

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 5

01/10/2013 Authored by Atkins, Huntley, Abeler, Davids, Fritz and others

The bill was read for the first time and referred to the Committee on Commerce and Consumer Protection Finance and Policy

01/24/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Government Operations

01/31/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Civil Law

02/04/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Health and Human Services Policy

02/07/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on State Government Finance and Veterans Affairs

02/14/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Health and Human Services Finance

02/20/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Taxes

02/25/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Ways and Means

02/28/2013 Adoption of Report: Pass as Amended and Read Second Time

03/04/2013 Fiscal Calendar, Amended

Read Third Time as Amended

Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act

1.2 relating to commerce; establishing the Minnesota Insurance Marketplace;

1.3 prescribing its powers and duties; prohibiting abortion coverage with certain

1.4 exemptions; recognizing the right to a person's physician of choice; establishing

1.5 the right not to participate; specifying open meeting requirements and data

1.6 practices procedures; appropriating money; amending Minnesota Statutes 2012,

1.7 section 13.7191, by adding a subdivision; proposing coding for new law as

1.8 Minnesota Statutes, chapter 62V.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2012, section 13.7191, is amended by adding a

1.11 subdivision to read:

1.12 Subd. 14a. Minnesota Insurance Marketplace. Classification and sharing of data

1.13 of the Minnesota Insurance Marketplace is governed by section 62V.06.

1.14 Sec. 2. [62V.01] TITLE.

1.15 This chapter may be cited as the "Minnesota Insurance Marketplace Act."

1.16 Sec. 3. [62V.02] DEFINITIONS.

1.17 Subdivision 1. Scope. For the purposes of this chapter, the following terms have

1.18 the meanings given.

1.19 Subd. 2. Board. "Board" means the board of directors specified in section 62V.04.

1.20 Subd. 3. Health benefit plan. "Health benefit plan" means a policy, contract,

1.21 certificate, or agreement defined in section 62A.011, subdivision 3, and a dental plan

1.22 defined in section 62Q.76, subdivision 3.

1.23 Subd. 4. Health carrier. "Health carrier" has the meaning defined in section

1.24 62A.011.

2.1 Subd. 5. **Individual market.** "Individual market" means the market for health  
2.2 insurance coverage offered to individuals.

2.3 Subd. 6. **Insurance producer.** "Insurance producer" has the meaning defined  
2.4 in section 60K.31.

2.5 Subd. 7. **Minnesota Insurance Marketplace.** "Minnesota Insurance Marketplace"  
2.6 means the Minnesota Insurance Marketplace created as a state health benefit exchange  
2.7 as described in section 1311 of the federal Patient Protection and Affordable Care Act  
2.8 (Public Law 111-148), and further defined through amendments to the act and regulations  
2.9 issued under the act.

2.10 Subd. 8. **Navigator.** "Navigator" has the meaning described in section 1311(i) of  
2.11 the federal Patient Protection and Affordable Care Act (Public Law 111-148), and further  
2.12 defined through amendments to the act and regulations issued under the act.

2.13 Subd. 9. **MAGI public health care program.** "MAGI public health care  
2.14 program" means any exchange enrollment public health care program administered by  
2.15 the commissioner of human services whereby eligibility for the program is determined  
2.16 according to a modified adjusted gross income standard.

2.17 Subd. 10. **Small group market.** "Small group market" means the market for health  
2.18 insurance coverage offered to small employers as defined in section 62L.02, subdivision 26.

2.19 Sec. 4. **[62V.03] MINNESOTA INSURANCE MARKETPLACE;**  
2.20 **ESTABLISHMENT.**

2.21 Subdivision 1. **Creation.** The Minnesota Insurance Marketplace is created as a  
2.22 board under section 15.012, paragraph (a), to:

2.23 (1) promote informed consumer choice through innovation, competition, quality,  
2.24 value, market participation, affordability, suitable and meaningful choices, health  
2.25 improvement, care management, and portability of health benefit plans;

2.26 (2) facilitate and simplify the comparison, choice, enrollment, and purchase of health  
2.27 benefit plans for individuals purchasing in the individual market through the Minnesota  
2.28 Insurance Marketplace and for employees and employers purchasing in the small group  
2.29 market through the Minnesota Insurance Marketplace;

2.30 (3) assist small employers with access to small business health insurance tax credits  
2.31 and to assist individuals with access to MAGI public health care programs, premium  
2.32 assistance tax credits and cost-sharing reductions, and certificates of exemption from  
2.33 individual responsibility requirements;

(4) facilitate the integration and transition of individuals between MAGI public health care programs and health benefit plans in the individual or group market and develop processes that, to the maximum extent possible, provide for continuous coverage;

(5) establish a name for the Web-based exchange based on market studies that show maximum effectiveness in attracting the uninsured and motivating them to take action; and

(6) evaluate the effectiveness of the outreach and implementation activities of the Minnesota Insurance Marketplace in reducing the rate of uninsurance in Minnesota and in addressing the above responsibilities.

Subd. 2. **Application of other law.** (a) The Minnesota Insurance Marketplace must be reviewed by the legislative auditor under section 3.971. The legislative auditor shall audit the books, accounts, and affairs of the Minnesota Insurance Marketplace once each year or less frequently as the legislative auditor's funds and personnel permit. Pursuant to section 3.97, subdivision 3a, the Legislative Audit Commission is requested to direct the legislative auditor to report by March 1, 2014, to the legislature on any duplication of services that occurs within state government as a result of the creation of the Minnesota Insurance Marketplace. The legislative auditor may make recommendations on consolidating or eliminating any services deemed duplicative. The board shall reimburse the legislative auditor for any costs incurred in the creation of this report.

