# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 5 **DATE:** March 15, 2013
**Version:** Conference Committee Report

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**Subject:** Health Insurance Exchange

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## Overview

This bill creates a health insurance exchange in Minnesota, consistent with the federal Affordable Care Act (the "ACA"). The intent is for Minnesota to create and operate a Minnesota-designed health insurance exchange, rather than have the federal government operate a federally-designed health insurance exchange in Minnesota. Federal law allows states to design and operate their own exchanges, so long as the exchange meets certain federal requirements. The health insurance exchange created in this bill is named the "Minnesota Insurance Marketplace," which this summary will also refer to as "the marketplace."

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**1** **Minnesota Insurance Marketplace.** Amends § 13.7191, buy adding subd. 14a. Specifies that classification and sharing of data of the Minnesota Insurance Marketplace is governed by section 8 of this bill.

**2** **Minnesota Insurance Marketplace.** Amends § 13D.08, by adding subd. 5a. Provides that meetings of the marketplace are governed by section 5, subdivision 2, of this bill.

**3** **Title.** Adds § 62V.01. Names this new chapter of law (chapter 62V) the "Minnesota Insurance Marketplace Act."

**4** **Definitions.** Adds § 62V.02. Defines terms used in this bill.

**5** **Minnesota Insurance Marketplace; establishment.** Adds § 62V.03.

**Subd. 1. Creation.** Creates the marketplace as a board in the executive branch of

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state government. Summarizes five of its functions.

**Subd. 2. Application of other law.** Specifies general Minnesota governmental operations laws that govern the marketplace and its board members, including laws dealing with reviews and audits by the legislative auditor, conflicts of interest, receipt of gifts, compliance with the Open Meeting Law, and when certain types of meetings can or must be closed to the public. Exempts the marketplace from the following otherwise required provisions:

(1) the Administrative Procedure Act (chapter 14) rulemaking procedures, except as provided in section 6, subdivision 8;

(2) the laws creating and governing the Department of Administration (chapter 16B) and those governing state procurement of goods and services (chapter 16C), except for specified sections relating to contracts for services and a section which requires efforts by state agencies to purchase from small businesses, including those owned by targeted group members and by veterans. Requires also, however, that the exchange establish "an open and competitive procurement process" for the exchange that complies with those chapters to the extent practicable for the exchange.

Exempts the marketplace from certain laws governing the relationship between the Office of Enterprise Technology and state agencies.

**Subd. 3. Continued operation of a private marketplace.** (a) States that nothing in this chapter shall be construed so as to: (1) prohibit the offering outside of the Minnesota Insurance Marketplace of health plans to qualified individuals or qualified employers; and (2) prohibit a qualified individual from enrolling in, or a qualified employer from selecting, a health plan offered outside of the marketplace.

(b) Provides that nothing in this chapter shall be construed to restrict the choice of a qualified individual to enroll or not enroll in a qualified health plan, to participate in the marketplace, or to compel an individual to enroll in a qualified health plan.

**6 Governance.** Adds § 62V.04.

**Subd. 1. Board.** The exchange's board of directors has seven members.

**Subd. 2. Appointment.** The board members are appointed to a four-year term, following the initial staggered-term lot determination and are classified as follows:

(1) Of one group of three board members, one represents individual market consumers, one represents public health care program enrollees, and one represents small employers. These members are appointed by the governor, with advice and consent of both the Senate and the House of Representatives, acting separately.

(2) Of a second group of three board members, one member represents the areas of health administration, health care finance, health plan purchasing, and health care delivery systems; one represents the areas of public health, health disparities, public health care programs, and the uninsured; and one represents health policy issues

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relating to the small group and individual markets. These members also are appointed by the governor, with advice and consent of both the Senate and the House of Representatives, acting separately.

(3) The seventh board member is the Commissioner of Human Services or a designee.

