



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4574

Introduced 2/1/2012, by Rep. JoAnn D. Osmond

SYNOPSIS AS INTRODUCED:

215 ILCS 122/5-3
215 ILCS 122/5-4 new
215 ILCS 122/5-5
215 ILCS 122/5-15
215 ILCS 122/5-16 new
215 ILCS 122/5-21 new
215 ILCS 122/5-25

Amends the Illinois Health Benefits Exchange Law. Makes changes concerning the legislative intent of the Law. Sets forth definitions. Establishes the Illinois Health Benefits Exchange as an independent, non-profit entity formed and organized under the laws of the State. Provides that the Exchange shall be a public entity, but shall not be considered a department, institution, or agency of the State. Deletes references to the Illinois Health Benefits Exchange Legislative Study Committee and establishes instead the Illinois Health Benefits Exchange Legislative Oversight Committee within the Commission on Government Forecasting and Accountability. Provides that the governing and administrative powers of the Exchange shall be vested in a body known as the Illinois Health Benefits Exchange Board and sets forth provisions concerning appointments, terms, meetings, structure, recusal, budget, and purpose. Sets forth provisions concerning enrollment through brokers and agents and producer compensation. Provides that the Law shall be null and void if the U.S. Supreme Court strikes down the federal Affordable Care Act in whole or in part. Makes other changes. Effective immediately.

LRB097 16803 RPM 61983 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Health Benefits Exchange Law is
5 amended by changing Sections 5-3, 5-5, 5-15, and 5-25 and by
6 adding Sections 5-4, 5-16, and 5-21 as follows:

7 (215 ILCS 122/5-3)

8 Sec. 5-3. Legislative intent. The General Assembly finds
9 the health benefits exchanges authorized by the federal Patient
10 Protection and Affordable Care Act represent one of a number of
11 ways in which the State can address coverage gaps and provide
12 individual consumers and small employers access to greater
13 coverage options. The General Assembly also finds that the
14 State is best positioned to implement an exchange that is
15 sensitive to the coverage gaps and market landscape unique to
16 this State.

17 The purpose of this Law is to provide for the establishment
18 of an Illinois Health Benefits Exchange (the Exchange) to
19 facilitate the purchase and sale of qualified health plans and
20 qualified dental plans in the individual market in this State
21 and to provide for the establishment of a Small Business Health
22 Options Program (SHOP Exchange) to assist qualified small
23 employers in this State in facilitating the enrollment of their

1 employees in qualified health plans and qualified dental plans
2 offered in the small group market. The intent of the Exchange
3 is to supplement the existing health insurance market to
4 simplify shopping for individual and small employers by
5 increasing access to benefit options, encouraging a robust and
6 competitive market both inside and outside the Exchange,
7 reducing the number of uninsured, and providing a transparent
8 marketplace and effective consumer education and programmatic
9 assistance tools. ~~The purpose of this Law is to ensure that the~~
10 ~~State is making sufficient progress towards establishing an~~
11 ~~exchange within the guidelines outlined by the federal law and~~
12 ~~to protect Illinoisans from undue federal regulation. Although~~
13 ~~the federal law imposes a number of core requirements on~~
14 ~~state level exchanges, the State has significant flexibility~~
15 ~~in the design and operation of a State exchange that make it~~
16 ~~prudent for the State to carefully analyze, plan, and prepare~~
17 ~~for the exchange. The General Assembly finds that in order for~~
18 ~~the State to craft a tenable exchange that meets the~~
19 ~~fundamental goals outlined by the Patient Protection and~~
20 ~~Affordable Care Act of expanding access to affordable coverage~~
21 ~~and improving the quality of care, the implementation process~~
22 ~~should (1) provide for broad stakeholder representation; (2)~~
23 ~~foster a robust and competitive marketplace, both inside and~~
24 ~~outside of the exchange; and (3) provide for a broad-based~~
25 ~~approach to the fiscal solvency of the exchange.~~

26 (Source: P.A. 97-142, eff. 7-14-11.)

