

**PROPOSED AMENDMENTS TO
SENATE BILL 99**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages
2 2 through 8 and insert:

3 **“SECTION 1. Oregon Health Insurance Exchange Corporation. (1)**
4 **The Oregon Health Insurance Exchange Corporation is established as**
5 **a public corporation that shall exercise and carry out statewide all the**
6 **powers, rights and privileges that are expressly conferred upon the**
7 **corporation, are implied by law or are incident to such powers.**

8 **“(2) As used in sections 1 to 27 of this 2011 Act, ‘exchange’ means**
9 **the Oregon Health Insurance Exchange Corporation established under**
10 **this section.**

11 **“SECTION 2. Public policy of exchange; purposes. (1) The Oregon**
12 **Health Insurance Exchange Corporation is established for the purpose**
13 **of administering a health insurance exchange in compliance with the**
14 **requirements of 42 U.S.C. 18031, 18032, 18033 and 18041 and other appli-**
15 **cable federal laws.**

16 **“(2) It shall be the public policy of the Oregon Health Insurance**
17 **Exchange Corporation in carrying out its missions as a public corpo-**
18 **ration:**

19 **“(a) To incorporate the triple aim goals of improving the lifelong**
20 **health of all Oregonians, increasing the quality, reliability and avail-**
21 **ability of health care for all Oregonians and lowering or containing the**
22 **cost of health care so that health care is affordable to everyone.**

1 **“(b) To administer the exchange in the public interest for the ben-**
2 **efit of the people and businesses that get health insurance coverage**
3 **for themselves, their families and employees through the exchange.**

4 **“(c) To empower Oregonians by giving them the information and**
5 **tools they need to make insurance choices that meet their needs and**
6 **values.**

7 **“(d) To work in coordination with the Oregon Health Authority, the**
8 **Oregon Health Policy Board and the Department of Consumer and**
9 **Business Services to improve health care quality and public health,**
10 **eliminate health disparities, control costs and ensure access to af-**
11 **fordable, equitable, high-quality and accountable health care**
12 **throughout the state.**

13 **“(e) To be accountable to the public.**

14 **“(3) The Oregon Health Insurance Exchange Corporation shall be a**
15 **governmental entity performing governmental functions and exercis-**
16 **ing governmental powers. The exchange shall be an independent public**
17 **corporation with statewide purposes and missions and without terri-**
18 **torial boundaries.**

19 **“SECTION 3. Duties of exchange. (1) The duties of the Oregon**
20 **Health Insurance Exchange Corporation shall be to:**

21 **“(a) Provide uniform information to consumers of health care re-**
22 **garding costs, benefits, provider networks and other information to**
23 **assist individuals and small businesses in making informed health care**
24 **decisions.**

25 **“(b) Using procedures adopted by the Oregon Health Insurance Ex-**
26 **change Corporation board of directors by rule, screen, certify and re-**
27 **certify health plans as qualified health plans according to federal and**
28 **state guidelines and ensure that qualified health plans provide mean-**
29 **ingful coverage choices.**

30 **“(c) Decertify health plans in order to preclude participation in the**

1 transaction of insurance through the exchange by health plans that
2 fail to meet federal and state standards.

3 “(d) Promote fair competition of carriers participating and not
4 participating in the transaction of insurance through the exchange by
5 establishing:

6 “(A) Standardized health benefit plan options; and

7 “(B) An Internet-based clearinghouse and a toll-free telephone
8 hotline for information about carriers, including standardized com-
9 parisons of health plan coverage and costs.

10 “(e) Make qualified health plans available to individuals and em-
11 ployers, assist with individual and group enrollment in qualified health
12 plans and, if appropriate, collect premiums from and pay premiums for
13 individuals or groups.

14 “(f) Facilitate community-based assistance with enrollment in
15 qualified health plans, certify entities to be navigators as described in
16 42 U.S.C. 18031(i) and fund navigators to provide education and per-
17 form eligibility determination and enrollment functions.

18 “(g) Provide employers with the names of employees who end cov-
19 erage under a qualified health plan during a plan year.

20 “(h) Grade health plans in accordance with criteria established by
21 the United States Secretary of Health and Human Services and dis-
22 tribute the information through the Internet-based clearinghouse and
23 toll-free telephone hotline.

24 “(i) Certify that an individual meets the criteria for an exemption
25 from the individual responsibility requirement of section 5000A of the
26 Internal Revenue Code.

27 “(j) Establish open and special enrollment periods for all enrollees,
28 and monthly enrollment periods for Native Americans.

29 “(k) Provide information to individuals and employers regarding the
30 eligibility requirements for all publicly funded programs that provide

1 **medical assistance, assist individuals in applying for the programs and**
2 **enroll qualified individuals in the programs.**

3 **“(L) Establish and make available an electronic calculator that al-**
4 **lows individuals to determine the cost of coverage after deducting any**
5 **applicable tax credits or cost-sharing reduction.**

6 **“(m) Provide information to the federal government necessary for**
7 **individuals who are enrolled in qualified health plans through the ex-**
8 **change to receive tax credits and reduced cost-sharing.**

9 **“(n) Provide to the federal government:**

10 **“(A) Information regarding individuals determined to be exempt**
11 **from the individual responsibility requirement of section 5000A of the**
12 **Internal Revenue Code;**

13 **“(B) Information regarding employees who have reported a change**
14 **in employer;**

15 **“(C) Information regarding individuals who have ended coverage**
16 **during a plan year; and**

17 **“(D) Any other information necessary for compliance with federal**
18 **requirements.**

19 **“(o) Take any other actions necessary and appropriate to comply**
20 **with federal requirements for state health insurance exchanges.**

21 **“(2) The exchange may sue and be sued.**

22 **“(3) The exchange may:**

23 **“(a) Acquire, lease, rent, own and manage real property.**

24 **“(b) Construct, equip and furnish buildings or other structures as**
25 **are necessary to accommodate the exchange’s needs.**

26 **“(c) Purchase, rent, lease or otherwise acquire for the exchange’s**
27 **use all supplies, materials, equipment and services necessary to carry**
28 **out the exchange’s duties.**

29 **“(d) Sell or otherwise dispose of any property acquired under this**
30 **subsection.**

1 “(4) Any real property acquired and owned by the exchange under
2 this section shall be subject to ad valorem taxation.

