S T A T E O F N E W Y O R K

S. 6256 A. 9056

S E N A T E - A S S E M B L Y

January 17, 2012

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the public health law, in relation to requiring the use of network providers for evaluations or services under the early intervention program, state aid reimbursement to municipalities for respite services, and service coordination; to repeal subdivision 7 of section 2551 and subdivision 4 of section 2557 of the public health law, relating to administering early intervention services; to amend the public health law, in relation to requiring that each municipality be responsible for providing early intervention services; to amend the public health law, in relation to removing the authorization of the commissioner of health to collect data from counties on early intervention programs for the purpose of improving efficiency, cost effectiveness and quality; to amend the public health law, in relation to requiring health maintenance organizations to include coverage for otherwise covered services that are part of an early intervention program; to amend the insurance law, in relation to payment for early intervention services; to amend the education law, in relation to special education services and programs for preschool children with handicapping conditions; and to repeal subdivision 18 of section 4403 of the education law, relating to the power of the education department to approve the provision of early intervention services (Part A); to amend the public authorities law, in relation to funding and operations of the Roswell Park Cancer Institute (Part B); to amend the public health law, in relation to establishment of an electronic death registration system (Part C); to amend the public health law, in relation to establishing the supportive housing development reinvestment program; to amend the social services law, in relation to applicability of the assisted living program; to amend the social services law, in relation to including podiatry services and lactation services under the term medical assistance; to amend the public health law and education law, in relation to medical prescriptions for limited

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD12671-01-2

English proficient individuals; to amend the social services law, in relation to education, outreach services and facilitated enrollment activities for certain aged, blind and disabled persons; to amend the public health law, in relation to including certain violations by a pharmacy as professional misconduct; expanding prenatal care programs, establishing the primary care service corps practitioner loan repayment program, requiring changes in directors of not-for-profit corporations that operate hospitals to be approved by the department, authorizing the commissioner of health to temporarily suspend or limit hospital operating certificates, revoking of hospital operating certificates, appointment and duties of temporary operators of a general hospital or diagnostic and treatment center, authorizing moneys in the medical indemnity fund to be invested in obligations of the United States or the state or obligations where the principal and interest are guaranteed by the United States or the state and moneys distributed as non-Medicaid grants to non-major public academic medical centers; to amend the social services law, in relation to prescriptions of opioid analgesics and brand name drugs covered by medical assistance; to amend the public health law, in relation to notice requirement for preferred drug program, payment to the commissioner of health by third-party payors, audit of payments to the commissioner of health, electronic submission of reports by hospitals, and changing the definition of eligible applicant; to amend the social services law, in relation to medical assistance where relative is absent or refuses or fails to provide necessary care; to amend the public health law, in relation to third-party payor's election to make payments; to amend the elder law, in relation to the elderly pharmaceutical insurance coverage program; to amend the public health law, in relation to reserved bed days; to amend the social services law, in relation to the personal care services worker recruitment and retention program; to amend the public health law, in relation to the tobacco control and insurance initiatives pool distributions; to amend the social services law, in relation to certain public school districts and state operated/state supported schools; to amend the public health law, in relation to the licensure of home care services agencies; to amend the social services law, in relation to managed care programs; to amend the public health law, in relation to the distribution of the professional education pools; to amend chapter 584 of the laws of 2011, amending the public authorities law, relating to the powers and duties of the dormitory authority of the state of New York relative to the establishment of subsidiaries for certain purposes, in relation to the effectiveness thereof; to amend chapter 119 of the laws of 1997 relating to authorizing the department of health to establish certain payments to general hospitals, in relation to costs incurred in excess of revenues by general hospitals in providing services in eligible programs to uninsured patients and patients eligible for Medicaid assistance; to amend subdivision 1 of section 92 of part H of chapter 59 of the laws of 2011, relating to known and projected department of health state funds Medicaid expenditures, in relation to the effectiveness thereof; to amend section 90 of part H of chapter 59 of the laws of 2011, relating to types of appropriations exempt from certain reductions, in relation to certain payments with regard to local governments; to amend section 1 of part C of chapter 58 of the laws of 2005, relating to authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the

administration thereof, in relation to Medicaid reimbursement; and to repeal certain provisions of the public health law, the social services law and the elder law relating thereto (Part D); to amend the public authorities law and the public officers law, in relation to the establishment of the New York Health Benefit Exchange (Part E); to amend chapter 58 of the laws of 2005 authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, in relation to an administrative cap on such program; to amend chapter 59 of the laws of 2011, amending the public health law and other laws relating to general hospital reimbursement for annual rates, in relation to the cap on local Medicaid expenditures; and to amend the social services law, in relation to the department assumption of program administration for medical assistance (Part F); to amend the public health law, in relation to regulations for computing hospital inpatient rates and to amend chapter 58 of the laws of 2005 relating to the preferred drug program, in relation to the effectiveness thereof (Part G); to amend chapter 57 of the laws of 2006, relating to establishing a cost of living adjustment for designated human services programs, in relation to foregoing such adjustment during the 2012-2013 state fiscal year; and in relation to directing limits on state reimbursement for executive compensation and administrative costs (Part H); in relation to contracts by the office for people with developmental disabilities made under section 1115 of the federal social security act (Part I); to amend the mental hygiene law, the public health law, the general municipal law, the education law, the social services law, and the surrogate's court procedure act, in relation to the office for people with developmental disabilities and the creation of developmental disabilities regional offices and state operations offices (Part J); to amend chapter 723 of the laws of 1989 amending the mental hygiene law and other laws relating to comprehensive psychiatric emergency programs, in relation to extending the repeal of certain provisions thereof (Part K); to permit the commissioners of the department of health, the office of mental health, the office of alcoholism and substance abuse services and the office for people with developmental disabilities the regulatory flexibility to more efficiently and effectively integrate health and behavioral health services (Part L); to permit the office of mental health and the state education department to enter into an agreement for purposes of providing education programming for patients residing in hospitals operated by the office of mental health who are between the ages of five and twenty-one; and providing for the repeal of such provisions upon expiration thereof (Part M); to amend the mental hygiene law and the public health law, in relation to the statewide comprehensive services plan for people with mental disabilities and in relation to the local planning process; and to repeal certain provisions of the mental hygiene law relating thereto (Part N); to amend the mental hygiene law, in relation to the closure and the reduction in size of certain facilities serving persons with mental illness (Part O); to amend the mental hygiene law, in relation to amending procedures under the sex offender management and treatment act, and to amend the penal law, in relation to providing criminal penalties for certain violations of orders of commitment and strict and intensive supervision and treatment (Part P); to amend the criminal procedure law, in relation to providing for outpatient capacity restoration of felony defendants, or restoration at psychiatric units of jails or article 28

hospitals (Part Q); and to amend chapter 111 of the laws of 2010 relating to the recovery of exempt income by the office of mental health for community residences and family-based treatment programs, in relation to the effectiveness thereof (Part R)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2012-2013 state fiscal year. Each component is wholly contained within a Part identified as Parts A through R. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Paragraph (a) of subdivision 2 of section 2544 of the public health law, as added by chapter 428 of the laws of 1992, is amended and a new paragraph (c) is added to read as follows:

(a) [The] SUBJECT TO THE PROVISIONS OF SECTION TWENTY-FIVE HUNDRED FORTY-FIVE-A OF THIS TITLE, THE parent may select an evaluator from the list of approved evaluators as described in section twenty-five hundred forty-two of this title to conduct the evaluation. The parent or evaluator shall immediately notify the early intervention official of such selection. The evaluator may begin the evaluation no sooner than four working days after such notification, unless otherwise approved by the initial service coordinator.

(C) IF, IN CONSULTATION WITH THE EVALUATOR, THE SERVICE COORDINATOR IDENTIFIES A CHILD THAT IS POTENTIALLY ELIGIBLE FOR PROGRAMS OR SERVICES OFFERED BY OR UNDER THE AUSPICES OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE SERVICE COORDINATOR SHALL, WITH PARENT CONSENT, NOTIFY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES' REGIONAL DEVELOPMENTAL DISABILITIES SERVICES OFFICE OF THE POTENTIAL ELIGIBILITY OF SUCH CHILD FOR SAID PROGRAMS OR SERVICES.

S 2. Subdivision 1, the opening paragraph of subdivision 2 and subdivision 7 of section 2545 of the public health law, as added by chapter 428 of the laws of 1992, are amended to read as follows:

1. If the evaluator determines that the infant or toddler is an eligible child, the early intervention official shall convene a meeting, at a time and place convenient to the parent, consisting of the parent, such official, the evaluator, A REPRESENTATIVE FROM THE CHILD'S INSURER OR HEALTH MAINTENANCE ORGANIZATION, WHICH SHALL INCLUDE THE MEDICAL ASSISTANCE PROGRAM OR THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED IN TITLE ONE-A OF THIS ARTICLE, OR ANY OTHER GOVERNMENTAL THIRD PARTY PAYOR, IF THE CHILD HAS COVERAGE THROUGH AN INSURER OR HEALTH MAINTENANCE ORGANIZATION AND THE REPRESENTATIVE IS AVAILABLE TO ATTEND THE MEETING ON THE DATE AND TIME CHOSEN BY THE EARLY INTERVENTION OFFICIAL, the initial service coordinator and any other persons who the parent or the initial service coordinator, with the parent's consent, invite, provided that

such meeting shall be held no later than forty-five days from the date that the early intervention official was first contacted regarding the child, except under exceptional circumstances prescribed by the commissioner. The early intervention official, at or prior to the time of scheduling the meeting, shall inform the parent of the right to invite any person to the meeting. IF THE REPRESENTATIVE FROM THE CHILD'S INSURER OR HEALTH MAINTENANCE ORGANIZATION IS NOT AVAILABLE TO ATTEND THE MEETING IN PERSON ON THE DATE AND TIME CHOSEN BY THE EARLY INTERVENTION OFFICIAL, ARRANGEMENTS MAY BE MADE FOR THE REPRESENTATIVE'S INVOLVEMENT IN THE MEETING BY PARTICIPATION IN A TELEPHONE CONFERENCE CALL OR BY OTHER MEANS.

The early intervention official, A REPRESENTATIVE FROM THE CHILD'S INSURER OR HEALTH MAINTENANCE ORGANIZATION, WHICH SHALL INCLUDE THE MEDICAL ASSISTANCE PROGRAM OR THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED IN TITLE ONE-A OF THIS ARTICLE, OR ANY OTHER GOVERNMENTAL THIRD PARTY PAYOR, IF THE CHILD HAS COVERAGE THROUGH AN INSURER OR HEALTH MAINTENANCE ORGANIZATION AND THE REPRESENTATIVE IS AVAILABLE TO ATTEND THE MEETING ON THE DATE AND TIME CHOSEN BY THE EARLY INTERVENTION OFFICIAL, initial service coordinator, parent and evaluator shall develop an IFSP for an eligible child whose parents request services. The IFSP shall be in writing and shall include, but not be limited to:

7. The IFSP shall be reviewed at six month intervals and shall be evaluated annually by the early intervention official, A REPRESENTATIVE FROM THE CHILD'S INSURER OR HEALTH MAINTENANCE ORGANIZATION, WHICH SHALL INCLUDE THE MEDICAL ASSISTANCE PROGRAM OR THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED IN TITLE ONE-A OF THIS ARTICLE, OR ANY OTHER GOVERNMENTAL THIRD PARTY PAYOR, IF THE CHILD HAS COVERAGE THROUGH AN INSURER OR HEALTH MAINTENANCE ORGANIZATION AND THE REPRESENTATIVE IS AVAILABLE TO PARTICIPATE IN THE REVIEW OR ATTEND ON THE DATE AND TIME CHOSEN BY THE EARLY INTERVENTION OFFICIAL, THE service coordinator, the parent and providers of services to the eligible child. Upon request of a parent, the plan may be reviewed by such persons at more frequent intervals. IF THE REPRESENTATIVE FROM THE CHILD'S INSURER OR HEALTH MAINTENANCE ORGANIZATION IS NOT AVAILABLE TO PARTICIPATE IN THE REVIEW OR ATTEND IN PERSON ON THE DATE AND TIME CHOSEN BY THE EARLY INTERVENTION OFFICIAL, ARRANGEMENTS MAY BE MADE FOR THE REPRESENTATIVE'S INVOLVEMENT BY PARTICIPATION IN A TELEPHONE CONFERENCE CALL OR BY OTHER MEANS.

S 2-a. Section 2545 of the public health law is amended by adding a new subdivision 10 to read as follows:

10. THE SERVICE COORDINATOR SHALL ENSURE THAT THE IFSP, INCLUDING ANY AMENDMENTS THERETO, IS IMPLEMENTED IN A TIMELY MANNER BUT NOT LATER THAN THIRTY DAYS AFTER THE PROJECTED DATES FOR INITIATION OF THE SERVICES AS SET FORTH IN THE PLAN.

S 3. The public health law is amended by adding a new section 2545-a to read as follows:

S 2545-A. USE OF NETWORK PROVIDERS. FOR CHILDREN REFERRED TO THE EARLY INTERVENTION PROGRAM ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, IF A CHILD HAS COVERAGE UNDER AN INSURANCE POLICY, PLAN OR CONTRACT, INCLUDING COVERAGE AVAILABLE UNDER THE MEDICAL ASSISTANCE PROGRAM OR THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED IN TITLE ONE-A OF THIS ARTICLE OR UNDER ANY OTHER GOVERNMENTAL THIRD PARTY PAYOR, AND THE INSURANCE POLICY, PLAN OR CONTRACT PROVIDES COVERAGE FOR EVALUATIONS OR SERVICES THAT MAY BE RENDERED TO THE CHILD UNDER THE EARLY INTERVENTION PROGRAM, THE SERVICE COORDINATOR, OR, IN ACCORDANCE WITH SECTION TWENTY-FIVE HUNDRED FORTY-FOUR OF THIS TITLE, THE PARENT, WITH RESPECT TO EVALUATIONS, SHALL SELECT A PROVIDER APPROVED BY THE DEPARTMENT AND

WITHIN THE INSURER'S OR HEALTH MAINTENANCE ORGANIZATION'S NETWORK, IF APPLICABLE, FOR THE PROVISION OF SUCH EVALUATION OR SERVICES, PROVIDED HOWEVER THAT THIS SUBDIVISION SHALL NOT APPLY UNDER THE FOLLOWING CONDITIONS:

1. THERE IS NO PROVIDER IN THE INSURER'S OR HEALTH MAINTENANCE ORGANIZATION'S NETWORK THAT IS AVAILABLE OR APPROPRIATE TO RECEIVE THE REFERRAL AND TO CONDUCT THE EVALUATION OR TO BEGIN PROVIDING SERVICES IN A TIMELY MANNER IN ACCORDANCE WITH THE CHILD'S IFSP;

2. INSURANCE OR HEALTH PLAN BENEFITS HAVE BEEN EXHAUSTED; OR

3. THE CHILD HAS A DEMONSTRATED NEED, AS DETERMINED BY THE INSURER OR HEALTH MAINTENANCE ORGANIZATION, IF APPLICABLE, FOR AN EVALUATION OR SERVICE RENDERED BY A PROVIDER WHO DOES NOT HOLD AN AGREEMENT WITH THE CHILD'S INSURER OR HEALTH MAINTENANCE ORGANIZATION FOR THE PROVISION OF SUCH EVALUATION OR SERVICE.

S 4. Subdivision 2 of section 2547 of the public health law, as amended by chapter 231 of the laws of 1993, is amended to read as follows:

2. In addition to respite services provided pursuant to subdivision one of this section and subject to the amounts appropriated therefor, the state shall reimburse the municipality IN ACCORDANCE WITH THE PERCENTAGE OF STATE AID REIMBURSEMENT FOR APPROVED COSTS AS SET FORTH IN SUBDIVISION TWO OF SECTION TWENTY-FIVE HUNDRED FIFTY-SEVEN OF THIS TITLE, for [fifty percent of] the costs of respite services provided to eligible children and their families with the approval of the early intervention official.