(b) Board members of the Minnesota Insurance Marketplace are subject to section 10A.07. Board members and the personnel of the Minnesota Insurance Marketplace are subject to section 10A.071.

(c) All meetings of the board shall comply with the open meeting law in chapter 13D, except that:

(1) meetings, or portions of meetings, regarding compensation negotiations with the director or managerial staff may be closed in the same manner and according to the same procedures identified in section 13D.03;

(2) meetings regarding contract negotiation strategy may be closed in the same manner and according to the same procedures identified in section 13D.05, subdivision 3, paragraph (c); and

(3) meetings, or portions of meetings, regarding not public data described in section 62V.06, subdivision 2, and regarding trade secret information as defined in section 13.37, subdivision 1, paragraph (b), are closed to the public, but must otherwise comply with the procedures identified in chapter 13D.

(d) The Minnesota Insurance Marketplace and provisions specified under this chapter are exempt from:

(1) chapter 14, including section 14.386 but not sections 14.48 to 14.69; and

(2) chapters 16B and 16C, with the exception of sections 16C.08, subdivision 2, paragraph (b), clauses (1) to (8); 16C.086; 16C.09, paragraph (a), clauses (1) and (3), paragraph (b), and paragraph (c); and section 16C.16. However, the Minnesota Insurance Marketplace, in consultation with the commissioner of administration, shall implement policies and procedures to establish an open and competitive procurement process for the Minnesota Insurance Marketplace that, to the extent practicable, conforms to the principles and procedures contained in chapters 16B and 16C. In addition, the Minnesota Insurance Marketplace may enter into an agreement with the commissioner of administration for other services.

Subd. 3. **Continued operation of a private marketplace.** (a) Nothing in this chapter shall be construed to prohibit: (1) a health carrier from offering outside of the Minnesota Insurance Marketplace a health benefit plan to a qualified individual or qualified employer; and (2) a qualified individual from enrolling in, or a qualified employer from selecting for its employees, a health benefit plan offered outside of the Minnesota Insurance Marketplace.

(b) 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 or to participate in the Minnesota Insurance Marketplace. Nothing in this chapter shall be construed to compel an individual to enroll in a qualified health plan or to participate in the Minnesota Insurance Marketplace.

(c) For purposes of this subdivision, "qualified individual" and "qualified employer" have the meanings given in section 1312 of the Affordable Care Act, Public Law 111-148, and further defined through amendments to the act and regulations issued under the act.

**Sec. 5. [62V.04] GOVERNANCE.**

Subdivision 1. **Board.** The Minnesota Insurance Marketplace is governed by a board of directors with seven members.

Subd. 2. **Appointment.** (a) Board membership of the Minnesota Insurance Marketplace consists of the following:

(1) three members appointed by the governor with the advice and consent of both the senate and the house of representatives acting separately in accordance with paragraph (d), with one member representing the interests of individual consumers eligible for individual market coverage, one member representing individual consumers eligible for MAGI public health care program coverage, and one member representing small employers. Members are appointed to serve four-year staggered terms following the initial staggered-term lot determination;

(2) three members appointed by the governor with the advice and consent of both the senate and the house of representatives acting separately in accordance with paragraph (d) who have demonstrated expertise, leadership, and innovation in the following areas: one member representing the areas of health administration, health care finance, health plan purchasing, and health care delivery systems; one member representing the areas of public health, health disparities, MAGI public health care programs, and the uninsured; and one member representing health policy issues related to the small group and individual markets. Members are appointed to serve four-year staggered terms following the initial staggered-term lot determination; and

(3) the commissioner of human services or a designee.

(b) Section 15.0597 shall apply to all appointments, except for the commissioner and initial appointments.

(c) The governor shall make appointments to the board that are consistent with federal law and regulations regarding its composition and structure.

(d) Upon appointment by the governor, a board member shall exercise duties of office immediately. If both the house of representatives and the senate vote not to confirm an appointment, the appointment terminates on the day following the vote not to confirm in the second body to vote.

(e) Initial appointments shall be made by April 30, 2013.

(f) One of the members appointed under paragraph (a), clauses (1) and (2), must have experience in representing the needs of vulnerable populations and persons with disabilities.

(g) Membership on the board must include representation from outside the seven-county metropolitan area, as defined in section 473.121, subdivision 2.

Subd. 3. **Terms.** (a) Board members may serve no more than two consecutive terms, except for the commissioner or the commissioner's designee, who shall serve until replaced by the governor.

(b) A board member may resign at any time by giving written notice to the board.

(c) The appointed members under subdivision 2, paragraph (a), clauses (1) and (2), shall have an initial term of two, three, or four years, determined by lot by the secretary of state.

Subd. 4. **Conflicts of interest.** (a) Within one year prior to or at any time during their appointed term, board members appointed under subdivision 2, paragraph (a), clauses (1) and (2), shall not be employed by, be a member of the 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 in the business of selling items or services of significant value to or through the Minnesota

Insurance Marketplace. No member of the board may currently serve as a lobbyist, as defined under section 10A.01, subdivision 21.

(b) Directors must recuse themselves from discussion of and voting on an official matter if the director has a conflict of interest. A conflict of interest means an association including a financial or personal association that has the potential to bias or have the appearance of biasing a director's decisions in matters related to the exchange or the conduct of activities under this act.