3 “(5) The exchange may adopt rules necessary for the administration
4 and operations of the exchange.

5 “SECTION 4. Board of directors; appointment; membership; re-
6 moval of members. (1) The Oregon Health Insurance Exchange Cor-
7 poration shall be governed by a board of directors consisting of three
8 ex officio members and six members who are appointed by the Gover-
9 nor and subject to confirmation by the Senate in the manner pre-
10 scribed by ORS 171.562 and 171.565.

11 “(2) The ex officio voting members of the board are:

12 “(a) The Director of the Oregon Health Authority;

13 “(b) The Director of the Department of Consumer and Business
14 Services; and

15 “(c) The chairperson, or a designee of the chairperson, of the
16 Oregon Health Policy Board.

17 “(3)(a) The term of office of each member who is not an ex officio
18 member is four years. The Governor may remove any member at any
19 time for cause after notice and a hearing that shall be open to the
20 public, but the Governor may not remove more than three members
21 within any four-year period except for corrupt conduct in office.

22 “(b) Before the expiration of the term of a member who is not an
23 ex officio member, the Governor shall appoint a successor whose term
24 begins on January 1 next following. A member who is not an ex officio
25 member is eligible for no more than two reappointments. If there is
26 a vacancy for any cause, the Governor shall make an appointment to
27 become immediately effective for the unexpired term.

28 “(4) The members who are not ex officio members must be individ-
29 uals who:

30 “(a) Are United States citizens and residents of the State of Oregon;

1 **“(b) Have demonstrated professional and community leadership**
2 **skills and experience;**

3 **“(c) To the greatest extent practicable, represent the various ge-**
4 **ographic, ethnic, gender, racial and economic diversity of this state;**
5 **and**

6 **“(d) Subject to subsections (5) and (6) of this section, collectively**
7 **offer expertise, knowledge and experience in individual insurance**
8 **purchasing, business, finance, sales, health benefits administration,**
9 **individual and small group health insurance and use of exchange ser-**
10 **vices.**

11 **“(5) No more than two of the members who are not ex officio**
12 **members may be individuals who are:**

13 **“(a) Employed by, consultants to or members of a board of directors**
14 **of:**

15 **“(A) A health carrier or other health insurer;**

16 **“(B) An insurance agent or broker; or**

17 **“(C) A health care provider, health care facility or health clinic;**

18 **“(b) Members, board members or employees of a trade association**
19 **of:**

20 **“(A) Carriers; or**

21 **“(B) Health care providers, health care facilities or health clinics;**
22 **or**

23 **“(c) Health care providers, unless they receive no compensation for**
24 **rendering services as health care providers and do not have ownership**
25 **interests in professional health care practices.**

26 **“(6)(a) At least two of the members who are not ex officio members**
27 **shall be consumer members.**

28 **“(b) One consumer member must be an individual consumer pur-**
29 **chasing a qualified health plan through the exchange.**

30 **“(c) One consumer member must be a small business employer**

1 purchasing a qualified health plan through the exchange.

2 “(7) It is the function of the board of directors to establish the
3 policies for the operation of the Oregon Health Insurance Exchange
4 Corporation, consistent with all applicable provisions of law.

5 **“SECTION 5. Board transition.** (1) Notwithstanding the term of of-
6 fice specified by section 4 of this 2011 Act, of the members first ap-
7 pointed to the Oregon Health Insurance Exchange Corporation board
8 of directors who are not ex officio members:

9 “(a) Two shall serve for terms ending December 31, 2013.

10 “(b) Two shall serve for terms ending December 31, 2014.

11 “(c) Two shall serve for terms ending on the earlier of four years
12 after appointment or December 31, 2015.

13 “(2) Notwithstanding section 4 (6) of this 2011 Act, until insurance
14 becomes available for purchase through the exchange, the consumer
15 members shall be individuals or small business employers that will be
16 eligible under section 12 (1) of this 2011 Act to purchase qualified
17 health plans through the exchange. One of the consumer members
18 shall serve for one of the terms ending December 31, 2013, and one
19 shall serve for one of the terms ending December 31, 2014.

20 “(3) Notwithstanding section 6 (1) of this 2011 Act, the Governor
21 shall select, from the membership of the board, the chairperson and
22 the vice chairperson, who shall serve for the first two years of the
23 board’s operation.

24 **“SECTION 6. Meetings of board.** (1) The Oregon Health Insurance
25 Exchange Corporation board of directors shall select one of its mem-
26 bers as chairperson and another as vice chairperson, for such terms
27 and with duties and powers necessary for the performance of the
28 functions of those offices as the board determines.

29 “(2) A majority of the members of the board constitutes a quorum
30 for the transaction of business.