1 (215 ILCS 122/5-4 new)

2 Sec. 5-4. Definitions. In this Law:

3 "Board" means the Illinois Health Benefits Exchange Board
4 established pursuant to this Law.

5 "Director" means the Director of Insurance.

6 "Educated health care consumer" means an individual who is
7 knowledgeable about the health care system, and has background
8 or experience in making informed decisions regarding health,
9 medical, and scientific matters.

10 "Essential health benefits" has the meaning provided under
11 Section 1302(b) of the Federal Act.

12 "Exchange" means the Illinois Health Benefits Exchange
13 established by this Law and includes the Individual Exchange
14 and the SHOP Exchange, unless otherwise specified.

15 "Executive Director" means the Executive Director of the
16 Illinois Health Benefits Exchange.

17 "Federal Act" means the federal Patient Protection and
18 Affordable Care Act (Public Law 111-148), as amended by the
19 federal Health Care and Education Reconciliation Act of 2010
20 (Public Law 111-152), and any amendments thereto, or
21 regulations or guidance issued under, those Acts.

22 "Health benefit plan" means a policy, contract,
23 certificate, or agreement offered or issued by a health carrier
24 to provide, deliver, arrange for, pay for, or reimburse any of
25 the costs of health care services. "Health benefit plan" does

1 not include:

2 (1) coverage for accident only or disability income
3 insurance or any combination thereof;

4 (2) coverage issued as a supplement to liability
5 insurance;

6 (3) liability insurance, including general liability
7 insurance and automobile liability insurance;

8 (4) workers' compensation or similar insurance;

9 (5) automobile medical payment insurance;

10 (6) credit-only insurance;

11 (7) coverage for on-site medical clinics; or

12 (8) other similar insurance coverage, specified in
13 federal regulations issued pursuant to Public Law 104-191,
14 under which benefits for health care services are secondary
15 or incidental to other insurance benefits.

16 "Health benefit plan" does not include the following
17 benefits if they are provided under a separate policy,
18 certificate, or contract of insurance or are otherwise not an
19 integral part of the plan:

20 (a) limited scope dental or vision benefits;

21 (b) benefits for long-term care, nursing home care,
22 home health care, community-based care, or any combination
23 thereof; or

24 (c) other similar, limited benefits specified in
25 federal regulations issued pursuant to Public Law 104-191.

26 "Health benefit plan" does not include the following

1 benefits if the benefits are provided under a separate policy,
2 certificate, or contract of insurance, there is no coordination
3 between the provision of the benefits and any exclusion of
4 benefits under any group health plan maintained by the same
5 plan sponsor, and the benefits are paid with respect to an
6 event without regard to whether benefits are provided with
7 respect to such an event under any group health plan maintained
8 by the same plan sponsor:

9 (i) coverage only for a specified disease or illness;

10 or

11 (ii) hospital indemnity or other fixed indemnity
12 insurance.

13 "Health benefit plan" does not include the following if
14 offered as a separate policy, certificate, or contract of
15 insurance:

16 (A) Medicare supplemental health insurance as defined
17 under Section 1882(g)(1) of the federal Social Security
18 Act;

19 (B) coverage supplemental to the coverage provided
20 under Chapter 55 of Title 10, United States Code (Civilian
21 Health and Medical Program of the Uniformed Services
22 (CHAMPUS)); or

23 (C) similar supplemental coverage provided to coverage
24 under a group health plan.

25 "Health benefit plan" does not include a group health plan
26 or multiple employer welfare arrangement to the extent the plan

1 or arrangement is not subject to State insurance regulation
2 under Section 514 of the federal Employee Retirement Income
3 Security Act of 1974.

4 "Health carrier" or "carrier" means an entity subject to
5 the insurance laws and regulations of this State, or subject to
6 the jurisdiction of the Director, that contracts or offers to
7 contract to provide, deliver, arrange for, pay for, or
8 reimburse any of the costs of health care services, including a
9 sickness and accident insurance company, a health maintenance
10 organization, a nonprofit hospital and health service
11 corporation, or any other entity providing a plan of health
12 insurance, health benefits or health services.

