation shall establish by rule a process for certifying insurance producers to facilitate the transaction of insurance through the exchange, in accordance with federal standards and policies.

(9) The corporation shall ensure, as required by federal laws, that an insurer charges the same premiums for plans sold through the exchange as for identical plans sold outside of the exchange.

(10) The corporation is authorized to enter into contracts for the performance of duties, functions or operations of the exchange, including but not limited to contracting with:

(a) Insurers that meet the requirements of subsections (3) and (4) of this section, to offer qualified health plans through the exchange; and

(b) Navigators certified by the corporation under section 3 of this 2011 Act.

(11) The corporation is authorized to apply for and accept federal grants, other federal funds and grants from nongovernmental organizations for purposes of developing, implementing and administering the exchange. Moneys received under this subsection shall be deposited in and credited to the Oregon Health Insurance Exchange Fund established under section 18 of this 2011 Act.

**SECTION 13. Federal law compliance.** (1) **To the extent that there is any conflict between sections 1 to 11 and 13 to 23 of this 2011 Act and the Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, the federal law in effect on the date the Legislative Assembly enacts sections 1 to 11 and 13 to 23 of this 2011 Act controls.**

(2) **In all cases where federally granted funds are involved and the applicable federal laws, rules and regulations conflict with any provision of sections 1 to 11 and 13 to 23 of this 2011 Act, or require additional conditions not required under state statute, the applicable federal requirement governs.**

**SECTION 14. Information required by the exchange.** (1)(a) **The Oregon Health Insurance Exchange Corporation shall adopt by rule the information that must be documented in order for a person to qualify for:**

(A) **Health plan coverage through the health insurance exchange;**

(B) **Premium tax credits; and**

(C) **Cost-sharing reductions.**

(b) **The documentation specified by the corporation under this subsection shall include but is not limited to documentation of:**

(A) **The identity of the person;**

(B) **The status of the person as a United States citizen, or lawfully admitted noncitizen, and a resident of this state;**

(C) **Information concerning the income and resources of the person as necessary to establish the person's financial eligibility for coverage, for premium tax credits and for cost-sharing reductions, which may include income tax return information and a Social Security number; and**

(D) **Employer identification information and employer-sponsored health insurance coverage information applicable to the person.**

(2) **The corporation shall adopt by rule the information that must be documented in order to determine whether the person is exempt from a requirement to purchase or be enrolled in a health plan under section 5000A of the Internal Revenue Code or other federal law.**

(3) **The corporation shall implement systems that provide electronic access to, and use, disclosure and validation of data needed to administer the duties, functions and operation**

of the corporation, to comply with federal data access and data exchange requirements and to streamline and simplify processes of the corporation.

(4) Information and data that the corporation obtains under this section may be exchanged with other state or federal health insurance exchanges, with state or federal agencies and, subject to section 15 of this 2011 Act, for the purpose of carrying out exchange responsibilities, including but not limited to:

(a) Establishing and verifying eligibility for:

(A) A state medical assistance program;

(B) The purchase of health plans through the exchange; and

(C) Any other programs that are offered through the exchange;

(b) Establishing and verifying the amount of a person's federal tax credit, cost-sharing reduction or premium assistance;

(c) Establishing and verifying eligibility for exemption from the requirement to purchase or be enrolled in a health plan under section 5000A of the Internal Revenue Code or other federal law;

(d) Complying with other federal requirements; or

(e) Improving the operations of the exchange and other programs administered by the corporation and for program analysis.

**SECTION 15. Information that is confidential or not subject to disclosure; public officer privilege; permitted uses of confidential information.** (1) Except as provided in subsection (3) of this section, documents, materials or other information that is in the possession or control of the Oregon Health Insurance Exchange Corporation for the purpose of carrying out sections 3, 11 and 14 of this 2011 Act or complying with federal health insurance exchange requirements, and that is protected from disclosure by state or federal law, remains confidential and is not subject to disclosure under ORS 192.410 to 192.505 or subject to subpoena or discovery or admissible into evidence in any private civil action in which the corporation is not a named party. The executive director of the corporation may use confidential documents, materials or other information without further disclosure in order to carry out the duties described in sections 3, 11 and 14 of this 2011 Act or to take any legal or regulatory action authorized by law.

(2) Documents, materials and other information to which subsection (1) of this section applies is subject to the public officer privilege described in ORS 40.270.

