

# SENATE, No. 1288

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 8, 2010

**Sponsored by:**

**Senator JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

### **SYNOPSIS**

The “New Jersey Health Insurance Exchange Act.”

### **CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning health benefits plans and supplementing Title  
2 17B of the New Jersey Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. This act shall be known and may be cited as the “New Jersey  
8 Health Insurance Exchange Act.”

9  
10 2. As used in this act:

11 “Board” means the board of directors of the New Jersey Health  
12 Insurance Exchange established by section 3 of this act.

13 “Carrier” means any entity subject to the insurance laws and  
14 regulations of this State, or subject to the jurisdiction of the  
15 commissioner, that contracts or offers to contract to provide,  
16 deliver, arrange for, pay for, or reimburse any of the costs of health  
17 care services, including an insurance company authorized to issue  
18 health insurance, a health maintenance organization, a hospital  
19 service corporation, medical service corporation and health service  
20 corporation, or any other entity providing a health benefits plan.  
21 The term “carrier” shall not include a joint insurance fund  
22 established pursuant to State law. For purposes of this act, carriers  
23 that are affiliated companies shall be treated as one carrier, except  
24 that any insurance company, health service corporation, hospital  
25 service corporation, or medical service corporation that is an  
26 affiliate of a health maintenance organization located in New Jersey  
27 or any health maintenance organization located in New Jersey that  
28 is affiliated with an insurance company, health service corporation,  
29 hospital service corporation, or medical service corporation shall  
30 treat the health maintenance organization as a separate carrier.

31 “Commissioner” means the Commissioner of Banking and  
32 Insurance.

33 “Exchange” means the New Jersey Health Insurance Exchange.

34 “Exchange certification” means the approval given by the board  
35 of the exchange to indicate that a health benefits plan meets certain  
36 standards regarding quality and value.

37 “Eligible employee” means an individual who performs services  
38 for and under the direction of a participating employer for wages or  
39 other remuneration.

40 “Eligible person” means a person who is a resident of this State  
41 who is not an eligible employee and not eligible to be covered  
42 under a group health benefits plan, group health plan, governmental  
43 plan, church plan, or Part A or Part B of Title XVIII of the “Social  
44 Security Act” (42 U.S.C. s.1395 et seq.).

45 “Group health benefits plan” means a health benefits plan for  
46 groups of two or more persons.

47 “Group health plan” means an employee welfare benefit plan, as  
48 defined in section 3(1) of Pub.L.93-406, the “Employee Retirement

1 Income Security Act of 1974” (29 U.S.C. s.1002(1)), to the extent  
2 that the plan provides medical care, and includes items and services  
3 paid for as medical care to employees or their dependents directly  
4 or through insurance, reimbursement, or otherwise.

5 “Health benefits plan” means any hospital and medical expense  
6 insurance policy or certificate; health, hospital, or medical service  
7 corporation contract or certificate; or health maintenance  
8 organization subscriber contract or certificate delivered or issued  
9 for delivery in this State. For purposes of this act, "health benefits  
10 plan" shall not include one or more, or any combination of, the  
11 following: coverage only for accident or disability income  
12 insurance, or any combination thereof; coverage issued as a  
13 supplement to liability insurance; liability insurance, including  
14 general liability insurance and automobile liability insurance;  
15 workers' compensation or similar insurance; automobile medical  
16 payment insurance; credit-only insurance; coverage for on-site  
17 medical clinics; and other similar insurance coverage, as specified  
18 in federal regulations, under which benefits for medical care are  
19 secondary or incidental to other insurance benefits. Health benefits  
20 plans shall not include the following benefits if they are provided  
21 under a separate policy, certificate or contract of insurance or are  
22 otherwise not an integral part of the plan: limited scope dental or  
23 vision benefits; benefits for long-term care, nursing home care,  
24 home health care, community-based care, or any combination  
25 thereof; and such other similar, limited benefits as are specified in  
26 federal regulations. Health benefits plan shall not include hospital  
27 confinement indemnity coverage if the benefits are provided under  
28 a separate policy, certificate or contract of insurance, there is no  
29 coordination between the provision of the benefits and any  
30 exclusion of benefits under any group health benefits plan  
31 maintained by the same plan sponsor, and those benefits are paid  
32 with respect to an event without regard to whether benefits are  
33 provided with respect to such an event under any group health plan  
34 maintained by the same plan sponsor. Health benefits plan shall not  
35 include the following if it is offered as a separate policy, certificate  
36 or contract of insurance: Medicare supplemental health insurance  
37 as defined under section 1882(g)(1) of the federal “Social Security  
38 Act” (42 U.S.C. s.1395ss(g)(1)); and coverage supplemental to the  
39 coverage provided under chapter 55 of Title 10, United States Code  
40 (10 U.S.C. s.1071 et seq.); and similar supplemental coverage  
41 provided to coverage under a group health plan.