13 "Individual Exchange" means the exchange marketplace
14 established by this Law through which qualified individuals may
15 obtain coverage through an individual market qualified health
16 plan.

17 "Principal place of business" means the location in a state
18 where an employer has its headquarters or significant place of
19 business and where the persons with direction and control
20 authority over the business are employed.

21 "Qualified dental plan" means a limited scope dental plan
22 that has been certified in accordance with this Law.

23 "Qualified employee" means an eligible individual employed
24 by a qualified employer who has been offered health insurance
25 coverage by that qualified employer through the SHOP on the
26 Exchange.

1 "Qualified employer" means a small employer that elects to
2 make its full-time employees eligible for one or more qualified
3 health plans or qualified dental plans offered through the SHOP
4 Exchange, and at the option of the employer, some or all of its
5 part-time employees, provided that the employer has its
6 principal place of business in this State and elects to provide
7 coverage through the SHOP Exchange to all of its eligible
8 employees, wherever employed.

9 "Qualified health plan" or "QHP" means a health benefit
10 plan that has in effect a certification that the plan meets the
11 criteria for certification described in Section 1311(c) of the
12 Federal Act.

13 "Qualified health plan issuer" or "QHP issuer" means a
14 health insurance issuer that offers a health plan that the
15 Exchange has certified as a qualified health plan.

16 "Qualified individual" means an individual, including a
17 minor, who:

18 (1) is seeking to enroll in a qualified health plan or
19 qualified dental plan offered to individuals through the
20 Exchange;

21 (2) resides in this State;

22 (3) at the time of enrollment, is not incarcerated,
23 other than incarceration pending the disposition of
24 charges; and

25 (4) is, and is reasonably expected to be, for the
26 entire period for which enrollment is sought, a citizen or

1 national of the United States or an alien lawfully present
2 in the United States.

3 "Secretary" means the Secretary of the federal Department
4 of Health and Human Services.

5 "SHOP Exchange" means the Small Business Health Options
6 Program established under this Law through which a qualified
7 employer can provide small group qualified health plans to its
8 qualified employees.

9 "Small employer" means, in connection with a group health
10 plan with respect to a calendar year and a plan year, an
11 employer who employed an average of at least 2 but not more
12 than 50 employees on business days during the preceding
13 calendar year and who employs at least one employee on the
14 first day of the plan year. Beginning January 1, 2016, the
15 definition of a "small employer" shall mean, in connection with
16 a group health plan with respect to a calendar year and a plan
17 year, an employer who employed an average of at least 2 but not
18 more than 100 employees on business days during the preceding
19 calendar year and who employs at least one employee on the
20 first day of the plan year. For purposes of this definition:

21 (a) all persons treated as a single employer under
22 subsection (b), (c), (m) or (o) of Section 414 of the
23 federal Internal Revenue Code of 1986 shall be treated as a
24 single employer;

25 (b) an employer and any predecessor employer shall be
26 treated as a single employer;

1 (c) employees shall be counted in accordance with
2 federal law and regulations and State law and regulations;

3 (d) if an employer was not in existence throughout the
4 preceding calendar year, then the determination of whether
5 that employer is a small employer shall be based on the
6 average number of employees that is reasonably expected
7 that employer will employ on business days in the current
8 calendar year; and

9 (e) an employer that makes enrollment in qualified
10 health plans or qualified dental plans available to its
11 employees through the SHOP Exchange, and would cease to be
12 a small employer by reason of an increase in the number of
13 its employees, shall continue to be treated as a small
14 employer for purposes of this Law as long as it
15 continuously makes enrollment through the SHOP Exchange
16 available to its employees.