Provides that section 15.0597, relating to the usual process for making appointments to public entities, applies to this appointment process, except for the commissioner. Requires that initial appointments be made by April 30, 2013. Requires appointments to be consistent with federal law. Provides that upon appointment, a board member shall exercise duties of office immediately, but that the appointment terminates if both the House and the Senate vote not to confirm. Requires one of the members appointed under clauses (1) and (2) to have experience in representing the needs of vulnerable populations and persons with disabilities. Also requires the board to include representation from outside of the seven-county metropolitan area.

**Subd. 3. Terms.** (a) Limits board members to no more than two consecutive terms, except for the commissioner or designee who serves until replaced by the governor.

(b) Permits a board member to resign at any time by giving written notice.

(c) Provides that board members, not including the commissioner or designee, shall initially serve a staggered term of two, three, or four years determined by lot.

**Subd. 4. Conflicts of interest.** (a) Requires that board members appointed to the six positions, other than the one reserved for the Commissioner of Human Services, not have, within one year before or during their appointment, any type of employment by, service on a board of directors of, or otherwise be a representative of a health carrier, institutional health care provider or other entity providing health care, navigator, insurance producer, or other entity that sells items or services to or through the marketplace. Provides that a board member must not serve as a lobbyist, as defined in Minnesota Statutes, section 10A.01. Also provides that "health care provider or entity" does not include an academic institution.

(b) Requires directors to recuse themselves from discussion and voting if the director has a conflict of interest. Provides that no board member shall have a spouse who is an executive of a health carrier.

**Subds. 5 to 13.** These subdivisions deal with details of the board's internal operations, including the first meeting, the board chair, officers, vacancies, removal, meetings, quorum, compensation, and advisory committees. Board members shall be paid a salary according to state salary limits until December 31, 2015. Beginning January 1, 2016, compensation of board members is $55 per day plus expenses, including cost of child care.

**7 Responsibilities and powers of the Minnesota Insurance Marketplace.** Adds § 62V.05.

**Subd. 1. General.** (a) Requires the board to operate the marketplace in

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compliance with this chapter and applicable state and federal law.

(b) Lists the board's powers, including employing personnel and delegating responsibilities to the director and other personnel. Specifies that the director and managerial staff are unclassified state employees and are subject to a compensation plan prepared by the board, submitted to Minnesota Management and Budget ("MMB") for review and comment, and approved by the Legislative Coordinating Commission (LCC) and the legislature under section 3.855, except that section 15A.0815, subdivision 5(e), relating to the salary of the head of a new agency or commission, does not apply.

(c) Requires the board to establish policies and procedures to gather public comment and to provide notice in the State Register.

(d) Requires the board to adopt bylaws, policies, and procedures within 180 days of enactment.

**Subd. 2. Operations funding.** (a) Prior to January 1, 2015, permits the board to retain or collect up to 1.5 percent of individual, small group, and dental plan premiums (not the public programs) to fund cash reserves of the marketplace, but limits the amount collected to 25 percent of the Minnesota Comprehensive Health Association (MCHA) assessments collected for CY 2012.

(b) Beginning January 1, 2015, permits the board to retain or collect up to 3.5 percent of individual, small group, and dental plan premiums (not the public programs) to fund operations of the marketplace, but limits the amount collected to 50 percent of the MCHA assessments collected for CY 2012.

(c) Beginning January 1, 2016, permits the board to retain or collect up to 3.5 percent of individual, small group, and dental plan premiums (not the public programs) to fund operations of the marketplace, but limits the amount collected to 100 percent of the MCHA assessments collected for CY 2012.

(d) For fiscal years 2014 and 2015, authorizes the commissioner of MMB to provide up to $20 million in cash flow assistance from the special revenue fund or the general fund to the marketplace. Requires repayment with interest by June 30, 2015.

(e) Requires funding for marketplace operations to cover any compensation provided to navigators.

**Subd. 3. Insurance producers.** (The term "insurance producers" is a relatively new term that refers to insurance agents or brokers who market insurance to individuals or employers for insurance companies that provide insurance, in this case, health insurance.)