S 5. Section 2548 of the public health law, as amended by section 20 of part H of chapter 686 of the laws of 2003, is amended to read as follows:

S 2548. Transition plan. To the extent that a toddler with a disability is thought to be eligible for services pursuant to section forty-four hundred ten of the education law, the [early intervention official] SERVICE COORDINATOR shall notify in writing the committee on preschool special education of the local school district in which an eligible child resides of the potential transition of such child and, with parental consent, arrange for a conference among the service coordinator, the parent and the chairperson of the preschool committee on special education or his or her designee at least ninety days before such child would be eligible for services under section forty-four hundred ten of the education law to review the child's program options and to establish a transition plan, if appropriate. If a parent does not consent to a conference with the service coordinator and the chairperson of the preschool committee on special education or his or her designee to determine whether the child should be referred for services under section forty-four hundred ten of the education law, and the child is not determined to be eligible by the committee on preschool special education for such services prior to the child's third birthday, the child's eligibility for early intervention program services shall end at the child's third birthday.

S 6. Subdivision 2 of section 2550 of the public health law, as amended by section 5 of part B3 of chapter 62 of the laws of 2003, is amended to read as follows:

2. In meeting the requirements of subdivision one of this section, the lead agency shall adopt and use proper methods of administering the early intervention program, including:

(a) establishing standards for evaluators, service coordinators and providers of early intervention services;

(b) approving, and periodically re-approving evaluators, service coordinators and providers of early intervention services who meet department standards; PROVIDED HOWEVER THAT THE DEPARTMENT MAY REQUIRE THAT APPROVED EVALUATORS, SERVICE COORDINATORS AND PROVIDERS OF EARLY INTERVENTION SERVICES ENTER INTO AGREEMENTS WITH THE DEPARTMENT IN ORDER TO CONDUCT EVALUATIONS OR RENDER SERVICE COORDINATION OR EARLY INTERVENTION SERVICES IN THE EARLY INTERVENTION PROGRAM. SUCH AGREEMENTS SHALL SET FORTH THE TERMS AND CONDITIONS OF PARTICIPATION IN THE PROGRAM. IF THE DEPARTMENT REQUIRES THAT SUCH PROVIDERS ENTER INTO AGREEMENTS WITH THE DEPARTMENT FOR PARTICIPATION IN THE PROGRAM, "APPROVAL" OR "APPROVED" AS USED IN THIS TITLE SHALL MEAN A PROVIDER WHO IS APPROVED BY THE DEPARTMENT IN ACCORDANCE WITH DEPARTMENT REGULATIONS AND HAS ENTERED INTO AN AGREEMENT WITH THE DEPARTMENT FOR THE PROVISION OF EVALUATIONS, SERVICE COORDINATION OR EARLY INTERVENTION SERVICES.

A LESS-THAN-ARMS-LENGTH RELATIONSHIP SHALL NOT EXIST BETWEEN THE SERVICE COORDINATOR, EVALUATOR AND THE PROVIDER AUTHORIZED TO DELIVER EARLY INTERVENTION SERVICES TO THE CHILD, UNLESS APPROVAL OF THE LEAD AGENCY, IN CONSULTATION WITH THE EARLY INTERVENTION OFFICIAL, IS OBTAINED. PROVIDED FURTHER THAT, UNLESS AUTHORIZED BY THE LEAD AGENCY, IN CONSULTATION WITH THE EARLY INTERVENTION OFFICIAL, UPON A FINDING THAT IT HAS BEEN DEMONSTRATED THAT AN APPROVED PROVIDER IS THE ONLY APPROPRIATE PROVIDER AVAILABLE TO RENDER THE SERVICES RECOMMENDED FOR SUCH CHILD, THE SERVICE COORDINATOR, THE EVALUATOR SELECTED BY THE PARENT AND THE PROVIDER RECOMMENDED TO DELIVER SERVICES TO SUCH CHILD, AND ANY AGENCY UNDER WHICH SUCH SERVICE COORDINATOR, EVALUATOR OR PROVIDER IS EMPLOYED BY OR UNDER CONTRACT WITH, SHALL NOT BE THE SAME ENTITY.

ALL APPROVED EVALUATORS AND PROVIDERS OF EARLY INTERVENTION SERVICES, HEREINAFTER COLLECTIVELY REFERRED TO AS "PROVIDER" OR "PROVIDERS" FOR PURPOSES OF THIS SUBPARAGRAPH, SHALL ESTABLISH AND MAINTAIN CONTRACTS OR AGREEMENTS WITH A SUFFICIENT NUMBER OF INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS, INCLUDING THE MEDICAL ASSISTANCE PROGRAM OR THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED UNDER TITLE ONE-A OF THIS ARTICLE, AS DETERMINED NECESSARY BY THE COMMISSIONER TO MEET INSURER OR HEALTH MAINTENANCE ORGANIZATION NETWORK ADEQUACY; PROVIDED, HOWEVER, THAT THE DEPARTMENT MAY, IN ITS DISCRETION, APPROVE A PROVIDER WHO DOES NOT HAVE A CONTRACT OR AGREEMENT WITH ONE OR MORE INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS IF THE PROVIDER RENDERS A SERVICE THAT MEETS A UNIQUE NEED FOR SUCH SERVICE UNDER THE EARLY INTERVENTION PROGRAM. APPROVED PROVIDERS SHALL SUBMIT TO THE DEPARTMENT, INFORMATION AND DOCUMENTATION OF THE INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS, WITH WHICH THE PROVIDER HOLDS AN AGREEMENT OR CONTRACT. A PROVIDER'S APPROVAL WITH THE DEPARTMENT TO DELIVER EVALUATIONS OR EARLY INTERVENTION SERVICES SHALL TERMINATE IF THE PROVIDER FAILS TO PROVIDE SUCH INFORMATION OR DOCUMENTATION ACCEPTABLE TO THE DEPARTMENT OF ITS CONTRACTS OR AGREEMENTS WITH INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS AS REQUESTED BY THE DEPARTMENT;

(c) [compiling and disseminating to the municipalities lists of approved evaluators, service coordinators and providers of early intervention services;

(d)] monitoring of agencies, institutions and organizations under this title and agencies, institutions and organizations providing early intervention services which are under the jurisdiction of a state early intervention service agency;

[(e)] (D) enforcing any obligations imposed on those agencies under this title or Part H of the federal individuals with disabilities education act and its regulations;

[(f)] (E) providing training and technical assistance to those agencies, institutions and organizations, including initial and ongoing training and technical assistance to municipalities to help enable them to identify, locate and evaluate eligible children, develop IFSPs, ensure the provision of appropriate early intervention services, promote the development of new services, where there is a demonstrated need for such services and afford procedural safeguards to infants and toddlers and their families;

[(g)] (F) correcting deficiencies that are identified through monitoring; and

[(h)] (G) in monitoring early intervention services, the commissioner shall provide municipalities with the results of any review of early intervention services undertaken and shall provide the municipalities with the opportunity to comment thereon.

S 7. Subdivision 7 of section 2551 of the public health law is REPEALED, and subdivisions 8, 9 and 10 are renumbered subdivisions 7, 8 and 9.

S 8. Section 2552 of the public health law, as added by chapter 428 of the laws of 1992, subdivisions 2 and 3 as amended by chapter 231 of the laws of 1993, and subdivision 4 as added by section 6 of part B3 of chapter 62 of the laws of 2003, is amended to read as follows:

S 2552. Responsibility of municipality. 1. Each municipality shall be responsible for ensuring that the early intervention services contained in an IFSP are provided to eligible children and their families who reside in such municipality [and may contract with approved providers of early intervention services for such purpose]. THE SERVICE COORDINATOR SHALL REPORT, IN A MANNER AND FORMAT AS DETERMINED BY THE MUNICIPALITY, ON THE DELIVERY OF SERVICES TO AN ELIGIBLE CHILD IN ACCORDANCE WITH THE ELIGIBLE CHILD'S IFSP. A MUNICIPALITY MAY REQUEST THAT THE PARENT SELECT A NEW SERVICE COORDINATOR OR REQUIRE THAT THE SERVICE COORDINATOR SELECT A NEW PROVIDER OF SERVICES IF THE MUNICIPALITY FINDS THAT THE SERVICE COORDINATOR HAS NOT BEEN PERFORMING HIS OR HER RESPONSIBILITIES AS REQUIRED BY THIS TITLE OR THAT SERVICES HAVE NOT BEEN PROVIDED IN ACCORDANCE WITH THE ELIGIBLE CHILD'S IFSP.

2. [After consultation with early intervention officials, the commissioner shall develop procedures to permit a municipality to contract or otherwise make arrangements with other municipalities for an eligible child and the child's family to receive services from such other municipalities.

3. The municipality shall monitor claims for service reimbursement authorized by this title and shall verify such claims prior to payment. The municipality shall inform the commissioner of discrepancies in billing and when payment is to be denied or withheld by the municipality.

4.] The early intervention official shall require an eligible child's parent to furnish the parents' and eligible child's social security numbers for the purpose of the department's and municipality's administration of the program.

S 9. Subdivision 1 of section 2557 of the public health law, as amended by section 4 of part C of chapter 1 of the laws of 2002, is amended to read as follows:

1. The approved costs, OTHER THAN THOSE REIMBURSABLE IN ACCORDANCE WITH SECTION TWENTY-FIVE HUNDRED FIFTY-NINE OF THIS TITLE, for [an eligible] A child who receives an evaluation and early intervention services pursuant to this title shall be a charge upon the municipality wherein the eligible child resides or, where the services are covered by the medical assistance program, upon the social services district of

fiscal responsibility with respect to those eligible children who are also eligible for medical assistance. All approved costs shall be paid in the first instance and at least quarterly by the appropriate governing body or officer of the municipality upon vouchers presented and audited in the same manner as the case of other claims against the municipality. Notwithstanding the insurance law or regulations thereunder relating to the permissible exclusion of payments for services under governmental programs, no such exclusion shall apply with respect to payments made pursuant to this title. Notwithstanding the insurance law or any other law or agreement to the contrary, benefits under this title shall be considered secondary to any [plan of insurance or state government benefit program] INSURANCE POLICY, PLAN OR CONTRACT under which an eligible child may have coverage, INCLUDING COVERAGE AVAILABLE UNDER THE MEDICAL ASSISTANCE PROGRAM OR THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED IN TITLE ONE-A OF THIS ARTICLE, OR UNDER ANY OTHER GOVERNMENTAL THIRD PARTY PAYOR. Nothing in this section shall increase or enhance coverages provided for within an insurance contract subject to the provisions of this title.

S 9-a. Subdivision 4 of section 2557 of the public health law is REPEALED and subdivisions 2 and 5, subdivision 2 as added by chapter 428 of the laws of 1992 and subdivision 5 as added by section 7 of part B3 of chapter 62 of the laws of 2003, are amended to read as follows:

2. The department shall reimburse the approved costs paid by a municipality for the purposes of this title, other than those reimbursable by AN INSURER OR HEALTH MAINTENANCE ORGANIZATION, OR GOVERNMENTAL THIRD PARTY PAYOR INCLUDING the medical assistance program or [by third party payors] THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED IN TITLE ONE-A OF THIS ARTICLE, in an amount of fifty percent of the amount expended in accordance with the rules and regulations of the commissioner; PROVIDED, HOWEVER, THAT IN THE DISCRETION OF THE DEPARTMENT AND WITH THE APPROVAL OF THE DIRECTOR OF THE DIVISION OF THE BUDGET, THE DEPARTMENT MAY REIMBURSE MUNICIPALITIES IN AN AMOUNT GREATER THAN FIFTY PERCENT OF THE AMOUNT EXPENDED. Such state reimbursement to the municipality shall not be paid prior to April first of the year in which the approved costs are paid by the municipality, PROVIDED, HOWEVER THAT, SUBJECT TO THE APPROVAL OF THE DIRECTOR OF THE BUDGET, THE DEPARTMENT MAY PAY SUCH STATE AID REIMBURSEMENT TO THE MUNICIPALITY PRIOR TO SUCH DATE.

5. [The department shall] (A) THE COMMISSIONER, IN HIS OR HER DISCRETION, IS AUTHORIZED TO contract with [an independent organization] ONE OR MORE ENTITIES to act as the fiscal agent for the department AND MUNICIPALITIES WITH RESPECT TO FISCAL MANAGEMENT AND PAYMENT OF EARLY INTERVENTION CLAIMS. MUNICIPALITIES SHALL GRANT SUFFICIENT AUTHORITY TO THE FISCAL AGENT TO ACT ON THEIR BEHALF. MUNICIPALITIES, AND INDIVIDUAL AND AGENCY PROVIDERS AS DEFINED BY THE COMMISSIONER IN REGULATION SHALL UTILIZE SUCH FISCAL AGENT FOR PAYMENT OF EARLY INTERVENTION CLAIMS AS DETERMINED BY THE DEPARTMENT AND SHALL PROVIDE SUCH INFORMATION AND DOCUMENTATION AS REQUIRED BY THE DEPARTMENT AND NECESSARY FOR THE FISCAL AGENT TO CARRY OUT ITS DUTIES.

(B) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SECTION ONE HUNDRED TWELVE OR ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW, SECTIONS ONE HUNDRED FORTY-TWO AND ONE HUNDRED FORTY-THREE OF THE ECONOMIC DEVELOPMENT LAW, OR ANY OTHER CONTRARY PROVISION OF LAW, THE COMMISSIONER IS AUTHORIZED TO ENTER INTO A CONTRACT OR CONTRACTS UNDER PARAGRAPH (A) OF THIS SUBDIVISION WITHOUT A COMPETITIVE BID OR REQUEST FOR PROPOSAL PROCESS, PROVIDED, HOWEVER, THAT:

(I) THE DEPARTMENT SHALL POST ON ITS WEBSITE, FOR A PERIOD OF NO LESS THAN THIRTY DAYS:

(1) A DESCRIPTION OF THE PROPOSED SERVICES TO BE PROVIDED PURSUANT TO THE CONTRACT OR CONTRACTS;

(2) THE CRITERIA FOR SELECTION OF A CONTRACTOR OR CONTRACTORS;

(3) THE PERIOD OF TIME DURING WHICH A PROSPECTIVE CONTRACTOR MAY SEEK SELECTION, WHICH SHALL BE NO LESS THAN THIRTY DAYS AFTER SUCH INFORMATION IS FIRST POSTED ON THE WEBSITE; AND

(4) THE MANNER BY WHICH A PROSPECTIVE CONTRACTOR MAY SEEK SUCH SELECTION, WHICH MAY INCLUDE SUBMISSION BY ELECTRONIC MEANS;

(II) ALL REASONABLE AND RESPONSIVE SUBMISSIONS THAT ARE RECEIVED FROM PROSPECTIVE CONTRACTORS IN A TIMELY FASHION SHALL BE REVIEWED BY THE COMMISSIONER; AND

(III) THE COMMISSIONER SHALL SELECT SUCH CONTRACTOR OR CONTRACTORS THAT, IN HIS OR HER DISCRETION, ARE BEST SUITED TO SERVE THE PURPOSES OF THIS SECTION.

(C) PARAGRAPH (B) OF THIS SUBDIVISION SHALL APPLY ONLY TO THE INITIAL CONTRACT OR CONTRACTS NECESSARY TO OBTAIN THE SERVICES OF A FISCAL AGENT FOR EARLY INTERVENTION PROGRAM FISCAL MANAGEMENT AND PAYMENT OF EARLY INTERVENTION CLAIMS AND SHALL NOT APPLY TO SUBSEQUENT CONTRACTS NEEDED TO MAINTAIN SUCH SERVICES, AS DETERMINED BY THE COMMISSIONER IN HIS OR HER DISCRETION. [A municipality may elect to utilize the services of such organization for early intervention program fiscal management and claiming as determined by the commissioner or may select an independent agent to act as the fiscal agent for such municipality or may act as its own fiscal agent.]

S 10. Subdivision 4 of section 2558 of the public health law, as added by chapter 428 of the laws of 1992, is amended to read as follows:

4. Local contribution. The municipality of residence shall be financially responsible for the local contribution in the amount of fifty percent of the [approved costs] AMOUNT EXPENDED PROVIDED, HOWEVER, THAT IN THE DISCRETION OF THE DEPARTMENT AND WITH THE APPROVAL OF THE DIRECTOR OF THE DIVISION OF THE BUDGET, IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION TWENTY-FIVE HUNDRED FIFTY-SEVEN OF THIS TITLE, THE DEPARTMENT MAY REQUIRE THAT MUNICIPALITIES BE FINANCIALLY RESPONSIBLE FOR A LOCAL CONTRIBUTION IN AN AMOUNT LESS THAN FIFTY PERCENT OF THE AMOUNT EXPENDED. The commissioner shall certify to the comptroller the amount of the local contribution owed by each municipality to the state. The comptroller shall deduct the amount of such local contribution first from any moneys due the municipality pursuant to section twenty-five hundred fifty-six of this title and then from any other moneys due or to become due to the municipality.

