



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 547

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H.P. 366

House of Representatives, February 19, 2013

**An Act To Ensure the Accountability of Taxpayer Funds and State  
Collaboration, Planning and Oversight in the Implementation and  
Operation of a Health Exchange in Maine**

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Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative TREAT of Hallowell.  
Cosponsored by Senator WOODBURY of Cumberland and  
Representatives: BEAUDOIN of Biddeford, BERRY of Bowdoinham, Speaker EVES of North  
Berwick, FARNSWORTH of Portland, GRAHAM of North Yarmouth, MORRISON of South  
Portland, Senators: CRAVEN of Androscoggin, GRATWICK of Penobscot.

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

2 **PART A**

3 **Sec. A-1. 24-A MRSA §2188**, as enacted by PL 2011, c. 631, §1, is amended to  
4 read:

5 **§2188. Permitted activities of insurance producers; navigators; requirements**

6 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
7 following terms have the following meanings.

8 A. "Exchange" means a health benefit exchange established or operated in this State,  
9 ~~including a health benefit exchange established or operated by the Secretary of the~~  
10 ~~United States Department of Health and Human Services~~, pursuant to Section 1311 of  
11 the federal Affordable Care Act.

12 B. "Navigator" means a person selected to perform the activities and duties identified  
13 in Section 1311(i) of the federal Affordable Care Act. For the purposes of this  
14 section, if an organization or business entity serves as a navigator, an individual  
15 performing navigator duties for that organization or business entity is considered to  
16 be acting in the capacity of a navigator within the meaning of subsection 4.

17 **2. Permitted insurance producer or consultant activities.** Only a person licensed  
18 as an insurance producer in this State in accordance with chapter 16, or, with respect to  
19 paragraph B, a person licensed as a consultant in accordance with chapter 16, may:

20 A. Sell, solicit or negotiate health insurance;

21 B. Make recommendations to purchasers, enrollees or employers or prospective  
22 purchasers or enrollees concerning the substantive benefits, terms or conditions of  
23 health plans, except that the act of providing information to purchasers, enrollees or  
24 employers or prospective purchasers or enrollees concerning the substantive benefits,  
25 terms or conditions of health plans by a navigator may not be construed as making a  
26 recommendation under this paragraph; or

27 C. Enroll an individual or employee in a qualified health plan offered through an  
28 exchange or act as an intermediary between an employer and an insurer that offers a  
29 qualified health plan offered through ~~an~~ a state-based exchange, except that the  
30 actions of a navigator to provide assistance to an individual or employee to facilitate  
31 that individual's or employee's enrollment in a qualified health plan is not considered  
32 enrolling an individual or employee in a qualified health plan under this paragraph.

33 **3. Certification of navigators.** Prior to any state-based exchange becoming  
34 operational in this State, the superintendent shall:

35 A. Develop criteria for use by any state-based exchange for the selection of a  
36 navigator pursuant to Section 1311(i) of the federal Affordable Care Act and state  
37 law; and

1 B. Adopt rules to establish a certification and training program for a prospective  
2 individual navigator that includes initial and continuing education requirements and  
3 an examination; and,

4 ~~C. Adopt rules, to the extent permitted by the federal Affordable Care Act, that~~  
5 ~~require a navigator to carry and maintain errors and omissions insurance to cover all~~  
6 ~~activities contemplated or performed pursuant to this section and Section 1311(i) of~~  
7 ~~the federal Affordable Care Act.~~

8 **4. Navigator requirements.** An individual, other than a licensed insurance producer  
9 under chapter 16, may not act in the capacity of a navigator in a state-based exchange  
10 unless the individual:

11 A. Is at least 18 years of age;

12 B. Has completed and submitted a disclosure form, which must be developed by the  
13 superintendent and which may include such information as the superintendent  
14 determines necessary, and has declared under penalty of refusal, suspension or  
15 revocation of the navigator certification that the statements made in the form are true,  
16 correct and complete to the best of the individual's knowledge and belief;

17 C. Has submitted to any criminal history record check or regulatory background  
18 check required by the superintendent by rule;

19 ~~D. Has not committed any act that would be a ground for denial, suspension or~~  
20 ~~revocation of a producer license as set forth in section 1420 K;~~

21 E. Has successfully completed the certification and training requirements adopted by  
22 the superintendent in accordance with subsection 3; and

23 F. Has paid any fees required by the superintendent.

24 ~~**5. Unfair practices.** The provisions of this chapter and chapter 24 and any rules~~  
25 ~~adopted pursuant to those chapters apply to navigators. For purposes of this section and~~  
26 ~~the application of other provisions of this Title, the duties of a navigator are deemed to~~  
27 ~~constitute the business of insurance.~~

28 **6. Denial, suspension or revocation.** The superintendent may deny, suspend or  
29 revoke the authority of a navigator certified pursuant to this section for good cause.