(a) By April 30, 2013, requires the board, in consultation with the Commissioner of Commerce, to establish certification requirements for insurance producers. Allows the board to amend these requirements prior to January 1, 2015 only if this is necessary

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due to a change in federal rules.

(b) Provides that certification requirements shall not exceed those in federal regulations. Specifies areas that certification must cover.

(c) Requires producer compensation to be established by the health carriers, and further requires that the structure of compensation be similar for health plans sold within and outside the marketplace.

(d) Requires the compensation structure for the small group market to include compensation for defined contribution plans that involve multiple health carriers, and to be commensurate with other small group market defined contribution health plans.

(e) Specifies disclosure requirements for insurance producers.

(f) Requires that each insurance company that sells health insurance in the marketplace to report to the board and the commissioner of commerce the compensation and other incentives it offers to its insurance producers in connection with each type of health insurance product the insurance company offers or sells both inside and outside of the marketplace.

(g) Provides that this act does not prohibit an insurance producer from offering advice to a small group purchaser.

(h) Requires an insurance producer that offers health benefit plans in the small group market to notify each small group purchaser of which of its plans qualify for tax benefits under section 125 of the Internal Revenue Code, and of state laws that benefit small group plans when the employer agrees to pay 50 percent or more if its employees' premiums. Provides that persons who are eligible for cost-effective medical assistance will count toward the 75 percent participation requirement in current law requiring guaranteed coverage for certain small employers.

(i) States that this subdivision shall not be construed to limit the licensure requirements or the regulatory functions of the commissioner of commerce related to insurance producers.

**Subd. 4. Navigator; in-person assisters; call center.** (a) Requires the board to establish policies and procedures for operation of a navigator program, in-person assister program, call center, and customer service provisions, to be implemented beginning January 1, 2015.

(b) Describes how the needs for assistance described in paragraph (a) will be provided prior to 2015.

(c) Requires the board to establish a toll-free phone number for the marketplace and hire or contract for more resources related to this subdivision if necessary.

(d) Requires the navigator program and in-person assister program to meet federal requirements. Specifies criteria for training standards. For CY 2014, requires the

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Commissioner of Human Services to ensure that the existing Minnesota Health Care Outreach program provides application assistance for both qualified health plans offered through the marketplace and public health care programs.

(e) Requires the board to ensure that customer assistance information provided be accessible to persons with disabilities, and that the information on public health care programs include information on other coverage options for persons with disabilities.

**Subd. 5. Health carrier requirements; participation.** (a) Allows the board, beginning January 1, 2015, to establish certification requirements for health carriers and health plans in the marketplace that certify federal ACA requirements,

(b) Provides that paragraph (a) does not apply if by June 1, 2013, the legislature enacts regulatory requirements that apply uniformly to all health carriers and health plans in the individual and small group markets and satisfy federal certification requirements for the marketplace.

(c) Requires the board, in accordance with the ACA, to establish policies and procedures for the selection of health plans to be offered as qualified health plans through the marketplace. Specifies criteria that must be met for the board to certify and select a plan as a qualified health plan.

(d) Specifies requirements and criteria related to determinations by the board that inclusion of a plan is in the best interests of qualified individuals and employers (this is one of the criteria listed in paragraph (c)). Also provides that in determining these interests, the prohibitions on exclusion in the ACA apply.

(e) Requires the board to establish policies and procedures under paragraphs (c) and (d) for the selection of plans for the following calendar year by February 1 of each year, beginning February 1, 2014.

(f) States that for 2014, the board does not have the power to select health carriers and health plans for participation in the exchange. Requires the board to permit all health plans that meet ACA certification requirements to be offered through the marketplace.

(g) For paragraphs (b) and (c), gives the board the power to verify that health carriers and health plans are properly certified.

(h) Gives the board the authority to decertify health carriers and health plans that fail to comply with federal certification requirements.

(i) For qualified health plans offered through the marketplace beginning in 2015, requires use of the most current federal requirements for provider agreements with Indian health care providers. Requires that the marketplace comply with future changes in federal law regarding health coverage for Indian tribes.