(3) In order to assist in the performance of the executive director's duties, the executive director may:

(a) Authorize the sharing of confidential documents, materials or other information that is subject to subsection (1) of this section within the corporation and subject to any conditions on further disclosure, for the purpose of carrying out the duties and functions of the corporation or complying with federal health insurance exchange requirements.

(b) Authorize the sharing of confidential documents, materials or other information that is subject to subsection (1) of this section or that is otherwise confidential under ORS 192.501 or 192.502 with other state or federal health insurance exchanges or regulatory authorities, the Oregon Health Authority, the Department of Consumer and Business Services, law enforcement agencies and federal authorities, if required or authorized by state or federal law and if the recipient agrees to maintain the confidentiality of the documents, materials or other information.

(c) Receive documents, materials or other information, including documents, materials or other information that is otherwise confidential, from other state or federal health insurance exchanges or regulatory authorities, the Oregon Health Authority, the Department of Consumer and Business Services, law enforcement agencies or federal authorities. The executive director shall maintain the confidentiality requested by the sender of the documents, materials or other information received under this section as necessary to comply

with the laws of the jurisdiction from which the documents, materials or other information was received and originated.

(4) The disclosure of documents, materials or other information to the executive director under this section, or the sharing of documents, materials or other information as authorized in subsection (3) of this section, does not waive any applicable privileges or claims of confidentiality in the documents, materials or other information.

(5) This section does not prohibit the executive director from releasing to a database or other clearinghouse service maintained by federal authorities a final, adjudicated order, including a certification, recertification, suspension or decertification of a qualified health plan under section 3 of this 2011 Act, if the order is otherwise subject to public disclosure.

**SECTION 16. Agreements with other agencies regarding sharing and use of confidential information; contents.** (1) The executive director of the Oregon Health Insurance Exchange Corporation may enter into agreements governing the sharing and use of information consistent with this section and section 15 of this 2011 Act with other state or federal health insurance exchanges or regulatory authorities, the Oregon Health Authority, the Department of Consumer and Business Services, law enforcement agencies or federal authorities.

(2) An agreement under this section must specify the duration of the agreement, the purpose of the agreement, the methods that may be employed for terminating the agreement and any other necessary and proper matters.

(3) An agreement under this section does not relieve the executive director of any obligation or responsibility imposed by law.

(4) The executive director may expend funds and may supply services for the purpose of carrying out an agreement under this section.

(5) Agreements under this section are exempt from ORS 190.410 to 190.440 and 190.480 to 190.490.

**SECTION 17. Charges and fees.** (1) The Oregon Health Insurance Exchange Corporation board of directors shall establish, and the corporation shall impose and collect, an administrative charge from all insurers and state programs participating in the health insurance exchange in an amount sufficient to cover the costs of grants to navigators certified under section 3 of this 2011 Act and to pay the administrative and operational expenses of the corporation in carrying out sections 1 to 11 and 13 to 23 of this 2011 Act. The charge shall be paid in a manner and at intervals prescribed by the board and shall be deposited in the Oregon Health Insurance Exchange Fund established in section 18 of this 2011 Act.

(2) Each insurer's charge shall be based on the number of individuals, excluding individuals enrolled in state programs, who are enrolled in health plans offered by the insurer through the exchange. The assessment on each state program shall be based on the number of individuals enrolled in state programs offered through the exchange. The charge may not exceed:

(a) Five percent of the premium or other monthly charge for each enrollee if the number of enrollees receiving coverage through the exchange is at or below 175,000;

(b) Four percent of the premium or other monthly charge for each enrollee if the number of enrollees receiving coverage through the exchange is above 175,000 and at or below 300,000; and

(c) Three percent of the premium or other monthly charge for each enrollee if the number of enrollees receiving coverage through the exchange is above 300,000.

(3) If charges collected under subsection (1) of this section exceed the amounts needed for the administrative and operational expenses of the corporation, the excess moneys collected shall be held and invested and, with the earnings and interest, used by the corporation to offset future net losses or reduce the administrative costs of the corporation. The maximum amount of excess moneys that may be held under this subsection is the total administrative and operational expenses anticipated by the corporation for a six-month period. Any

moneys received that exceed the maximum shall be applied by the corporation to reduce the charges imposed by this section.

(4) Charges shall be based on annual statements and other reports deemed necessary by the corporation and filed by an insurer or state program with the exchange.

(5) In addition to charges imposed under subsection (1) of this section, to the extent permitted by federal law the corporation may impose a fee on insurers and state programs participating in the exchange to cover the cost of commissions of insurance producers that are certified by the corporation to facilitate the participation of individuals and employers in the exchange.