30 **7. Rules.** The superintendent may adopt rules as necessary to implement this  
31 section. Rules adopted pursuant to this subsection are routine technical rules as defined  
32 in Title 5, chapter 375, subchapter 2-A.

33 **PART B**

34 **Sec. B-1. 24-A MRSA §405-A, sub-§1,** as enacted by PL 2011, c. 90, Pt. C, §3,  
35 is amended to read:

36 **1. Regional insurer or health maintenance organization defined.** As used in this  
37 section, "regional insurer or health maintenance organization" means an insurer or health  
38 maintenance organization that holds a valid certificate of authority to transact individual

1 health insurance in Connecticut, Massachusetts, New Hampshire or, Rhode Island or  
2 Vermont.

3 **Sec. B-2. 24-A MRSA §405-A, sub-§2, ¶B**, as enacted by PL 2011, c. 90, Pt. C,  
4 §3, is amended to read:

5 B. A regional insurer or health maintenance organization shall meet the requirements  
6 of section 4302 for reporting plan information with respect to individual health plans  
7 offered for sale in this State and disclose to prospective enrollees how the health  
8 plans differ from individual health plans offered by domestic insurers in a format  
9 approved by the superintendent. Health plan policies and applications for coverage  
10 must contain the following disclosure statement or a substantially similar statement  
11 on the face page of the policy or application in a type size of at least 14 points and  
12 font that is easily readable by a person with average eyesight: "This policy is issued  
13 by a regional insurer or health maintenance organization and is governed by the laws  
14 and rules of (regional insurer's or health maintenance organization's state of  
15 domicile). This policy may not be subject to all the insurance laws and rules of the  
16 State of Maine, including coverage of certain health care services or benefits  
17 mandated by Maine law. Before purchasing this policy, you should carefully review  
18 the terms and conditions of coverage under this policy, including any exclusions or  
19 limitations of coverage."

20 **Sec. B-3. 24-A MRSA §405-B, first ¶**, as enacted by PL 2011, c. 90, Pt. C, §4, is  
21 amended to read:

22 Notwithstanding any other provision of this Title, a domestic insurer or licensed  
23 health maintenance organization authorized to transact individual health insurance in this  
24 State may offer for sale in this State an individual health plan duly authorized for sale in  
25 Connecticut, Massachusetts, New Hampshire or, Rhode Island or Vermont by a parent or  
26 corporate affiliate of the domestic insurer or licensed health maintenance organization if  
27 the following requirements are met.

28 **Sec. B-4. 24-A MRSA §405-B, sub-§3**, as enacted by PL 2011, c. 90, Pt. C, §4,  
29 is amended to read:

30 **3. Disclosure and reporting.** The domestic insurer or licensed health maintenance  
31 organization shall meet the requirements of section 4302 for reporting plan information  
32 with respect to individual health plans offered for sale in this State and disclose to  
33 prospective enrollees how the individual health plans of the parent or corporate affiliate  
34 differ from individual health plans offered by other domestic insurers or licensed health  
35 maintenance organizations in a format approved by the superintendent. Health plan  
36 policies and applications for coverage must contain the following disclosure statement or  
37 a substantially similar statement on the face page of the policy or application in a type  
38 size of at least 14 points and font that is easily readable by a person with average  
39 eyesight: "This policy is issued by a domestic insurer or licensed health maintenance  
40 organization but is governed by the laws and rules of (state of domicile of parent or  
41 corporate affiliate of domestic insurer or licensed health maintenance organization),  
42 which is the state of domicile of the parent or corporate affiliate of the domestic insurer or  
43 licensed health maintenance organization. This policy may not be subject to all the

1 insurance laws and rules of the State of Maine, including coverage of certain health care  
2 services or benefits mandated by Maine law. Before purchasing this policy, you should  
3 carefully review the terms and conditions of coverage under this policy, including any  
4 exclusions or limitations of coverage."

