Sponsored by:
Assemblyman JEFF VAN DREW
District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS
The “New Jersey Health Insurance Exchange Act.”

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning health benefits plans and supplementing Title 17B of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the “New Jersey Health Insurance Exchange Act.”

2. As used in this act:
   “Board” means the board of directors of the New Jersey Health Insurance Exchange established by section 3 of this act.
   “Carrier” means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company authorized to issue health insurance, a health maintenance organization, a hospital service corporation, medical service corporation and health service corporation, or any other entity providing a health benefits plan. The term "carrier" shall not include a joint insurance fund established pursuant to State law. For purposes of this act, carriers that are affiliated companies shall be treated as one carrier, except that any insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in New Jersey or any health maintenance organization located in New Jersey that is affiliated with an insurance company, health service corporation, hospital service corporation, or medical service corporation shall treat the health maintenance organization as a separate carrier.
   “Commissioner” means the Commissioner of Banking and Insurance.
   “Exchange” means the New Jersey Health Insurance Exchange.
   “Exchange certification” means the approval given by the board of the exchange to indicate that a health benefits plan meets certain standards regarding quality and value.
   “Eligible employee” means an individual who performs services for and under the direction of a participating employer for wages or other remuneration.
   “Eligible person” means a person who is a resident of this State who is not an eligible employee and not eligible to be covered under a group health benefits plan, group health plan, governmental plan, church plan, or Part A or Part B of Title XVIII of the “Social Security Act” (42 U.S.C. s.1395 et seq.).
   “Group health benefits plan” means a health benefits plan for groups of two or more persons.
   “Group health plan” means an employee welfare benefit plan, as defined in section 3(1) of Pub.L.93-406, the “Employee Retirement Income Security Act of 1974” (29 U.S.C. s.1001 et seq.).
Income Security Act of 1974” (29 U.S.C. s.1002(1)), to the extent that the plan provides medical care, and includes items and services paid for as medical care to employees or their dependents directly or through insurance, reimbursement, or otherwise.

“Health benefits plan” means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State. For purposes of this act, "health benefits plan” shall not include one or more, or any combination of, the following: coverage only for accident or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, as specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits. Health benefits plans shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and such other similar, limited benefits as are specified in federal regulations. Health benefits plan shall not include hospital confinement indemnity coverage if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health benefits plan maintained by the same plan sponsor, and those benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor. Health benefits plan shall not include the following if it is offered as a separate policy, certificate or contract of insurance: Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal “Social Security Act” (42 U.S.C. s.1395ss(g)(1)); and coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code (10 U.S.C. s.1071 et seq.); and similar supplemental coverage provided to coverage under a group health plan.

“Participating employer” means a small employer that enters into an agreement with the exchange to facilitate the offering of health benefits plans through the exchange to its employees.

“Resident” means a person whose primary residence is in New Jersey and who is present in New Jersey for at least six months of the calendar year, or, in the case of a person who has moved to New Jersey less than six months before applying for individual health
coverage, who intends to be present in New Jersey for at least six months of the calendar year.

“Small employer” means any person, firm, corporation, or partnership that is actively engaged in business that employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the current calendar year, and the majority of the employees are employed in New Jersey. All persons treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of the Internal Revenue Code (26 U.S.C. s.414) shall be treated as one employer. For the purpose of determining continued eligibility, the size of a small employer shall be determined annually. In the case of an employer that was not in existence during the preceding calendar year, the determination of whether the employer is a small employer shall be based on the average number of employees that it is reasonably expected that the employer will employ on business days in the current calendar year. Any reference in this act to a small employer shall include a reference to any predecessor of the small employer.