1 **“(3) The board shall meet at least once every three months at a**
2 **place, day and hour determined by the board. The board shall meet**
3 **at such other times and places specified by the call of the chairperson**
4 **or of a majority of the members of the board.**

5 **“(4) A member of the board is entitled to compensation and ex-**
6 **penses as provided in ORS 292.495, subject to the availability of funds**
7 **in the Oregon Health Insurance Exchange Fund.**

8 **“(5) ORS 192.610 to 192.690 apply to any meeting of the board and**
9 **to the Consumer Advisory Committee established by section 7 of this**
10 **2011 Act.**

11 **“SECTION 7. Consumer Advisory Committee. (1) The Oregon Health**
12 **Insurance Exchange Corporation board of directors shall establish a**
13 **Consumer Advisory Committee for the purpose of facilitating input**
14 **from a variety of stakeholders on issues related to the duties of the**
15 **Oregon Health Insurance Exchange Corporation, the services provided**
16 **by or through the exchange and related issues. The board shall deter-**
17 **mine the membership, terms and organization of the committee and**
18 **shall appoint the members. Members of the committee shall be rep-**
19 **resentative of consumers who purchase insurance through the ex-**
20 **change, racial and ethnic minorities in this state and the geographic**
21 **regions of the state. Members of the committee shall also include**
22 **individuals or representatives of organizations that help individuals to**
23 **enroll in health plans through the exchange, including insurance bro-**
24 **kers and advocates for hard-to-reach populations.**

25 **“(2) Members of the committee who are not members of the board**
26 **are not entitled to compensation, but at the discretion of the board**
27 **may be reimbursed from funds available to the board for actual and**
28 **necessary travel and other expenses incurred by them in the per-**
29 **formance of their official duties, in the manner and amount provided**
30 **in ORS 292.495.**

1 **“SECTION 8. Authority of board to establish advisory and technical**
2 **committees.** (1) In addition to the Consumer Advisory Committee es-
3 tablished under section 7 of this 2011 Act, the Oregon Health Insurance
4 Exchange Corporation board of directors may establish such advisory
5 and technical committees as the board considers necessary to aid and
6 advise the board in the performance of the board’s functions. These
7 committees may be continuing or temporary committees. The board
8 shall determine the representation, membership, terms and organiza-
9 tion of the committees and shall appoint the members of the com-
10 mittees. In lieu of establishing an advisory or technical committee, the
11 board may directly solicit input and assistance from insurance brokers
12 that assist small businesses, carriers that offer qualified health plans
13 through the exchange and health care professionals.

14 **“(2) Members of the committees who are not members of the board**
15 **are not entitled to compensation, but at the discretion of the board**
16 **may be reimbursed from funds available to the board for actual and**
17 **necessary travel and other expenses incurred by them in the per-**
18 **formance of their official duties, in the manner and amount provided**
19 **in ORS 292.495.**

20 **“SECTION 9. Executive director; appointment; functions.** (1) The
21 Oregon Health Insurance Exchange Corporation is under the super-
22 vision of an executive director appointed by the Oregon Health Insur-
23 ance Exchange Corporation board of directors. The executive director
24 serves at the pleasure of the board.

25 **“(2) The executive director has such powers as are necessary to**
26 **carry out the duties of the exchange, subject to policy direction by the**
27 **board.**

28 **“(3) The executive director may employ, supervise and terminate**
29 **the employment of such staff as the executive director deems neces-**
30 **sary. The executive director shall prescribe their duties and fix their**

1 compensation, in accordance with the personnel policies adopted by
2 the board. Employees of the exchange may not be individuals who are:

3 “(a) Employed by, consultants to or members of a board of directors
4 of:

5 “(A) A health carrier or other health insurer;

6 “(B) An insurance agent or broker; or

7 “(C) A health care provider, health care facility or health clinic;

8 “(b) Members, board members or employees of a trade association
9 of:

10 “(A) Carriers; or

11 “(B) Health care providers, health care facilities or health clinics;
12 or

13 “(c) Health care providers, unless they receive no compensation for
14 rendering services as health care providers and do not have ownership
15 interests in professional health care practices.

16 “(4) The board shall adopt personnel policies, subject to ORS 236.605
17 to 236.640, for any transferred public employees. The board may elect
18 to provide for participation in a health benefit plan available to state
19 employees pursuant to ORS 243.105 to 243.285 and may elect to partic-
20 ipate in the state deferred compensation plan established under ORS
21 243.401 to 243.507. If the board so elects, exchange employees shall be
22 considered eligible employees for purposes of ORS 243.105 to 243.285 and
23 eligible state employees for purposes of ORS 243.401 to 243.507.

24 “(5) With respect to the Public Employees Retirement System, ex-
25 change employees shall be considered employees for purposes of ORS
26 chapter 238 and eligible employees for purposes of ORS chapter 238A.

27 “(6) Exchange employees may participate in collective bargaining
28 in accordance with ORS 243.650 to 243.782.

29 “SECTION 10. Operational assistance by the Oregon Health Au-
30 thority. (1) The Oregon Health Authority shall provide staff and re-

1 sources and take actions the authority deems necessary or appropriate
2 to develop and assist in the organization and implementation of the
3 Oregon Health Insurance Exchange Corporation established under
4 section 1 of this 2011 Act, and to ensure compliance with the require-
5 ments for an American Health Benefit Exchange under 42 U.S.C. 18031,
6 18032, 18033 and 18041 and other applicable federal laws.

7 “(2) The authority may apply for and accept federal grants, other
8 federal funds and grants from nongovernmental organizations for
9 purposes of developing and implementing the exchange and carrying
10 out the functions and duties described in subsection (1) of this section.
11 Moneys received by the authority under this section are continuously
12 appropriated to the authority for purposes of this section.

13 “SECTION 11. Appropriation for Oregon Health Authority. There is
14 appropriated to the Oregon Health Authority, for the biennium begin-
15 ning July 1, 2011, out of the General Fund, the amount of \$_____ for
16 the purpose of carrying out the provisions of section 10 of this 2011
17 Act.

18 “SECTION 12. Operations of the exchange; rules. (1) The following
19 individuals and groups may purchase qualified health plans through
20 the Oregon Health Insurance Exchange Corporation:

21 “(a) Beginning January 1, 2014, individuals and employers with no
22 more than 50 employees.