17 (215 ILCS 122/5-5)

18 Sec. 5-5. Establishment of the Exchange ~~State health~~
19 ~~benefits exchange.~~

20 (a) It is declared that this State, beginning October 1,
21 2013, in accordance with Section 1311 of the federal Patient
22 Protection and Affordable Care Act, shall establish a State
23 health benefits exchange to be known as the Illinois Health
24 Benefits Exchange in order to help individuals and small
25 employers with no more than 50 employees shop for, select, and

1 enroll in qualified, affordable private health plans that fit
2 their needs at competitive prices. The Exchange shall separate
3 coverage pools for individuals and small employers and shall
4 supplement and not supplant any existing private health
5 insurance market for individuals and small employers.

6 (b) There is hereby created and established an independent,
7 non-profit entity formed and organized under the laws of the
8 State named the Illinois Health Benefits Exchange. The Exchange
9 shall be a public entity, but shall not be considered a
10 department, institution, or agency of the State.

11 (c) The Exchange shall be comprised of an individual and a
12 small business health options (SHOP) exchange. Pursuant to
13 Section 1311(b)(2) of the Federal Act, the Exchange shall
14 provide individual exchange services to qualified individuals
15 and SHOP exchange services to qualified employers under a
16 single governance and administrative structure.

17 (d) The Exchange shall promote a competitive and robust
18 marketplace that does not limit consumer access to affordable
19 health coverage options. The Exchange, therefore, shall allow
20 and certify all health insurance issuers to offer health plans
21 on the individual and SHOP exchange, as applicable, provided
22 that any such health plan meets the requirements set forth in
23 Section 1311(c) of the Federal Act. The Exchange shall not
24 solicit bids for or engage in the purchase of insurance.

25 (e) The Exchange shall not duplicate or replace the
26 functions of the Department of Insurance, including, but not

1 limited to, the Department of Insurance's rate review
2 authority.

3 (Source: P.A. 97-142, eff. 7-14-11.)

4 (215 ILCS 122/5-15)

5 Sec. 5-15. Illinois Health Benefits Exchange Legislative
6 Oversight Study Committee.

7 (a) There is created an Illinois Health Benefits Exchange
8 Legislative Oversight Study Committee within the Commission on
9 Government Forecasting and Accountability to provide
10 accountability for ~~conduct a study regarding State~~
11 ~~implementation and establishment of~~ the Illinois Health
12 Benefits Exchange and to ensure Exchange operations and
13 functions align with the goals and duties outlined by this Law.
14 The Committee shall also be responsible for providing policy
15 recommendations to ensure the Exchange aligns with the Federal
16 Act, amendments to the Federal Act, and regulations promulgated
17 pursuant to the Federal Act.

18 (b) Members of the Legislative Oversight Study Committee
19 shall be appointed as follows: 3 members of the Senate shall be
20 appointed by the President of the Senate; 3 members of the
21 Senate shall be appointed by the Minority Leader of the Senate;
22 3 members of the House of Representatives shall be appointed by
23 the Speaker of the House of Representatives; and 3 members of
24 the House of Representatives shall be appointed by the Minority
25 Leader of the House of Representatives. Each legislative leader

1 shall select one member to serve as co-chair of the committee.

2 ~~(e) Members of the Legislative Oversight Study Committee~~
3 ~~shall be appointed no later than June 1, 2012 within 30 days~~
4 ~~after the effective date of this Law. The co-chairs shall~~
5 ~~convene the first meeting of the committee no later than 45~~
6 ~~days after the effective date of this Law.~~

7 (Source: P.A. 97-142, eff. 7-14-11.)

8 (215 ILCS 122/5-16 new)

9 Sec. 5-16. Exchange governance. The governing and
10 administrative powers of the Exchange shall be vested in a body
11 known as the Illinois Health Benefits Exchange Board. The
12 following provisions shall apply:

13 (1) The Board shall consist of 9 voting members.
14 Members of the Board of Directors shall be appointed as
15 follows: 2 members shall be appointed by the President of
16 the Senate; 2 members shall be appointed by the Minority
17 Leader of the Senate; 2 members shall be appointed by the
18 Speaker of the House of Representatives; 2 members shall be
19 appointed by the Minority Leader of the House of
20 Representatives; and the Governor shall appoint one member
21 in good standing of the American Academy of Actuaries with
22 experience in Illinois health insurance markets to serve on
23 the Board. In addition, the Director of Insurance, the
24 Director of Healthcare and Family Services, and the
25 Executive Director of the Exchange shall serve as

1 non-voting, ex-officio members of the Board. The Governor
2 shall also appoint as non-voting, ex-officio members one
3 economist with experience in the health care markets and
4 one educated health care consumer advocate. All Board
5 members shall be appointed no later than January 31, 2012.