Subd. 5. **Acting chair; first meeting; supervision.** (a) The governor shall designate as acting chair one of the appointees described in subdivision 2.

(b) The board shall hold its first meeting within 60 days of enactment.

(c) The board shall elect a chair to replace the acting chair at the first meeting.

Subd. 6. **Chair.** The board shall have a chair, elected by a majority of members. The chair shall serve for one year.

Subd. 7. **Officers.** The members of the board shall elect officers by a majority of members. The officers shall serve for one year.

Subd. 8. **Vacancies.** If a vacancy occurs for a board seat that was appointed by the governor, the governor shall appoint a new member within 90 days, and the newly appointed member shall be subject to the same confirmation process described in subdivision 2.

Subd. 9. **Removal.** A board member may be removed by the board only for cause, following notice, hearing, and a two-thirds vote of the board. A conflict of interest as defined in subdivision 4 shall be cause for removal from the board.

Subd. 10. **Meetings.** The board shall meet at least quarterly.

Subd. 11. **Quorum.** A majority of the members of the board constitutes a quorum, and the affirmative vote of a majority of members of the board is necessary and sufficient for action taken by the board.

Subd. 12. **Compensation.** Board members may be compensated according to section 15.0575.

Subd. 13. **Advisory committees.** (a) The board may establish, as necessary, advisory committees to gather information related to the operation of the Minnesota Insurance Marketplace.

(b) Section 15.0597 shall not apply to any advisory committee established by the board.

Sec. 6. **[62V.05] RESPONSIBILITIES AND POWERS OF THE MINNESOTA INSURANCE MARKETPLACE.**

7.1 Subdivision 1. **General.** (a) The board shall operate the Minnesota Insurance  
7.2 Marketplace according to this chapter and applicable state and federal law.

7.3 (b) The board has the power to:

7.4 (1) employ personnel and delegate administrative, operational, and other  
7.5 responsibilities to the director and other personnel as deemed appropriate by the board.  
7.6 This authority is subject to chapters 43A and 179A. The director and managerial staff of  
7.7 the Minnesota Insurance Marketplace shall serve in the unclassified service and shall be  
7.8 governed by a compensation plan prepared by the board, submitted to the commissioner  
7.9 of management and budget for review and comment within 14 days of its receipt, and  
7.10 approved by the Legislative Coordinating Commission and the legislature under section  
7.11 3.855, except that section 15A.0815, subdivision 5, paragraph (e), shall not apply;

7.12 (2) establish the budget of the Minnesota Insurance Marketplace;

7.13 (3) seek and accept money, grants, loans, donations, materials, services, or  
7.14 advertising revenue from government agencies, philanthropic organizations, and public  
7.15 and private sources to fund the operation of the Minnesota Insurance Marketplace. No  
7.16 revenue raising effort shall advantage any specific health benefit plan, health carrier, or  
7.17 insurer producer active in the business of the Minnesota Insurance Marketplace;

7.18 (4) contract for the receipt and provision of goods and services;

7.19 (5) enter into information-sharing agreements with federal and state agencies and  
7.20 other entities, provided the agreements include adequate protections with respect to  
7.21 the confidentiality and integrity of the information to be shared, and comply with all  
7.22 applicable state and federal laws, regulations, and rules, including the requirements of  
7.23 section 62V.06; and

7.24 (6) exercise all powers reasonably necessary to implement and administer the  
7.25 requirements of this chapter and the Affordable Care Act, Public Law 111-148.

7.26 (c) The board shall establish policies and procedures to gather public comment and  
7.27 provide public notice in the State Register.

7.28 (d) Within 180 days of enactment, the board shall establish bylaws, policies,  
7.29 and procedures governing the operations of the Minnesota Insurance Marketplace in  
7.30 accordance with this chapter.

7.31 (e) If the board's policies, procedures, or other statements are rules, as defined in  
7.32 section 14.02, subdivision 4, the following requirements apply:

7.33 (1) the board shall publish proposed rules in the State Register;

7.34 (2) interested parties have 30 days to comment on the proposed rules. The board  
7.35 must consider comments it receives. After the board has considered all comments, the  
7.36 board shall publish the final rule in the State Register;

(3) if the adopted rules are the same as the proposed rules, the notice shall state that the rules have been adopted as proposed and shall cite the prior publication. If the adopted rules differ from the proposed rules, the portions of the adopted rules that differ from the proposed rules shall be included in the notice of adoption, together with a citation to the prior State Register that contained the notice of the proposed rules; and

(4) rules published in the State Register before January 1, 2014, take effect upon publication. Rules published in the State Register on and after January 1, 2014, take effect 30 days after publication.

Subd. 2. **Operations funding.** (a) Prior to January 1, 2015, the Minnesota Insurance Marketplace shall retain or collect up to 3.5 percent of total premiums for individual market and small group market health benefit plans sold through the Minnesota Insurance Marketplace to fund cash reserves of the Minnesota Insurance Marketplace, but the amount collected shall not exceed a dollar amount equal to 25 percent of the funds collected under section 62E.11, subdivision 6, for calendar year 2012.

(b) Beginning January 1, 2015, the Minnesota Insurance Marketplace shall retain or collect up to 3.5 percent of premiums for individual market and small group market health benefit plans sold through the Minnesota Insurance Marketplace to fund operations of the Minnesota Insurance Marketplace, but the amount collected shall not exceed a dollar amount equal to 50 percent of the funds collected under section 62E.11, subdivision 6, for calendar year 2012.