3. a. There is created a body politic and corporate to be known as the New Jersey Health Insurance Exchange. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the exchange is allocated in but not of the Department of Banking and Insurance, but notwithstanding this allocation, the exchange shall be independent of any supervision or control by the department or by any other board or officer thereof. The exchange shall submit its budget request directly to the Division of Budget and Accounting in the Department of Treasury. The purpose of the exchange is to facilitate the availability and choice of health benefits plans offered by carriers to eligible persons and eligible employees of small employers, pursuant to this act.

b. The exchange shall be governed by a board, with duties and powers established by this act. The board shall consist of 11 members: the Commissioner of Health and Human Services, ex officio, the Commissioner of Banking and Insurance, ex officio; and nine members appointed by the Governor with the advice and consent of the Senate, one of whom shall be a member in good standing of the American Academy of Actuaries, one of whom shall be a health economist, three of whom shall represent the interests of small employers, one of whom shall be an employee health benefits plan specialist, and three of whom shall represent the interests of consumer health organizations. The appointed members shall not be employees of any licensed carrier authorized to do business in the State. Initially, three of the appointed members shall serve for a three-year term, three shall serve for a two-year term, and three shall serve for a one-year term. Thereafter, all appointed members
shall serve for three year terms. An appointed member of the board shall be eligible for reappointment. Vacancies on the board shall be filled for the unexpired terms in the same manner as original appointments. The board shall annually elect one of its members to serve as chairperson. Ex officio members may be represented by designees. The board shall organize upon the appointment of a majority of its members.

c. Six members of the board shall constitute a quorum, and the affirmative vote of six members of the board shall be necessary and sufficient for any action taken by the board. A vacancy in the membership of the board shall not impair the right of a quorum to exercise all the rights and duties of the exchange. Members shall serve without pay, but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties. The chairperson of the board shall report to the Governor and to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), no less than annually.

d. Meetings of the board shall be subject to the “Senator Byron M. Baer Open Public Meetings Act,” P.L.1975, c.231 (C.10:4-6 et seq.).

4. The board shall employ an executive director to supervise the administrative affairs and general management and operations of the exchange and, who shall also serve as secretary of the exchange, ex officio, but shall be ineligible to vote. The executive director shall receive a salary commensurate with the duties of the office. The executive director may appoint other officers and employees of the exchange necessary to the functioning of the exchange. The executive director shall, with the approval of the board:

a. plan, direct, coordinate, and execute administrative functions in conformity with the policies and directives of the board;

b. employ professional and clerical staff as necessary;

c. report to the board on all operations under his control and supervision;

d. prepare an annual budget and manage the administrative expenses of the exchange; and

e. undertake any other activities necessary to implement the powers and duties set forth in this act.

5. The purpose of the board of the exchange shall be to implement the New Jersey Health Insurance Exchange pursuant to the provisions of this act. The goal of the board is to facilitate the purchase of coverage under health benefits plans through the exchange at affordable prices by eligible persons and eligible employees. For these purposes, the board is authorized and empowered as follows:
a. to develop a plan of operation for the exchange, which shall include, but not be limited to, the following:
   (1) procedures for operations of the exchange;
   (2) procedures and minimum requirements for the selection and certification of health benefits plans to be offered through the exchange;
   (3) criteria for determining that certain health benefits plans shall no longer be made available through the exchange and a procedure to decertify these plans;
   (4) procedures, criteria, and a standard application form for the enrollment of small employers as participating employers;
   (5) procedures, criteria, and standard application forms for prospective eligible persons and eligible employees seeking to obtain coverage under health benefits plans offered through the exchange;
   (6) establishment and management of a system for collecting all premium payments made by, or on behalf of, eligible persons and eligible employees obtaining coverage from health benefits plans offered through the exchange, including any premium payments made by participating employers on behalf of eligible employees, and remitting the premium payments to carriers;
   (7) a plan for operating a service center to manage exchange enrollment, provide eligible persons, small employers, and eligible employees with information about the exchange, provide carriers with information about criteria for health benefits plans eligible to be offered through the exchange, and provide participating employers with information about establishing and maintaining cafeteria plans for its employees pursuant to section 125 of the federal Internal Revenue Code (26 U.S.C. s.125);
   (8) a plan for publicizing the exchange’s services, eligibility requirements, and enrollment procedures; and
   (9) procedures for communications with the executive director;
   b. to seek and receive grant funding from the federal government, departments or agencies of the State, and private foundations;
   c. to contract with professional service firms as may be necessary in its judgment, and to fix their compensation;
   d. to contract with companies which provide third-party administrative and billing services for health benefits plans;
   e. to charge and equitably apportion among participating employers its administrative costs and expenses incurred in the exercise of the powers and duties granted by this act;
   f. to adopt by-laws for the regulation of its affairs and the conduct of its business;
   g. to adopt an official seal and alter the same;
   h. to maintain an office in the State;
   i. to sue and be sued in its own name;
j. to establish lines of credit, and establish one or more cash and
investment accounts to receive payments for services rendered,
appropriations from the State and for all other business activity
permitted by this act except to the extent otherwise limited by any
applicable provision of the “Employee Retirement Income Security
Act of 1974” Pub.L. 93-406 (29 U.S.C. s.1001 et seq.); and
k. to approve the use of its trademarks, brand names, seals,
logos, and similar instruments by carriers, participating employers
and other organizations.