S 11. Paragraphs (a), (c) and (d) of subdivision 3 of section 2559 of the public health law, paragraph (a) as amended and paragraph (d) as added by chapter 231 of the laws of 1993, subparagraphs (i) and (ii) of paragraph (a) as added by chapter 406 of the laws of 2011, and paragraph (c) as added by chapter 428 of the laws of 1992 are amended to read as follows:

(a) Providers of EVALUATIONS AND early intervention services [and], INCLUDING transportation services, HEREINAFTER COLLECTIVELY REFERRED TO IN THIS SUBDIVISION AS "PROVIDER" OR "PROVIDERS", shall in the first instance and where applicable, seek payment from all [third party payors including governmental agencies] INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS, INCLUDING THE MEDICAL ASSISTANCE PROGRAM AND THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED IN TITLE ONE-A OF THIS ARTICLE AND ANY OTHER GOVERNMENTAL THIRD PARTY PAYORS prior to claiming payment from a

given municipality for EVALUATIONS CONDUCTED UNDER THE PROGRAM AND FOR services rendered to eligible children, provided that, [for the purpose of seeking payment from the medical assistance program or from other third party payors, the municipality shall be deemed the provider of such early intervention services to the extent that the provider has promptly furnished to the municipality adequate and complete information necessary to support the municipality billing, and provided further that] the obligation to seek payment shall not apply to a payment from [a third party payor] AN INSURER who is not prohibited from applying such payment, and will apply such payment, to an annual or lifetime limit specified in the insured's policy.

(i) Parents shall provide [and] the municipality [shall obtain] AND SERVICE COORDINATOR information on any [plan of insurance] INSURANCE POLICY, PLAN OR CONTRACT under which an eligible child has coverage.

(ii) Parents shall provide the municipality AND THE SERVICE COORDINATOR with a written referral from a primary care provider as documentation, for eligible children, of the medical necessity of early intervention services.

(III) PROVIDERS SHALL UTILIZE THE DEPARTMENT'S FISCAL AGENT AND DATA SYSTEM FOR CLAIMING PAYMENT FROM INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS FOR EVALUATIONS AND SERVICES RENDERED UNDER THE EARLY INTERVENTION PROGRAM.

(IV) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, RULE OR REGULATION, PAYMENTS MADE BY ANY INSURER OR HEALTH MAINTENANCE ORGANIZATION FOR EVALUATIONS AND SERVICES PROVIDED UNDER THE EARLY INTERVENTION PROGRAM SHALL BE AT RATES ESTABLISHED UNDER AN AGREEMENT NEGOTIATED BETWEEN THE INSURER OR HEALTH MAINTENANCE ORGANIZATION, IF APPLICABLE, PROVIDED, HOWEVER, THAT IF THE INSURER OR HEALTH MAINTENANCE ORGANIZATION MAINTAINS A NETWORK OF PROVIDERS AND A CHILD HAS A DEMONSTRATED NEED, AS DETERMINED BY THE INSURER OR HEALTH MAINTENANCE ORGANIZATION, IF APPLICABLE, FOR AN EVALUATION OR SERVICE RENDERED BY A PROVIDER WHO IS NOT WITHIN THE INSURER OR HEALTH MAINTENANCE ORGANIZATION'S NETWORK, PAYMENT TO SUCH OUT OF NETWORK PROVIDER SHALL BE MADE AT RATES ESTABLISHED BY THE COMMISSIONER IN ACCORDANCE WITH REGULATION.

(V) PAYMENTS MADE BY ANY INSURER OR HEALTH MAINTENANCE PROGRAM SHALL BE CONSIDERED PAYMENTS IN FULL FOR SUCH SERVICES AND THE PROVIDER SHALL NOT SEEK ADDITIONAL PAYMENT FROM THE MUNICIPALITY, CHILD, OR HIS OR HER PARENTS FOR ANY PORTION OF THE COSTS OF SAID SERVICES. NOTHING HEREIN SHALL PROHIBIT AN INSURER OR HEALTH MAINTENANCE ORGANIZATION FROM APPLYING A COPAYMENT, COINSURANCE OR DEDUCTIBLE AS SET FORTH IN THE POLICY OR PLAN. PAYMENTS FOR COPAYMENTS, COINSURANCE OR DEDUCTIBLES SHALL BE MADE IN ACCORDANCE WITH PARAGRAPH (B) OF THIS SUBDIVISION.

(VI) WHEN PAYMENT UNDER AN INSURANCE POLICY, PLAN OR CONTRACT IS NOT AVAILABLE OR HAS BEEN EXHAUSTED, PROVIDERS SHALL SEEK PAYMENT FOR SERVICES IN ACCORDANCE WITH SECTION TWENTY-FIVE HUNDRED FIFTY-SEVEN OF THIS TITLE; PROVIDED, HOWEVER, THAT IF THE SERVICE PROVIDED IS A COVERED BENEFIT UNDER THE POLICY, PLAN OR CONTRACT AND PAYMENT HAS BEEN DENIED ON GROUNDS OTHER THAN THAT BENEFITS HAVE BEEN EXHAUSTED, THE PROVIDER SHALL EXHAUST ALL APPEALS OF SAID DENIAL PRIOR TO CLAIMING PAYMENT TO THE MUNICIPALITY FOR THE SERVICE IN ACCORDANCE WITH SECTION TWENTY-FIVE HUNDRED FIFTY-SEVEN OF THIS TITLE. PROVIDERS SHALL NOT DISCONTINUE OR DELAY SERVICES TO ELIGIBLE CHILDREN PENDING PAYMENT OF THE CLAIM OR DETERMINATIONS OF ANY APPEAL DENIALS.

(c) Payments made for early intervention services under an insurance policy or health benefit plan, INCLUDING PAYMENTS MADE BY THE MEDICAL ASSISTANCE PROGRAM OR THE CHILD HEALTH INSURANCE PROGRAM ESTABLISHED

UNDER TITLE ONE-A OF THIS ARTICLE OR OTHER GOVERNMENTAL THIRD PARTY PAYOR, which are provided as part of an IFSP pursuant to section twenty-five hundred forty-five of this title shall not be applied by the insurer or plan administrator against any maximum lifetime or annual limits specified in the policy or health benefits plan, pursuant to section eleven of the chapter of the laws of nineteen hundred ninety-two which added this title.

[(d) A municipality, or its designee, shall be subrogated, to the extent of the expenditures by such municipality for early intervention services furnished to persons eligible for benefits under this title, to any rights such person may have or be entitled to from third party reimbursement. The right of subrogation does not attach to benefits paid or provided under any health insurance policy or health benefits plan prior to receipt of written notice of the exercise of subrogation rights by the insurer or plan administrator providing such benefits.]

S 12. Subdivision 7 of section 2510 of the public health law, as amended by section 21 of part B of chapter 109 of the laws of 2010, is amended to read as follows:

7. "Covered health care services" means: the services of physicians, optometrists, nurses, nurse practitioners, midwives and other related professional personnel which are provided on an outpatient basis, including routine well-child visits; diagnosis and treatment of illness and injury; inpatient health care services; laboratory tests; diagnostic x-rays; prescription and non-prescription drugs and durable medical equipment; radiation therapy; chemotherapy; hemodialysis; emergency room services; hospice services; emergency, preventive and routine dental care, including medically necessary orthodontia but excluding cosmetic surgery; emergency, preventive and routine vision care, including eyeglasses; speech and hearing services; and, inpatient and outpatient mental health, alcohol and substance abuse services as defined by the commissioner in consultation with the superintendent. "COVERED HEALTH CARE SERVICES" SHALL ALSO INCLUDE EARLY INTERVENTION SERVICES PROVIDED PURSUANT TO TITLE TWO-A OF THIS ARTICLE UP TO THE SCOPE AND LEVEL OF COVERAGE FOR THE SAME SERVICES PROVIDED PURSUANT TO THIS SUBDIVISION, AS DEFINED BY THE COMMISSIONER. "Covered health care services" shall not include drugs, procedures and supplies for the treatment of erectile dysfunction when provided to, or prescribed for use by, a person who is required to register as a sex offender pursuant to article six-C of the correction law, provided that any denial of coverage of such drugs, procedures or supplies shall provide the patient with the means of obtaining additional information concerning both the denial and the means of challenging such denial.

S 13. Intentionally omitted.

S 14. Paragraph (b) of subdivision 5 of section 4403 of the public health law is relettered paragraph (c), paragraph (c), as added by chapter 705 of the laws of 1996, is amended and a new paragraph (b) is added to read as follows:

(B) UPON THE EFFECTIVE DATE OF THIS PARAGRAPH AND AT THE TIME OF EVERY THREE YEAR REVIEW BY THE COMMISSIONER AS SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION, AND UPON APPLICATION FOR EXPANSION OF SERVICE AREA, THE HEALTH MAINTENANCE ORGANIZATION SHALL DEMONSTRATE THAT IT MAINTAINS AN ADEQUATE NETWORK OF PROVIDERS WHO ARE APPROVED TO DELIVER EVALUATIONS AND EARLY INTERVENTION PROGRAM SERVICES IN ACCORDANCE WITH TITLE II-A OF ARTICLE TWENTY-FIVE OF THIS CHAPTER, BY SHOWING TO THE SATISFACTION OF THE COMMISSIONER THAT (I) THERE ARE A SUFFICIENT NUMBER OF GEOGRAPHICALLY ACCESSIBLE PARTICIPATING PROVIDERS; AND (II) THERE ARE SUFFICIENT

PROVIDERS IN EACH AREA OF SPECIALTY OF PRACTICE TO MEET THE NEEDS OF THE ENROLLMENT POPULATION.

[(c)] (D) Each organization shall report on an annual basis the number of enrollees and the number of participating providers in each organization. EACH HEALTH MAINTENANCE ORGANIZATION SHALL MAKE PUBLICLY AVAILABLE AND UPDATE ON A QUARTERLY BASIS, THE NAMES OF PARTICIPATING PROVIDERS IN THE HEALTH MAINTENANCE ORGANIZATION'S NETWORK WHO ARE APPROVED TO DELIVER EVALUATIONS AND EARLY INTERVENTION PROGRAM SERVICES IN ACCORDANCE WITH TITLE II-A OF ARTICLE TWENTY-FIVE OF THIS CHAPTER.

S 15. Section 4406 of the public health law is amended by adding a new subdivision 6 to read as follows:

6. (A) NO SUBSCRIBER CONTRACT OR BENEFIT PACKAGE SHALL EXCLUDE COVERAGE FOR OTHERWISE COVERED SERVICES SOLELY ON THE BASIS THAT THE SERVICES CONSTITUTE EARLY INTERVENTION PROGRAM SERVICES UNDER TITLE II-A OF ARTICLE TWENTY-FIVE OF THIS CHAPTER.

(B) WHERE A SUBSCRIBER CONTRACT OR BENEFIT PACKAGE PROVIDES COVERAGE FOR A SERVICE THAT IS PROVIDED UNDER THE EARLY INTERVENTION PROGRAM AND IS OTHERWISE COVERED UNDER THE SUBSCRIBER CONTRACT OR BENEFIT PACKAGE, SUCH COVERAGE SHALL NOT BE APPLIED AGAINST ANY MAXIMUM ANNUAL OR LIFETIME MONETARY LIMITS SET FORTH IN SUCH SUBSCRIBER CONTRACT OR BENEFIT PACKAGE. VISIT LIMITATIONS AND OTHER TERMS AND CONDITIONS OF THE SUBSCRIBER CONTRACT OR BENEFIT PACKAGE WILL CONTINUE TO APPLY TO EARLY INTERVENTION SERVICES. HOWEVER, ANY VISITS USED FOR EARLY INTERVENTION PROGRAM SERVICES SHALL NOT REDUCE THE NUMBER OF VISITS OTHERWISE AVAILABLE UNDER THE SUBSCRIBER CONTRACT OR BENEFIT PACKAGE FOR SUCH SERVICES THAT ARE NOT PROVIDED UNDER THE EARLY INTERVENTION PROGRAM.

(C) THE HEALTH MAINTENANCE ORGANIZATION SHALL PROVIDE THE MUNICIPALITY AND SERVICE COORDINATOR WITH INFORMATION ON THE EXTENT OF BENEFITS AVAILABLE TO AN ENROLLEE UNDER SUCH SUBSCRIBER CONTRACT OR BENEFIT PACKAGE WITHIN FIFTEEN DAYS OF THE HEALTH MAINTENANCE ORGANIZATION'S RECEIPT OF WRITTEN REQUEST AND NOTICE AUTHORIZING SUCH RELEASE.

(D) NO HEALTH MAINTENANCE ORGANIZATION SHALL REFUSE TO ISSUE A SUBSCRIBER CONTRACT OR BENEFIT PACKAGE OR REFUSE TO RENEW A SUBSCRIBER CONTRACT OR BENEFIT PACKAGE SOLELY BECAUSE THE APPLICANT OR ENROLLEE IS RECEIVING SERVICES UNDER THE EARLY INTERVENTION PROGRAM.

(E) HEALTH MAINTENANCE ORGANIZATIONS SHALL ACCEPT CLAIMS SUBMITTED FOR PAYMENT UNDER THE CONTRACT FROM A PROVIDER THROUGH THE DEPARTMENT'S FISCAL AGENT AND DATA SYSTEM FOR SUCH CLAIMING. HEALTH MAINTENANCE ORGANIZATIONS SHALL, IN A MANNER AND FORMAT AS REQUIRED BY THE DEPARTMENT, PROVIDE THE DEPARTMENT WITH INFORMATION ON CLAIMS SUBMITTED FOR EVALUATIONS AND EARLY INTERVENTION SERVICES PROVIDED TO CHILDREN UNDER THE EARLY INTERVENTION PROGRAM AND DISPOSITION OF SUCH CLAIMS.

(F) WHERE A SUBSCRIBER CONTRACT OR BENEFIT PACKAGE PROVIDES COVERAGE FOR AN EVALUATION OR SERVICE PROVIDED UNDER THE EARLY INTERVENTION PROGRAM, REIMBURSEMENT FOR SUCH EVALUATION OR SERVICE SHALL BE AT RATES NEGOTIATED BY THE HEALTH MAINTENANCE ORGANIZATION AND PROVIDER PROVIDED, HOWEVER, THAT IF A CHILD HAS A DEMONSTRATED NEED, AS DETERMINED BY THE HEALTH MAINTENANCE ORGANIZATION, FOR AN EVALUATION OR SERVICE RENDERED BY A PROVIDER WHO DOES NOT HOLD AN AGREEMENT WITH THE CHILD'S HEALTH MAINTENANCE ORGANIZATION FOR THE PROVISION OF SERVICES TO COVERED PERSONS, PAYMENT TO SUCH OUT OF NETWORK PROVIDER SHALL BE MADE AT RATES ESTABLISHED BY THE COMMISSIONER IN ACCORDANCE WITH REGULATION.

(G) HEALTH MAINTENANCE ORGANIZATIONS SHALL ENSURE THAT THE TERMS AND CONDITIONS CONTAINED IN SUBSCRIBER CONTRACTS OR BENEFIT PACKAGES RELATING TO PROVISION OF SERVICES TO CHILDREN UNDER THE EARLY INTERVENTION PROGRAM COMPLIES WITH TITLE II-A OF ARTICLE TWENTY-FIVE OF THIS CHAPTER

AND WITH STANDARDS SET FORTH IN PART C OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, AS AMENDED BY THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004.

S 16. Intentionally omitted.

S 17. Subsections (c) and (e) of section 3235-a of the insurance law, subsection (c) as amended and subsection (e) as added by chapter 406 of the laws of 2011, are amended, and a new subsection (f) is added to read as follows:

(c) [Any right of subrogation to benefits which a municipality is entitled in accordance with paragraph (d) of subdivision three of section twenty-five hundred fifty-nine of the public health law shall be valid and enforceable to the extent benefits are available under any accident and health insurance policy. The right of subrogation does not attach to insurance benefits paid or provided under any accident and health insurance policy prior to receipt by the insurer of written notice from the municipality. Upon the insurer's receipt of written request and notice from the municipality that such right of subrogation has been granted to such municipality and that the insured has authorized the release of information to the municipality, the] THE insurer shall provide the municipality AND SERVICE COORDINATOR with information on the extent of benefits available to the covered person under such policy WITHIN FIFTEEN DAYS OF THE INSURER'S RECEIPT OF WRITTEN REQUEST AND NOTICE AUTHORIZING SUCH RELEASE.