(c) Beginning January 1, 2016, the Minnesota Insurance Marketplace shall retain or collect up to 3.5 percent of premiums for individual market and small group market health benefit plans sold through the Minnesota Insurance Marketplace to fund operations of the Minnesota Insurance Marketplace, but the annual growth in the amount collected or retained shall not exceed the annual rate of inflation after accounting for year-to-year enrollment changes and may never exceed 100 percent of the funds collected under section 62E.11, subdivision 6, for calendar year 2012.

Subd. 3. **Abortion coverage prohibited.** (a) No abortion coverage may be provided by a qualified health benefit plan offered through the Minnesota Insurance Marketplace created pursuant to the Affordable Care Act, Public Law 111-148.

(b) This limitation shall not apply to an abortion:

(1) performed to prevent the death of the mother;

(2) when the pregnancy is the result of criminal sexual conduct as defined in section 609.342, subdivision 1, clauses (c), (d), (e), item (i), and (f), and the incident is reported within 48 hours after the incident occurs to a valid law enforcement agency for investigation, unless the victim is physically unable to report the criminal sexual conduct,



in which case the report shall be made within 48 hours after the victim becomes physically able to report the criminal sexual conduct; or

(3) when the pregnancy is the result of incest, but only if the incident and relative are reported to a valid law enforcement agency for investigation prior to the abortion.

Subd. 4. **Insurance producers.** (a) The board, in consultation with the commissioner of commerce, shall establish minimum standards for certifying insurance producers who may sell health benefit plans through the Minnesota Insurance Marketplace. Producers must complete four hours of training in order to receive certification. The training must include online enrollment tools, compliance with privacy and security standards, an assessment of the affordability of various cost-sharing responsibilities, how to evaluate known health needs for that individual and the likely health needs for the relevant age group, the eligibility requirements for premium assistance and MAGI public health care programs, the availability of navigator assistance and enrollment support, tax provisions that may apply to group health benefit plan purchases, and Minnesota specific programs and marketplace laws. Certification and training shall be administered by the commissioner of commerce, and the training required under this section shall qualify as continuing education required under chapter 60K. In order to remain certified under this subdivision, insurance producers must comply with all applicable certification requirements, including the requirements established under paragraphs (d) and (e). A person shall not sell, solicit, or negotiate insurance for any class or classes of insurance unless the person is licensed for that line of authority under sections 60K.30 to 60K.56.

(b) Producer compensation shall be established by health carriers that provide health benefit plans through the Minnesota Insurance Marketplace. Compensation to producers must be equivalent for health benefit plans sold through the marketplace or outside the marketplace.

(c) Each health carrier that offers or sells health benefit plans through the Minnesota Insurance Marketplace shall report in writing to the marketplace on a quarterly basis the compensation and other incentives it offers or provides to its insurance producers with regard to each type of health benefit plan the health carrier offers or sells both inside and outside the marketplace.

(d) Nothing in this act shall prohibit an insurance producer from offering professional advice and recommendations to a small group purchaser based upon information provided to the producer.

(e) An insurance producer that offers health benefit plans in the individual market must not sell or renew an individual health benefit plan to a person whose income indicates the person may be eligible for either premium assistance or a MAGI public

10.1 health program, without first informing the person of the person's potential eligibility for  
10.2 premium assistance or a MAGI public health program and either offering assistance in  
10.3 determining the person's eligibility, or referring the person for assistance in determining  
10.4 eligibility. Nothing in this paragraph prohibits an individual from refusing to apply for  
10.5 any public program or tax credit.

10.6 (f) An insurance producer that offers health benefit plans in the small group market  
10.7 shall notify each small group purchaser of which group health benefit plans qualify for  
10.8 Internal Revenue Service approved section 125 tax benefits. The insurance producer shall  
10.9 also notify small group purchasers of state law provisions that benefit small group plans  
10.10 when the employer agrees to pay 50 percent or more of its employees' premium. Persons  
10.11 who are eligible for cost-effective medical assistance will count toward the 75 percent  
10.12 participation requirement in section 62L.03, subdivision 3.

10.13 (g) Any insurance producer assisting an individual or small employer with  
10.14 purchasing coverage through the Minnesota Insurance Marketplace must disclose, orally  
10.15 and in writing, to the individual or small employer at the time of the first solicitation with  
10.16 the prospective purchaser the following:

10.17 (1) the health carriers and qualified health plans offered through the Minnesota  
10.18 Insurance Marketplace that the producer is authorized to sell, and that the producer may  
10.19 not be authorized to sell all the qualified health plans offered through the Minnesota  
10.20 Insurance Marketplace;

10.21 (2) the producer may be receiving compensation from a health carrier for enrolling  
10.22 the individual or small employer into a particular health plan; and

10.23 (3) information on all qualified health plans offered through the Minnesota Insurance  
10.24 Marketplace is available through the Minnesota Insurance Marketplace Web site.

10.25 For purposes of this paragraph, "solicitation" means any contact by a producer, or any  
10.26 person acting on behalf of a producer made for the purpose of selling or attempting to sell  
10.27 coverage through the Minnesota Insurance Marketplace. If the first solicitation is made by  
10.28 telephone, the disclosures required under this paragraph need not be made in writing, but  
10.29 the fact that disclosure has been made must be memorialized when the policy is delivered.

