

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1497

H.P. 1098

House of Representatives, April 20, 2011

**An Act To Comply with the Health Insurance Exchange Provision of
the Patient Protection and Affordable Care Act**

Received by the Clerk of the House on April 15, 2011. Referred to the Committee on Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative McKANE of Newcastle.
Cosponsored by Senator WHITTEMORE of Somerset and
Representatives: FITZPATRICK of Houlton, MORISSETTE of Winslow, PICCHIOTTI of
Fairfield, RICHARDSON of Warren, Senator: SNOWE-MELLO of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §12004-G, sub-§14-H** is enacted to read:

3 **14-H.**

4 Health care Board of Directors Expenses Only 24-A MRSA §7004
5 of the Maine Health
6 Benefit Exchange

7 **Sec. 2. 24-A MRSA c. 89** is enacted to read:

8 **CHAPTER 89**

9 **MAINE HEALTH BENEFIT EXCHANGE ACT**

10 **§7001. Short title**

11 This chapter may be known and cited as "the Maine Health Benefit Exchange Act."

12 **§7002. Definitions**

13 As used in this chapter, unless the context otherwise indicates, the following terms
14 have the following meanings.

15 **1. Board.** "Board" means the Board of Directors of the Maine Health Benefit
16 Exchange established in section 7004.

17 **2. Educated health care consumer.** "Educated health care consumer" means an
18 individual who is knowledgeable about the health care system and has background or
19 experience in making informed decisions regarding health, medical and scientific matters.

20 **3. Exchange.** "Exchange" means the Maine Health Benefit Exchange established in
21 section 7003.

22 **4. Federal Act.** "Federal Act" means the federal Patient Protection and Affordable
23 Care Act, Public Law 111-148, as amended by the federal Health Care and Education
24 Reconciliation Act of 2010, Public Law 111-152, and any amendments to, or regulations
25 or guidance issued under, those Acts.

26 **5. Health benefit plan.** "Health benefit plan" means a policy, contract, certificate or
27 agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for or
28 reimburse any of the costs of health care services.

29 A. "Health benefit plan" does not include:

30 (1) Coverage only for accident or disability income insurance or any
31 combination thereof;

32 (2) Coverage issued as a supplement to liability insurance;

- 1 (3) Liability insurance, including general liability insurance and automobile
2 liability insurance;
- 3 (4) Workers' compensation or similar insurance;
- 4 (5) Automobile medical payment insurance;
- 5 (6) Credit-only insurance;
- 6 (7) Coverage for on-site medical clinics; or
- 7 (8) Insurance coverage similar to any coverage listed in subparagraphs (1) to (7),
8 as specified in federal regulations issued pursuant to the federal Health Insurance
9 Portability and Accountability Act of 1996, Public Law 104-191, under which
10 benefits for health care services are secondary or incidental to other insurance
11 benefits.

12 B. "Health benefit plan" does not include the following benefits if they are provided
13 under a separate policy, certificate or contract of insurance or are otherwise not an
14 integral part of the plan:

- 15 (1) Limited-scope dental or vision benefits;
- 16 (2) Benefits for long-term care, nursing home care, home health care,
17 community-based care or any combination thereof; or
- 18 (3) Limited benefits similar to those listed in subparagraphs (1) and (2), as
19 specified in federal regulations issued pursuant to the federal Health Insurance
20 Portability and Accountability Act of 1996, Public Law 104-191.

21 C. "Health benefit plan" does not include the following benefits if the benefits are
22 provided under a separate policy, certificate or contract of insurance, there is no
23 coordination between the provision of the benefits and any exclusion of benefits
24 under any group health plan maintained by the same plan sponsor, and the benefits
25 are paid with respect to an event without regard to whether benefits are provided with
26 respect to such an event under any group health plan maintained by the same plan
27 sponsor:

- 28 (1) Coverage only for a specified disease or illness; or
- 29 (2) Hospital indemnity or other fixed indemnity insurance.

30 D. "Health benefit plan" does not include the following if offered as a separate
31 policy, certificate or contract of insurance:

- 32 (1) Medicare supplemental health insurance as defined under the United States
33 Social Security Act, Section 1882(g)(1) of ;
- 34 (2) Coverage supplemental to the coverage provided under 10 United States
35 Code, Chapter 55; or
- 36 (3) Supplemental coverage similar to coverage listed in subparagraphs (1) and
37 (2) provided under a group health plan.