(e) [Written claim for early intervention program services shall be submitted by the municipality as the approved provider within one hundred fifty days from the date of service.] WHERE A POLICY OF ACCIDENT AND HEALTH INSURANCE, INCLUDING A CONTRACT ISSUED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER, UTILIZES A NETWORK OF PROVIDERS, THE INSURER SHALL DEMONSTRATE TO THE SUPERINTENDENT THAT IT MAINTAINS AN ADEQUATE NETWORK OF PROVIDERS WHO ARE APPROVED TO DELIVER EVALUATIONS AND EARLY INTERVENTION PROGRAM SERVICES IN ACCORDANCE WITH TITLE II-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW BY DOCUMENTING THAT (I) THERE ARE A SUFFICIENT NUMBER OF GEOGRAPHICALLY ACCESSIBLE PARTICIPATING PROVIDERS; AND (II) THERE ARE SUFFICIENT PROVIDERS IN EACH AREA OF SPECIALTY OF PRACTICE TO MEET THE NEEDS OF THE ENROLLMENT POPULATION. WHERE A POLICY OF ACCIDENT AND HEALTH INSURANCE, INCLUDING A CONTRACT ISSUED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER, PROVIDES COVERAGE FOR AN EVALUATION OR SERVICE PROVIDED UNDER THE EARLY INTERVENTION PROGRAM, REIMBURSEMENT FOR SUCH EVALUATION OR SERVICE SHALL BE AT RATES NEGOTIATED BY THE INSURER AND PROVIDER, IF APPLICABLE, PROVIDED, HOWEVER, THAT IF A CHILD HAS A DEMONSTRATED NEED FOR AN EVALUATION OR SERVICE RENDERED BY A PROVIDER WHO DOES NOT HOLD AN AGREEMENT WITH THE CHILD'S INSURER FOR THE PROVISION OF SERVICES TO COVERED PERSONS, PAYMENT TO SUCH PROVIDER SHALL BE MADE AT RATES ESTABLISHED BY THE COMMISSIONER OF HEALTH IN ACCORDANCE WITH REGULATION.

(F) NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE SUPERINTENDENT'S AUTHORITY TO IMPOSE NETWORK ADEQUACY REQUIREMENTS ON INSURERS IN GENERAL.

S 18. Subdivision 18 of section 4403 of the education law is REPEALED.

S 19. Paragraph f of subdivision 3 and the opening paragraph of paragraph a of subdivision 9 of section 4410 of the education law, as amended by chapter 82 of the laws of 1995, are amended to read as follows:

f. After notification by [an early intervention official] A SERVICE COORDINATOR, as defined in section twenty-five hundred forty-one of the public health law, that a child receiving services pursuant to title

II-A of article twenty-five of the public health law potentially will transition to receiving services under this section and that a conference is to be convened to review the child's program options and establish a transition plan, which conference must occur at least ninety days before such child would be eligible for services under this section, the chairperson of the committee on preschool special education of the local school district or his or her designee in which such child resides shall participate in the conference.

Providers of special services or programs shall apply to the commissioner for program approval on a form prescribed by the commissioner; such application shall include, but not be limited to, a listing of the services to be provided, the population to be served, a plan for providing services in the least restrictive environment and a description of its evaluation component, if any. [Providers of early intervention services seeking approval pursuant to subdivision seven of section twenty-five hundred fifty-one of the public health law shall apply to the commissioner for such approval on a form prescribed by the commissioner.] The commissioner shall approve programs in accordance with regulations adopted for such purpose and shall periodically review such programs at which time the commissioner shall provide the municipality in which the program is located or for which the municipality bears fiscal responsibility an opportunity for comment within thirty days of the review. In collaboration with municipalities and representatives of approved programs, the commissioner shall develop procedures for conducting such reviews. Municipalities shall be allowed to participate in such departmental review process. Such review shall be conducted by individuals with appropriate experience as determined by the commissioner and shall be conducted not more than once every three years.

S 20. Intentionally omitted.

S 21. Intentionally omitted.

S 22. Intentionally omitted.

S 23. This act shall take effect January 1, 2013; provided, however, that:

1. the amendments to subdivision 7 of section 2510 of the public health law made by section twelve of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith;

2. the requirements contained in subparagraph (iv) of paragraph (a) of subdivision 3 of section 2559 of the public health law, as added by section eleven of this act, paragraph (f) of subdivision 6 of section 4406 of the public health law, as added by section fifteen of this act, and subsection (e) of section 3235-a of the insurance law, as amended by section seventeen of this act, as such sections pertain to requiring that an insurer or health maintenance organization make payment to a provider who is not within the insurer or health maintenance organization's network at rates established by the commissioner of health in accordance with regulation, if a child has a demonstrated need, as determined by the insurer or health maintenance organization, if applicable, for an evaluation or service rendered by a provider who is not within the insurer or health maintenance organization's network, shall apply only to policies, benefit packages and contracts issued, renewed, modified, altered or amended on or after the effective date of such sections of this act; and

3. sections two-a, four, five, seven, eight, nine-a, ten, eighteen and nineteen of this act shall take effect April 1, 2013.

PART B

Section 1. Subdivisions 9, 10 and 11 of section 3555 of the public authorities law, as added by chapter 5 of the laws of 1997, are amended to read as follows:

9. to determine the conditions under which a physician may be extended the privilege of practicing within a health facility under the jurisdiction of the corporation, to promulgate internal policies for the conduct of all persons, physicians and allied health practitioners within such facility, and to appoint and grant privileges to qualified and competent clinical practitioners; [and]

10. except as provided in this subdivision or as expressly limited by any applicable state law or regulation, and in support of the powers granted by subdivisions five and six of this section, to form and to participate in the formation of one or more corporations, and to exercise and perform such purposes, powers, duties, functions or activities through one or more subsidiary corporations or other entities owned or controlled wholly or in part by the corporation, which shall be formed pursuant to the business corporation law, the limited liability company law, the not-for-profit corporation law, or the partnership law; any such subsidiary may be authorized to act as a general or limited partner in a partnership or as a member of a limited liability company, and enter into an arrangement calling for an initial and subsequent payment or payments or contributions to capital by such subsidiary in consideration of an interest in revenues or other contractual rights. An entity shall be deemed a subsidiary corporation whenever and so long as (a) more than half of any voting shares or other membership interest of such subsidiary are owned or held by the corporation or (b) a majority of the directors, trustees or members of such subsidiary are designees of the corporation[.];

11. TO ACCEPT FUNDING FROM THE STATE PURSUANT TO PARAGRAPH (O) OF SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED SEVEN-V OF THE PUBLIC HEALTH LAW OR PURSUANT TO SECTION TWENTY-EIGHT HUNDRED EIGHTEEN OF THE PUBLIC HEALTH LAW, PROVIDED, HOWEVER, THAT AS A CONDITION FOR RECEIPT OF SUCH FUNDS THE CORPORATION IS REQUIRED TO TAKE ALL NECESSARY AND APPROPRIATE STEPS AND ARRANGEMENTS, INCLUDING BUT NOT LIMITED TO, ENTERING INTO AN ARRANGEMENT FOR MERGER OR OTHER AFFILIATION WITH ONE OR MORE HEALTH CARE, ACADEMIC OR OTHER ENTITIES, LOCATED WITHIN THE SAME GEOGRAPHICAL REGION AS THE CORPORATION, FOR THE PURPOSE OF PROMOTING THE CONTINUED FINANCIAL VIABILITY OF THE CORPORATION, PROTECTING AND PROMOTING THE HEALTH OF THE PATIENTS SERVED BY ITS HEALTH FACILITIES AND, TO THE EXTENT POSSIBLE, CONTRIBUTING TO THE ECONOMIC REVITALIZATION OF THE REGION BY BECOMING OPERATIONALLY AND FISCALLY INDEPENDENT OF THE DEPARTMENT OF HEALTH BY NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND FOURTEEN, AND PROVIDED FURTHER, HOWEVER, THAT THE COMMISSIONER OF HEALTH SHALL MONITOR SUCH STEPS AND ARRANGEMENTS, ESTABLISH GOALS AND BENCHMARKS FOR THE ACHIEVEMENT OF SUCH INDEPENDENCE, INTERCEDE AS DEEMED NECESSARY AND APPROPRIATE AND DELAY OR PRECLUDE THE CORPORATION'S RECEIPT OF SUCH FUNDS IN THE EVENT THE COMMISSIONER OF HEALTH DETERMINES THAT SUCH GOALS AND BENCHMARKS HAVE NOT BEEN MET.

12. No subsidiary of the corporation shall own, operate, manage or control the existing research, education, acute inpatient or outpatient facilities and services now operated by the Roswell Park Cancer Institute.

S 2. This act shall take effect April 1, 2012.

PART C

Section 1. The public health law is amended by adding a new section 4148 to read as follows:

S 4148. ELECTRONIC DEATH REGISTRATION SYSTEM. 1. LEGISLATIVE FINDINGS. THE LEGISLATURE FINDS THAT IT IS NECESSARY TO UPDATE AND MODERNIZE THE STATE'S SYSTEM OF FILING AND MAINTAINING INFORMATION AND DOCUMENTS RELATED TO THE REGISTRATION OF DEATH. AN ELECTRONIC DEATH REGISTRATION SYSTEM WILL PROMOTE ACCURACY AND PROVIDE FOR MORE TIMELY TRANSMISSION OF DOCUMENTATION, PROMOTING EFFICIENCY IN THE OPERATIONS OF THE DEPARTMENT, WHICH OVERSEES THE DEATH REGISTRATION FILING PROCESS; LOCAL REGISTRARS, WHICH ACCEPT AND FILE CERTIFICATES OF DEATH AND ISSUE BURIAL AND FUNERAL PERMITS; HEALTH CARE INSTITUTIONS AND PRACTITIONERS, CORONERS AND MEDICAL EXAMINERS, WHICH PREPARE CERTIFICATES OF DEATH; AND LICENSED FUNERAL DIRECTORS AND UNDERTAKERS, WHO REQUIRE PROMPT ACCESS TO CERTIFICATES OF DEATH TO CONDUCT BURIALS AND FUNERALS IN A TIMELY FASHION. LICENSED FUNERAL DIRECTORS AND UNDERTAKERS HAVE EXPRESSED THEIR INTEREST IN PARTNERING WITH THE DEPARTMENT TO SUPPORT THE ESTABLISHMENT OF SUCH SYSTEM THROUGH A CONTRIBUTION, TENDERED FOR EACH BURIAL AND FUNERAL PERMIT ISSUED TO A LICENSED FUNERAL DIRECTOR OR UNDERTAKER, IN THE AMOUNT OF TWENTY DOLLARS.

2. THE DEPARTMENT IS HEREBY AUTHORIZED TO DESIGN, IMPLEMENT AND MAINTAIN AN ELECTRONIC DEATH REGISTRATION SYSTEM FOR COLLECTING, STORING, RECORDING, TRANSMITTING, AMENDING, CORRECTING AND AUTHENTICATING INFORMATION, AS NECESSARY AND APPROPRIATE TO COMPLETE A DEATH REGISTRATION, AND TO GENERATE SUCH DOCUMENTS AS DETERMINED BY THE DEPARTMENT IN RELATION TO A DEATH OCCURRING IN THIS STATE. THE CONTRIBUTION REFERENCED IN SUBDIVISION ONE OF THIS SECTION SHALL BE COLLECTED FOR EACH BURIAL OR REMOVAL PERMIT ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION FROM THE LICENSED FUNERAL DIRECTOR OR UNDERTAKER TO WHOM SUCH PERMIT IS ISSUED, IN THE MANNER SPECIFIED BY THE DEPARTMENT.

3. COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, THE DEPARTMENT MAY REQUIRE THAT DEATHS OCCURRING WITHIN THIS STATE MUST BE REGISTERED USING THE ELECTRONIC DEATH REGISTRATION SYSTEM ESTABLISHED IN THIS SECTION. ELECTRONIC DEATH REGISTRATION MAY BE PHASED IN, AS DETERMINED BY THE COMMISSIONER, FOR DEATHS OCCURRING IN THE STATE UNTIL THE ELECTRONIC DEATH REGISTRATION SYSTEM IS FULLY IMPLEMENTED IN THE STATE.

4. COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, ALL PERSONS REQUIRED TO REGISTER A DEATH UNDER THIS ARTICLE, AND SUCH OTHERS AS MAY BE AUTHORIZED BY THE COMMISSIONER, SHALL HAVE ACCESS TO THE ELECTRONIC DEATH REGISTRATION SYSTEM FOR THE PURPOSE OF ENTERING INFORMATION REQUIRED TO EXECUTE, COMPLETE AND FILE A CERTIFICATE OF DEATH OR TO RETRIEVE SUCH INFORMATION OR GENERATE DOCUMENTATION FROM THE ELECTRONIC DEATH REGISTRATION SYSTEM. THE CONFIDENTIALITY PROVISIONS IN SECTION FORTY-ONE HUNDRED FORTY-SEVEN OF THIS TITLE SHALL APPLY TO INFORMATION MAINTAINED IN THIS SYSTEM.

5. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, ANY REQUIREMENT OF THIS TITLE FOR A SIGNATURE OF ANY PERSON SHALL BE DEEMED SATISFIED BY THE USE BY SUCH PERSON OF DIGITAL SIGNATURE PROVIDED SUCH PERSON IS AUTHORIZED IN ACCORDANCE WITH THIS SECTION TO USE THE ELECTRONIC DEATH REGISTRATION SYSTEM.

S 2. Subdivision 1 of section 4100-a of the public health law, as amended by chapter 644 of the laws of 1988, is amended and a new subdivision 5 is added to read as follows:

1. The term "certified copy" means a photographic reproduction in the form of a photocopy or a microfilm print of the original certificate OR ELECTRONICALLY PRODUCED PRINT OF THE ORIGINAL CERTIFICATE, COMMENCING ON

OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, and certified by the commissioner, his designated representative, a local registrar [or his deputy], DEPUTY REGISTRAR OR SUB-REGISTRAR as a true copy thereof.

5. THE TERM "ELECTRONIC DEATH REGISTRATION SYSTEM" MEANS THE DATA SYSTEM CREATED AND MAINTAINED BY THE DEPARTMENT FOR COLLECTING, STORING, RECORDING, TRANSMITTING, AMENDING, CORRECTING AND AUTHENTICATING INFORMATION, AS NECESSARY AND APPROPRIATE TO COMPLETE A DEATH REGISTRATION, AND TO GENERATE SUCH DOCUMENTS AS DETERMINED BY THE DEPARTMENT, INCLUDING PERMITS OR CERTIFICATES, RELATING TO A DEATH OCCURRING IN THIS STATE.

S 3. Subdivision 1 of section 4140 of the public health law is amended to read as follows:

1. The death of each person who has died in this state shall be registered immediately and not later than seventy-two hours after death or the finding of a dead human body, by filing with the registrar of the district in which the death occurred or the body was found a certificate of such death, [which certificate shall be upon the form] IN A MANNER AND FORMAT AS prescribed by the commissioner, WHICH MAY INCLUDE THROUGH ELECTRONIC MEANS IN ACCORDANCE WITH SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS TITLE.

S 4. Section 4141-a of the public health law, as amended by chapter 153 of the laws of 2011, is amended to read as follows:

S 4141-a. Death certificate; duties of hospital administrator. When a death occurs in a hospital, except in those cases where certificates are issued by coroners or medical examiners, the person in charge of such hospital or his or her designated representative shall promptly present the certificate to the physician or nurse practitioner in attendance, or a physician or nurse practitioner acting in his or her behalf, who shall promptly certify to the facts of death, provide the medical information required by the certificate, sign the medical certificate of death, and thereupon return such certificate to such person, so that the seventy-two hour registration time limit prescribed in section four thousand one hundred forty of this title can be met; PROVIDED, HOWEVER THAT COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, INFORMATION AND SIGNATURES REQUIRED BY THIS SECTION SHALL BE OBTAINED AND MADE IN ACCORDANCE WITH SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS TITLE.