6 (2) The President of the Senate, Minority Leader of the
7 Senate, Speaker of the House of Representatives, and
8 Minority Leader of the House of Representatives shall
9 coordinate appointments to ensure that there is broad
10 representation within the skill sets specified in this
11 Section and shall consider the geographic, cultural, and
12 ethnic diversity of this State when making the
13 appointments. A majority of the voting members must be
14 employers or individuals who are not employed by a health
15 insurance issuer and none shall be State employees or been
16 employed by the State within one year prior to their
17 appointment.

18 No more than 4 of the voting members may be individuals
19 who are employed by, consultants to, or members of a board
20 of directors of:

21 (i) an insurer or third party administrator;

22 (ii) an insurance producer; or

23 (iii) a health care provider, health care
24 facility, or health clinic;

25 Each person appointed to the Board should have
26 demonstrated expertise in no less than 2 of the following

1 areas:

2 (A) individual health insurance coverage;

3 (B) small employer health insurance;

4 (C) health benefits administration;

5 (D) health care finance;

6 (E) administration of a public or private health
7 care delivery system;

8 (F) the provision of health care services;

9 (G) the purchase of health insurance coverage;

10 (H) health care consumer navigation or assistance;

11 (I) health care economics or health care actuarial
12 sciences;

13 (J) information technology; or

14 (K) starting a small business with 50 or fewer
15 employees.

16 (3) The Board shall elect one voting member of the
17 Board to serve as chairperson and one voting member to
18 serve as vice-chairperson, upon approval of a majority of
19 the Board.

20 (4) The Exchange shall be administered by an Executive
21 Director, who shall be appointed, and may be removed, by a
22 majority of the Board. The Board shall have the power to
23 determine compensation for the Executive Director. The
24 Executive Director may not be a State employee or have been
25 employed by or have had a contract with the State in the 3
26 years prior to his or her appointment.

1 (5) The terms of the non-voting, ex-officio members of
2 the Board shall run concurrent with their terms of
3 appointment to office, or in the case of the Executive
4 Director, his or her term of appointment to that position,
5 subject to the determination of the Board. The terms of the
6 members, including those non-voting, ex-officio members
7 appointed by the Governor, shall be 4 years. Each member of
8 the General Assembly identified in paragraph (1) of this
9 Section shall initially appoint one member to a 3-year
10 term, and one member to a 4-year term. Upon conclusion of
11 the initial term, the next term and every term subsequent
12 to it shall run for 3 years. Voting members shall serve no
13 more than 3 consecutive terms.

14 A person appointed to fill a vacancy and complete the
15 unexpired term of a member of the Board shall only be
16 appointed to serve out the unexpired term by the individual
17 who made the original appointment within 45 days after the
18 initial vacancy. A person appointed to fill a vacancy and
19 complete the unexpired term of a member of the Board may be
20 re-appointed to the Board for another term, but shall not
21 serve than more than 2 consecutive terms following their
22 completion of the unexpired term of a member of the Board.

23 If a voting Board member's qualifications change due to
24 a change in employment during the term of their
25 appointment, then the Board member shall resign their
26 position, subject to reappointment by the individual who

1 made the original appointment.

2 (6) The Board may, as necessary, create and appoint
3 qualified persons with requisite expertise to Exchange
4 technical advisory groups. These Exchange technical
5 advisory groups shall meet in a manner and frequency
6 determined by the Board to discuss exchange-related issues
7 and to provide exchange-related guidance, advice, and
8 recommendations to the Board and the Exchange.