23 “(b) Beginning January 1, 2016, employers with 51 to 100 employees.

24 “(c) Groups meeting additional criteria established by the exchange
25 for qualified purchasers.

26 “(2)(a) Only individuals who purchase health plans through the ex-
27 change may be eligible to receive premium tax credits under section
28 36B of the Internal Revenue Code and reduced cost-sharing under 42
29 U.S.C. 18071.

30 “(b) Only employers that purchase health plans through the ex-

1 change may be eligible to receive small employer health insurance
2 credits under section 45R of the Internal Revenue Code.

3 “(3) The exchange shall certify a health plan as qualified if:

4 “(a) The plan provides coverage on terms established by the ex-
5 change by rule that, at a minimum, includes the essential health
6 benefits established by the United States Secretary of Health and Hu-
7 man Services pursuant to 42 U.S.C. 18022; and

8 “(b) The exchange determines that making the health plan available
9 through the exchange is in the best interests of individuals and em-
10 ployers in this state.

11 “(4) The exchange is authorized to limit the number of qualified
12 health plans available in each level of coverage described in 42 U.S.C.
13 18022(d) as bronze, silver, gold and platinum.

14 “(5) The exchange shall establish a streamlined and seamless ap-
15 plication and enrollment process for both the exchange and the state
16 medical assistance program.

17 “(6) The exchange, in collaboration with the appropriate federal and
18 state authorities, shall coordinate federal and state risk mediation
19 programs, including:

20 “(a) The reinsurance program established pursuant to 42 U.S.C.
21 18061;

22 “(b) The federal program of risk corridors established pursuant to
23 42 U.S.C. 18062; and

24 “(c) The state risk adjustment program administered pursuant to
25 42 U.S.C. 18063.

26 “(7) The exchange shall define the role of insurance agents and
27 brokers within the operation of the exchange in accordance with fed-
28 eral guidelines and policies adopted by the exchange by rule.

29 “(8) The exchange shall ensure parity in premiums for plans sold
30 within and outside the exchange.

1 “(9) The exchange is authorized to enter into contracts for the
2 performance of duties, functions or operations of the exchange, in-
3 cluding but not limited to contracting with:

4 “(a) Insurance carriers to offer coverage through the exchange; and

5 “(b) Navigators certified by the exchange under section 3 of this
6 2011 Act.

7 “(10) The exchange is authorized to apply for and accept federal
8 grants, other federal funds and grants from nongovernmental organ-
9 izations for purposes of developing, implementing and administering
10 the exchange. Moneys received under this subsection shall be deposited
11 in or credited to the Oregon Health Insurance Exchange Fund estab-
12 lished under section 21 of this 2011 Act.

13 “(11) The exchange, in coordination with the Oregon Health Au-
14 thority and the Department of Consumer and Business Services, shall
15 plan and coordinate the phasing out of the Oregon Medical Insurance
16 Pool by January 1, 2014.

17 “**SECTION 13.** Section 12 of this 2011 Act is amended to read:

18 “**Sec. 12.** (1) The following individuals and groups may purchase qualified
19 health plans through the Oregon Health Insurance Exchange Corporation:

20 “[(a) *Beginning January 1, 2014, individuals and employers with no more*
21 *than 50 employees.*]

22 “[(b)] (a) [*Beginning January 1, 2016,*] **Individuals and** employers with
23 [*51 to*] **no more than** 100 employees.

24 “[(c)] (b) Groups meeting additional criteria established by the exchange
25 for qualified purchasers.

26 “(2)(a) Only individuals who purchase health plans through the exchange
27 may be eligible to receive premium tax credits under section 36B of the
28 Internal Revenue Code and reduced cost-sharing under 42 U.S.C. 18071.

29 “(b) Only employers that purchase health plans through the exchange may
30 be eligible to receive small employer health insurance credits under section

1 45R of the Internal Revenue Code.

2 “(3) The exchange shall certify a health plan as qualified if:

3 “(a) The plan provides coverage on terms established by the exchange by
4 rule that, at a minimum, includes the essential health benefits established
5 by the United States Secretary of Health and Human Services pursuant to
6 42 U.S.C. 18022; and

7 “(b) The exchange determines that making the health plan available
8 through the exchange is in the best interests of individuals and employers
9 in this state.

10 “(4) The exchange is authorized to limit the number of qualified health
11 plans available in each level of coverage described in 42 U.S.C. 18022(d) as
12 bronze, silver, gold and platinum.

13 “(5) The exchange shall establish a streamlined and seamless application
14 and enrollment process for both the exchange and the state medical assist-
15 ance program.

16 “(6) The exchange, in collaboration with the appropriate federal and state
17 authorities, shall coordinate federal and state risk mediation programs, in-
18 cluding:

19 “(a) The reinsurance program established pursuant to 42 U.S.C. 18061;

20 “(b) The federal program of risk corridors established pursuant to 42
21 U.S.C. 18062; and

22 “(c) The state risk adjustment program administered pursuant to 42 U.S.C.
23 18063.

24 “(7) The exchange shall define the role of insurance agents and brokers
25 within the operation of the exchange in accordance with federal guidelines
26 and policies adopted by the exchange by rule.

27 “(8) The exchange shall ensure parity in premiums for plans sold within
28 and outside the exchange.

29 “(9) The exchange is authorized to enter into contracts for the perform-
30 ance of duties, functions or operations of the exchange, including but not

1 limited to contracting with:

2 “(a) Insurance carriers to offer coverage through the exchange; and

3 “(b) Navigators certified by the exchange under section 3 of this 2011 Act.