(6) The board shall establish the charges and fees under this section in accordance with ORS 183.310 to 183.410 and in such a manner that will reasonably and substantially accomplish the objective of subsections (1) and (5) of this section.

**SECTION 18. Oregon Health Insurance Exchange Fund.** The Oregon Health Insurance Exchange Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Health Insurance Exchange Fund shall be credited to the fund. The Oregon Health Insurance Exchange Fund consists of moneys received by the Oregon Health Insurance Exchange Corporation through premiums or the imposition of fees under section 17 of this 2011 Act and moneys received as grants under section 11 of this 2011 Act. Moneys in the fund are continuously appropriated to the Oregon Health Insurance Exchange Corporation for carrying out the purposes of sections 1 to 11 and 13 to 23 of this 2011 Act.

**SECTION 19. Oregon Health Insurance Exchange Corporation exempt from certain laws; contracts with state agencies for services.** (1) Except as otherwise provided by law, the provisions of ORS 279.835 to 279.855 and ORS chapters 240, 276, 279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply to the Oregon Health Insurance Exchange Corporation.

(2) In carrying out the duties, functions and powers imposed by law upon the corporation, the corporation board of directors or the executive director of the corporation may contract with any state agency or other qualified person or entity for the performance of such duties, functions and powers as the board or executive director considers appropriate.

(3) ORS 30.210 to 30.250, 30.260 to 30.300, 30.310, 30.312, 30.390 and 30.400 apply to the members of the board, the executive director and employees of the corporation.

(4) Notwithstanding subsection (1) of this section, ORS 293.235, 293.240, 293.245, 293.260, 293.262, 293.611, 293.625 and 293.630 apply to the accounts of the corporation.

(5) Notwithstanding subsections (1) and (2) of this section, ORS 243.305, 279A.100 and 659A.012 apply to the members of the board, executive director and employees of the corporation.

**SECTION 20. Criminal records check; fingerprints required; persons subject to requirement.** The Oregon Health Insurance Exchange Corporation shall conduct a state or nationwide criminal records check under ORS 181.534 on, and for that purpose may require the fingerprints of a person who:

(1) Is employed by or applying for employment with the corporation; or

(2) Is, or will be, providing services to the corporation in a position:

(a) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) In which the person has access to information that is confidential or for which state or federal laws, rules or regulations prohibit disclosure;

(c) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the corporation;

(d) That has mailroom duties as a primary duty or job function;

- (e) In which the person has responsibility for auditing the corporation;
- (f) That has personnel or human resources functions as a primary responsibility;
- (g) In which the person has access to Social Security numbers, dates of birth or criminal background information; or
- (h) In which the person has access to tax or financial information about individuals or business entities.

**SECTION 21. Financial and performance audits of Oregon Health Insurance Exchange Corporation and Oregon Health Insurance Exchange Fund; report of audit.** (1) The Oregon Health Insurance Exchange Corporation shall keep an accurate accounting of the operation and all activities, receipts and expenditures of the corporation and the health insurance exchange.

(2) Beginning after the first 12 months of the operation of the exchange and every 12 months thereafter, the Secretary of State shall conduct a financial audit of the corporation and the fund pursuant to ORS 297.210, which shall include but is not limited to:

- (a) A review of the sources and uses of the moneys in the fund;
- (b) A review of charges and fees imposed and collected pursuant to section 17 of this 2011 Act; and
- (c) A review of premiums collected and remitted.

(3) Beginning after the first 24 months of the operation of the exchange and every two years thereafter, the Secretary of State shall conduct a performance audit of the corporation and the exchange.

(4) The corporation board of directors, the executive director of the corporation and employees of the corporation shall cooperate with the Secretary of State in the audits and reviews conducted under subsections (2) and (3) of this section.

(5) The audits shall be conducted using generally accepted accounting principles and any financial integrity requirements of federal authorities.

(6) The cost of the audits required by subsections (2) and (3) of this section shall be paid by the corporation.

(7) The Secretary of State shall issue a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Oregon Health Authority, the Oregon Health Policy Board, the Department of Consumer and Business Services and appropriate federal authorities on the results of each audit conducted pursuant to this section, including any recommendations for corrective actions. The report shall be available for public inspection, in accordance with the Secretary of State's established rules and procedures governing public disclosure of audit documents.

(8) To the extent the audit requirements under this section are similar to any audit requirements imposed on the corporation by federal authorities, the Secretary of State and the corporation shall make reasonable efforts to coordinate with the federal authorities to promote efficiency and the best use of resources in the timing and provision of information.