9 (7) The Board shall meet no less than quarterly on a
10 schedule established by the chairperson. Meetings shall be
11 public and public records shall be maintained, subject to
12 the Open Meetings Act. A majority of the Board shall
13 constitute a quorum and the affirmative vote of a majority
14 is necessary for any action of the Board. No vacancy shall
15 impair the ability of the Board to act provided a quorum is
16 reached. Members shall serve without pay, but shall be
17 reimbursed for their actual and reasonable expenses
18 incurred in the performance of their duties. The
19 chairperson of the Board shall file a written report
20 regarding the activities of the Board and the Exchange to
21 the Governor and General Assembly annually, and the
22 Legislative Oversight Committee established in Section
23 5-15 quarterly, beginning on July 1, 2012 through December
24 31, 2014.

25 (8) The Board shall adopt conflict of interest rules
26 and recusal procedures. Such rules and procedures shall (i)

1 prohibit a member of the Board from performing an official
2 act that may have a direct economic benefit on a business
3 or other endeavor in which that member has a direct or
4 substantial financial interest and (ii) require a member of
5 the Board to recuse himself or herself from an official
6 matter, whether direct or indirect. All recusals must be in
7 advance, in writing, and specify the reason and date of the
8 recusal. All recusals shall be maintained by the Executive
9 Director and shall be disclosed to any person upon written
10 request.

11 (9) The Board shall develop a preliminary budget for
12 the implementation and operation of the Exchange through
13 December 31, 2014. The preliminary budget shall include
14 proposed compensation levels for the Executive Director
15 and identify personnel and staffing needs for the
16 implementation and operation of the Exchange. The Board
17 shall submit its preliminary budget to the Legislative
18 Oversight Committee established in Section 5-15 no later
19 than October 1, 2012.

20 (10) The purpose of the Board shall be to implement the
21 Exchange in accordance with this Section and shall be
22 authorized to establish procedures for the operation of the
23 Exchange, subject to legislative approval.

24 (215 ILCS 122/5-21 new)

25 Sec. 5-21. Enrollment through brokers and agents; producer

1 compensation.

2 (a) In accordance with Section 1312(e) of the Federal Act,
3 the Exchange shall allow licensed insurance producers to (1)
4 enroll qualified individuals in any qualified health plan, for
5 which the individual is eligible, in the individual exchange,
6 (2) assist qualified individuals in applying for premium tax
7 credits and cost-sharing reductions for qualified health plans
8 purchased through the individual exchange, and (3) enroll
9 qualified employers in any qualified health plan, for which the
10 employer is eligible, offered through the SHOP exchange.
11 Nothing in this subsection (a) shall be construed as to require
12 a qualified individual or qualified employer to utilize a
13 licensed insurance producer for any of the purposes outlined in
14 this subsection (a).

15 (b) In order to enroll individuals and small employers in
16 qualified health plans on the Exchange, licensed producers must
17 complete a certification program. The Department of Insurance
18 may develop and implement a certification program for licensed
19 insurance producers who enroll individuals and employers in the
20 exchange. The Department of Insurance may charge a reasonable
21 fee, by regulation, to producers for the certification program.
22 The Department of Insurance may approve certification programs
23 developed and instructed by others, charging a reasonable fee,
24 by regulation, for approval.

25 (c) The Exchange shall include on its Internet website a
26 producer locator section, featured prominently, through which

1 individuals and small employers can find exchange-certified
2 producers.

3 (d) The Exchange shall have no role in developing or
4 determining the manner or amount of compensation producers
5 receive from qualified health plans for individuals or
6 employers enrolled in health plans through the Exchange.

7 (215 ILCS 122/5-25)

8 Sec. 5-25. Federal action. This Law shall be null and void
9 if Congress and the President take action to repeal or replace,
10 or both, Section 1311 of the Affordable Care Act or the U.S.
11 Supreme Court strikes down the Affordable Care Act in whole or
12 in part.

13 (Source: P.A. 97-142, eff. 7-14-11.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.