38 **6. Health carrier.** "Health carrier" or "carrier" means:

1 A. An insurance company licensed in accordance with this Title to provide health
2 insurance;

3 B. A health maintenance organization licensed pursuant to chapter 56;

4 C. A preferred provider arrangement administrator registered pursuant to chapter 32;

5 D. A nonprofit hospital or medical service organization or health plan licensed
6 pursuant to Title 24; or

7 E. An employee benefit excess insurance company licensed in accordance with this
8 Title to provide property and casualty insurance that provides employee benefit
9 excess insurance pursuant to section 707, subsection 1, paragraph C-1.

10 **7. Qualified dental plan.** "Qualified dental plan" means a limited-scope dental plan
11 that has been certified in accordance with this chapter.

12 **8. Qualified employer.** "Qualified employer" means a small employer that elects to
13 make its full-time employees and, at the option of the employer, some or all of its part-
14 time employees eligible for one or more qualified health plans offered through the SHOP
15 exchange and that:

16 A. Has its principal place of business in this State and elects to provide coverage
17 through the SHOP exchange to all of its eligible employees, wherever employed; or

18 B. Elects to provide coverage through the SHOP exchange to all of its eligible
19 employees who are principally employed in this State.

20 **9. Qualified health plan.** "Qualified health plan" means a health benefit plan that
21 has in effect a certification that the plan meets the criteria for certification described in
22 Section 1311(c) of the Federal Act and this chapter.

23 **10. Qualified individual.** "Qualified individual" means an individual, including a
24 minor, who:

25 A. Is seeking to enroll in a qualified health plan offered to individuals through the
26 exchange;

27 B. Resides in this State;

28 C. At the time of enrollment, is not incarcerated, other than incarceration pending the
29 disposition of charges; and

30 D. Is, and is reasonably expected to be, for the entire period for which enrollment is
31 sought, a citizen or national of the United States or an alien lawfully present in the
32 United States.

33 **11. Secretary.** "Secretary" means the Secretary of the United States Department of
34 Health and Human Services.

35 **12. SHOP exchange.** "SHOP exchange" means the Small Business Health Options
36 Program established pursuant to section 7003.

1 **13. Small employer.** "Small employer" means an employer that employed an
2 average of not more than 50 employees during the preceding calendar year. For purposes
3 of this subsection:

4 A. All persons treated as a single employer under 26 United States Code, Section
5 414(b), (c), (m) or (o) must be treated as a single employer;

6 B. An employer and a predecessor employer must be treated as a single employer;

7 C. All employees must be counted, including part-time employees and employees
8 who are not eligible for coverage through the employer;

9 D. If an employer was not in existence throughout the preceding calendar year, the
10 determination of whether that employer is a small employer must be based on the
11 average number of employees that is reasonably expected that employer will employ
12 on business days in the current calendar year; and

13 E. An employer that makes enrollment in qualified health plans available to its
14 employees through the SHOP exchange and would cease to be a small employer by
15 reason of an increase in the number of its employees must continue to be treated as a
16 small employer for purposes of this chapter as long as it continuously makes
17 enrollment through the SHOP exchange available to its employees.

18 **§7003. Maine Health Benefit Exchange established; declaration of necessity**

19 **1. Exchange established.** The Maine Health Benefit Exchange is established as an
20 independent executive agency to provide, pursuant to the Federal Act, for the
21 establishment of a health benefit exchange to facilitate the purchase and sale of qualified
22 health plans in the individual market in this State and for the establishment of the Small
23 Business Health Options Program to assist qualified small employers in this State in
24 facilitating the enrollment of their employees in qualified health plans offered in the small
25 group market. The intent of the exchange is to reduce the number of uninsured
26 individuals, provide a transparent marketplace and consumer education and assist
27 individuals with access to programs, premium assistance tax credits and cost-sharing
28 reductions.

29 **2. Contracting authority.** The exchange may contract with an eligible entity for
30 any of its functions described in this chapter. For the purposes of this subsection, "eligible
31 entity" includes, but is not limited to, the MaineCare program or any entity that has
32 experience in individual and small group health insurance, benefit administration or other
33 experience relevant to the responsibilities to be assumed by the entity, except that a health
34 carrier or an affiliate of a health carrier is not an eligible entity.