S 5. Section 4142 of the public health law is amended by adding a new subdivision (e) to read as follows:

(E) NOTWITHSTANDING ANY CONTRARY PROVISIONS OF LAW AS MAY BE SET FORTH IN THIS SECTION, COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, INFORMATION AND SIGNATURES REQUIRED BY THIS SUBDIVISION SHALL BE OBTAINED AND MADE IN ACCORDANCE WITH SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS TITLE.

S 6. Paragraph (b) of subdivision 2 and subdivisions 3 and 5 of section 4144 of the public health law, paragraph (b) of subdivision 2 as amended by chapter 153 of the laws of 2011, are amended to read as follows:

(b) Verbal permission to remove a body of a deceased person from the county in which death occurred or the body was found to a non-adjacent county within the state of New York, as provided in subdivision one of this section, shall be issued by the said registrar of vital statistics, upon request by telephone of a licensed funeral director or undertaker who holds a certificate of death signed by the attending physician or nurse practitioner, OR FOR DEATHS OCCURRING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, SUCH CERTIFICATE OF DEATH SIGNED BY THE ATTENDING PHYSICIAN OR NURSE PRACTITIONER IS AVAILABLE ELECTRONICALLY IN ACCORD-

ANCE WITH SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS TITLE, showing that the death resulted from natural causes and was not a result of accidental, suicidal, homicidal or other external causes.

3. No registrar of vital statistics shall receive any fee for the issuance of burial or removal permits under this chapter EXCEPT AS REFERENCED BY SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS TITLE AND other than the compensation provided in this article.

5. If the interment, or other disposition of the body of a deceased person is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death, having been filed with him, as required by law, permission is granted to inter, remove or otherwise dispose of the body, stating the name, age, sex, cause of death, and other necessary details [upon the form prescribed by the commissioner] IN A MANNER AND FORMAT AS MAY BE REQUIRED BY THE COMMISSIONER.

S 7. Subdivisions 1 and 4 of section 4161 of the public health law, subdivision 1 as amended by chapter 589 of the laws of 1991 and subdivision 4 as amended by chapter 153 of the laws of 2011, are amended to read as follows:

1. The certificate of fetal death and the report of fetal death shall contain such information and be in such form as the commissioner may prescribe; PROVIDED HOWEVER THAT COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, INFORMATION AND SIGNATURES REQUIRED BY THIS SUBDIVISION SHALL BE OBTAINED AND MADE IN ACCORDANCE WITH SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS ARTICLE, except that unless requested by the woman neither the certificate nor the report of fetal death shall contain the name of the woman, her social security number or any other information which would permit her to be identified except as provided in this subdivision. The report shall state that a certificate of fetal death was filed with the commissioner and the date of such filing. The commissioner shall develop a unique, confidential identifier to be used on the certificate of fetal death to be used in connection with the exercise of the commissioner's authority to monitor the quality of care provided by any individual or entity licensed to perform an abortion in this state and to permit coordination of data concerning the medical history of the woman for purposes of conducting surveillance scientific studies and research pursuant to the provisions of paragraph (j) of subdivision one of section two hundred six of this chapter.

4. When a fetal death occurs in a hospital, except in those cases where certificates are issued by coroners or medical examiners, the person in charge of such hospital or his or her designated representative shall promptly present the certificate to the physician or nurse practitioner in attendance, or a physician or nurse practitioner acting in his or her behalf, who shall promptly certify to the facts of birth and of fetal death, provide the medical information required by the certificate, sign the medical certificate of birth and death, and thereupon return such certificate to such person, so that the seventy-two hour registration time limit prescribed in section four thousand one hundred sixty of this title can be met; PROVIDED, HOWEVER THAT COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, INFORMATION AND SIGNATURES REQUIRED BY THIS SUBDIVISION SHALL BE OBTAINED AND MADE IN ACCORDANCE WITH SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS ARTICLE.

S 8. Subdivision 3 of section 4171 of the public health law is amended to read as follows:

3. All certificates, either of birth or death, shall be written legibly, in durable black ink, [and no] PROVIDED HOWEVER, THAT COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, DEATH CERTIFICATES SHALL BE COMPLETED IN ACCORDANCE WITH SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS ARTICLE. NO certificate, WHETHER FILED IN PAPER FORM OR DEATH CERTIFICATE FILED ELECTRONICALLY IN ACCORDANCE WITH SECTION FORTY-ONE HUNDRED FORTY-EIGHT OF THIS ARTICLE, shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission.

S 9. This act shall take effect immediately; provided, however, that if chapter 153 of the laws of 2011 is not in effect on such date then the amendments made to section 4141-a of the public health law, paragraph (b) of subdivision 2 of section 4144 of the public health law and subdivision 4 of section 4161 of the public health law by sections four, six and seven of this act shall take effect on the same date and same manner as chapter 153 of the laws of 2011, takes effect; provided further that the commissioner of health is authorized to promulgate regulations as necessary to implement the provisions of this act.

PART D

Section 1. The public health law is amended by adding a new section 2823 to read as follows:

S 2823. SUPPORTIVE HOUSING DEVELOPMENT REINVESTMENT PROGRAM. 1. NOTWITHSTANDING SECTIONS ONE HUNDRED TWELVE AND ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW OR SECTIONS ONE HUNDRED FORTY-TWO AND ONE HUNDRED FORTY-THREE OF THE ECONOMIC DEVELOPMENT LAW OR ANY OTHER CONTRARY PROVISION OF LAW, REINVESTMENT FUNDS FOR SUPPORTIVE HOUSING FOR VULNERABLE POPULATIONS SHALL BE ALLOCATED ANNUALLY BY THE COMMISSIONER BASED UPON THE FOLLOWING CRITERIA:

(A) THE EFFICIENCY AND EFFECTIVENESS OF THE USE OF FUNDING FOR THE DEVELOPMENT OF ADEQUATE AND ACCESSIBLE HOUSING TO SUPPORT VULNERABLE PERSONS IN THE COMMUNITY AND TO ENSURE ACCESS TO SUPPORTS NECESSARY TO MAXIMIZE EXPECTED OUTCOMES; AND

(B) OTHER RELEVANT FACTORS RELATING TO THE MAINTENANCE OF EXISTING SUPPORTIVE HOUSING AND THE DEVELOPMENT OF NEW SUPPORTIVE HOUSING AND ASSOCIATED SERVICES.

2. AMOUNTS PROVIDED PURSUANT TO THIS SECTION SHALL BE USED ONLY TO FUND HOUSING DEVELOPMENT ACTIVITIES AND OTHER GENERAL PROGRAMMATIC ACTIVITIES TO HELP ENSURE A STABLE SYSTEM OF SUPPORTIVE HOUSING FOR VULNERABLE PERSONS IN THE COMMUNITY.

3. THE COMMISSIONER IS AUTHORIZED AND EMPOWERED TO MAKE INSPECTIONS AND EXAMINE RECORDS OF ANY ENTITY FUNDED PURSUANT TO SUBDIVISION TWO OF THIS SECTION. SUCH EXAMINATION SHALL INCLUDE ALL MEDICAL, SERVICE AND FINANCIAL RECORDS, RECEIPTS, DISBURSEMENTS, CONTRACTS, LOANS AND OTHER MONEYS RELATING TO THE FINANCIAL OPERATION OF THE PROVIDER.

4. THE AMOUNT OF SUPPORTIVE HOUSING DEVELOPMENT REINVESTMENT FUNDS FOR THE DEPARTMENT SHALL BE ITEMIZED IN THE ANNUAL BUDGET IN AN AMOUNT DETERMINED BY THE COMMISSIONER, SUBJECT TO THE APPROVAL OF THE DIRECTOR OF THE BUDGET. THIS AMOUNT SHALL INCLUDE THE AMOUNT OF GENERAL FUND SAVINGS DIRECTLY RELATED TO INPATIENT HOSPITAL AND NURSING HOME BED DECERTIFICATION AND/OR FACILITY CLOSURE. THE METHODOLOGIES USED TO CALCULATE THE SAVINGS SHALL BE DEVELOPED BY THE COMMISSIONER AND THE DIRECTOR OF THE BUDGET. IN NO EVENT SHALL THE FULL ANNUAL VALUE OF SUPPORTIVE HOUSING DEVELOPMENT REINVESTMENT PROGRAMS ATTRIBUTABLE TO INPATIENT HOSPITAL AND NURSING HOME BED DECERTIFICATION AND/OR FACILITY

CLOSURE EXCEED THE TWELVE MONTH VALUE OF THE DEPARTMENT OF HEALTH GENERAL FUND REDUCTIONS RESULTING FROM SUCH DECERTIFICATION AND/OR FACILITY CLOSURE.

5. THE ANNUAL SUPPORTIVE HOUSING DEVELOPMENT REINVESTMENT APPROPRIATION SHALL REFLECT A PROPORTION OF THE AMOUNT OF GENERAL FUND SAVINGS RESULTING FROM SUBDIVISION FOUR OF THIS SECTION. WITHIN ANY FISCAL YEAR WHERE APPROPRIATION INCREASES ARE RECOMMENDED FOR THE SUPPORTIVE HOUSING DEVELOPMENT REINVESTMENT PROGRAM, INSOFAR AS PROJECTED BED DECERTIFICATION AND/OR FACILITY CLOSURES DO NOT OCCUR AS ESTIMATED, AND GENERAL FUND SAVINGS DO NOT RESULT, THEN THE REINVESTMENT APPROPRIATIONS MAY BE REDUCED IN THE NEXT YEAR'S ANNUAL BUDGET ITEMIZATION.

6. AMOUNTS MADE AVAILABLE TO THE SUPPORTIVE HOUSING DEVELOPMENT REINVESTMENT PROGRAM OF THE DEPARTMENT SHALL BE SUBJECT TO ANNUAL APPROPRIATIONS THEREFOR.

7. NO PROVISION IN THIS SECTION SHALL CREATE OR BE DEEMED TO CREATE ANY RIGHT, INTEREST OR ENTITLEMENT TO SERVICES OR FUNDS THAT ARE SUBJECT TO THIS SECTION, OR TO ANY OTHER SERVICES OR FUNDS, WHETHER TO INDIVIDUALS, LOCALITIES, PROVIDERS OR OTHERS, INDIVIDUALLY OR COLLECTIVELY.

8. ALL APPROPRIATIONS FOR SUPPORTIVE HOUSING DEVELOPMENT SHALL BE ADJUSTED IN THE FOLLOWING FISCAL YEAR TO REFLECT THE VARIANCE BETWEEN THE INITIAL AND REVISED ESTIMATES OF BED DECERTIFICATION AND/OR FACILITY CLOSURE.

9. THE COMMISSIONER SHALL PROMULGATE REGULATIONS, AND MAY PROMULGATE EMERGENCY REGULATIONS, TO EFFECTUATE THE PROVISIONS OF THIS SECTION.

S 2. Paragraph (e) of subdivision 1 of section 461-l of the social services law, as added by chapter 165 of the laws of 1991, is amended to read as follows:

(e) "Services" shall mean all services for which full payment to an assisted living program is included in the capitated rate of payment, which shall include personal care services, home care services and such other services as the commissioner in conjunction with the commissioner of health determine by regulation must be included in the capitated rate of payment, and which the assisted living program shall provide, or arrange for the provision of, through contracts with a social services district, [a] long term home health care [program or a] PROGRAMS, certified home health [agency, and] AGENCIES, AND/OR other qualified providers.

S 3. Paragraphs (b) and (d) of subdivision 2 of section 461-l of the social services law, as added by chapter 165 of the laws of 1991 and subparagraph (iii) of paragraph (d) as amended by chapter 569 of the laws of 2000, are amended to read as follows:

(b) If an assisted living program itself is not a certified home health agency or long term home health care program, the assisted living program shall contract with [a] ONE OR MORE certified home health [agency or] AGENCIES AND/OR long term home health care [program] PROGRAMS for the provision of services pursuant to article thirty-six of the public health law. [An assisted living program shall contract with no more than one certified home health agency or long term home health care program, provided, however, that the commissioner and the commissioner of health may approve additional contracts for good cause.]

(d) Patient services and care. (i) An assisted living program[, or if the assisted living program itself does not include a long term home health care program or certified home health agency an assisted living program and a long term home health care program or certified home health agency,] shall conduct an initial assessment to determine whether a person would otherwise require placement in a residential health care

facility if not for the availability of the assisted living program and is appropriate for admission to an assisted living program. The assisted living program shall forward such assessment of a medical assistance applicant or recipient to the appropriate social services district.

(ii) No person shall be determined eligible for and admitted to an assisted living program unless the assisted living program [and the long term home health care program or the certified home health care agency agree, based on the initial assessment,] FINDS that the person meets the criteria provided in paragraph (d) of subdivision one of this section and unless the appropriate social services district prior authorizes payment for services.

(iii) Appropriate services shall be provided to an eligible person only in accordance with a plan of care which is based upon an initial assessment and periodic reassessments conducted by an assisted living program[, or if the assisted living program itself does not include a long term home health care program or certified home health agency an assisted living program and a long term home health care program or certified home health agency]. A reassessment shall be conducted as frequently as is required to respond to changes in the resident's condition and ensure immediate access to necessary and appropriate services by the resident, but in no event less frequently than once every six months. No person shall be admitted to or retained in an assisted living program unless [the assisted living program, and long term home health care program or certified home health agency are in agreement that] the person can be safely and adequately cared for with the provision of services determined by such assessment or reassessment.

S 4. Paragraph (i) of subdivision 3 of section 461-l of the social services law is REPEALED.

S 5. Intentionally Omitted.

S 6. Subdivision 2 of section 365-a of the social services law is amended by adding four new paragraphs (w), (x), (y) and (z) to read as follows:

(W) PODIATRY SERVICES FOR INDIVIDUALS WITH A DIAGNOSIS OF DIABETES MELLITUS; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS PARAGRAPH SHALL NOT TAKE EFFECT UNLESS ALL NECESSARY APPROVALS UNDER FEDERAL LAW AND REGULATION HAVE BEEN OBTAINED TO RECEIVE FEDERAL FINANCIAL PARTICIPATION IN THE COSTS OF HEALTH CARE SERVICES PROVIDED PURSUANT TO THIS PARAGRAPH.

(X) LACTATION COUNSELING SERVICES FOR PREGNANT AND POSTPARTUM WOMEN WHEN SUCH SERVICES ARE ORDERED BY A PHYSICIAN, REGISTERED PHYSICIAN ASSISTANT, REGISTERED NURSE PRACTITIONER, OR LICENSED MIDWIFE AND PROVIDED BY A CERTIFIED LACTATION CONSULTANT, AS DETERMINED BY THE COMMISSIONER OF HEALTH; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS PARAGRAPH SHALL NOT TAKE EFFECT UNLESS ALL NECESSARY APPROVALS UNDER FEDERAL LAW AND REGULATION HAVE BEEN OBTAINED TO RECEIVE FEDERAL FINANCIAL PARTICIPATION IN THE COSTS OF HEALTH CARE SERVICES PROVIDED PURSUANT TO THIS PARAGRAPH. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO MODIFY ANY LICENSURE, CERTIFICATION OR SCOPE OF PRACTICE PROVISION UNDER TITLE EIGHT OF THE EDUCATION LAW.

(Y) HARM REDUCTION COUNSELING AND SERVICES TO REDUCE OR MINIMIZE THE ADVERSE HEALTH CONSEQUENCES ASSOCIATED WITH DRUG USE, WHEN ORDERED BY A PHYSICIAN, REGISTERED PHYSICIAN ASSISTANT, REGISTERED NURSE PRACTITIONER, OR LICENSED MIDWIFE AND PROVIDED BY A QUALIFIED DRUG TREATMENT PROGRAM OR COMMUNITY-BASED ORGANIZATION, AS DETERMINED BY THE COMMISSIONER OF HEALTH; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS PARAGRAPH SHALL NOT TAKE EFFECT UNLESS ALL NECESSARY APPROVALS UNDER FEDERAL

LAW AND REGULATION HAVE BEEN OBTAINED TO RECEIVE FEDERAL FINANCIAL PARTICIPATION IN THE COSTS OF HEALTH CARE SERVICES PROVIDED PURSUANT TO THIS PARAGRAPH. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO MODIFY ANY LICENSURE, CERTIFICATION OR SCOPE OF PRACTICE PROVISION UNDER TITLE EIGHT OF THE EDUCATION LAW.