10.30 Subd. 5. **Navigator; in-person assisters; call center.** (a) The board shall establish  
10.31 policies and procedures for the ongoing operation of a navigator program, in-person  
10.32 assister program, call center, and customer service provisions for the Minnesota Insurance  
10.33 Marketplace to be implemented beginning January 1, 2015. The policies and procedures  
10.34 must require that a person complete at least eight hours of training specific to helping  
10.35 people obtain insurance through the exchange before working as an in-person assister or

11.1 before working as or on behalf of a navigator directly with people seeking insurance  
11.2 through the exchange.

11.3 (b) Until the implementation of the policies and procedures described in paragraph  
11.4 (a), the following shall be in effect:

11.5 (1) the navigator program shall be fulfilled through section 256.962;

11.6 (2) entities eligible to be navigators, including insurance producers, Indian tribes and  
11.7 organizations, and counties may serve as in-person assisters;

11.8 (3) the board shall establish requirements and compensation for the in-person  
11.9 assister program by April 30, 2013. Compensation for in-person assisters must take  
11.10 into account any other compensation received by the in-person assister for conducting  
11.11 the same or similar services; and

11.12 (4) call center operations shall utilize existing state resources and personnel,  
11.13 including referrals to counties for medical assistance.

11.14 (c) The board shall establish a toll-free number for the Minnesota Insurance  
11.15 Marketplace and may hire and contract for additional resources as deemed necessary.

11.16 (d) In establishing training standards for the navigator program, the board must  
11.17 ensure that all entities and individuals carrying out navigator functions have training in  
11.18 the needs of underserved and vulnerable populations; eligibility and enrollment rules  
11.19 and procedures; the range of available public health care programs and qualified health  
11.20 plan options available through the Minnesota Insurance Marketplace; and privacy and  
11.21 security standards. For calendar year 2014, the commissioner of human services shall  
11.22 ensure that the program under section 256.962 provides application assistance for both  
11.23 qualified health plans offered through the Minnesota Insurance Marketplace and public  
11.24 health care programs.

11.25 (e) Any individual or entity acting as a navigator or in-person assister shall be  
11.26 personally liable for all damages resulting from the individual's or entity's acts or  
11.27 omissions in providing assistance to marketplace participants.

11.28 Subd. 6. **Health carrier requirements; participation.** (a) Beginning January 1,  
11.29 2015, the board shall have the power to establish certification requirements for health  
11.30 carriers and health benefit plans offered through the Minnesota Insurance Marketplace  
11.31 unless by June 1, 2013, the legislature enacts regulatory requirements that:

11.32 (1) apply uniformly to all health carriers and health benefit plans in the individual  
11.33 market;

11.34 (2) apply uniformly to all health carriers and health benefit plans in the small  
11.35 group market; and

12.1 (3) satisfy federal certification requirements for the Minnesota Insurance  
12.2 Marketplace.

12.3 (b) For certification requirements established by the board under paragraph (a), the  
12.4 board shall establish network adequacy requirements that are not inconsistent with the  
12.5 most popular health benefit plans offered through the Minnesota Insurance Marketplace  
12.6 under paragraph (c) in 2014 or 2015.

12.7 (c) No health carrier shall be required to participate in the Minnesota Insurance  
12.8 Marketplace. Beginning January 1, 2015, for those health carriers that opt to participate in  
12.9 the Minnesota Insurance Marketplace, the board shall approve two health benefit plans,  
12.10 of which one must be the most popular health benefit plan that a health carrier offers at  
12.11 each of the catastrophic, bronze, silver, and gold actuarial value levels for each service  
12.12 area in which the health carrier offers coverage in the individual and small group markets.  
12.13 The most popular health benefit plan is determined by the highest enrollment inside and  
12.14 outside the Minnesota Insurance Marketplace by number of lives at the end of the open  
12.15 enrollment period in the preceding year, excluding health benefit plans closed to new  
12.16 enrollment as of the preceding year. In determining the most popular health benefit  
12.17 plans, health benefit plans offered in the individual market prior to January 1, 2014, are  
12.18 not included. If a health carrier participating in the Minnesota Insurance Marketplace  
12.19 offers less than two health benefit plans in an actuarial value level or service area in the  
12.20 individual or small group market, the health carrier shall offer all health benefit plans it  
12.21 offers in that actuarial value level or service area in the individual or small group market  
12.22 in the Minnesota Insurance Marketplace.

12.23 (d) If a health carrier or parent organization participating in the Minnesota Insurance  
12.24 Marketplace offers health benefit plans outside the Minnesota Insurance Marketplace in  
12.25 the individual or small group market, the health carrier must offer health benefit plans  
12.26 at the silver and gold actuarial levels outside the Minnesota Insurance Marketplace for  
12.27 each service area in which the health carrier offers coverage in the individual and small  
12.28 group markets.