35 **3. Information sharing.** The exchange may enter into information-sharing
36 agreements with federal and state agencies and other states' exchanges to carry out its
37 responsibilities under this chapter; such agreements must include adequate protections
38 with respect to the confidentiality of the information to be shared and comply with all
39 state and federal laws, rules and regulations.

1 **§7004. Board of Directors of Maine Health Benefit Exchange**

2 The Board of Directors of the Maine Health Benefit Exchange, as established in Title
3 5, section 12004-G, subsection 14-H, is established to supervise the exchange.

4 **1. Appointments.** The board consists of 10 members appointed by the Governor
5 subject to review by the joint standing committee of the Legislature having jurisdiction
6 over health insurance matters and confirmation by the Senate. The Governor shall
7 appoint the members as follows:

- 8 A. Two members representing insurers;
- 9 B. Two members representing insurance producers;
- 10 C. One member representing hospitals;
- 11 D. One member representing physicians;
- 12 E. One member representing nurses;
- 13 F. One member representing large employers;
- 14 G. One member representing small employers; and
- 15 H. One member who purchases individual health insurance.

16 **2. Terms of office.** Members of the board are appointed to 6-year terms. Members
17 may serve 2 consecutive terms. Any vacancy for an unexpired term must be filled in
18 accordance with subsection 1. A member may serve until a replacement is appointed and
19 qualified.

20 **3. Chair.** The Governor shall appoint one of the members as the chair of the board.

21 **4. Quorum.** Six members of the board constitute a quorum.

22 **5. Affirmative vote.** An affirmative vote of 6 members is required for any action
23 taken by the board.

24 **6. Compensation.** Members are entitled to compensation for expenses incurred in
25 the performance of their duties on the board.

26 **7. Meetings.** The board shall meet monthly and may also meet at other times at the
27 call of the chair or the executive director selected pursuant to section 7006, subsection 2.
28 All meetings of the board are public proceedings within the meaning of Title 1, chapter
29 13, subchapter 1.

30 **§7005. Limitation on liability**

31 **1. Indemnification of exchange employees and board members.** A board member
32 or employee of the exchange is not subject to personal liability for having acted within
33 the course and scope of membership or employment to carry out any power or duty under
34 this chapter. The exchange shall indemnify a member of the board or an employee of the
35 exchange against expenses actually and necessarily incurred by that member or employee

1 in connection with the defense of an action or proceeding in which that member or
2 employee is made a party by reason of past or present authority with the exchange.

3 **2. Limitation on liability of board members.** The personal liability of a member of
4 the board is governed by Title 18-B, section 1010.

5 **§7006. Duties of board; plan of operation**

6 **1. Plan of operation.** Within 6 months of appointment, the board shall submit to the
7 superintendent a plan of operation for the exchange that will ensure fair, reasonable and
8 equitable administration of the exchange. The plan of operation takes effect upon the
9 approval of the superintendent.

10 **2. Requirements.** In addition to the other requirements of this chapter, the plan of
11 operation submitted under subsection 1 must include procedures for:

12 A. Operation of the exchange;

13 B. Selecting and hiring an executive director;

14 C. Creating a fund, managed by the board, for administrative expenses;

15 D. Handling, according and auditing of money and other assets of the exchange;

16 E. Developing and implementing a program to foster public awareness of the
17 exchange and to publicize the eligibility requirements and enrollment procedures for
18 coverage under the exchange and for subsidies offered for individual coverage;

19 F. Developing and implementing requirements that only producers licensed under
20 chapter 16, subchapter 2-A enroll individuals and small employers in qualified health
21 plans offered through the exchange, including an annual educational certification
22 process for producers who elect to participate in the exchange;

23 G. Developing and implementing requirements to assist individuals in applying for
24 premium tax credits and cost-sharing reductions for qualified health plans sold
25 through the exchange; and

26 H. Any matters necessary and proper for the execution of the board's powers, duties
27 and obligations under this chapter.

28 **3. Failure to submit plan of operation.** If the board fails to submit a plan of
29 operation as required in subsection 1, the superintendent may, after notice and hearing,
30 determine a plan of operation for the exchange. A plan of operation determined by the
31 superintendent pursuant to this subsection continues in effect until the board submits a
32 plan of operation approved by the superintendent.