4 “(10) The exchange is authorized to apply for and accept federal grants,
5 other federal funds and grants from nongovernmental organizations for pur-
6 poses of developing, implementing and administering the exchange. Moneys
7 received under this subsection shall be deposited in or credited to the Oregon
8 Health Insurance Exchange Fund established under section 21 of this 2011
9 Act.

10 “[*(11) The exchange, in coordination with the Oregon Health Authority and*
11 *the Department of Consumer and Business Services, shall plan and coordinate*
12 *the phasing out of the Oregon Medical Insurance Pool by January 1, 2014.*]

13 **“SECTION 14. Federal law compliance. (1) To the extent that there**
14 **is any conflict between section 12, 15, 16, 17 or 24 of this 2011 Act and**
15 **the Patient Protection and Affordable Care Act, P.L. 111-148, as**
16 **amended by the Health Care and Education Reconciliation Act of 2010,**
17 **P.L. 111-152, the federal law in effect on the date the Legislative As-**
18 **sembly enacts this 2011 Act controls.**

19 **“(2) In all cases where federally granted funds are involved and the**
20 **applicable federal laws, rules and regulations conflict with any pro-**
21 **vision of section 12, 15, 16, 17 or 24 of this 2011 Act, or require addi-**
22 **tional conditions not required under state statute, the applicable**
23 **federal requirement shall govern.**

24 **“SECTION 15. Information required by the exchange. (1) The**
25 **Oregon Health Insurance Exchange Corporation shall adopt by rule**
26 **the information that must be documented in order for a person to**
27 **qualify for health plan coverage through the exchange, for premium**
28 **tax credits or for cost-sharing reductions, including but not limited to**
29 **documentation of:**

30 **“(a) The identity of the person;**

1 **“(b) The status of the person as a United States citizen and resident**
2 **of this state;**

3 **“(c) Information concerning the income and resources of the person**
4 **as necessary to establish the person’s financial eligibility for coverage,**
5 **for premium tax credits and for cost-sharing reductions, which may**
6 **include income tax return information and a Social Security number;**
7 **and**

8 **“(d) Employer identification information and employer-sponsored**
9 **health insurance coverage information applicable to the person.**

10 **“(2) The exchange shall adopt by rule the information that must**
11 **be documented in order to determine whether the person is exempt**
12 **from a legal requirement under federal or state law to purchase or be**
13 **enrolled in a health plan.**

14 **“(3) The exchange shall implement systems that provide electronic**
15 **access to, and use, disclosure and validation of data needed to admin-**
16 **ister the duties, functions and operation of the exchange, to comply**
17 **with federal data access and data exchange requirements and to**
18 **streamline and simplify exchange processes.**

19 **“(4) Information and data that the exchange obtains under this**
20 **section may be exchanged with other state or federal health insurance**
21 **exchanges, with state or federal agencies and, subject to section 16 of**
22 **this 2011 Act, for the purpose of carrying out exchange responsibilities,**
23 **including but not limited to:**

24 **“(a) Establishing and verifying eligibility:**

25 **“(A) For any state medical assistance program;**

26 **“(B) To purchase health plans through the exchange; and**

27 **“(C) For other health benefit programs;**

28 **“(b) Establishing and verifying the amount of any federal tax credit**
29 **due to the person, cost-sharing reduction or premium assistance;**

30 **“(c) Establishing and verifying eligibility for exemption from a re-**

1 **quirement to purchase or be enrolled in a health plan under section**
2 **5000A of the Internal Revenue Code or other state or federal law;**

3 **“(d) Disclosing information to federal authorities in compliance**
4 **with federal requirements applicable to the exchange; or**

5 **“(e) Improving the provision of services by the exchange, for pro-**
6 **gram analysis and for administering health benefit programs.**

7 **“SECTION 16. Information that is confidential or not subject to**
8 **disclosure; public officer privilege; permitted uses of confidential in-**
9 **formation. (1) Except as provided in subsection (3) of this section,**
10 **documents, materials or other information that is in the possession**
11 **or control of the Oregon Health Insurance Exchange Corporation for**
12 **the purpose of administering sections 12 and 15 of this 2011 Act or**
13 **complying with federal health insurance exchange requirements is**
14 **confidential and is not subject to disclosure under ORS 192.410 to**
15 **192.505, is not subject to subpoena, is not subject to discovery and is**
16 **not admissible into evidence in any private civil action. The executive**
17 **director of the Oregon Health Insurance Exchange Corporation may**
18 **use confidential documents, materials or other information without**
19 **further disclosure in order to carry out the duties described in section**
20 **9 of this 2011 Act or to take any legal or regulatory action authorized**
21 **by law.**

22 **“(2) Documents, materials or other information to which subsection**
23 **(1) of this section applies is subject to the public officer privilege de-**
24 **scribed in ORS 40.270.**

25 **“(3) In order to assist in the performance of the executive director’s**
26 **duties, the executive director may:**

27 **“(a) Authorize the sharing of confidential documents, materials or**
28 **other information that is subject to subsection (1) of this section**
29 **within the exchange and subject to any conditions on further disclo-**
30 **sure, for the purpose of carrying out the duties and functions of the**

1 exchange or complying with federal health insurance exchange re-
2 quirements.

3 “(b) Authorize the sharing of confidential documents, materials or
4 other information that is subject to subsection (1) of this section or
5 that is otherwise confidential under ORS 192.501 or 192.502 with other
6 state or federal health insurance exchanges or regulatory authorities,
7 the Oregon Health Authority, the Department of Consumer and Busi-
8 ness Services, law enforcement agencies and federal authorities, if re-
9 quired or authorized by state or federal law or if the recipient agrees
10 to maintain the confidentiality of the documents, materials or other
11 information.