**Subd. 6. Appeals.** Specifies the procedures available in connection with appeals of determinations made by the marketplace. Provides that this subdivision does not apply if a state agency appeal is available under section 256.045, which relates to the

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public health care programs.

**Subd. 7. Agreements; consultation.** (a) Requires the board to enter into agreements with the Office of Enterprise Technology, for information technology services that ensure coordination with public health care programs; with the Commissioner of Human Services for coordination with public health care programs and other services; and with the Commissioners of Commerce and Health for various enforcement and other services. Requires the board to establish interagency agreements to transfer funds to other agencies for their costs relating to implementing the marketplace, excluding MA allocatable costs.

(b) & (c) Require the board to consult with the Commissioners of Commerce and Health and with Indian tribes and organizations regarding operations of the marketplace.

(d) Requires the board to report to specified legislative committees on all agreements entered into with the Office of Enterprise Technology and state agencies under this subdivision, beginning March 1, 2014 and each March 15 thereafter.

**Subd. 8. Rulemaking.** (a) States that the requirements in either paragraph (b) or (c) apply if the board's policies, procedures, or other statements are rules.

(b) Upon enactment until January 1, 2015, requires the board to publish notice of proposed rules, with interested parties having 21 days to comment. After considering all comments, requires the board to publish notice of the final rule, including those portions of the adopted rules that differ from the proposed rules. Rules published before January 1, 2014, take effect upon publication, and rules published on or after January 1, 2014, take effect 30 days after publication.

(c) Beginning January 1, 2015, allows the board to adopt rules using the expedited rulemaking process.

(d) Requires the notice of proposed rules in paragraph (b) to provide information on where a copy of the rules can be obtained. Requires the board to post proposed rules on the marketplace Web site.

**Subd. 9. Dental plans.** (a) States that the provisions of this section that apply to health plans also apply to dental plans offered as stand-alone plans through the marketplace, to the extent practicable.

(b) Requires a stand-alone dental plan offered through the exchange to meet all ACA certification requirements that apply to health plans, except for requirements that cannot be met because the plan only covers dental benefits.

**Subd. 10. Limitations; risk-bearing.** (a) States that the board shall not bear insurance risk or enter into any agreement with health care providers to pay claims.

(b) States that this subdivision does not prevent the marketplace from providing insurance for its employees.

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**8** **Data practices.** Adds § 62V.06. Says that the marketplace is a state agency for purposes of the Data Practices Act, and is subject to all provisions of chapter 13. Defines terms.

Specifies the classification, status, and permitted use of government data held or obtained by the marketplace on individuals, employees of employers, and employers that use the marketplace.

Requires the marketplace to provide a Tennessen warning, as provided in the Data Practices Act, to individuals asked to supply private data. Also requires the marketplace to give notice of a data subject's rights related to handling of genetic information and notice of the records retention policy of the marketplace.

Provides that only individuals with explicit authorization from the board may access not public data maintained by the marketplace. Specifies procedures to limit and to track access to data. Provides that the board must revoke the authorization of any person who accesses data in violation of this section of chapter 13. Requires that if an individual is determined to have willfully gained access to data without board authorization, the board must forward the matter to the county attorney. Provides that these limits do not affect authority of the Legislative Auditor under current law or the right of a marketplace participant to enter, update, or access data if the participant is the subject of the data.

Forbids the marketplace from selling its data.

**9** **Funds.** Adds 62V.07. Requires that all funds received by the marketplace be deposited in a dedicated account in the special revenue fund that may earn interest. Appropriates funds in the account to the marketplace for operations. Provides that investment income and investment losses are to be credited to the marketplace account. Requires the budget submitted to the legislature by the governor to include budget information for the Minnesota Insurance Marketplace.

**10** **Reports.** Adds § 62V.08. (a) Requires the marketplace to submit a report to the legislature by January 15, 2015, and on each January 15 thereafter. The report must cover the marketplace's performance, responsibilities, budget activities, compliance with data practices laws, and outreach and implementation activities.