33 **§7007. Availability of coverage**

34 **1. Coverage.** The exchange shall make qualified health plans available to qualified
35 individuals and qualified employers no later than January 1, 2014.

36 **2. Qualified health plan required.** The exchange may not make available any
37 health benefit plan that is not a qualified health plan.

1 **3. Dental benefits.** The exchange shall allow a health carrier to offer a plan that
2 provides limited-scope dental benefits meeting the requirements of 26 United States
3 Code, Section 9832(c)(2)(A) through the exchange, either separately or in conjunction
4 with a qualified health plan, if the plan provides pediatric dental benefits meeting the
5 requirements of Section 1302(b)(1)(J) of the Federal Act.

6 **4. No fee or penalty for termination of coverage.** The exchange or a carrier
7 offering qualified health plans through the exchange may not charge an individual a fee
8 or penalty for termination of coverage if the individual enrolls in another type of
9 minimum essential coverage because the individual has become newly eligible for that
10 coverage or because the individual's employer-sponsored coverage has become affordable
11 under the standards of Section 1401 of the Federal Act.

12 **§7008. Powers and duties of the Maine Health Benefit Exchange**

13 **1. Powers.** Subject to any limitations contained in this chapter or in any other law,
14 the exchange may:

15 A. Take any legal actions that are necessary for the proper administration of the
16 exchange;

17 B. Make and alter bylaws, not inconsistent with this chapter or with the laws of this
18 State, for the administration and regulation of the activities of the exchange;

19 C. Have and exercise all powers necessary or convenient to effect the purposes for
20 which the exchange is organized or to further the activities in which the exchange
21 may lawfully be engaged, including the establishment of the exchange;

22 D. Engage in legislative liaison activities, including gathering information regarding
23 legislation, analyzing the effect of legislation, communicating with Legislators and
24 attending and giving testimony at legislative sessions, public hearings or committee
25 hearings;

26 E. Enter into contracts with qualified 3rd parties both private and public for any
27 service necessary to carry out the purposes of this chapter;

28 F. Apply for and receive funds, grants or contracts from public and private sources;
29 and

30 G. In accordance with the limitations and restrictions of this chapter, cause any of its
31 powers or duties to be carried out by one or more organizations organized, created or
32 operated under the laws of this State.

33 **2. Duties.** The exchange shall:

34 A. Implement procedures for the certification, recertification and decertification,
35 consistent with guidelines developed by the secretary under Section 1311(c) of the
36 Federal Act and pursuant to section 7009, of health benefit plans as qualified health
37 plans;

38 B. Provide for the operation of a toll-free telephone hotline to respond to requests for
39 assistance;

- 1 C. Provide for enrollment periods, as provided under Section 1311(c)(6) of the
2 Federal Act;
- 3 D. Maintain a publicly accessible website through which enrollees and prospective
4 enrollees of qualified health plans may obtain standardized comparative information
5 on such plans;
- 6 E. Assign a rating to each qualified health plan offered through the exchange in
7 accordance with the criteria developed by the secretary under Section 1311(c)(3) of
8 the Federal Act, and determine each qualified health plan's level of coverage in
9 accordance with regulations issued by the secretary under Section 1302(d)(2)(A) of
10 the Federal Act;
- 11 F. Use a standardized format for presenting health benefit options in the exchange,
12 including the use of the uniform outline of coverage established under the federal
13 Public Health Service Act, 42 United States Code, Section 300gg-15 (2010);
- 14 G. In accordance with Section 1413 of the Federal Act, inform individuals of
15 eligibility requirements for the Medicaid program under the United States Social
16 Security Act, Title XIX, the State Children's Health Insurance Program under the
17 United States Social Security Act, Title XXI, or any applicable state or local public
18 program and if, through screening of an application by the exchange, the exchange
19 determines that an individual is eligible for any such program, enroll the individual in
20 that program;
- 21 H. Establish and make available by electronic means a calculator to determine the
22 actual cost of coverage after application of any premium tax credit under Section
23 1401 of the Federal Act and any cost-sharing reduction under Section 1402 of the
24 Federal Act;
- 25 I. Establish the SHOP exchange through which qualified employers may access
26 coverage for their employees, and that enables a qualified employer to specify a level
27 of coverage so that any of its employees may enroll in any qualified health plan
28 offered through the SHOP exchange at the specified level of coverage;
- 29 J. Subject to Section 1411 of the Federal Act, issue a certification attesting that, for
30 purposes of the individual responsibility penalty under 26 United State Code, Section
31 5000A, an individual is exempt from the individual responsibility requirement or
32 from the penalty because:
- 33 (1) There is no affordable qualified health plan available through the exchange
34 or the individual's employer covering the individual; or
- 35 (2) The individual meets the requirements for any other exemption from the
36 individual responsibility requirement or penalty;
- 37 K. Transfer to the United States Secretary of the Treasury the following:
- 38 (1) A list of the individuals who are issued a certification under paragraph J,
39 including the name and taxpayer identification number of each individual;
- 40 (2) The name and taxpayer identification number of each individual who was an
41 employee of an employer but who was determined to be eligible for the premium
42 tax credit under Section 1401 of the Federal Act because;