12.29 (e) Beginning January 1, 2015, the board has the power to select health benefit plans  
12.30 in addition to those specified in paragraph (c) to participate in the Minnesota Insurance  
12.31 Marketplace. In the selection process, the board shall seek to provide health coverage  
12.32 choices that offer the optimal combination of choice, value, quality, and service. Selection  
12.33 of additional health benefit plans must be determined in the best interests of individual  
12.34 consumers and employers and within federal requirements. The board shall consistently  
12.35 and uniformly apply requirements, standards, and criteria to all health carriers and health  
12.36 benefit plans. In determining the best interests, the board shall consider:

- 13.1 (1) affordability and value;  
13.2 (2) promotions of high-quality care;  
13.3 (3) promotion of prevention and wellness;  
13.4 (4) ensuring access to care;  
13.5 (5) alignment and coordination with state agency and private sector purchasing  
13.6 strategies and payment reform efforts; and  
13.7 (6) other criteria that the board determines appropriate.  
13.8 (f) For health benefit plans offered through the Minnesota Insurance Marketplace  
13.9 beginning January 1, 2015, health carriers must use the most current addendum for Indian  
13.10 health care providers approved by the Centers for Medicare and Medicaid Services and  
13.11 the tribes as part of their contracts with Indian health care providers.  
13.12 (g) For 2014, the board shall not have the power to select health carriers and health  
13.13 benefit plans for participation in the Minnesota Insurance Marketplace. The board shall  
13.14 have the power to verify that health carriers and health benefit plans were properly  
13.15 certified under certification guidance in place on January 1, 2013, to be eligible for  
13.16 participation in the Minnesota Insurance Marketplace. Notwithstanding the foregoing, any  
13.17 catastrophic health plan, as defined in section 1302(e) of the federal Patient Protection  
13.18 and Affordable Care Act (Public Law 111-148), shall be eligible for participation in the  
13.19 Minnesota Insurance Marketplace in 2014.  
13.20 (h) The board has the authority to decertify health carriers and health benefit plans  
13.21 that fail to maintain compliance with section 1311(c) of the federal Patient Protection and  
13.22 Affordable Care Act (Public Law 111-148).  
13.23 Subd. 7. **Appeals.** (a) The board may conduct hearings, appoint hearing officers,  
13.24 and recommend final orders related to appeals of any Minnesota Insurance Marketplace  
13.25 determinations, except for those determinations identified in paragraph (d). An appeal  
13.26 by a health carrier regarding a specific certification or selection determination made by  
13.27 the Minnesota Insurance Marketplace under subdivision 6, paragraph (a) or (b), must be  
13.28 conducted as a contested case proceeding under chapter 14, with the report or order of  
13.29 the administrative law judge constituting the final decision in the case, subject to judicial  
13.30 review under sections 14.63 to 14.69. For other appeals, the board shall establish hearing  
13.31 processes which provide for a reasonable opportunity to be heard and timely resolution of  
13.32 the appeal and which are consistent with the requirements of federal law and guidance.  
13.33 An appealing party may be represented by legal counsel at these hearings, but this is  
13.34 not a requirement.  
13.35 (b) The Minnesota Insurance Marketplace may establish service-level agreements  
13.36 with state agencies to conduct hearings for appeals. Notwithstanding section 471.59,

14.1 subdivision 1, a state agency is authorized to enter into service-level agreements for this  
14.2 purpose with the Minnesota Insurance Marketplace.

14.3 (c) For proceedings under this subdivision, the Minnesota Insurance Marketplace may  
14.4 be represented by an attorney who is an employee of the Minnesota Insurance Marketplace.

14.5 (d) This subdivision does not apply to appeals of determinations where a state  
14.6 agency hearing is available under section 256.045.

14.7 Subd. 8. **Agreements; consultation.** (a) The board shall:

14.8 (1) establish and maintain an agreement with the chief information officer of  
14.9 the Office of Enterprise Technology for information technology services that ensures  
14.10 coordination with MAGI public health care programs. The board may establish and  
14.11 maintain agreements with the chief information officer of the Office of Enterprise  
14.12 Technology for other information technology services, including an agreement that would  
14.13 permit the Minnesota Insurance Marketplace to administer eligibility for additional health  
14.14 care and public assistance programs under the authority of the commissioner of human  
14.15 services;

14.16 (2) establish and maintain an agreement with the commissioner of human services  
14.17 for cost allocation and services regarding eligibility determinations and enrollment for  
14.18 MAGI public health care programs. The board may establish and maintain an agreement  
14.19 with the commissioner of human services for other services;

14.20 (3) establish and maintain an agreement with the commissioners of commerce  
14.21 and health for services regarding enforcement of Minnesota Insurance Marketplace  
14.22 certification requirements for health benefit plans offered through the Minnesota Insurance  
14.23 Marketplace. The board may establish and maintain agreements with the commissioners  
14.24 of commerce and health for other services; and

14.25 (4) establish interagency agreements to transfer funds to other state agencies for  
14.26 their costs related to implementing and operating the Minnesota Insurance Marketplace,  
14.27 excluding medical assistance allocatable costs.

14.28 (b) The board shall consult with the commissioners of commerce and health  
14.29 regarding the operations of the Minnesota Insurance Marketplace.

14.30 (c) The board shall consult with Indian tribes and organizations regarding the  
14.31 operation of the Minnesota Insurance Marketplace.

14.32 (d) The board shall establish an advisory committee consisting of representatives  
14.33 from the health care industry, consumers, and other stakeholders to provide information  
14.34 and advise the board on the operations of the Minnesota Insurance Marketplace.

14.35 Subd. 9. **Limitations; risk-bearing.** (a) The board shall not bear insurance risk or  
14.36 enter into any agreement with health care providers to pay claims.

15.1 (b) Nothing in this subdivision shall prevent the Minnesota Insurance Marketplace  
15.2 from providing insurance for its employees.

15.3 **Sec. 7. [62V.06] DATA PRACTICES.**

15.4 Subdivision 1. **Applicability.** The Minnesota Insurance Marketplace is a state  
15.5 agency for purposes of the Minnesota Government Data Practices Act and is subject to all  
15.6 provisions of chapter 13, in addition to the requirements contained in this section.