5 **PART C**

6 **Sec. C-1. 5 MRSA §12004-I, sub-§31-B** is enacted to read:

7 **31-B.**

8 Health Care                      Maine Health                      Legislative per diem                      24-A MRSA §4345  
9    Exchange Advisory                      and travel expenses  
10    Board

11 **Sec. C-2. 24-A MRSA c. 56-A, sub-c. 4** is enacted to read:

12 **SUBCHAPTER 4**

13 **HEALTH EXCHANGE UNDER FEDERAL AFFORDABLE CARE ACT**

14 **§4345. Maine Health Exchange Advisory Board**

15 The Maine Health Exchange Advisory Board, referred to in this section as "the  
16 advisory board," established under Title 5, section 12004-I, subsection 31-B, is  
17 established to advise the Federal Government, the Governor, the Legislature, the  
18 Department of Health and Human Services and the bureau regarding the interests of  
19 individuals and employers with respect to any federally facilitated exchange, partnership  
20 exchange or state-based exchange that may be created for this State pursuant to the  
21 federal Affordable Care Act.

22 **1. Appointment; composition.** The advisory board consists of 17 members  
23 appointed pursuant to this subsection.

24 A. The Governor shall appoint 12 members of the advisory board with the approval  
25 of the joint standing committee of the Legislature having jurisdiction over insurance  
26 and financial services matters:

- 27                      (1) Two persons representing health insurance carriers;  
28                      (2) One person representing dental insurance carriers;  
29                      (3) One person representing insurance producers;  
30                      (4) One person representing Medicaid recipients;  
31                      (5) One person representing health care providers and health care facilities;  
32                      (6) One person who is an advocate for enrolling hard-to-reach populations,  
33                      including individuals with mental health or substance abuse disorders;  
34                      (7) One person who is a public health expert; and

1                   (8) Four members representing individuals and small businesses, including:

2                   (a) One person who can reasonably be expected to purchase individual  
3                   coverage through an exchange with the assistance of a premium tax credit  
4                   and who can reasonably be expected to represent the interests of consumers  
5                   purchasing individual coverage through the exchange;

6                   (b) One person representing an employer that can reasonably be expected to  
7                   purchase group coverage through an exchange who can reasonably be  
8                   expected to represent the interests of such employers;

9                   (c) One person representing navigators or entities likely to be licensed as  
10                   navigators; and

11                   (d) One person employed by an employer that can reasonably be expected to  
12                   purchase group coverage through an exchange who can reasonably be  
13                   expected to represent the interests of such employees.

14                   Prior to making appointments to the advisory board, the Governor shall seek  
15                   nominations from the public statewide associations representing the interests under  
16                   this paragraph and other entities as appropriate.

17                   B. Five members of the advisory board must be members of the Legislature, of  
18                   whom at least 3 must serve on the joint standing committee of the Legislature having  
19                   jurisdiction over insurance and financial services matters:

20                   (1) Two members of the Senate, appointed by the President of the Senate,  
21                   including one member recommended by the Senate Minority Leader; and

22                   (2) Three members of the House of Representatives, appointed by the Speaker of  
23                   the House, including one member recommended by the House Minority Leader.

24                   **2. Term.** Except for members who are Legislators, members of the advisory board  
25                   serve 3-year terms. A member may not serve more than 2 consecutive terms. Members  
26                   who are Legislators serve 2-year terms coterminous with their elected terms. Except for a  
27                   member who is a Legislator, a member may continue to serve after expiration of the  
28                   member's term until a successor is appointed.

29                   **3. Duties.** The advisory board shall:

30                   A. Advise the Federal Government, the Governor, the Legislature, the Department of  
31                   Health and Human Services and the bureau regarding the interests of individuals and  
32                   employers with respect to any federally facilitated exchange, partnership exchange or  
33                   state-based exchange that may be created for this State;

34                   B. Serve as a liaison between any exchange and individuals and small businesses  
35                   enrolled in the exchange;

36                   C. Evaluate the implementation and operation of any federally facilitated exchange,  
37                   partnership exchange or state-based exchange with respect to the following:

38                   (1) The essential health benefits benchmark plan designated in this State under  
39                   the federal Affordable Care Act, including whether the State should change its  
40                   designation;

1 (2) Whether state laws governing health insurance coverage for wellness  
2 programs and smoking cessation programs are in compliance with federal  
3 regulations;

4 (3) The consumer outreach and enrollment conducted by the exchange and  
5 whether the navigator program is effective;

6 (4) The coordination between the state Medicaid program and the exchange;

7 (5) Whether individual subsidies are adequate;

8 (6) Whether the exchange is effective in providing access to health insurance  
9 coverage for small businesses; and

10 (7) The implementation of rebates under the federal Affordable Care Act and  
11 section 4319.