12 “(c) Receive documents, materials or other information, including
13 documents, materials or other information that is otherwise confi-
14 dential, from other state or federal health insurance exchanges or
15 regulatory authorities, the Oregon Health Authority, the Department
16 of Consumer and Business Services, law enforcement agencies or fed-
17 eral authorities. The executive director shall maintain the
18 confidentiality requested by the sender of the documents, materials
19 or other information received under this section as necessary to com-
20 ply with the laws of the jurisdiction from which the documents, ma-
21 terials or other information was received or originated.

22 “(4) The disclosure of documents, materials or other information
23 to the executive director under this section, or the sharing of docu-
24 ments, materials or other information as authorized in subsection (3)
25 of this section, does not waive any applicable privileges or claims of
26 confidentiality in the documents, materials or other information.

27 “(5) This section does not prohibit the executive director from re-
28 leasing to a database or other clearinghouse service maintained by
29 federal authorities a final, adjudicated order, including a certification,
30 recertification, suspension, decertification or revocation of a certif-

1 icate under section 3 of this 2011 Act, if the order is otherwise subject
2 to public disclosure.

3 **“SECTION 17. Agreements with other agencies regarding sharing**
4 **and use of confidential information; contents.** (1) The executive direc-
5 tor of the Oregon Health Insurance Exchange Corporation may enter
6 into agreements governing the sharing and use of information con-
7 sistent with section 16 of this 2011 Act with other state or federal
8 health insurance exchanges or regulatory authorities, the Oregon
9 Health Authority, the Department of Consumer and Business Services,
10 law enforcement agencies or federal authorities.

11 **“(2) An agreement under this section must specify the duration of**
12 **the agreement, the purpose of the agreement, the methods that may**
13 **be employed for terminating the agreement and any other necessary**
14 **and proper matters.**

15 **“(3) An agreement under this section does not relieve the executive**
16 **director of any obligation or responsibility imposed by law.**

17 **“(4) The executive director may expend funds and may supply ser-**
18 **vices for the purpose of carrying out an agreement under this section.**

19 **“(5) Agreements under this section are exempt from ORS 190.410 to**
20 **190.440 and 190.480 to 190.490.**

21 **“SECTION 18. Definitions.** As used in this section and section 20
22 **of this 2011 Act:**

23 **“(1) ‘Health insurance’ has the meaning given that term in ORS**
24 **731.162.**

25 **“(2) ‘Insured’ means any individual resident of this state who is**
26 **enrolled in a health benefit plan, as defined in ORS 743.730, or covered**
27 **by insurance issued by an insurer.**

28 **“(3) ‘Insurer’ means:**

29 **“(a) Any insurer as defined in ORS 731.106 or fraternal benefit so-**
30 **ciety as described in ORS 748.106 required to have a certificate of au-**

1 **thority to transact health insurance business in this state, and any**
2 **health care service contractor as defined in ORS 750.005.**

3 **“(b) Any reinsurer reinsuring health insurance in this state.**

4 **“(c) To the extent consistent with federal law, any self-insurance**
5 **arrangement covered by the Employee Retirement Income Security**
6 **Act of 1974, as amended, that provides health care benefits in this**
7 **state.**

8 **“(d) All self-insurance arrangements not covered by the Employee**
9 **Retirement Income Security Act of 1974, as amended, that provide**
10 **health care benefits in this state.**

11 **“(4) ‘Medicare’ means coverage under Part A, Part B and Part D**
12 **of Title XVIII of the Social Security Act, 42 U.S.C. 1395c et seq., as**
13 **amended.**

14 **“(5) ‘Reinsurance’ has the meaning given that term in ORS 731.126.**

15 **“(6) ‘Reinsurer’ means a person offering reinsurance.**

16 **“(7) ‘Self-insurance arrangement’ means any plan, program, con-**
17 **tract or any other arrangement under which one or more employers,**
18 **unions or other organizations provide health care services or benefits**
19 **to their employees or members in this state, either directly or indi-**
20 **rectly through a trust or third party administrator.**

21 **“SECTION 19. Fees and other administrative charges. The Oregon**
22 **Health Insurance Exchange Corporation board of directors may es-**
23 **tablish, and the Oregon Health Insurance Exchange Corporation may**
24 **impose and collect, fees and other administrative charges that are**
25 **reasonable and necessary for the operation of the exchange. Any fees**
26 **or other administrative charges authorized under this section shall be**
27 **adopted pursuant to ORS 183.310 to 183.410. The fees or other admin-**
28 **istrative charges shall be collected in a manner prescribed by the ex-**
29 **change and deposited in the Oregon Health Insurance Exchange Fund**
30 **established in section 21 of this 2011 Act.**

1 **“SECTION 20. Assessments for expenses of exchange.** (1) The
2 **Oregon Health Insurance Exchange Corporation board of directors**
3 **shall establish, and the Oregon Health Insurance Exchange Corpo-**
4 **ration shall impose and collect, assessments on all insurers in an**
5 **amount sufficient to pay the administrative and operational expenses**
6 **of the exchange under sections 1 to 27 of this 2011 Act. The assess-**
7 **ments shall be paid in a manner and at intervals prescribed by the**
8 **board and shall be deposited in the Oregon Health Insurance Exchange**
9 **Fund established in section 21 of this 2011 Act.**

10 **“(2) The board shall establish the assessments required by this sec-**
11 **tion in accordance with ORS 183.310 to 183.410 and in such a manner**
12 **that will reasonably and substantially accomplish the objective of**
13 **subsection (1) of this section.**