- 1 (a) The employer did not provide the minimum essential coverage; or
- 2 (b) The employer provided the minimum essential coverage, but it was
- 3 determined under Section 1401 of the Federal Act to either be unaffordable
- 4 to the employee or not provide the required minimum actuarial value; and
- 5 (3) The name and taxpayer identification number of:
- 6 (a) Each individual who notifies the exchange under Section 1411(b)(4) of
- 7 the Federal Act that the individual has changed employers; and
- 8 (b) Each individual who ceases coverage under a qualified health plan
- 9 during a plan year and the effective date of that cessation;
- 10 L. Provide to each employer the name of each employee of the employer described
- 11 in paragraph K, subparagraph (3) who ceases coverage under a qualified health plan
- 12 during a plan year and the effective date of the cessation;
- 13 M. Perform duties required of the exchange by the secretary or the United States
- 14 Secretary of the Treasury related to determining eligibility for premium tax credits,
- 15 reduced cost-sharing and individual responsibility requirement exemptions;
- 16 N. Select entities qualified to serve as navigators in accordance with Section 1311(i)
- 17 of the Federal Act and standards developed by the secretary and award grants to
- 18 enable navigators to:
- 19 (1) Conduct public education activities to raise awareness of the availability of
- 20 qualified health plans;
- 21 (2) Distribute fair and impartial information concerning enrollment in qualified
- 22 health plans and the availability of premium tax credits under Section 1401 of the
- 23 Federal Act and cost-sharing reductions under Section 1402 of the Federal Act;
- 24 (3) Facilitate enrollment in qualified health plans;
- 25 (4) Provide referrals to any applicable office of health insurance consumer
- 26 assistance or health insurance ombudsman established under 42 United States
- 27 Code, Section 300gg-93 (2010), or any other appropriate state agency or
- 28 agencies, for an enrollee with a grievance, complaint or question regarding a
- 29 health benefit plan or coverage or a determination under that plan or coverage;
- 30 and
- 31 (5) Provide information in a manner that is culturally and linguistically
- 32 appropriate to the needs of the population being served by the exchange;
- 33 O. Review the rate of premium growth within the exchange and outside the
- 34 exchange, and consider the information in developing recommendations on whether
- 35 to continue limiting qualified employer status to small employers;
- 36 P. Credit the amount of any free choice voucher to the monthly premium of the plan
- 37 in which a qualified employee is enrolled, in accordance with Section 10108 of the
- 38 Federal Act, and collect the amount credited from the offering employer;
- 39 Q. Consult with stakeholders regarding carrying out the activities required under this
- 40 chapter, including, but not limited to:

- 1 (1) Educated health care consumers who are enrollees in qualified health plans;
- 2 (2) Individuals and entities with experience in facilitating enrollment in qualified
- 3 health plans;
- 4 (3) Representatives of small businesses and self-employed individuals;
- 5 (4) The MaineCare program; and
- 6 (5) Advocates for enrolling hard-to-reach populations;

7 R. Keep an accurate accounting of all activities, receipts and expenditures and
8 annually submit to the secretary, the Governor, the superintendent and the Legislature
9 a report concerning such accountings;

10 S. Fully cooperate with any investigation conducted by the secretary pursuant to the
11 secretary's authority under the Federal Act and allow the secretary, in coordination
12 with the Inspector General of the United States Department of Health and Human
13 Services, to:

- 14 (1) Investigate the affairs of the exchange;
- 15 (2) Examine the properties and records of the exchange; and
- 16 (3) Require periodic reports in relation to the activities undertaken by the
- 17 exchange; and

18 T. In carrying out its activities under this chapter, avoid using any funds intended for
19 the administrative and operational expenses of the exchange for staff retreats,
20 promotional giveaways, excessive executive compensation or promotion of federal or
21 state legislative and regulatory modifications.