15.7 Subd. 2. **Definitions.** As used in this section:

15.8 (1) "individual" means an individual according to section 13.02, subdivision 8, but  
15.9 does not include a vendor of services; and

15.10 (2) "participating" means that an individual, employee, or employer is seeking, or  
15.11 has sought an eligibility determination, enrollment processing, or premium processing  
15.12 through the Minnesota Insurance Marketplace.

15.13 Subd. 3. **General data classifications.** The following data collected, created, or  
15.14 maintained by the Minnesota Insurance Marketplace (Marketplace) are classified as  
15.15 private data on individuals, as defined in section 13.02, subdivision 12, or nonpublic data,  
15.16 as defined in section 13.02, subdivision 9:

15.17 (1) data on any individual participating in the Marketplace;

15.18 (2) data on any individuals participating in the Marketplace as employees of an  
15.19 employer participating in the Marketplace; and

15.20 (3) data on employers participating in the Marketplace.

15.21 Subd. 4. **Application and certification data.** (a) Data submitted by an insurance  
15.22 producer in an application for certification to sell a health benefit plan through the  
15.23 Marketplace, or submitted by an applicant seeking permission or a commission to act as a  
15.24 navigator or in-person assister, are classified as follows:

15.25 (1) at the time the application is submitted, all data contained in the application are  
15.26 private data, as defined in section 13.02, subdivision 12, or nonpublic data as defined in  
15.27 section 13.02, subdivision 9, except that the name of the applicant is public; and

15.28 (2) upon a final determination related to the application for certification by the  
15.29 Marketplace, all data contained in the application are public, with the exception of trade  
15.30 secret data as defined in section 13.37.

15.31 (b) Data created or maintained by a government entity as part of the evaluation of  
15.32 an application are protected nonpublic data, as defined in section 13.02, subdivision 13,  
15.33 until a final determination as to certification is made and all rights of appeal have been  
15.34 exhausted. Upon a final determination and exhaustion of all rights of appeal, these data are

public, with the exception of trade secret data as defined in section 13.37 and data subject to attorney-client privilege or other protection as provided in section 13.393.

(c) If an application is denied, the public data must include the criteria used by the board to evaluate the application and the specific reasons for the denial, and these data must be published on the Marketplace Web site.

**Subd. 5. Data sharing.** (a) The Minnesota Insurance Marketplace may share or disseminate data classified as private or nonpublic in subdivision 4 as follows:

(1) to the subject of the data, as provided in section 13.04;

(2) according to a court order;

(3) according to a state or federal law specifically authorizing access to the data;

(4) with other state or federal agencies, only to the extent necessary to verify the identity of, determine the eligibility of, process premiums for, process enrollment of, or investigate fraud related to an individual, employer, or employee participating in the Marketplace, provided that the Marketplace must enter into a data-sharing agreement with the agency prior to sharing data under this clause; and

(5) with a nongovernmental person or entity, only to the extent necessary to verify the identity of, determine the eligibility of, process premiums for, process enrollment of, or investigate fraud related to an individual, employer, or employee participating in the Marketplace, provided that the Marketplace must enter a contract with the person or entity, as provided in section 13.05, subdivision 6 or 11, prior to disseminating data under this clause.

(b) The Minnesota Insurance Marketplace may share or disseminate data classified as private or nonpublic in subdivision 4 as follows:

(1) to the subject of the data, as provided in section 13.04;

(2) according to a court order;

(3) according to a state or federal law specifically authorizing access to the data;

(4) with other state or federal agencies, only to the extent necessary to carry out the functions of the Marketplace, provided that the Marketplace must enter into a data-sharing agreement with the agency prior to sharing data under this clause; and

(5) with a nongovernmental person or entity, only to the extent necessary to carry out the functions of the Marketplace, provided that the Marketplace must enter a contract with the person or entity, as provided in section 13.05, subdivision 6 or 11, prior to disseminating data under this clause.

(c) Sharing or disseminating data outside of the exchange in a manner not authorized by this subdivision is prohibited. The list of authorized dissemination and sharing



contained in this subdivision must be included in the Tennesen warning required by section 13.04, subdivision 2.

(d) Until July 1, 2014, state agencies must share data classified as private or nonpublic on individuals, employees, or employers participating in the Marketplace with the Marketplace, only to the extent such data are necessary to verify the identity of, determine the eligibility of, process premiums for, process enrollment of, or investigate fraud related to a Marketplace participant. The agency must enter into a data-sharing agreement with the Marketplace prior to sharing any data under this paragraph.

(e) The Minnesota Insurance Marketplace may not share or disseminate outside of the marketplace data that indicates whether or not an individual or employee participating in the marketplace has a history of tobacco use or owns a gun or has a firearm in their home.

**Subd. 6. Notice and disclosures.** (a) In addition to the Tennesen warning required by section 13.04, subdivision 2, the Marketplace must provide any data subject asked to supply private data with:

(1) a notice of rights related to the handling of genetic information, pursuant to section 13.386; and

(2) a notice of the records retention policy of the Marketplace, detailing the length of time the Marketplace will retain data on the individual and the manner in which it will be destroyed upon expiration of that time.

(b) All notices required by this subdivision, including the Tennesen warning, must be provided in an electronic format suitable for downloading or printing.

**Subd. 7. Summary data.** In addition to creation and disclosure of summary data derived from private data on individuals, as permitted by section 13.05, subdivision 7, the Marketplace may create and disclose summary data derived from data classified as nonpublic under this section.

