

The House Committee on Insurance offers the following substitute to HB 476:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 establish the Georgia Health Exchange Authority; to provide for legislative intent; to provide
3 for definitions; to provide for a board of directors; to provide for composition, terms, and
4 officers; to provide for powers and duties of the authority; to provide for the Georgia Health
5 Exchange and the Small Business Health Options Program (SHOP) Exchange; to provide for
6 automatic repeal under certain conditions; to provide for a trust fund; to provide for an
7 advisory committee; to provide for limited liability; to provide for rules and regulations; to
8 provide for accounts and audits; to provide for related matters; to provide for an effective
9 date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 The purpose of this Act is to provide for a Georgia Health Exchange to facilitate the purchase
13 and sale of qualified health plans in the individual market in this state in accordance with
14 federal law. This Act also provides for the establishment of a Small Business Health Options
15 Program (SHOP) Exchange to assist qualified small employers in this state in facilitating the
16 enrollment of their employees in qualified health plans offered in the small group market.
17 The intent of the exchanges are to reduce the number of uninsured people in this state,
18 provide a transparent exchange, provide consumer education, and assist individuals with
19 access to programs, premium assistance tax credits, and cost-sharing reductions.

20 **SECTION 2.**

21 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
22 adding a new chapter to read as follows:

"CHAPTER 65

33-65-1.

This chapter shall be known and may be cited as the 'Georgia Health Exchange Act.'

33-65-2.

As used in this chapter, the term:

(1) 'Authority' means the Georgia Health Exchange Authority established pursuant to Code Section 33-65-3.

(2) 'Board' means the board of directors of the Georgia Health Exchange Authority.

(3) 'Exchange' means the Georgia Health Exchange established as the state's American Health Benefit Exchange in accordance with the federal act.

(4) 'Federal act' means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any regulations or guidance issued under such acts.

(5) 'Fund' means the Georgia Health Exchange Trust Fund, established pursuant to Code Section 33-65-6.

(6) 'Insurer' means any insurer or nonprofit organization authorized to sell accident and sickness policies, subscriber contracts, certificates, or agreements of any form under Chapter 15, 18, 19, 20, 21, 29, or 30 of this title.

(7) 'SHOP Exchange' means the Small Business Health Options Program Exchange established pursuant to 33-65-5.

33-65-3.

(a) There is established the Georgia Health Exchange Authority as a body corporate and politic, an instrumentality of the state, and a public corporation; and by that name the authority may contract and be contracted with and bring and defend actions. The authority shall have perpetual existence.

(b) The authority shall be governed by a board of directors composed of nine members who shall be residents of the State of Georgia as follows:

(1) The commissioner of community health, or his or her designee;

(2) The Commissioner;

(3) Seven members appointed by the Governor from the general public, one of whom shall represent a consumer organization or health advocacy organization and one of whom shall represent small businesses. The balance of the appointments to the board shall be made to provide demonstrated and acknowledged expertise in a diverse range of health care areas including, but not limited to, the following:

- (A) Individual health care coverage;
- (B) Small employer health care coverage;
- (C) Health benefits plan administration;
- (D) Health care finance;
- (E) Administering a public or private health care delivery system;
- (F) Purchasing health plan coverage; and
- (G) State employee health care coverage.

The Governor shall consider the expertise of the other members of the board and attempt to make appointments so that the board's composition reflects a range and diversity of skills, backgrounds, and geographic and stakeholder perspectives; and

(4) Three ex officio members as follows:

- (A) The director of the Office of Planning and Budget, or his or her designee;
- (B) The Governor's executive counsel, or his or her designee; and
- (C) The executive director of the Georgia Technology Authority or his or her designee.