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

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

1 through the exchange, who intends to be present in New Jersey for  
2 at least six months of the calendar year.

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

20

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

34 b. The exchange shall be governed by a board, with duties and  
35 powers established by this act. The board shall consist of 11  
36 members: the Commissioner of Health and Human Services, ex  
37 officio, the Commissioner of Banking and Insurance, ex officio; and  
38 nine members appointed by the Governor with the advice and  
39 consent of the Senate, one of whom shall be a member in good  
40 standing of the American Academy of Actuaries, one of whom shall  
41 be a health economist, three of whom shall represent the interests of  
42 small employers, one of whom shall be an employee health benefits  
43 plan specialist, and three of whom shall represent the interests of  
44 consumer health organizations. The appointed members shall not be  
45 employees of any licensed carrier authorized to do business in the  
46 State. Initially, three of the appointed members shall serve for a  
47 three-year term, three shall serve for a two-year term, and three  
48 shall serve for a one-year term. Thereafter, all appointed members

1 shall serve for three year terms. An appointed member of the board  
2 shall be eligible for reappointment. Vacancies on the board shall be  
3 filled for the unexpired terms in the same manner as original  
4 appointments. The board shall annually elect one of its members to  
5 serve as chairperson. Ex officio members may be represented by  
6 designees. The board shall organize upon the appointment of a  
7 majority of its members.

8 c. Six members of the board shall constitute a quorum, and the  
9 affirmative vote of six members of the board shall be necessary and  
10 sufficient for any action taken by the board. A vacancy in the  
11 membership of the board shall not impair the right of a quorum to  
12 exercise all the rights and duties of the exchange. Members shall  
13 serve without pay, but shall be reimbursed for actual expenses  
14 necessarily incurred in the performance of their duties. The  
15 chairperson of the board shall report to the Governor and to the  
16 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
17 19.1), no less than annually.

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

21  
22 4. The board shall employ an executive director to supervise the  
23 administrative affairs and general management and operations of  
24 the exchange, who shall also serve as secretary of the exchange, ex  
25 officio, but shall be ineligible to vote. The executive director shall  
26 receive a salary commensurate with the duties of the office. The  
27 executive director may appoint other officers and employees of the  
28 exchange necessary to the functioning of the exchange. The  
29 executive director shall, with the approval of the board:

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

32 b. employ professional and clerical staff as necessary;

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

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

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

39  
40 5. The purpose of the board of the exchange shall be to  
41 implement the New Jersey Health Insurance Exchange pursuant to  
42 the provisions of this act. The goal of the board is to facilitate the  
43 purchase of coverage under health benefits plans through the  
44 exchange at affordable prices by eligible persons and eligible  
45 employees. For these purposes, the board is authorized and  
46 empowered as follows:

47 a. to develop a plan of operation for the exchange, which shall  
48 include, but not be limited to, the following:

- 1 (1) procedures for operations of the exchange;
- 2 (2) procedures and minimum requirements for the selection and  
3 certification of health benefits plans to be offered through the  
4 exchange;
- 5 (3) criteria for determining that certain health benefits plans shall  
6 no longer be made available through the exchange and a procedure  
7 to decertify these plans;
- 8 (4) procedures, criteria, and a standard application form for the  
9 enrollment of small employers as participating employers;
- 10 (5) procedures, criteria, and standard application forms for  
11 prospective eligible persons and eligible employees seeking to  
12 obtain coverage under health benefits plans offered through the  
13 exchange;
- 14 (6) establishment and management of a system for collecting all  
15 premium payments made by, or on behalf of, eligible persons and  
16 eligible employees obtaining coverage from health benefits plans  
17 offered through the exchange, including any premium payments  
18 made by participating employers on behalf of eligible employees,  
19 and remitting the premium payments to carriers;
- 20 (7) a plan for operating a service center to manage exchange  
21 enrollment, provide eligible persons, small employers, and eligible  
22 employees with information about the exchange, provide carriers  
23 with information about criteria for health benefits plans eligible to  
24 be offered through the exchange, and provide participating  
25 employers with information about establishing and maintaining  
26 cafeteria plans for its employees pursuant to section 125 of the  
27 federal Internal Revenue Code (26 U.S.C. s.125);
- 28 (8) a plan for publicizing the exchange's services, eligibility  
29 requirements, and enrollment procedures; and
- 30 (9) procedures for communications with the executive director;
- 31 b. to seek and receive grant funding from the federal  
32 government, departments or agencies of the State, and private  
33 foundations;
- 34 c. to contract with professional service firms as may be necessary  
35 in its judgment, and to fix their compensation;
- 36 d. to contract with companies which provide third-party  
37 administrative and billing services for health benefits plans;
- 38 e. to charge and equitably apportion among participating  
39 employers its administrative costs and expenses incurred in the  
40 exercise of the powers and duties granted by this act;
- 41 f. to adopt by-laws for the regulation of its affairs and the  
42 conduct of its business;
- 43 g. to adopt an official seal and alter the same;
- 44 h. to maintain an office in the State;
- 45 i. to sue and be sued in its own name;
- 46 j. to establish lines of credit, and establish one or more cash and  
47 investment accounts to receive payments for services rendered,  
48 appropriations from the State and for all other business activity

1 permitted by this act except to the extent otherwise limited by any  
2 applicable provision of the “Employee Retirement Income Security  
3 Act of 1974” Pub.L. 93-406 (29 U.S.C. s.1001 et seq.); and

4 k. to approve the use of its trademarks, brand names, seals,  
5 logos, and similar instruments by carriers, participating employers  
6 and other organizations.

7  
8 6. a. The exchange may offer to eligible persons and eligible  
9 employees only health benefits plans that have been certified by the  
10 exchange, authorized by the commissioner, and underwritten by a  
11 carrier.

12 b. A health benefits plan offered by a carrier through the  
13 exchange shall contain a detailed description of the benefits offered,  
14 including maximums, limitations, exclusions, and other benefit  
15 limits.

16 c. The exchange certification shall be assigned to health benefits  
17 plans that the board determines provide good value and offer high  
18 quality coverage to eligible persons and eligible employees.

19 d. The exchange shall begin offering health benefits plans as of  
20 January 1, 2011.

21  
22 7. A small employer seeking to be a participating employer  
23 shall, as a condition of participation, enter into a written agreement  
24 with the exchange which, at a minimum, shall stipulate the  
25 following:

26 a. that the small employer reserves the right to determine the  
27 amounts of contributions, if any, which the small employer agrees  
28 to make to any exchange certified health benefits plan, provided  
29 that, for the term of the agreement with the exchange, the small  
30 employer agrees not to change contribution amounts at any time  
31 other than during a period designated by the exchange; and

32 b. that the small employer agrees to make available, in a timely  
33 manner, for confidential review by the executive director, any of the  
34 small employer’s documents, records or information that the  
35 exchange reasonably determines are necessary for the executive  
36 director to verify:

37 (1) that the small employer is in compliance with this act and  
38 other applicable federal and State laws relating to the offering of  
39 health benefits plans, particularly those provisions of laws relating  
40 to non-discrimination in coverage; and

41 (2) the eligibility of the small employer’s employees to obtain  
42 coverage under a health benefits plan pursuant to this act.