12 D. Following the release of guidance or regulations from the federal Centers for  
13 Medicare and Medicaid Services addressing the basic health program option, as set  
14 forth in the federal Affordable Care Act, conduct a study, and make  
15 recommendations as appropriate, that examines the following:

16 (1) The affordability of health insurance coverage for low-income populations  
17 earning between 133% and 200% of the federal poverty level, including the  
18 impact of premium levels and cost sharing on access to health care by these  
19 populations;

20 (2) The health needs and limited income of these populations;

21 (3) The potential cost savings to the state Medicaid program as a result of the  
22 adoption of a basic health program due to the decrease in the administrative  
23 burden associated with individuals churning off and on Medicaid as their  
24 incomes fluctuate;

25 (4) Systems to create automatic and seamless coverage for individuals who  
26 transfer between a basic health program and Medicaid coverage;

27 (5) The impact of a basic health program on the State's ability to negotiate rates  
28 or receive rebates under any health insurance coverage offered by or through the  
29 State; and

30 (6) The most cost-effective and affordable method of delivering basic health  
31 program health insurance coverage by comparing and contrasting coverage and  
32 applicable out-of-pocket costs provided through a Medicaid look-alike program,  
33 a standard health plan offered through the Consumer Operated and Oriented Plan  
34 program under the federal Affordable Care Act or any other insurance product  
35 offered through a state-based exchange or federally facilitated exchange.

36 E. Based on the evaluation conducted by the advisory board pursuant to paragraphs  
37 C and D, recommend whether the State should transition to a partnership model or  
38 state-based exchange or implement any other changes in policy or law that would  
39 improve the operation of a federally facilitated exchange for consumers and small  
40 businesses in the State. If the advisory board recommends that the State transition to

1 an alternative model from a federally facilitated exchange, the advisory board shall  
2 recommend a work plan and timeline for the transition, including estimated costs.

3 **4. Compensation.** Except for members of the advisory board who are Legislators,  
4 members serve as volunteers and without compensation or reimbursement for expenses.  
5 Members who are Legislators are entitled to receive the legislative per diem as defined in  
6 Title 3, section 2 and reimbursement for travel for attendance at meetings of the board.

7 **5. Quorum.** A quorum is a majority of the members of the advisory board.

8 **6. Chair.** The advisory board shall annually choose one of its members to serve as  
9 chair for a one-year term.

10 **7. Meetings.** The advisory board shall meet at least 4 times a year at regular  
11 intervals and may meet at other times at the call of the chair. Meetings of the board are  
12 public proceedings as provided by Title 1, chapter 13, subchapter 1.

13 **8. Records.** Except for information designated as confidential under federal or state  
14 law, information obtained by the advisory board is a public record as provided by Title 1,  
15 chapter 13, subchapter 1.

16 **Sec. C-3. Maine Health Exchange Advisory Board initial member terms.**  
17 Notwithstanding the Maine Revised Statutes, Title 24-A, section 4342, subsection 2,  
18 except for members who are Legislators, initial appointees to the Maine Health Exchange  
19 Advisory Board must include 3 members appointed to one-year terms, 4 members  
20 appointed to 2-year terms and 5 members appointed to 3-year terms.

## 21 SUMMARY

22 Part A of this bill clarifies that the provisions relating to navigators apply only to any  
23 state-based health exchange that may be established in this State pursuant to the federal  
24 Patient Protection and Affordable Care Act, as amended by the federal Health Care and  
25 Education Reconciliation Act of 2010. It also clarifies that certain activities may be  
26 performed by a navigator without a license as an insurance producer or being subject to  
27 regulation as an insurance business.

28 Part B of this bill allows an insurance company authorized to do business in Vermont  
29 to offer individual health insurance for sale in this State. Current law is limited to  
30 insurance companies authorized to do business in Connecticut, Massachusetts, New  
31 Hampshire and Rhode Island.

32 Part C of this bill establishes the Maine Health Exchange Advisory Board to advise  
33 the Federal Government, the Governor, the Legislature, the Department of Health and  
34 Human Services and the Department of Professional and Financial Regulation, Bureau of  
35 Insurance on the implementation and operation of a health exchange in this State pursuant  
36 to the federal Patient Protection and Affordable Care Act. The advisory board is  
37 comprised of 17 members, including 5 members who are Legislators.