(Z) HEPATITIS C WRAP-AROUND SERVICES TO PROMOTE CARE COORDINATION AND INTEGRATION WHEN ORDERED BY A PHYSICIAN, REGISTERED PHYSICIAN ASSISTANT, REGISTERED NURSE PRACTITIONER, OR LICENSED MIDWIFE, AND PROVIDED BY A QUALIFIED PROFESSIONAL, AS DETERMINED BY THE COMMISSIONER OF HEALTH. SUCH SERVICES MAY INCLUDE CLIENT OUTREACH, IDENTIFICATION AND RECRUITMENT, HEPATITIS C EDUCATION AND COUNSELING, COORDINATION OF CARE AND ADHERENCE TO TREATMENT, ASSISTANCE IN OBTAINING APPROPRIATE ENTITLEMENT SERVICES, PEER SUPPORT AND OTHER SUPPORTIVE SERVICES; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS PARAGRAPH SHALL NOT TAKE EFFECT UNLESS ALL NECESSARY APPROVALS UNDER FEDERAL LAW AND REGULATION HAVE BEEN OBTAINED TO RECEIVE FEDERAL FINANCIAL PARTICIPATION IN THE COSTS OF HEALTH CARE SERVICES PROVIDED PURSUANT TO THIS PARAGRAPH. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO MODIFY ANY LICENSURE, CERTIFICATION OR SCOPE OF PRACTICE PROVISION UNDER TITLE EIGHT OF THE EDUCATION LAW.

S 7. Paragraph (g) of subdivision 2 of section 365-a of the social services law, as amended by section 23 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

(g) sickroom supplies, eyeglasses, prosthetic appliances and dental prosthetic appliances furnished in accordance with the regulations of the department; provided further that: (i) the commissioner of health is authorized to implement a preferred diabetic supply program wherein the department of health will receive enhanced rebates from preferred manufacturers of glucometers and test strips, and may subject non-preferred manufacturers' glucometers and test strips to prior authorization under section two hundred seventy-three of the public health law; (ii) enteral formula therapy and nutritional supplements are limited to coverage only for nasogastric, jejunostomy, or gastrostomy tube feeding or for treatment of an inborn metabolic disorder, or to address growth and development problems in children, OR, SUBJECT TO STANDARDS ESTABLISHED BY THE COMMISSIONER, FOR PERSONS WITH A DIAGNOSIS OF HIV INFECTION, AIDS OR HIV-RELATED ILLNESS; (iii) prescription footwear and inserts are limited to coverage only when used as an integral part of a lower limb orthotic appliance, as part of a diabetic treatment plan, or to address growth and development problems in children; and (iv) compression and support stockings are limited to coverage only for pregnancy or treatment of venous stasis ulcers;

S 8. Intentionally Omitted.

S 9. Intentionally Omitted.

S 10. Paragraph (d) of subdivision 2 of section 3332 of the public health law, as amended by chapter 178 of the laws of 2010, is amended and a new paragraph (e) is added to read as follows:

(d) the date upon which such prescription was actually signed by the prescribing practitioner[.]; AND

(E) IF THE PATIENT IS A LIMITED ENGLISH PROFICIENT INDIVIDUAL, AS DEFINED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THIS CHAPTER, INDICATION OF SUCH STATUS AND INDICATION OF THE PATIENT'S PRIMARY LANGUAGE.

S 11. Section 3333 of the public health law is amended by adding a new subdivision 6 to read as follows:

6. IF THE PHARMACIST KNOWS OR HAS REASON TO KNOW THAT THE PATIENT IS A LIMITED ENGLISH PROFICIENT INDIVIDUAL, AS DEFINED IN SECTION THREE THOU-

SAND THREE HUNDRED NINETY-EIGHT-A OF THIS CHAPTER, THE PHARMACIST SHALL PROVIDE FOR TRANSLATION OR OTHER LANGUAGE SERVICES AS REQUIRED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THIS CHAPTER, UNLESS DOING SO WOULD COMPROMISE THE CARE OF THE PATIENT.

S 12. Paragraphs (b) and (c) of subdivision 1 of section 3334 of the public health law, as amended by chapter 178 of the laws of 2010, are amended and a new paragraph (d) is added to read as follows:

(b) dispense the substance in conformity with the labeling requirements applicable to the type of prescription which would be required but for the emergency; [and]

(c) make a good faith effort to verify the practitioner's identity, if the practitioner is unknown to the pharmacist[.]; AND

(D) IF THE PHARMACIST KNOWS OR HAS REASON TO KNOW THAT THE PATIENT IS A LIMITED ENGLISH PROFICIENT INDIVIDUAL, AS DEFINED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THIS CHAPTER, THE PHARMACIST SHALL PROVIDE FOR TRANSLATION OR OTHER LANGUAGE SERVICES AS REQUIRED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THIS CHAPTER, UNLESS DOING SO WOULD COMPROMISE THE CARE OF THE PATIENT.

S 13. Subdivision 1 of section 3337 of the public health law is amended by adding a new paragraph (d) to read as follows:

(D) IF THE PHARMACIST KNOWS OR HAS REASON TO KNOW THAT THE PATIENT IS A LIMITED ENGLISH PROFICIENT INDIVIDUAL, AS DEFINED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THIS CHAPTER, THE PHARMACIST SHALL PROVIDE FOR TRANSLATION OR OTHER LANGUAGE SERVICES AS REQUIRED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THIS CHAPTER, UNLESS DOING SO WOULD COMPROMISE THE CARE OF THE PATIENT.

S 14. Subdivision 1 of section 3338 of the public health law, as amended by section 12 of part A of chapter 58 of the laws of 2004, is amended to read as follows:

1. Official New York state prescription forms shall be prepared and issued by the department in the FORMAT, manner and detail as the commissioner in consultation with the commissioner of education may, by regulation, require, and, each form shall be serialized. Such forms shall be furnished to practitioners authorized to write such prescriptions and to institutional dispensers. Such prescription blanks shall not be transferable.

S 15. Subdivision b of section 6804 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

b. To regulate and control the sale, distribution, character and standard of drugs, poisons, cosmetics, devices and new drugs, INCLUDING, BUT NOT LIMITED TO, IN CONJUNCTION WITH THE COMMISSIONER OF HEALTH, THE DEVELOPMENT OF REQUIREMENTS RELATED TO THE SALE, DISTRIBUTION, AND DISPENSING OF DRUGS AND NEW DRUGS TO ADDRESS THE SPECIAL NEEDS OF PERSONS WHO ARE ELDERLY, OF LIMITED VISION OR OF LIMITED ENGLISH PROFICIENCY,

S 16. Section 6810 of the education law is amended by adding three new subdivisions 10, 11 and 12 to read as follows:

10. COVERED PHARMACIES, AS DEFINED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THE PUBLIC HEALTH LAW, MUST PROVIDE TRANSLATION AND INTERPRETATION SERVICES FOR PATIENTS HAVING LIMITED PROFICIENCY IN ENGLISH, SUBJECT TO REGULATIONS OF THE COMMISSIONER AND THE PROVISIONS OF SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THE PUBLIC HEALTH LAW.

11. IF THE PATIENT IS LIMITED ENGLISH PROFICIENT, AS DEFINED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THE PUBLIC HEALTH

LAW, INDICATION OF SUCH STATUS AND INDICATION OF THE PATIENT'S PRIMARY LANGUAGE.

12. IF THE PHARMACIST KNOWS OR HAS REASON TO KNOW THAT THE PATIENT IS OF LIMITED ENGLISH PROFICIENCY, AS DEFINED IN SECTION THREE THOUSAND THREE HUNDRED NINETY-EIGHT-A OF THE PUBLIC HEALTH LAW, THE PHARMACIST SHALL PROVIDE FOR TRANSLATION OR OTHER LANGUAGE SERVICES AS REQUIRED IN SUCH SECTION, UNLESS DOING SO WOULD COMPROMISE THE CARE OF THE PATIENT.

S 17. The public health law is amended by adding a new article 33-B to read as follows:

ARTICLE 33-B

STANDARDS FOR PRESCRIPTION MEDICATIONS

SECTION 3398. APPLICATION.

3398-A. INTERPRETATION REQUIREMENTS FOR PRESCRIPTION DRUGS.

S 3398. APPLICATION. THIS ARTICLE APPLIES TO MEDICATIONS PRESCRIBED BY PRACTITIONERS AUTHORIZED TO PRESCRIBE MEDICATIONS, INCLUDING BUT NOT LIMITED TO CONTROLLED SUBSTANCES, PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW; PROVIDED, HOWEVER, THAT TO THE EXTENT THERE IS ANY CONFLICT BETWEEN THE PROVISIONS OF THIS ARTICLE AND THE PROVISIONS OF ARTICLE THIRTY-THREE OF THIS TITLE WITH RESPECT TO PRESCRIPTIONS FOR CONTROLLED SUBSTANCES, THE PROVISIONS OF ARTICLE THIRTY-THREE OF THIS TITLE SHALL CONTROL.

S 3398-A. INTERPRETATION REQUIREMENTS FOR PRESCRIPTION DRUGS. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "COVERED PHARMACY" MEANS ANY PHARMACY THAT IS PART OF A GROUP OF FIVE OR MORE PHARMACIES OWNED BY THE SAME CORPORATE ENTITY, OR WHICH IS A MAIL ORDER PHARMACY. FOR PURPOSES OF THIS SECTION, "CORPORATE ENTITY" SHALL INCLUDE RELATED SUBSIDIARIES, AFFILIATES, SUCCESSORS, OR ASSIGNEES DOING BUSINESS AS OR OPERATING UNDER A COMMON NAME OR TRADING SYMBOL;

(B) "LIMITED ENGLISH PROFICIENT INDIVIDUAL" OR "LEP INDIVIDUAL" MEANS AN INDIVIDUAL WHO IDENTIFIES AS BEING, OR IS EVIDENTLY, UNABLE TO SPEAK, READ OR WRITE ENGLISH AT A LEVEL THAT PERMITS SUCH INDIVIDUAL TO UNDERSTAND HEALTH RELATED AND PHARMACEUTICAL INFORMATION COMMUNICATED IN ENGLISH;

(C)"TRANSLATE" SHALL MEAN THE CONVERSION OF A WRITTEN TEXT FROM ONE LANGUAGE INTO AN EQUIVALENT WRITTEN TEXT IN ANOTHER LANGUAGE BY AN INDIVIDUAL COMPETENT TO DO SO AND UTILIZING ALL NECESSARY PHARMACEUTICAL AND HEALTH-RELATED TERMINOLOGY;

(D) "COMPETENT ORAL INTERPRETATION" MEANS ORAL COMMUNICATION IN WHICH A PERSON ACTING AS AN INTERPRETER COMPREHENDS A SPOKEN MESSAGE AND RE-EXPRESSES THAT MESSAGE ACCURATELY IN ANOTHER LANGUAGE, UTILIZING ALL NECESSARY PHARMACEUTICAL AND HEALTH-RELATED TERMINOLOGY, SO AS TO ENABLE AN LEP INDIVIDUAL TO RECEIVE ALL NECESSARY INFORMATION IN THE LEP INDIVIDUAL'S PRIMARY LANGUAGE;

(E) "PHARMACY PRIMARY LANGUAGES" SHALL MEAN THE TOP SEVEN LANGUAGES SPOKEN BY LEP INDIVIDUALS IN THIS STATE AS DETERMINED BIENNIALLY BY THE STATE BOARD OF PHARMACY BASED ON DATA FROM THE MOST RECENT AMERICAN COMMUNITY SURVEY FROM THE UNITED STATES CENSUS BUREAU AND OTHER RELEVANT DATA SOURCES;

(F) "MAIL ORDER PHARMACY" SHALL MEAN A PHARMACY THAT DISPENSES MOST OF ITS PRESCRIPTIONS THROUGH THE UNITED STATES POSTAL SERVICE OR OTHER DELIVERY SERVICES.

2. (A) EVERY COVERED PHARMACY SHALL PROVIDE FREE, COMPETENT ORAL AND WRITTEN INTERPRETATION SERVICES, TO EACH LEP INDIVIDUAL FILLING A PRESCRIPTION AT OR THROUGH SUCH COVERED PHARMACY, IN THE LEP INDIVIDUAL'S PRIMARY LANGUAGE FOR THE PURPOSE OF COUNSELING SUCH INDIVIDUAL

ABOUT HIS OR HER PRESCRIPTION MEDICATIONS AND INTERPRETING LABEL INFORMATION, OR WHEN SOLICITING INFORMATION NECESSARY TO MAINTAIN A PATIENT MEDICATION PROFILE, UNLESS THE LEP INDIVIDUAL IS OFFERED AND REFUSES SUCH SERVICES;

(B) EVERY COVERED PHARMACY SHALL PROVIDE FREE, COMPETENT ORAL INTERPRETATION OF PRESCRIPTION MEDICATION LABELS, WARNING LABELS AND OTHER WRITTEN MATERIAL TO EACH LEP INDIVIDUAL FILLING A PRESCRIPTION AT OR THROUGH SUCH COVERED PHARMACY UNLESS THE LEP INDIVIDUAL IS OFFERED AND REFUSES SUCH SERVICES, OR THE MEDICATION LABEL WARNING LABELS AND OTHER WRITTEN MATERIALS HAVE ALREADY BEEN TRANSLATED INTO THE LANGUAGE SPOKEN BY THE LEP INDIVIDUAL;

(C) THE SERVICES REQUIRED BY THIS SECTION MAY BE PROVIDED BY A STAFF MEMBER OF THE COVERED PHARMACY OR A THIRD-PARTY CONTRACTOR. SUCH SERVICES MUST BE PROVIDED ON AN IMMEDIATE BASIS BUT NEED NOT BE PROVIDED IN-PERSON OR FACE-TO-FACE.

3. EVERY COVERED PHARMACY SHALL CONSPICUOUSLY POST, AT OR ADJACENT TO EACH COUNTER OVER WHICH PRESCRIPTION DRUGS ARE SOLD, AND EVERY MAIL ORDER PHARMACY, SHALL INCLUDE IN THE PACKAGE IN WHICH PRESCRIPTION DRUGS ARE DELIVERED, A NOTIFICATION OF THE RIGHT TO FREE LANGUAGE ASSISTANCE SERVICES FOR LEP INDIVIDUALS AS PROVIDED FOR IN SUBDIVISION TWO OF THIS SECTION. SUCH NOTIFICATIONS SHALL BE PROVIDED IN THE PHARMACY PRIMARY LANGUAGES. THE SIZE, STYLE AND PLACEMENT OF SUCH NOTICE SHALL BE DETERMINED IN ACCORDANCE WITH RULES PROMULGATED BY THE COMMISSIONER.

4. ANY PERSON AGGRIEVED BY A FAILURE TO RECEIVE SERVICES REQUIRED BY THIS SECTION SHALL HAVE A CAUSE OF ACTION ONLY AGAINST THE COVERED PHARMACY IN ANY COURT OF COMPETENT JURISDICTION FOR DAMAGES, INCLUDING PUNITIVE DAMAGES, AND FOR INJUNCTIVE RELIEF AND SUCH OTHER REMEDIES AS MAY BE APPROPRIATE.

5. THIS SECTION SHALL PREEMPT ANY CONTRARY LOCAL LAW OR ORDINANCE, EXCEPT THAT THIS SECTION SHALL NOT PREEMPT OR SUPERSEDE LOCAL LAWS OR ORDINANCES IMPOSING ADDITIONAL OR STRICTER REQUIREMENTS RELATING TO INTERPRETATION OR TRANSLATION SERVICES IN PHARMACIES.

S 18. Section 6509 of the education law is amended by adding a new subdivision 15 to read as follows:

(15) A VIOLATION OF SUBDIVISION TWO OR THREE OF SECTION THIRTY-THREE HUNDRED NINETY-EIGHT-A OF THE PUBLIC HEALTH LAW, BUT ONLY AS TO A PHARMACY AND NOT AS TO AN INDIVIDUAL LICENSED PHARMACIST.

S 19. Subdivisions (f) and (g) of section 2522 of the public health law, as amended by chapter 484 of the laws of 2009, are amended and a new subdivision (h) is added to read as follows:

(f) follow-up of patient participation in prenatal care services; [and]

(g) identification of regional perinatal health care system barriers and limitations that lead to poor perinatal outcomes and development of strategies to address such barriers and limitations[.]; AND

(H) COORDINATION OF SERVICE DELIVERY BY COMMUNITY-BASED ORGANIZATIONS AMONG HEALTH CARE PROVIDERS AND HEALTH PLANS USING HEALTH INFORMATION TECHNOLOGY AND UNIFORM SCREENING CRITERIA FOR PERINATAL RISK.