(c) The initial members of the board appointed pursuant to paragraph (3) of subsection (b) of this Code section shall be appointed to terms of office beginning July 1, 2011. All members shall serve for terms of three years; provided, however, that for the purpose of providing for staggered terms, three members shall have initial terms of three years, two members shall have initial terms of two years, and two members shall have initial terms of one year. Any vacancy on the board shall be filled in the same manner as the original appointment, and any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of the member's predecessor. A member shall be eligible for reappointment. All members of the board shall serve until the appointment and qualification of a successor.

(d) The board chairperson shall be appointed by the Governor from his or her appointees and the board shall at its initial meeting and the first meeting of each calendar year thereafter select from among its members a vice chairperson and other officers. Meetings shall be held at the call of the chairperson or whenever any two members so request.

(e) The members of the board who are not public officers shall be entitled to an expense allowance and reimbursement from funds of the authority for their actual travel expenses necessarily incurred in the performance of their duties and for each day actually spent in performance of their duties in the same manner as provided in Code Section 45-7-21.

(f) A majority of the members of the board shall constitute a quorum for the transaction of business of the authority. The vote of at least a majority of the members present at any meeting at which a quorum is present is necessary for any action to be taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all rights and perform all duties of the board.

(g) A member of the board or of the staff of the authority shall not be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of an insurer, a health insurance agent or broker, a health care provider, a health care facility, or a health care clinic while serving on the board or on the staff of the authority. A member of the board or of the staff of the authority shall not be a member, a board member, or an employee of a trade association of insurers, health facility, health clinic, or health care provider while serving on the board or on the staff of the authority. A member of the board or of the staff of the authority shall not be a health care provider unless he or she receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice.

(h) The authority is assigned to the Department of Community Health for administrative purposes only, as prescribed in Code Section 50-4-3.

(i) The executive director of the authority shall be appointed by the Governor.

33-65-4.

The authority shall have the following powers:

(1) To elect, appoint, or hire officers, employees, and other agents of the authority, including experts and fiscal agents, define their duties, and fix their compensation;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created;

(4) To adopt, amend, and repeal bylaws, regulations, and policies and procedures for the regulation of its affairs and the conduct of its business; to elect and prescribe the duties of officers and employees of the corporation; and to perform such other matters as the authority may determine. In the adoption of bylaws, regulations, policies, and procedures or in the exercise of any regulatory power, the authority shall be exempt from the requirements of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act';

(5) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(6) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or any agency or instrumentality thereof or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(7) To solicit, receive, and review proposals from technology vendors for the development and implementation of technology to operate and maintain the Exchange, including an Internet website and call center accessible to all Georgians;

(8) To work with advisory groups, state agencies, nonprofit entities, consumer groups, corporations, universities, and other persons and organizations to research and make recommendations to the Governor and General Assembly on the creation of the Exchange and the SHOP Exchange;

(9) To administer the Georgia Health Care Exchange Trust Fund, as established pursuant to Code Section 33-65-6;

(10) To deposit or invest funds held by it in any state depository or in any investment which is authorized for the investment of proceeds of state general obligation bonds and to use for its corporate purposes or redeposit or reinvest interest earned on such funds;

(11) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority; and

(12) To do all things necessary or convenient to carry out the powers conferred by this chapter.

33-65-5.

(a) The board shall work with the advisory committee established pursuant to Code Section 33-65-7 to develop a report for submittal to the Governor and General Assembly no later than November 15, 2011. Such report shall include proposed legislation, business operations plans, and actuarial studies necessary to efficiently and effectively operate a financially viable Exchange and a SHOP Exchange in compliance with the federal act.

(b) The board may seek federal funding and other grants necessary to plan and implement the Exchange and SHOP Exchange by January 1, 2014.

(c) The Exchange will be the entity designated to operate the state's American Health Benefit Exchange pursuant to the federal act contingent on legislation authorizing the Exchange to sell qualified health insurance plans in compliance with the federal act.

(d) The authority may establish a SHOP Exchange to facilitate enrollment of qualified small employers in qualified health plans offered in the small group insurance market.