14 **“(3) Each insurer’s assessment shall be determined by multiplying**
15 **the total amount to be assessed by a fraction, the numerator of which**
16 **equals the number of Oregon insureds and certificate holders insured**
17 **or reinsured by the insurer, and the denominator of which equals the**
18 **total of all Oregon insureds and certificate holders insured or**
19 **reinsured by all insurers, as determined as of March 31 each year. In-**
20 **dividuals with the following types of coverage are not insureds or**
21 **certificate holders for purposes of calculating an insurer’s assessment:**

22 **“(a) State medical assistance;**

23 **“(b) Disability income insurance;**

24 **“(c) Hospital only insurance;**

25 **“(d) Dental insurance;**

26 **“(e) Vision only insurance;**

27 **“(f) Accident only insurance;**

28 **“(g) Automobile insurance;**

29 **“(h) Specific disease insurance;**

30 **“(i) Medicare supplemental plans;**

1 “(j) TRICARE;

2 “(k) CHAMPUS;

3 “(L) Prescription drug only plans;

4 “(m) Long term care insurance; and

5 “(n) Federal Employees Health Benefits Program.

6 “(4) The exchange shall ensure that each insured and certificate
7 holder is counted only once with respect to any assessment. For that
8 purpose, the exchange shall require each insurer that obtains rein-
9 surance for its insureds and certificate holders to include in its count
10 of insureds and certificate holders all insureds and certificate holders
11 whose coverage is reinsured in whole or in part. The exchange shall
12 allow an insurer that is a reinsurer to exclude from its number of in-
13 sureds those insureds that have been counted by the primary insurer
14 or the primary reinsurer for the purpose of determining the insurer’s
15 assessment under this section.

16 “(5) All insurers authorized to transact health insurance in Oregon
17 that insure persons residing in Oregon are subject to the assessment
18 under this section.

19 “(6) If assessments exceed the amounts actually needed, the excess
20 moneys collected shall be held and invested and, with the earnings and
21 interest, used by the exchange to offset future net losses or to reduce
22 the administrative costs of the exchange. For purposes of this sub-
23 section, ‘future net losses’ includes reserves for claims incurred but
24 not reported.

25 “(7) Each insurer’s proportion of participation in the assessment
26 shall be determined by the exchange based on annual statements and
27 other reports deemed necessary by the exchange and filed by the
28 insurer with the exchange. The exchange may use any reasonable
29 method of estimating the number of insureds and certificate holders
30 of an insurer if the specific number is unknown. With respect to

1 insurers that are reinsurers, the exchange may use any reasonable
2 method of estimating the number of persons insured by each re-
3 insurer.

4 **“SECTION 21. Oregon Health Insurance Exchange Fund.** The
5 Oregon Health Insurance Exchange Fund is established in the State
6 Treasury, separate and distinct from the General Fund. The Oregon
7 Health Insurance Exchange Fund consists of moneys received by the
8 Oregon Health Insurance Exchange Corporation through premiums or
9 the imposition of fees or assessments under sections 19 and 20 of this
10 2011 Act and moneys received as grants under section 12 of this 2011
11 Act. Moneys in the fund are continuously appropriated to the Oregon
12 Health Insurance Exchange Corporation for carrying out the purposes
13 of sections 1 to 27 of this 2011 Act.

14 **“SECTION 22. Oregon Health Insurance Exchange Corporation ex-**
15 **empt from certain laws; contracts with state agencies for services.** (1)
16 Except as otherwise provided by law, the provisions of ORS 279.835 to
17 279.855 and ORS chapters 240, 276, 279A, 279B, 279C, 282, 283, 291, 292
18 and 293 do not apply to the Oregon Health Insurance Exchange Cor-
19 poration.

20 **“(2) In carrying out the duties, functions and powers imposed by**
21 **law upon the exchange, the Oregon Health Insurance Exchange Cor-**
22 **poration board of directors or the executive director of the Oregon**
23 **Health Insurance Exchange Corporation may contract with any state**
24 **agency or other qualified person or entity for the performance of such**
25 **duties, functions and powers as the board or executive director con-**
26 **siders appropriate.**

27 **“(3) ORS 30.210 to 30.250, 30.260 to 30.300, 30.310, 30.312, 30.390 and**
28 **30.400 apply to the members of the board, the executive director and**
29 **employees of the exchange.**

30 **“(4) Notwithstanding subsection (1) of this section, ORS 293.235,**

1 293.240, 293.245, 293.260, 293.262, 293.611, 293.625 and 293.630 apply to the
2 accounts of the exchange.

3 “(5) Notwithstanding subsections (1) and (2) of this section, ORS
4 243.305, 279A.100 and 659A.012 apply to the members of the board,
5 executive director and employees of the exchange.

6 **“SECTION 23. Criminal records check; fingerprints required; per-**
7 **sons subject to requirement.** For the purpose of requesting a state or
8 nationwide criminal records check under ORS 181.534, the Oregon
9 Health Insurance Exchange Corporation may require the fingerprints
10 of a person who:

11 “(1)(a) Is employed by or applying for employment with the ex-
12 change; or

13 “(b) Provides services or seeks to provide services to the exchange
14 as a contractor, vendor, navigator or volunteer; and

15 “(2) Is, or will be, working or providing services in a position:

16 “(a) In which the person is providing information technology ser-
17 vices and has control over, or access to, information technology sys-
18 tems that would allow the person to harm the information technology
19 systems or the information contained in the systems;

20 “(b) In which the person has access to information that is confi-
21 dential or for which state or federal laws, rules or regulations prohibit
22 disclosure;

23 “(c) That has payroll functions or in which the person has respon-
24 sibility for receiving, receipting or depositing money or negotiable in-
25 struments, for billing, collections or other financial transactions or for
26 purchasing or selling property or has access to property held in trust
27 or to private property in the temporary custody of the exchange;

28 “(d) That has mailroom duties as a primary duty or job function;

29 “(e) In which the person has responsibility for auditing the ex-
30 change;

1 “(f) That has personnel or human resources functions as a primary
2 responsibility;

3 “(g) In which the person has access to Social Security numbers,
4 dates of birth or criminal background information; or

5 “(h) In which the person has access to tax or financial information
6 about individuals or business entities.