S 20. Intentionally Omitted.

S 21. Intentionally Omitted.

S 22. Section 366 of the social services law is amended by adding a new subdivision 15 to read as follows:

15. (A) THE COMMISSIONER MAY CONTRACT WITH ONE OR MORE ENTITIES TO ENGAGE IN EDUCATION, OUTREACH SERVICES, AND FACILITATED ENROLLMENT ACTIVITIES FOR AGED, BLIND, AND DISABLED PERSONS WHO MAY BE ELIGIBLE FOR COVERAGE UNDER THIS TITLE.

(B) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SECTIONS ONE HUNDRED TWELVE AND ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW, OR SECTIONS ONE HUNDRED FORTY-TWO AND ONE HUNDRED FORTY-THREE OF THE ECONOMIC DEVELOPMENT LAW, OR ANY OTHER CONTRARY PROVISION OF LAW, THE COMMISSIONER IS AUTHORIZED TO ENTER INTO A CONTRACT OR CONTRACTS UNDER THIS SUBDIVISION WITHOUT A COMPETITIVE BID OR REQUEST FOR PROPOSAL PROCESS, PROVIDED, HOWEVER, THAT:

(I) THE DEPARTMENT SHALL POST ON ITS WEBSITE, FOR A PERIOD OF NO LESS THAN THIRTY DAYS:

(1) A DESCRIPTION OF THE PROPOSED SERVICES TO BE PROVIDED PURSUANT TO THE CONTRACT OR CONTRACTS;

(2) THE CRITERIA FOR SELECTION OF A CONTRACTOR OR CONTRACTORS;

(3) THE PERIOD OF TIME DURING WHICH A PROSPECTIVE CONTRACTOR MAY SEEK SELECTION, WHICH SHALL BE NO LESS THAN THIRTY DAYS AFTER SUCH INFORMATION IS FIRST POSTED ON THE WEBSITE; AND

(4) THE MANNER BY WHICH A PROSPECTIVE CONTRACTOR MAY SEEK SUCH SELECTION, WHICH MAY INCLUDE SUBMISSION BY ELECTRONIC MEANS;

(II) ALL REASONABLE AND RESPONSIVE SUBMISSIONS THAT ARE RECEIVED FROM PROSPECTIVE CONTRACTORS IN TIMELY FASHION SHALL BE REVIEWED BY THE COMMISSIONER; AND

(III) THE COMMISSIONER SHALL SELECT SUCH CONTRACTOR OR CONTRACTORS THAT, IN HIS OR HER DISCRETION, ARE BEST SUITED TO SERVE THE PURPOSES OF THIS SUBDIVISION.

S 23. The public health law is amended by adding a new article 9-B to read as follows:

ARTICLE 9-B

PRIMARY CARE SERVICE CORPS PRACTITIONER LOAN REPAYMENT PROGRAM

SECTION 923. DEFINITIONS.
924. PRIMARY CARE SERVICE CORPS PRACTITIONER LOAN REPAYMENT PROGRAM.

S 923. DEFINITIONS. THE FOLLOWING WORDS OR PHRASES AS USED IN THIS SECTION SHALL HAVE THE FOLLOWING MEANINGS:

1. "UNDERSERVED AREA" MEANS AN AREA OR MEDICALLY UNDERSERVED POPULATION DESIGNATED BY THE COMMISSIONER AS HAVING A SHORTAGE OF PRIMARY CARE PHYSICIANS, OTHER PRIMARY CARE PRACTITIONERS, DENTAL PRACTITIONERS OR MENTAL HEALTH PRACTITIONERS.

2. "PRIMARY CARE SERVICE CORPS PRACTITIONER" MEANS A PHYSICIAN ASSISTANT, NURSE PRACTITIONER, NURSE MIDWIFE, GENERAL OR PEDODONTIC DENTIST, DENTAL HYGIENIST, CLINICAL PSYCHOLOGIST, LICENSED CLINICAL SOCIAL WORKER, PSYCHIATRIC NURSE PRACTITIONER, LICENSED MARRIAGE AND FAMILY THERAPIST, OR A LICENSED MENTAL HEALTH COUNSELOR, WHO IS LICENSED, REGISTERED, OR CERTIFIED TO PRACTICE IN NEW YORK STATE AND WHO PROVIDES COORDINATED PRIMARY CARE SERVICES, INCLUDING, BUT NOT LIMITED TO, ORAL HEALTH AND MENTAL HEALTH SERVICES.

3. "PHYSICIAN ASSISTANT" MEANS A PERSON WHO HAS BEEN REGISTERED AS SUCH PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE-B OF THE EDUCATION LAW.

4. "NURSE PRACTITIONER" MEANS A PERSON WHO HAS BEEN CERTIFIED AS SUCH PURSUANT TO SECTION SIXTY-NINE HUNDRED TEN OF THE EDUCATION LAW.

5. "NURSE MIDWIFE" MEANS A PERSON WHO HAS BEEN LICENSED AS SUCH PURSUANT TO SECTION SIXTY-NINE HUNDRED FIFTY-FIVE OF THE EDUCATION LAW.

6. "PSYCHOLOGIST" MEANS A PERSON WHO HAS BEEN LICENSED AS SUCH PURSUANT TO SECTION SEVENTY-SIX HUNDRED THREE OF THE EDUCATION LAW.

7. "LICENSED CLINICAL SOCIAL WORKER" MEANS A PERSON WHO HAS BEEN LICENSED AS SUCH PURSUANT TO SECTION SEVENTY-SEVEN HUNDRED TWO OF THE EDUCATION LAW.

8. "PSYCHIATRIC NURSE PRACTITIONER" MEANS A NURSE PRACTITIONER WHO, BY REASON OF TRAINING AND EXPERIENCE, PROVIDES A FULL SPECTRUM OF PSYCHIATRIC CARE, ASSESSING, DIAGNOSING, AND MANAGING THE PREVENTION AND TREATMENT OF PSYCHIATRIC DISORDERS AND MENTAL HEALTH PROBLEMS.

9. "LICENSED MARRIAGE AND FAMILY THERAPIST" MEANS A PERSON WHO HAS BEEN LICENSED AS SUCH PURSUANT TO SECTION EIGHTY-FOUR HUNDRED THREE OF THE EDUCATION LAW.

10. "LICENSED MENTAL HEALTH COUNSELOR" MEANS A PERSON WHO HAS BEEN LICENSED AS SUCH PURSUANT TO SECTION EIGHTY-FOUR HUNDRED TWO OF THE EDUCATION LAW.

11. "GENERAL OR PEDODONTIC DENTIST" MEANS A PERSON WHO HAS BEEN LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE DENTISTRY PURSUANT TO ARTICLE ONE HUNDRED THIRTY-THREE OF THE EDUCATION LAW EXCLUDING ORTHODONTISTS, ENDODONTISTS AND PERIODONTISTS.

12. "DENTAL HYGIENIST" MEANS A PERSON WHO IS LICENSED TO PRACTICE DENTAL HYGIENE PURSUANT TO SECTION SIXTY-SIX HUNDRED NINE OF THE EDUCATION LAW.

S 924. PRIMARY CARE SERVICE CORPS PRACTITIONER LOAN REPAYMENT PROGRAM. 1. THE COMMISSIONER IS AUTHORIZED, WITHIN AMOUNTS AVAILABLE THEREFOR, TO MAKE LOAN REPAYMENT AWARDS TO ELIGIBLE PRIMARY CARE SERVICE CORPS PRACTITIONERS WHO AGREE TO PRACTICE FULL-TIME IN AN UNDERSERVED AREA IN NEW YORK STATE, IN AMOUNTS TO BE DETERMINED BY THE COMMISSIONER, BUT NOT TO EXCEED THIRTY-TWO THOUSAND DOLLARS PER YEAR FOR ANY YEAR IN WHICH SUCH PRACTITIONERS PROVIDE FULL-TIME ELIGIBLE OBLIGATED SERVICE.

2. LOAN REPAYMENT AWARDS MADE TO A PRIMARY CARE SERVICE CORPS PRACTITIONER PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL NOT EXCEED THE TOTAL QUALIFYING OUTSTANDING DEBT OF THE PRACTITIONER FROM STUDENT LOANS TO COVER TUITION AND OTHER RELATED EDUCATIONAL EXPENSES, MADE BY OR GUARANTEED BY THE FEDERAL OR STATE GOVERNMENT, OR MADE BY A LENDING OR EDUCATIONAL INSTITUTION APPROVED UNDER TITLE IV OF THE FEDERAL HIGHER EDUCATION ACT. LOAN REPAYMENT AWARDS SHALL BE USED SOLELY TO REPAY SUCH OUTSTANDING DEBT.

3. IN THE EVENT THAT ANY COMMITMENT PURSUANT TO THE AGREEMENT REFERENCED IN SUBDIVISION ONE OF THIS SECTION IS NOT FULFILLED, THE RECIPIENT SHALL BE RESPONSIBLE FOR REPAYMENT IN AMOUNTS WHICH SHALL BE CALCULATED IN ACCORDANCE WITH THE FORMULA SET FORTH IN SUBDIVISION (B) OF SECTION TWO HUNDRED FIFTY-FOUR-O OF TITLE FORTY-TWO OF THE UNITED STATES CODE, AS AMENDED.

4. THE COMMISSIONER IS AUTHORIZED TO APPLY ANY FUNDS AVAILABLE FOR PURPOSES OF SUBDIVISION ONE OF THIS SECTION FOR USE AS MATCHING FUNDS FOR ANY AVAILABLE FEDERAL GRANTS FOR THE PURPOSE OF ASSISTING STATES IN OPERATING LOAN REPAYMENT PROGRAMS.

5. THE COMMISSIONER MAY POSTPONE, CHANGE OR WAIVE THE SERVICE OBLIGATION AND REPAYMENTS AMOUNTS SET FORTH IN SUBDIVISIONS ONE AND THREE OF THIS SECTION, RESPECTIVELY, IN INDIVIDUAL CIRCUMSTANCES WHERE THERE IS COMPELLING NEED OR HARDSHIP.

6. IN ORDER TO BE ELIGIBLE TO RECEIVE A LOAN REPAYMENT AWARD UNDER THIS SECTION, A PRIMARY CARE SERVICE CORPS PRACTITIONER MUST MEET SITE AND SERVICE ELIGIBILITY CRITERIA AS DETERMINED BY THE COMMISSIONER.

7. THE COMMISSIONER SHALL PROMULGATE REGULATIONS NECESSARY TO EFFECTUATE THE PROVISIONS AND PURPOSES OF THIS ARTICLE.

S 24. Paragraph (a) of subdivision 4 of section 2801-a of the public health law, as amended by section 57 of part A of chapter 58 of the laws of 2010, is amended to read as follows:

(a) Any change in the person who is the operator of a hospital shall be approved by the public health and health planning council in accord-

ance with the provisions of subdivisions two and three of this section. NO CHANGE IN THE DIRECTORS OF A NOT-FOR-PROFIT CORPORATION THAT IS THE OPERATOR OF A HOSPITAL SHALL BE EFFECTIVE UNLESS, AT LEAST ONE HUNDRED TWENTY DAYS PRIOR TO THE INTENDED EFFECTIVE DATE THEREOF, THE CORPORATION FULLY COMPLETES AND FILES WITH THE DEPARTMENT NOTICE ON A FORM, TO BE DEVELOPED BY THE DEPARTMENT, WHICH SHALL DISCLOSE SUCH INFORMATION AS MAY REASONABLY BE NECESSARY FOR THE DEPARTMENT TO DETERMINE WHETHER IT SHOULD BAR THE CHANGE IN DIRECTORS. Notwithstanding any inconsistent provision of this paragraph, any change by a natural person who is the operator of a hospital seeking to transfer part of his or her interest in such hospital to another person or persons so as to create a partnership shall be approved in accordance with the provisions of paragraph (b) of this subdivision.

S 25. Section 2806 of the public health law is amended by adding a new subdivision 2-a to read as follows:

2-A. (A) THE COMMISSIONER MAY TEMPORARILY SUSPEND OR LIMIT AN OPERATING CERTIFICATE OF A NOT-FOR-PROFIT CORPORATION WITHOUT A HEARING UPON: (I) THE COMMENCEMENT BY THE DEPARTMENT OF AN ACTION TO REVOKE, SUSPEND, LIMIT OR ANNUL THE OPERATING CERTIFICATE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION DUE TO REPEATED VIOLATIONS OF THIS ARTICLE OR RULES AND REGULATIONS PROMULGATED THEREUNDER; (II) THE INDICTMENT ON FELONY CHARGES OF ANY MEMBER OF THE CORPORATION'S BOARD OF DIRECTORS OR (III) NOTICE FROM THE ATTORNEY GENERAL OF AN ACTION TO REMOVE ANY MEMBER OF THE CORPORATION'S BOARD OF DIRECTORS PURSUANT TO PARAGRAPH (D) OF SECTION SEVEN HUNDRED SIX OF THE NOT-FOR-PROFIT CORPORATION LAW. SUCH SUSPENSION OR LIMITATION OF THE OPERATING CERTIFICATE SHALL REMAIN EFFECTIVE UNTIL THE RESOLUTION OF THE CRIMINAL ACTION THAT IS THE SUBJECT OF THE INDICTMENT OR UNTIL THE RESOLUTION OF THE ACTION OF THE ATTORNEY GENERAL, AS APPLICABLE.

(B) IN THE EVENT ONE OR MORE MEMBERS OF A BOARD OF DIRECTORS OF A NOT-FOR-PROFIT CORPORATION ARE THE SUBJECT OF AN ACTION TO LIMIT AN OPERATING CERTIFICATE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, HAVE BEEN INDICTED ON FELONY CHARGES, OR ARE THE SUBJECT OF AN ACTION FOR REMOVAL BY THE ATTORNEY GENERAL AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE COMMISSIONER MAY, IN ADDITION TO HIS OR HER OTHER POWERS, LIMIT THE EXISTING OPERATING CERTIFICATE OF SUCH CORPORATION SO THAT IT SHALL APPLY ONLY TO THE REMAINING MEMBERS OF THE BOARD OF DIRECTORS PROVIDED THAT: (I) EVERY SUCH PERSON SUBJECT TO AN ACTION TO LIMIT THE OPERATING CERTIFICATE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, EVERY SUCH INDICTED PERSON, OR EVERY SUCH PERSON SUBJECT TO AN ACTION FOR REMOVAL SHALL IMMEDIATELY AND COMPLETELY CEASE AND WITHDRAW FROM PARTICIPATION, IN ANY CAPACITY, IN THE MANAGEMENT, GOVERNANCE OR OPERATION OF THE HOSPITAL; AND (II) THE COMMISSIONER HAS FOUND THAT THE REMAINING MEMBERS OF THE BOARD OF DIRECTORS ARE OF SUCH CHARACTER, EXPERIENCE, COMPETENCE AND STANDING SO AS TO GIVE REASONABLE ASSURANCE OF THEIR ABILITY TO CONDUCT THE AFFAIRS OF THE CORPORATION IN ITS BEST INTERESTS AND IN THE PUBLIC INTEREST. IF THE CONDITIONS SET FORTH IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH ARE NOT MET, OR IF THE LIMITATION OF THE OPERATING CERTIFICATE UNDER THIS PARAGRAPH RESULTS IN A BOARD OF DIRECTORS OF LESS THAN THREE MEMBERS, THE COMMISSIONER SHALL TEMPORARILY SUSPEND THE OPERATING CERTIFICATE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION.

(C) WHERE THE COMMISSIONER HAS FOUND THAT THE SUSPENSION OR LIMITATION OF A HOSPITAL OPERATING CERTIFICATE PURSUANT TO THIS SECTION WOULD JEOPARDIZE EXISTING OR CONTINUED ACCESS TO NECESSARY SERVICES WITHIN THE COMMUNITY, THE COMMISSIONER MAY APPOINT TEMPORARY MEMBERS OF THE BOARD

OF DIRECTORS TO OPERATE AND MANAGE THE HOSPITAL DURING THE TERM OF THE SUSPENSION.