(e) The authority may coordinate the planning and future policy and operations of the Exchange and SHOP Exchange with those of other state agencies whose policies and operations relate to those of the Exchange and SHOP Exchange, including, but not limited to, the state agency that administers Title XIX of the Social Security Act, the state agency that administers Title XXI of the Social Security Act, the department, and other state agencies as necessary.

(f) The authority may contract with or enter into a memorandum of understanding with an eligible entity for any of its functions described in this chapter. An eligible entity includes, but is not limited to, the Department of Community Health or an entity that has experience in individual and small group health insurance, benefit administration, or other experience relevant to the responsibilities to be assumed by the entity, but a health insurance carrier or an affiliate of a health insurance carrier shall not be an eligible entity.

(g) Prior to January 1, 2015, in the event of a decrease in anticipated funding from the federal government or other sources, the board may reassess the feasibility of meeting each of the requirements contained in this Code section and make appropriate adjustments to the functions of the Exchange or the SHOP Exchange as are deemed necessary.

(h) If the Georgia General Assembly does not enact legislation enabling the creation of the Exchange by the end of the 2012 general legislative session, the Georgia Health Exchange Authority shall cease to exist and this chapter shall stand repealed on June 30, 2012.

33-65-6.

(a) There is created the Georgia Health Exchange Trust Fund as a separate fund in the state treasury. The trust fund shall be administered by the authority.

(b) The trust fund shall consist of such moneys as provided by grants from the federal government and revenue from and private contributions from any source.

33-65-7.

(a) The Governor shall appoint an Exchange Advisory Committee to allow for the involvement of the health care industry, business leaders, and other stakeholders in the development of the Exchange. Such advisory committee shall provide expertise and recommendations to the Governor but shall have no authority to promulgate rules or regulations or enter into contracts on behalf of the authority.

(b) The Exchange Advisory Committee shall study and make recommendations to the board for the design, implementation, and operation of the Exchange and the SHOP Exchange. The advisory committee shall provide a report to the board and the Governor no later than November 15, 2011, and shall include options and recommendations on the following:

(1) Administration of the exchanges;

(2) Any changes to the governing structure of the exchanges;

(3) Authority and responsibilities of the exchanges, including procurement, finances, and business operations;

(4) Addressing risk adjustment inside and outside the exchanges;

(5) Options for maximizing the use of existing resources and state and federal processes;

(6) Options for promoting family members maintaining the same health plan as the family income changes between 100 and 400 percent of the federal poverty level; and
(7) Other recommendations as deemed necessary by the advisory committee or as requested by the board or Governor.

(c) The advisory committee shall base the options and recommendations developed pursuant to subsection (b) of this Code section on the following guiding principles:

- (1) Increasing number of Georgians with quality health care coverage;
- (2) Supporting provider viability;
- (3) Building real competition in the insurance market;
- (4) Making Georgia small business friendly;
- (5) Promoting keeping all family members together on the same plan;
- (6) Promoting customer service and the importance of brokers and navigators; and
- (7) Seeking solutions that are sustainable and best for Georgians whether specifically part of the federal act or not.

(d) The authority shall provide staff and consultants as necessary to support to the work of the advisory committee upon the approval of the executive director.

33-65-8.

(a) The authority shall not be liable for any acts or omissions of an insurer related to its participation in the Exchange or SHOP Exchange.

(b) Consumer complaints relating to health care products and programs purchased or enrolled in through the Exchange or the SHOP Exchange shall be handled in the same manner as would be applicable if the consumer purchased or enrolled in the health care product or program through other means.

33-65-9.

The authority and the Commissioner, as appropriate, shall be authorized to adopt rules and regulations to effect the implementation of this chapter.

33-65-10.

The accounts of the authority created in this chapter shall be kept as separate and distinct accounts and shall be audited by the Department of Audits and Accounts of the state."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

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SECTION 4.
All laws and parts of laws in conflict with this Act are repealed.