(9) Not later than the 90th day after the Secretary of State completes and delivers an audit report issued under subsection (7) of this section, the corporation shall notify the Secretary of State in writing of the corrective actions taken or to be taken, if any, in response to any recommendations in the report. The Secretary of State may extend the 90-day period for good cause.

**SECTION 22. Quarterly and annual reports.** (1) The executive director of the Oregon Health Insurance Exchange Corporation shall report to the Legislative Assembly each calendar quarter on:

- (a) The financial condition of the health insurance exchange, including actual and projected revenues and expenses of the administrative operations of the exchange and commissions paid to insurance producers out of fees collected under section 17 (5) of this 2011 Act;

(b) The implementation of the business plan adopted by the corporation board of directors;

(c) The development of the information technology system for the exchange; and

(d) Any other information requested by the leadership of the Legislative Assembly.

(2) The corporation board of directors shall provide to the Legislative Assembly, the Governor, the Oregon Health Authority, the Oregon Health Policy Board and the Department of Consumer and Business Services, not later than April 15 of each year:

(a) A report covering the activities and operations of the corporation during the previous year of operations;

(b) A statement of the financial condition of the Oregon Health Insurance Exchange Fund as of December 31 of the previous year;

(c) A description of the role of insurance producers in the exchange; and

(d) Recommendations, if any, for additional groups to be eligible to purchase qualified health plans through the exchange under section 11 of this 2011 Act.

**SECTION 23. Complaints and investigations confidential; permitted disclosures.** (1) A complaint made to the executive director of the Oregon Health Insurance Exchange Corporation with respect to any prospective or certified qualified health plan, and the record thereof, shall be confidential and may not be disclosed except as provided in sections 15 and 16 of this 2011 Act. No such complaint, or the record thereof, shall be used in any action, suit or proceeding except to the extent considered necessary by the executive director in the prosecution of apparent violations of section 11 of this 2011 Act or other law.

(2) Data gathered pursuant to an investigation of a complaint by the executive director shall be confidential, may not be disclosed except as provided in sections 15 and 16 of this 2011 Act and may not be used in any action, suit or proceeding except to the extent considered necessary by the executive director in the investigation or prosecution of apparent violations of section 11 of this 2011 Act or other law.

(3) Notwithstanding subsections (1) and (2) of this section, the executive director shall establish a method for making available to the public an annual statistical report containing the number, percentage, type and disposition of complaints received by the corporation against each health plan that is certified or that has been certified as a qualified health plan by the corporation.

**SECTION 24. False or misleading filings.** A person may not file or cause to be filed with the executive director of the Oregon Health Insurance Exchange Corporation any article, certificate, report, statement, application or any other information required or permitted by the executive director to be filed, that is known by the person to be false or misleading in any material respect.

**SECTION 25. Civil penalties.** (1) The executive director of the Oregon Health Insurance Exchange Corporation, in accordance with ORS 183.745, may impose a civil penalty under section 24 of this 2011 Act of no more than \$10,000. The penalty may not be imposed on carriers for violations of section 24 of this 2011 Act unless imposed by the Department of Consumer and Business Services pursuant to the department's regulatory functions.

(2) All penalties recovered under this section shall be paid to the State Treasury and credited to the General Fund.

**SECTION 26. Repeal and delayed operative date.** (1) Section 5 of this 2011 Act is repealed January 2, 2016.

(2) Section 10 of this 2011 Act is repealed January 2, 2014.

**SECTION 27. Operation of exchange delayed pending legislative approval of formal business plan.** (1) Section 11 of this 2011 Act becomes operative on the date the Legislative Assembly approves the formal business plan submitted by the Oregon Health Insurance Exchange Corporation under section 5 (9) of this 2011 Act. This subsection does not prohibit the implementation, on or after the effective date of this 2011 Act, of the responsibilities of the Oregon Health Authority or the Oregon Health Insurance Exchange Corporation in ad-

ministering federal grants received for planning, administration or information technology for the exchange.

(2) The amendments to section 11 of this 2011 Act by section 12 of this 2011 Act become operative on the later of the date the Legislative Assembly approves the formal business plan submitted by the corporation under section 5 (9) of this 2011 Act or January 1, 2016.

**SECTION 28. Captions.** The section captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

**SECTION 29. Emergency clause.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 25, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 7, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

.....  
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

.....  
Kate Brown, Secretary of State