43  
44 8. a. The exchange may apply a surcharge to all health benefits  
45 plans offered by a carrier through the exchange, which surcharge  
46 shall be used only to pay for administrative and operational  
47 expenses of the exchange; provided, however, that the surcharge

1 shall be applied uniformly to all health benefits plans offered  
2 through the exchange.

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

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

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

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

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

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

42 e. Upon dissolution, liquidation, or other termination of the  
43 exchange, all rights, funds, assets, and properties of the exchange  
44 shall be vested in the State.

45  
46 10. The exchange shall keep an accurate account of all its  
47 activities and of all its receipts and expenditures and shall annually  
48 make a report thereof as of the end of the State fiscal year to its



1 board, to the Governor, to the Legislature pursuant to section 2 of  
2 P.L.1991, c.164 (C.52:14-19.1), and to the State Auditor, the  
3 reports to be in a form prescribed by the board, with the written  
4 approval of the State Auditor. The State Auditor may investigate  
5 the affairs of the exchange, severally examine the properties and  
6 records of the exchange, and prescribe methods of accounting and  
7 the rendering of periodical reports in relation to projects undertaken  
8 by the exchange. The State Auditor shall conduct a biennial audit of  
9 the exchange.

10  
11 11. No later than two years after the exchange begins operation  
12 and every year thereafter, the exchange shall conduct a study of the  
13 exchange and the eligible persons and eligible employees enrolled  
14 in the exchange and shall submit a written report to the Governor,  
15 and the Legislature pursuant to section 2 of P.L.1991, c.164  
16 (C.52:14-19.1), or their successor committees, on the status and  
17 activities of the exchange, based on the data collected in the study.  
18 The report shall also be available to the general public upon request.  
19 The study shall review the operation and administration of the  
20 exchange, including surveys and reports of health benefits plans  
21 available to eligible persons and eligible employees and on the  
22 experience of the plans. The experience of the plans shall include  
23 data on eligible persons and eligible employees who obtained  
24 coverage through the exchange, participating employers enrolled in  
25 the exchange, expenses, claims statistics, complaints data, how the  
26 exchange met its goals, significant observations regarding  
27 utilization and adoption of the exchange, and other information  
28 deemed pertinent by the exchange.

29  
30 12. The exchange, in consultation with the Commissioner of the  
31 Department of Banking and Insurance and the Commissioner of  
32 Health and Senior Services, shall adopt, pursuant to the  
33 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
34 seq.), rules and regulations to effectuate the purposes of this act.

35  
36 13. This act shall take effect immediately.

#### 37 38 39 STATEMENT

40  
41 This bill establishes the New Jersey Health Insurance Exchange  
42 as an independent public entity, in but not of the Department of  
43 Banking and Insurance, with certain authority to facilitate the  
44 availability and choice of health benefits plans offered to employees  
45 of small employers that employ between two and 50 employees, and  
46 other eligible persons not employed by small employers.

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

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

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

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

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

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

17 (6) publicize the exchange's services, eligibility requirements,  
18 and enrollment procedures.

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

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

30 The bill provides that the exchange shall begin offering health  
31 benefits plans as of January 1, 2011. The exchange shall offer to  
32 eligible employees only health benefits plans that are certified by  
33 the exchange as providing good value and high quality coverage,  
34 authorized by the Commissioner of Banking and Insurance,  
35 underwritten by a carrier, and that meet certain other conditions.

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

40 To pay for administrative expenses, the bill allows the exchange  
41 to apply a surcharge to all health benefits plans offered by a carrier  
42 through the exchange. The bill provides immunities from liability,  
43 in certain circumstances, for board members, officers, and  
44 employees of the exchange, except in instances of willful  
45 dishonesty or intentional violation of the law, and limits the  
46 exchange's liability in certain respects.

47 The bill requires the exchange to maintain certain records,  
48 subjects exchange operations to audit by the State Auditor, and

1 requires an annual study and a report on exchange operations to the  
2 Governor and Legislature.

3 Finally, the bill provides the exchange with the authority, in  
4 consultation with the Commissioner of Banking and Insurance and  
5 the Commissioner of Health and Senior Services, to adopt rules and  
6 regulations to effectuate the purposes of the bill.