**Subd. 8. Access to data; audit trail.** (a) Only individuals with explicit authorization from the board may enter, update, or access not public data collected, created, or maintained by the Marketplace. The ability of authorized individuals to enter, update, or access data must be limited through the use of role-based access that corresponds to the official duties or training level of the individual, and the statutory authorization that grants access for that purpose. All queries and responses, and all actions in which data are entered, updated, accessed, or shared or disseminated outside of the marketplace, must be recorded in a data audit trail. Data contained in the audit trail are public, to the extent that the data are not otherwise classified by this section.

The board shall immediately and permanently revoke the authorization of any individual determined to have willfully entered, updated, accessed, shared, or disseminated

data in violation of this section, or any provision of chapter 13. If an individual is determined to have willfully gained access to data without explicit authorization from the board, the board shall forward the matter to the county attorney for prosecution.

(b) This subdivision shall not limit or affect the authority of the legislative auditor to access data needed to conduct audits, evaluations, or investigations of the Marketplace or the obligation of the board and Marketplace employees to comply with section 3.978, subdivision 2.

(c) This subdivision does not apply to actions taken by a Minnesota Insurance Marketplace participant to enter, update, or access data held by the Minnesota Insurance Marketplace, if the participant is the subject of the data that is entered, updated, or accessed.

Subd. 9. **Sale of data prohibited.** The Marketplace may not sell any data collected, created, or maintained by the Marketplace, regardless of its classification, for commercial or any other purposes.

**Sec. 8. [62V.07] FUNDS.**

All funds received by the Minnesota Insurance Marketplace must be deposited in a dedicated account in the special revenue fund which may earn interest and are appropriated to the Minnesota Insurance Marketplace for the purpose for which the funds were received.

**Sec. 9. [62V.08] REPORT.**

(a) The Minnesota Insurance Marketplace shall submit a report to the legislature by January 15, 2015, and each January 15 thereafter, on: (1) the performance of Minnesota Insurance Marketplace operations; (2) meeting the Minnesota Insurance Marketplace responsibilities; and (3) an accounting of the Minnesota Insurance Marketplace budget activities.

(b) The exchange must publish the administrative and operational costs of the exchange on a Web site to educate consumers on those costs. The information published must include the amount of premiums and federal premium subsidies collected by the exchange; the amount and source of revenue received under section 62V.05, subdivision 1, paragraph (b), clause (3); the amount and source of any other fees collected by the exchange for purposes of supporting its operations; and any misuse of funds as identified in accordance with section 3.975. The Web site must be updated at least annually.

**Sec. 10. [62V.09] EXPIRATION AND SUNSET EXCLUSION.**

19.1 Notwithstanding Minnesota Statutes, section 15.059, the Minnesota Insurance  
19.2 Marketplace Act shall not expire. The board is not subject to review or sunseting under  
19.3 Minnesota Statutes, chapter 3D.

19.4 Sec. 11. **[62V.10] RIGHT NOT TO PARTICIPATE.**

19.5 Nothing in this chapter infringes on the right of a Minnesota citizen not to participate  
19.6 in the Minnesota Insurance Marketplace.

19.7 Sec. 12. **[62V.11] RIGHT TO PHYSICIAN OF CHOICE.**

19.8 Nothing in this chapter shall prohibit a person using a federal premium tax credit or  
19.9 cost-sharing subsidy to purchase a health benefit plan through the Minnesota Insurance  
19.10 Exchange from receiving care from the physician of their choice.

19.11 Sec. 13. **TRANSITION OF AUTHORITY.**

19.12 (a) Upon the effective date of this act, the commissioner of management and budget  
19.13 shall exercise all authorities and responsibilities under Minnesota Statutes, sections  
19.14 62V.03 and 62V.05 until the board has satisfied the requirements of Minnesota Statutes,  
19.15 section 62V.05, subdivision 1, paragraph (d).

19.16 (b) Upon the establishment of bylaws, policies, and procedures governing the  
19.17 operations of the Minnesota Insurance Marketplace by the board as required under  
19.18 Minnesota Statutes, section 62V.05, subdivision 1, paragraph (d), all personnel, assets,  
19.19 contracts, obligations, and funds managed by the commissioner of management and  
19.20 budget for the design and development of the Minnesota Insurance Marketplace shall be  
19.21 transferred to the board. Existing personnel managed by the commissioner of management  
19.22 and budget for the design and development of the Minnesota Insurance Marketplace shall  
19.23 staff the board upon enactment.

19.24 Sec. 14. **MINNESOTA COMPREHENSIVE HEALTH ASSOCIATION.**

19.25 The commissioner of commerce, in consultation with the board of directors of the  
19.26 Minnesota Comprehensive Health Association, has the authority to determine the need  
19.27 for and to implement the eventual appropriate termination of coverage provided by the  
19.28 Minnesota Comprehensive Health Association under Minnesota Statutes, chapter 62E.  
19.29 The phase-out of coverage shall begin no sooner than January 1, 2014.

19.30 Sec. 15. **EFFECTIVE DATE.**

20.1        Sections 1 to 14 are effective the day following final enactment. Any actions taken  
20.2        by any state agencies in furtherance of the design, development, and implementation of the  
20.3        Minnesota Insurance Marketplace prior to the effective date shall be considered actions  
20.4        taken by the Minnesota Insurance Marketplace and shall be governed by the provisions of  
20.5        this chapter and state law. Health benefit plan coverage through the Minnesota Insurance  
20.6        Marketplace is effective January 1, 2014.