(b) Requires the marketplace to publish its administrative and operational costs on its website, and specifies information to be reported.

**11** **Expiration and sunset exclusion.** Adds § 62V.09. Provides that the marketplace board and its advisory committees do not expire (except that advisory committees expire by board action). Further provides that the board and advisory committees are not subject to review under chapter 3D (Minnesota Sunset Act).

**12** **Right not to participate.** Adds § 62V.10 Provides that nothing in this chapter infringes on the right of a Minnesota citizen not to participate in the marketplace.

**13** **Legislative oversight committee.** Adds § 62V.11.

**Subd. 1. Legislative oversight.** Establishes the legislative oversight committee to

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oversee the implementation of this chapter and the operation of the marketplace. Requires the committee to review the operations of the marketplace at least annually and recommend necessary changes to the board and legislature. Requires the marketplace to present to the committee the annual report and other specified information.

**Subd. 2. Membership; meetings; compensation.** States that membership is comprised of five members of the Senate and five members of the House (three appointed by the majority and two appointed by the minority in each body). Specifies other administrative criteria.

**Subd. 3. Review of proposed rules.** (a) Requires the board to submit proposed rules to the advisory committee, at the same time they are published in the State Register.

(b) When the legislature is in session, allows the rule to be adopted, unless a majority of the Senate members and a majority of the House members on the committee request further review within 10 days. If this is the case, the rule is not effective until the request is satisfied and withdrawn, the rule is approved in law, or the regular session of the legislature is adjourned.

(c) If the legislature is not in session, allows the rule to be adopted unless further review is requested as specified in paragraph (b). If this is the case, the rule is not effective unless the request is satisfied or withdrawn, or February 1, whichever occurs first.

**Subd. 4. Review of costs.** Requires the board to submit the annual budget of the marketplace for the next fiscal year to the committee for review, by March 15 of each year, beginning March 15, 2014.

**14** **Transition of authority.** (a) Says that the Commissioner of MMB shall exercise all authorities and responsibilities of the marketplace, until the marketplace board has adopted bylaws, policies, and procedures under this chapter.

(b) Requires that the commissioner transfer those assets and responsibilities to the marketplace board upon compliance with paragraph (a).

**15** **Minnesota comprehensive health association termination.** This section involves the state's high-risk pool, MCHA, which is a nonprofit corporation created and governed under state law. The section gives the Commissioner of Commerce, in consultation with the exchange board, the authority to develop and implement the phase-out and eventual appropriate termination of MCHA coverage. The phase-out is to begin no sooner than January 1, 2014, or upon the effective date of marketplace operation and the ability to purchase qualified health plans, whichever is later. Requires MCHA member assessments to take into consideration any phase-out of coverage.

**16** **Report on appeals process.** Requires the marketplace board, by February 1, 2014 and February 1, 2015, to report to the chairs and ranking minority members of the legislative

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committees with jurisdiction over commerce, health, and civil law, on the appeals process for eligibility determinations established in section 7, subdivision 6 of this bill.

**17** **Contingent treatment of multiemployer plans.** Requires the marketplace board, on or after the date that final federal regulations on multiemployer plans are adopted, to consult with the commissioner of commerce and take actions necessary to: (1) ensure that all multiemployer plans are notified of the rules; (2) conform marketplace policies and procedures with the applicable rules; and (3) permit multiemployer plans to be integrated in the marketplace to the maximum extent permitted by federal rules. Requires the marketplace to submit written notification of compliance to the legislature.

**18** **Effective date.** Makes this act effective the day following final enactment. Requires the secretary of state to post notice of vacancies for positions on the board immediately after final enactment. States that any actions taken by state agencies before then that involve design, development, or implementation must be considered actions taken on behalf of the marketplace and are governed by this chapter (62V) and state law. Specifies that health plan and dental plan coverage provided by the marketplace is effective January 1, 2014.