6. a. The exchange may offer to eligible persons and eligible
employees only health benefits plans that have been certified by the
exchange, authorized by the commissioner, and underwritten by a
carrier.
b. A health benefits plan offered by a carrier through the
exchange shall contain a detailed description of the benefits offered,
including maximums, limitations, exclusions, and other benefit
limits.
c. The exchange certification shall be assigned to health benefits
plans that the board determines provide good value and offer high
quality coverage to eligible persons and eligible employees.
d. The exchange shall begin offering health benefits plans as of
January 1, 2008.

7. A small employer seeking to be a participating employer
shall, as a condition of participation, enter into a written agreement
with the exchange which, at a minimum, shall stipulate the
following:
a. that the small employer reserves the right to determine the
amounts of contributions, if any, which the small employer agrees
to make to exchange certified health benefits plan, provided that,
for the term of the agreement with the exchange, the small employer
agrees not to change contribution amounts at any time other than
during a period designated by the exchange; and
b. that the small employer agrees to make available, in a timely
manner, for confidential review by the executive director, any of the
small employer’s documents, records or information that the
exchange reasonably determines are necessary for the executive
director to verify:
   (1) that the small employer is in compliance with this act and
other applicable federal and State laws relating to the offering of
health benefits plans, particularly those provisions of laws relating
to non-discrimination in coverage; and
   (2) the eligibility of the small employer’s employees to obtain
coverage under a health benefits plan pursuant to this act.

8. a. The exchange may apply a surcharge to all health benefits
plans offered by a carrier through the exchange, which surcharge
shall be used only to pay for administrative and operational expenses of the exchange; provided, however, that the surcharge shall be applied uniformly to all health benefits plans offered through the exchange.

b. A carrier participating in the exchange shall provide to the board those reports which the board reasonably determines to be necessary to enable the executive director to carry out his duties under this act.

c. The board may withdraw a health benefits plan from the exchange only after notice to the carrier.

9. a. The exchange shall be liable for all claims for activities, whether ministerial or discretionary, of any board member, officer, or employee of the exchange acting as such, except for willful dishonesty or intentional violation of the law, in the same manner and to the same extent as a private person under like circumstances; provided, however, that the exchange shall not be liable to levy or execution on any real or personal property to satisfy judgment, for interest prior to judgment, for punitive damages or for any amount in excess of $100,000.

b. A person shall not be liable to the State, to the exchange or to any other person as a result of his activities, whether ministerial or discretionary, as a board member, officer or employee of the exchange except for willful dishonesty or intentional violation of the law; provided, however, that the person shall provide reasonable cooperation to the exchange in the defense of any claim. Failure of the person to provide reasonable cooperation shall cause him to be jointly liable with the exchange, to the extent that the failure prejudiced the defense of the action.

c. The exchange may indemnify or reimburse any person, or his personal representative, for losses or expenses, including legal fees and costs, arising from any claim, action, proceeding, award, compromise, settlement or judgment resulting from the person’s activities, whether ministerial or discretionary, as a member, officer or employee of the exchange; provided that the defense or settlement thereof shall have been made by counsel approved by the exchange. The exchange may procure insurance for itself and for its board members, officers and employees against liabilities, losses, and expenses which may be incurred by virtue of this section or otherwise.

d. A civil action under this section shall not be brought more than three years after the date upon which the cause thereof accrued.

e. Upon dissolution, liquidation, or other termination of the exchange, all rights, funds, assets, and properties of the exchange shall be vested in the State.
10. The exchange shall keep an accurate account of all its activities and of all its receipts and expenditures and shall annually make a report thereof as of the end of the State fiscal year to its board, to the Governor, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the State Auditor, the reports to be in a form prescribed by the board, with the written approval of the State Auditor. The State Auditor may investigate the affairs of the exchange, severally examine the properties and records of the exchange, and prescribe methods of accounting and the rendering of periodical reports in relation to projects undertaken by the exchange. The State Auditor shall conduct a biennial audit of the exchange.