7 “SECTION 24. Annual audit of Oregon Health Insurance Exchange
8 Corporation and Oregon Health Insurance Exchange Fund by Secre-
9 tary of State; scope of review; report of audit. (1) The Oregon Health
10 Insurance Exchange Corporation shall keep an accurate accounting
11 of the operation and all activities, receipts and expenditures of the
12 exchange.

13 “(2) Beginning after the first 12 months of the operation of the ex-
14 change and each year thereafter, the Secretary of State shall conduct
15 an audit of the exchange and the Oregon Health Insurance Exchange
16 Fund pursuant to ORS 297.210, which shall include but not be limited
17 to:

18 “(a) A review of the sources and uses of the moneys in the Oregon
19 Health Insurance Exchange Fund;

20 “(b) A review of fees, charges or assessments imposed and collected
21 pursuant to sections 19 and 20 of this 2011 Act; and

22 “(c) A review of premiums collected and paid.

23 “(3) The Oregon Health Insurance Exchange Corporation board of
24 directors, the executive director of the Oregon Health Insurance Ex-
25 change Corporation and employees of the exchange shall cooperate
26 with the Secretary of State in the audit and review conducted under
27 subsection (2) of this section.

28 “(4) The audit required by subsection (2) of this section shall be
29 conducted using generally accepted accounting principles and any fi-
30 nancial integrity requirements of federal authorities.

1 “(5) The cost of the audit required by subsection (2) of this section
2 shall be paid by the exchange.

3 “(6) The Secretary of State shall issue an annual report to the
4 Governor, the President of the Senate, the Speaker of the House of
5 Representatives, the Oregon Health Authority, the Oregon Health
6 Policy Board, the Department of Consumer and Business Services and
7 appropriate federal authorities on the results of the audit and may
8 include recommendations for corrective actions. The report shall be
9 available for public inspection, in accordance with the Secretary of
10 State’s established rules and procedures governing public disclosure
11 of audit documents.

12 “(7) To the extent the audit requirements under this section are
13 similar to any audit requirements imposed on the exchange by federal
14 authorities, the Secretary of State and the exchange shall make rea-
15 sonable efforts to coordinate with the federal authorities to promote
16 efficiency and the best use of resources in the timing and provision
17 of information.

18 “(8) Not later than the 90th day after the Secretary of State com-
19 pletes and delivers the report issued under subsection (6) of this sec-
20 tion, the exchange shall notify the Secretary of State in writing of the
21 corrective actions taken or to be taken, if any, in response to any
22 recommendations in the report. The Secretary of State may extend the
23 90-day period for good cause.

24 “SECTION 25. Annual report. The Oregon Health Insurance Ex-
25 change Corporation shall provide to the Legislative Assembly, the
26 Governor, the Oregon Health Authority, the Oregon Health Policy
27 Board and the Department of Consumer and Business Services, not
28 later than April 15 of each year, a report covering the activities and
29 operations of the exchange during the previous year of operations and
30 a statement of the financial condition of the Oregon Health Insurance

1 Exchange Fund as of December 31 of the previous year.

2 **“SECTION 26. Complaints and investigations confidential; permit-**
3 **ted disclosures.** (1) A complaint made to the executive director of the
4 Oregon Health Insurance Exchange Corporation against any prospec-
5 tive or certified qualified health plan, and the record thereof, shall be
6 confidential and may not be disclosed except as provided in section 16
7 of this 2011 Act. No such complaint, or the record thereof, shall be
8 used in any action, suit or proceeding except to the extent considered
9 necessary by the executive director in the prosecution of apparent vi-
10 olations of section 12 of this 2011 Act or other law.

11 **“(2) Data gathered pursuant to an investigation of a complaint by**
12 **the executive director shall be confidential, may not be disclosed ex-**
13 **cept as provided in section 16 of this 2011 Act and may not be used in**
14 **any action, suit or proceeding except to the extent considered neces-**
15 **sary by the executive director in the investigation or prosecution of**
16 **apparent violations of section 12 of this 2011 Act or other law.**

17 **“(3) Notwithstanding subsections (1) and (2) of this section, the**
18 **executive director shall establish a method for making available to the**
19 **public an annual statistical report containing the number, percentage,**
20 **type and disposition of complaints received by the Oregon Health In-**
21 **surance Exchange Corporation against each health plan that is certi-**
22 **fied or that has been certified as a qualified health plan by the**
23 **exchange.**

24 **“SECTION 27. False or misleading filings.** A person may not file or
25 cause to be filed with the executive director of the Oregon Health In-
26 surance Exchange Corporation any article, certificate, report, state-
27 ment, application or any other information required or permitted by
28 the executive director to be filed, that is known by the person to be
29 false or misleading in any material respect.

30 **“SECTION 28. Repeal and delayed operative date.** (1) Section 10 of

1 **this 2011 Act is repealed January 2, 2014.**

2 **“(2) The amendments to section 12 of this 2011 Act by section 13 of**
3 **this 2011 Act become operative January 1, 2016.**

4 **“SECTION 29. Captions. The section captions used in this 2011 Act**
5 **are provided only for the convenience of the reader and do not become**
6 **part of the statutory law of this state or express any legislative intent**
7 **in the enactment of this 2011 Act.**

8 **“SECTION 30. Emergency clause. This 2011 Act being necessary for**
9 **the immediate preservation of the public peace, health and safety, an**
10 **emergency is declared to exist, and this 2011 Act takes effect on its**
11 **passage.”.**

12