22 **3. Budget.** The revenues and expenditures of the exchange are subject to legislative
23 approval in the biennial budget process. At the direction of the board, the executive
24 director selected under section 7006, subsection 2 shall prepare the budget for the
25 administration and operation of the exchange in accordance with the provisions of law
26 that apply to departments of State Government.

27 **4. Audit.** The exchange must be audited annually by the State Auditor. The board
28 may, in its discretion, arrange for an independent audit to be conducted. A copy of any
29 audit must be provided to the State Controller, the superintendent, the joint standing
30 committee of the Legislature having jurisdiction over appropriations and financial affairs,
31 the joint standing committee of the Legislature having jurisdiction over insurance and
32 financial services matters and the joint standing committee of the Legislature having
33 jurisdiction over health and human services matters.

34 **5. Rulemaking.** The exchange may adopt rules as necessary for the proper
35 administration and enforcement of this chapter pursuant to the Maine Administrative
36 Procedure Act. Unless otherwise specified, rules adopted pursuant to this subsection are
37 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted
38 pursuant to this subsection may not conflict with or prevent the application of regulations
39 promulgated by the secretary under the Federal Act.

1 **6. Annual report.** Beginning February 1, 2015, and annually thereafter, the board
2 shall report on the operation of the exchange to the Governor, the joint standing
3 committee of the Legislature having jurisdiction over appropriations and financial affairs,
4 the joint standing committee of the Legislature having jurisdiction over insurance and
5 financial services matters and the joint standing committee of the Legislature having
6 jurisdiction over health and human services matters.

7 **7. Technical assistance from other state agencies.** Other state agencies, including,
8 but not limited to, the bureau; the Department of Health and Human Services; the
9 Department of Administrative and Financial Services, Maine Revenue Services; and the
10 Maine Health Data Organization, shall provide technical assistance and expertise to the
11 exchange upon request.

12 **8. Legal counsel.** The Attorney General, when requested, shall furnish any legal
13 assistance, counsel or advice the exchange requires in the discharge of its duties.

14 **§7009. Health benefit plan certification**

15 **1. Certification.** The exchange may certify a health benefit plan as a qualified
16 health plan if:

17 A. The health benefit plan provides the essential health benefits package described in
18 Section 1302(a) of the Federal Act, except that the plan is not required to provide
19 essential benefits that duplicate the minimum benefits of qualified dental plans, as
20 provided in subsection 5, if:

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

23 (2) The carrier makes prominent disclosure at the time it offers the plan, in a
24 form approved by the exchange, that the plan does not provide the full range of
25 essential pediatric dental benefits and that qualified dental plans providing those
26 benefits and other dental benefits not covered by the plan are offered through the
27 exchange;

28 B. The premium rates and contract language have been approved by the
29 superintendent;

30 C. The health benefit plan provides at least a bronze level of coverage, as determined
31 pursuant to Section 1302(d)(1)(A) of the Federal Act for catastrophic plans, and will
32 only be offered to individuals eligible for catastrophic coverage;

33 D. The health benefit plan's cost-sharing requirements do not exceed the limits
34 established under Section 1302(c)(1) of the Federal Act, and, if the plan is offered
35 through the SHOP exchange, the plan's deductible does not exceed the limits
36 established under Section 1302(c)(2) of the Federal Act;

37 E. The health carrier offering the health benefit plan:

38 (1) Is licensed and in good standing to offer health insurance coverage in this
39 State;

1 (2) Offers at least one qualified health plan in the silver level and at least one
2 plan in the gold level as described in Section 1302(d)(1)(B) and Section
3 1302(d)(1)(C) of the Federal Act through each component of the exchange in
4 which the carrier participates. As used in this subparagraph, "component" means
5 the SHOP exchange and the exchange;