11. No later than two years after the exchange begins operation and every year thereafter, the exchange shall conduct a study of the exchange and the eligible persons and eligible employees enrolled in the exchange and shall submit a written report to the Governor, and the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), or their successor committees, on the status and activities of the exchange, based on the data collected in the study. The report shall also be available to the general public upon request. The study shall review the operation and administration of the exchange, including surveys and reports of health benefits plans available to eligible persons and eligible employees and on the experience of the plans. The experience of the plans shall include data on eligible persons and eligible employees who obtained coverage through the exchange, participating employers enrolled in the exchange, expenses, claims statistics, complaints data, how the exchange met its goals, significant observations regarding utilization and adoption of the exchange, and other information deemed pertinent by the exchange.

12. The exchange, in consultation with the Commissioner of the Department of Banking and Insurance and the Commissioner of Health and Senior Services, shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to effectuate the purposes of this act.

13. This act shall take effect immediately.

STATEMENT

This bill establishes the New Jersey Health Insurance Exchange as an independent public entity, in but not of the Department of Banking and Insurance, with certain authority to facilitate the availability and choice of health benefits plans offered to employees
of small employers that employ between two and 50 employees, and
other eligible persons not employed by small employers.

The bill authorizes the exchange to develop certain systems and
procedures to:

(1) select and certify health benefits plans to be offered through
the exchange;

(2) enroll small employers as participating employers that will
facilitate the offering of health benefits plans;

(3) enroll eligible persons and eligible employees seeking to
obtain coverage under health benefits plans offered through the
connector;

(4) allow the collection of premium payments on behalf of
eligible persons, or by employers on behalf of eligible employees,
and the remitting of these payments to carriers;

(5) operate a service center to manage exchange enrollment and
provide certain information to eligible persons, small employers,
carriers, and eligible employees, including information for small
employers on establishing and maintaining cafeteria plans for their
employees pursuant to section 125 of the federal Internal Revenue
Code, 26 U.S.C. s.125.; and

(6) publicize the exchange’s services, eligibility requirements,
and enrollment procedures.

The bill authorizes the exchange to maintain an office in the
State and perform certain other administrative functions, including
charging participating small employers for administrative expenses.

To implement the functions of the exchange, the bill establishes
an 11-member board of directors, consisting of the Commissioner
of Banking and Insurance and the Commissioner of Health and
Senior Services as ex officio members, and nine members appointed
by the Governor with the advice and consent of the Senate, with
certain categories of appointed member representation as detailed in
the bill. The bill also provides for an executive director to supervise
operations, subject to the approval of the board.

The bill provides that the exchange shall begin offering health
benefits plans as of January 1, 2008. The exchange shall offer to
eligible employees only health benefits plans that are certified by
the exchange as providing good value and high quality coverage,
authorized by the Commissioner of Banking and Insurance,
underwritten by a carrier, and that meet certain other conditions.

To participate in the exchange and offer health benefits plans to
its eligible employees, a small employer must enter into a written
agreement with the exchange and the agreement must contain
certain stipulations as set forth in the bill.

To pay for administrative expenses, the bill allows the exchange
to apply a surcharge to all health benefits plans offered by a carrier
through the exchange. The bill provides immunities from liability,
in certain circumstances, for board members, officers, and
employees of the exchange, except in instances of willful
dishonesty or intentional violation of the law, and limits the exchange’s liability in certain respects. The bill requires the exchange to maintain certain records, subjects exchange operations to audit by the State Auditor, and requires an annual study and a report on exchange operations to the Governor and Legislature. Finally, the bill provides the exchange with the authority, in consultation with the Commissioner of Banking and Insurance and the Commissioner of Health and Senior Services, to adopt rules and regulations to effectuate the purposes of the bill.