6 (3) Charges the same premium rate for each qualified health plan without regard
7 to whether the plan is offered through the exchange and without regard to
8 whether the plan is offered directly from the carrier or through an insurance
9 producer;

10 (4) Does not charge any cancellation fees or penalties in violation of section
11 7007, subsection 4; and

12 (5) Complies with the regulations developed by the secretary under Section
13 1311(c) of the Federal Act and such other requirements as the exchange may
14 establish;

15 F. The health benefit plan meets the requirements of certification as adopted by rule
16 pursuant to section 7008, subsection 5 and by regulation promulgated by the secretary
17 under Section 1311(c) of the Federal Act, which include, but are not limited to,
18 minimum standards in the areas of marketing practices, network adequacy, essential
19 community providers in underserved areas, accreditation, quality improvement,
20 uniform enrollment forms and descriptions of coverage and information on quality
21 measures for health benefit plan performance; and

22 G. The exchange determines that making the health benefit plan available through
23 the exchange is in the interest of qualified individuals and qualified employers in this
24 State.

25 **2. Authority to exclude health benefit plans.** The exchange may not exclude a
26 health benefit plan:

27 A. On the basis that the health benefit plan is a fee-for-service plan;

28 B. Through the imposition of premium price controls by the exchange; or

29 C. On the basis that the health benefit plan provides treatments necessary to prevent
30 patients' deaths in circumstances in which the exchange determines the treatments are
31 inappropriate or too costly.

32 **3. Carrier requirements.** The exchange shall require each health carrier seeking
33 certification of a health benefit plan as a qualified health plan to:

34 A. Submit a justification for any premium increase before implementation of that
35 increase. The carrier shall prominently post the information on its publicly accessible
36 website. The exchange shall take this information, along with the information and the
37 recommendations provided to the exchange by the superintendent under the federal
38 Public Health Service Act, 42 United States Code, Section 300gg-94 (2010), into
39 consideration when determining whether to allow the carrier to make plans available
40 through the exchange;

1 B. Make available to the public and submit to the exchange, the secretary and the
2 superintendent accurate and timely disclosure of the following:

3 (1) Claims payment policies and practices;

4 (2) Periodic financial disclosures;

5 (3) Data on enrollment;

6 (4) Data on disenrollment;

7 (5) Data on the number of claims that are denied;

8 (6) Data on rating practices;

9 (7) Information on cost sharing and payments with respect to any out-of-network
10 coverage;

11 (8) Information on enrollee and participant rights under Title I of the Federal
12 Act; and

13 (9) Other information as determined appropriate by the secretary.

14 The information required in this paragraph must be provided in plain language, as
15 that term is defined in Section 1311(e)(3)(B) of the Federal Act; and

16 C. Permit an individual to learn, in a timely manner upon the request of the
17 individual, the amount of cost sharing, including deductibles, copayments and
18 coinsurance, under the individual's health benefit plan or coverage that the individual
19 would be responsible for paying with respect to the furnishing of a specific item or
20 service by a participating provider. At a minimum, this information must be made
21 available to the individual through a publicly accessible website and through other
22 means for an individual without access to the Internet.

23 **4. No exemption from licensing or solvency requirements.** The exchange may
24 not exempt any health carrier seeking certification of a qualified health plan, regardless of
25 the type or size of the carrier, from state licensure or solvency requirements and shall
26 apply the criteria of this section in a manner that ensures fairness between or among
27 health carriers participating in the exchange.

28 **5. Application to qualified dental plans.** The provisions of this chapter that are
29 applicable to qualified health plans also apply to the extent relevant to qualified dental
30 plans except as modified in this subsection or by rules adopted by the exchange.

31 A. The carrier must be licensed to offer dental coverage, but need not be licensed to
32 offer other health benefits.

33 B. The qualified dental plan must be limited to dental and oral health benefits,
34 without substantially duplicating the benefits typically offered by health benefit plans
35 without dental coverage and must include, at a minimum, the essential pediatric
36 dental benefits prescribed by the secretary pursuant to Section 1302(b)(1)(J) of the
37 Federal Act and such other dental benefits as the exchange or the secretary may
38 specify by rule or regulation.