S 26. Paragraphs (a) and (b) of subdivision 5 of section 2806 of the public health law, paragraph (a) as amended by section 20 of part LL of chapter 56 of the laws of 2010 and paragraph (b) as amended by chapter 607 of the laws of 1981, are amended to read as follows:

(a) Except as provided in paragraphs (b) and (d) of this subdivision, anything contained in this section or in a certificate of relief from disabilities or a certificate of good conduct issued pursuant to article twenty-three of the correction law to the contrary notwithstanding, a hospital operating certificate of a hospital under control of a controlling person as defined in paragraph (a) of subdivision twelve of section twenty-eight hundred one-a of this article, or under control of any other entity, shall be revoked upon a finding by the department that such controlling person or any individual, member of a partnership, MEMBER OF A LIMITED LIABILITY COMPANY, MEMBER OF A BOARD OF DIRECTORS, or shareholder of a corporation to whom or to which an operating certificate has been issued, has been convicted of a class A, B or C felony, or a felony related in any way to any activity or program subject to the regulations, supervision, or administration of the department or of the office of temporary and disability assistance or in violation of the public officers law in a court of competent jurisdiction in the state, or of a crime outside the state which, if committed within the state, would have been a class A, B or C felony or a felony related in any way to any activity or program subject to the regulations, supervision, or administration of the department or of the office of temporary and disability assistance or in violation of the public officers law.

(b) In the event one or more members of a partnership, MEMBER OF A LIMITED LIABILITY COMPANY, MEMBER OF A BOARD OF DIRECTORS, or shareholders of a corporation shall have been convicted of a felony as described in paragraph (a) of this subdivision, the commissioner shall, in addition to his other powers, limit the existing operating certificate of such partnership or corporation so that it shall apply only to the remaining partner, MEMBER OF A LIMITED LIABILITY COMPANY, MEMBER OF A BOARD OF DIRECTORS, or shareholders, as the case may be, provided that every such convicted person immediately and completely ceases and withdraws from participation, IN ANY CAPACITY, in the management and operation of the hospital, and further provided that an application for approval of change of ownership, CHANGE OF BOARD MEMBERSHIP, or transfer of stock is filed without delay in accordance with the pertinent provisions of section twenty-eight hundred one-a of this [chapter] ARTICLE.

S 27. The public health law is amended by adding a new section 2806-a to read as follows:

S 2806-A. TEMPORARY OPERATOR. 1. FOR THE PURPOSES OF THIS SECTION: (A) THE TERM "ADULT CARE FACILITY" SHALL MEAN AN ADULT HOME OR ENRICHED HOUSING PROGRAM LICENSED PURSUANT TO ARTICLE SEVEN OF THE SOCIAL SERVICES LAW OR AN ASSISTED LIVING RESIDENCE LICENSED PURSUANT TO ARTICLE FORTY-SIX-B OF THIS CHAPTER; (B) THE TERM "ESTABLISHED OPERATOR" SHALL MEAN THE OPERATOR OF AN ADULT CARE FACILITY, A GENERAL HOSPITAL OR A DIAGNOSTIC AND TREATMENT CENTER THAT HAS BEEN ESTABLISHED AND ISSUED AN OPERATING CERTIFICATE AS SUCH PURSUANT TO THIS ARTICLE; (C) THE TERM "FACILITY" SHALL MEAN (I) A GENERAL HOSPITAL OR A DIAGNOSTIC AND TREATMENT CENTER THAT HAS BEEN ISSUED AN OPERATING CERTIFICATE AS SUCH PURSUANT TO THIS ARTICLE; OR (II) AN ADULT CARE FACILITY; AND (D) THE TERM "TEMPORARY OPERATOR" SHALL MEAN ANY PERSON OR ENTITY THAT:

(I) AGREES TO OPERATE A FACILITY ON A TEMPORARY BASIS IN THE BEST INTERESTS OF ITS RESIDENTS OR PATIENTS AND THE COMMUNITY SERVED BY THE FACILITY; AND

(II) HAS DEMONSTRATED THAT HE OR SHE HAS THE CHARACTER, COMPETENCE AND FINANCIAL ABILITY TO OPERATE THE FACILITY IN COMPLIANCE WITH APPLICABLE STANDARDS.

2. (A) WHEN A STATEMENT OF DEFICIENCIES HAS BEEN ISSUED BY THE DEPARTMENT AND UPON A DETERMINATION BY THE COMMISSIONER THAT THERE EXIST SIGNIFICANT MANAGEMENT FAILURES, INCLUDING BUT NOT LIMITED TO ADMINISTRATIVE, OPERATIONAL OR CLINICAL DEFICIENCIES OR FINANCIAL INSTABILITY, IN A FACILITY THAT (I) SERIOUSLY ENDANGER THE LIFE, HEALTH OR SAFETY OF RESIDENTS OR PATIENTS OR (II) JEOPARDIZE EXISTING OR CONTINUED ACCESS TO NECESSARY SERVICES WITHIN THE COMMUNITY, HE OR SHE SHALL APPOINT A TEMPORARY OPERATOR TO ASSUME SOLE CONTROL OVER AND SOLE RESPONSIBILITY FOR THE OPERATIONS OF THAT FACILITY. THE APPOINTMENT OF A TEMPORARY OPERATOR SHALL BE IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW.

(B) THE ESTABLISHED OPERATOR OF A FACILITY MAY AT ANY TIME REQUEST THE COMMISSIONER TO APPOINT A TEMPORARY OPERATOR. UPON RECEIVING SUCH A REQUEST, THE COMMISSIONER MAY, IF HE OR SHE DETERMINES THAT SUCH AN ACTION IS NECESSARY TO RESTORE OR MAINTAIN THE PROVISION OF QUALITY CARE TO THE RESIDENTS OR PATIENTS, ENTER INTO AN AGREEMENT WITH THE ESTABLISHED OPERATOR FOR THE APPOINTMENT OF A TEMPORARY OPERATOR TO ASSUME SOLE CONTROL OVER AND SOLE RESPONSIBILITY FOR THE OPERATIONS OF THAT FACILITY.

3. A TEMPORARY OPERATOR APPOINTED PURSUANT TO THIS SECTION SHALL USE HIS OR HER BEST EFFORTS TO CORRECT OR ELIMINATE ANY DEFICIENCIES, MANAGEMENT FAILURES OR FINANCIAL INSTABILITY IN THE FACILITY AND TO PROMOTE THE QUALITY AND ACCESSIBILITY OF HEALTH CARE SERVICES IN THE COMMUNITY SERVED BY THE FACILITY. SUCH CORRECTION OR ELIMINATION OF DEFICIENCIES, MANAGEMENT FAILURES OR FINANCIAL INSTABILITY SHALL NOT INCLUDE MAJOR ALTERATIONS OF THE PHYSICAL STRUCTURE OF THE FACILITY. DURING THE TERM OF HIS OR HER APPOINTMENT, THE TEMPORARY OPERATOR SHALL HAVE THE AUTHORITY TO DIRECT THE MANAGEMENT OF THE FACILITY IN ALL ASPECTS OF OPERATION AND SHALL BE AFFORDED FULL ACCESS TO THE ACCOUNTS AND RECORDS OF THE FACILITY. THE TEMPORARY OPERATOR SHALL, DURING THIS PERIOD, OPERATE THE FACILITY IN SUCH A MANNER AS TO PROMOTE SAFETY AND TO PROMOTE THE QUALITY AND ACCESSIBILITY OF HEALTH CARE SERVICES OR RESIDENTIAL CARE IN THE COMMUNITY SERVED BY THE FACILITY. THE TEMPORARY OPERATOR SHALL HAVE THE POWER TO LET CONTRACTS THEREFOR OR INCUR EXPENSES ON BEHALF OF THE FACILITY, PROVIDED THAT WHERE INDIVIDUAL ITEMS OF REPAIRS, IMPROVEMENTS OR SUPPLIES EXCEED TEN THOUSAND DOLLARS, THE TEMPORARY OPERATOR SHALL OBTAIN PRICE QUOTATIONS FROM AT LEAST THREE REPUTABLE SOURCES. THE TEMPORARY OPERATOR SHALL NOT BE REQUIRED TO FILE ANY BOND. NO SECURITY INTEREST IN ANY REAL OR PERSONAL PROPERTY COMPRISING THE FACILITY OR CONTAINED WITHIN THE FACILITY, OR IN ANY FIXTURE OF THE FACILITY, SHALL BE IMPAIRED OR DIMINISHED IN PRIORITY BY THE TEMPORARY OPERATOR. NEITHER THE TEMPORARY OPERATOR NOR THE DEPARTMENT SHALL ENGAGE IN ANY ACTIVITY THAT CONSTITUTES A CONFISCATION OF PROPERTY WITHOUT THE PAYMENT OF FAIR COMPENSATION.

4. THE TEMPORARY OPERATOR SHALL BE ENTITLED TO A REASONABLE FEE, AS DETERMINED BY THE COMMISSIONER, AND NECESSARY EXPENSES INCURRED DURING HIS OR HER PERFORMANCE AS TEMPORARY OPERATOR, TO BE PAID FROM THE REVENUE OF THE FACILITY. THE TEMPORARY OPERATOR SHALL COLLECT INCOMING PAYMENTS FROM ALL SOURCES AND APPLY THEM FIRST TO THE REASONABLE FEE AND TO COSTS INCURRED IN THE PERFORMANCE OF HIS OR HER FUNCTIONS AS TEMPORARY OPERATOR. THE TEMPORARY OPERATOR SHALL BE LIABLE ONLY IN HIS OR HER

CAPACITY AS TEMPORARY OPERATOR FOR INJURY TO PERSON AND PROPERTY BY REASON OF CONDITIONS OF THE FACILITY IN A CASE WHERE AN ESTABLISHED OPERATOR WOULD HAVE BEEN LIABLE; HE OR SHE SHALL NOT HAVE ANY LIABILITY IN HIS OR HER PERSONAL CAPACITY, EXCEPT FOR GROSS NEGLIGENCE AND INTENTIONAL ACTS.

5. (A) THE INITIAL TERM OF THE APPOINTMENT OF THE TEMPORARY OPERATOR SHALL NOT EXCEED ONE HUNDRED EIGHTY DAYS. AFTER ONE HUNDRED EIGHTY DAYS, IF THE COMMISSIONER DETERMINES THAT TERMINATION OF THE TEMPORARY OPERATOR WOULD CAUSE SIGNIFICANT DETERIORATION OF THE QUALITY OF, OR ACCESS TO, HEALTH CARE OR RESIDENTIAL CARE IN THE COMMUNITY OR THAT REAPPOINTMENT IS NECESSARY TO CORRECT THE DEFICIENCIES, MANAGEMENT FAILURE OR FINANCIAL INSTABILITY THAT REQUIRED THE APPOINTMENT OF THE TEMPORARY OPERATOR, THE COMMISSIONER MAY AUTHORIZE UP TO TWO ADDITIONAL NINETY DAY TERMS. WITHIN FOURTEEN DAYS PRIOR TO THE TERMINATION OF EACH TERM OF THE APPOINTMENT OF THE TEMPORARY OPERATOR, THE TEMPORARY OPERATOR SHALL SUBMIT TO THE COMMISSIONER AND TO THE ESTABLISHED OPERATOR A REPORT DESCRIBING THE ACTIONS TAKEN DURING THE APPOINTMENT TO ADDRESS SUCH DEFICIENCIES, MANAGEMENT FAILURES AND/OR FINANCIAL INSTABILITY. THE REPORT SHALL REFLECT BEST EFFORTS TO PRODUCE A FULL AND COMPLETE ACCOUNTING.

(B) UPON THE COMPLETION OF THE TWO NINETY DAY TERMS REFERENCED IN PARAGRAPH (A) OF THIS SUBDIVISION, IF THE COMMISSIONER DETERMINES THAT TERMINATION OF THE TEMPORARY OPERATOR WOULD CAUSE SIGNIFICANT DETERIORATION OF THE QUALITY OF, OR ACCESS TO, HEALTH CARE OR RESIDENTIAL CARE IN THE COMMUNITY OR THAT REAPPOINTMENT IS NECESSARY TO CONTINUE THE CORRECTION OF THE DEFICIENCIES, MANAGEMENT FAILURE OR FINANCIAL INSTABILITY THAT REQUIRED THE APPOINTMENT OF THE TEMPORARY OPERATOR, THE COMMISSIONER MAY REAPPOINT THE TEMPORARY OPERATOR FOR ADDITIONAL NINETY DAY TERMS, PROVIDED THAT THE COMMISSIONER SHALL PROVIDE FOR NOTICE AND THE OPPORTUNITY FOR A HEARING AS SET FORTH IN SUBDIVISION SIX OF THIS SECTION.

(C) THE TERM OF THE INITIAL APPOINTMENT AND OF ANY SUBSEQUENT REAPPOINTMENT MAY BE TERMINATED PRIOR TO THE EXPIRATION OF THE DESIGNATED TERM, IF THE ESTABLISHED OPERATOR AND THE COMMISSIONER AGREE ON A PLAN OF CORRECTION AND THE IMPLEMENTATION OF SUCH PLAN.

6. THE COMMISSIONER SHALL, UPON MAKING A DETERMINATION TO APPOINT A TEMPORARY OPERATOR PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION OR REAPPOINT A TEMPORARY OPERATOR FOR THE FIRST ADDITIONAL NINETY DAY TERM PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FIVE OF THIS SECTION, CAUSE THE ESTABLISHED OPERATOR OF THE FACILITY TO BE NOTIFIED OF THE DETERMINATION BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE PRINCIPAL OFFICE OF THE ESTABLISHED OPERATOR. IF THE COMMISSIONER DETERMINES THAT ADDITIONAL REAPPOINTMENTS PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FIVE OF THIS SECTION ARE REQUIRED, THE COMMISSIONER SHALL AGAIN CAUSE THE ESTABLISHED OPERATOR OF THE FACILITY TO BE NOTIFIED OF SUCH DETERMINATION BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE PRINCIPAL OFFICE OF THE ESTABLISHED OPERATOR AT THE COMMENCEMENT OF THE FIRST OF EVERY TWO ADDITIONAL TERMS. UPON RECEIPT OF SUCH NOTIFICATION AT THE PRINCIPAL OFFICE OF THE ESTABLISHED OPERATOR AND BEFORE THE EXPIRATION OF TEN DAYS THEREAFTER, THE ESTABLISHED OPERATOR MAY REQUEST AN ADMINISTRATIVE HEARING ON THE DETERMINATION TO BEGIN NO LATER THAN SIXTY DAYS FROM THE DATE OF THE APPOINTMENT OR REAPPOINTMENT OF THE TEMPORARY OPERATOR. ANY SUCH HEARING SHALL BE STRICTLY LIMITED TO THE ISSUE OF WHETHER THE DETERMINATION OF THE COMMISSIONER WHICH RESULTED IN THE APPOINTMENT OR REAPPOINTMENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

7. NO PROVISION CONTAINED IN THIS SECTION SHALL BE DEEMED TO RELIEVE THE ESTABLISHED OPERATOR OR ANY OTHER PERSON OF ANY CIVIL OR CRIMINAL LIABILITY INCURRED, OR ANY DUTY IMPOSED BY LAW, BY REASON OF ACTS OR OMISSIONS OF THE ESTABLISHED OPERATOR OR ANY OTHER PERSON PRIOR TO THE APPOINTMENT OF ANY TEMPORARY OPERATOR HEREUNDER; NOR SHALL ANYTHING CONTAINED IN THIS SECTION BE CONSTRUED TO SUSPEND DURING THE TERM OF THE APPOINTMENT OF THE TEMPORARY OPERATOR ANY OBLIGATION OF THE ESTABLISHED OPERATOR OR ANY OTHER PERSON FOR THE PAYMENT OF TAXES OR OTHER OPERATING AND MAINTENANCE EXPENSES OF THE FACILITY NOR OF THE ESTABLISHED OPERATOR OR ANY OTHER PERSON FOR THE PAYMENT OF MORTGAGES OR LIENS.

S 28. Section 2 of chapter 584 of the laws of 2011, amending the public authorities law, relating to the powers and duties of the dormitory authority of the state of New York relative to the establishment of subsidiaries for certain purposes, is amended to read as follows:

S 2. This act shall take effect immediately and shall expire and be deemed repealed ON July 1, [2012] 2015; provided however, that the expiration of this act shall not impair or otherwise affect any of the powers, duties, responsibilities, functions, rights or liabilities of any subsidiary duly created pursuant to subdivision twenty-five of section 1678 of the public authorities law prior to such expiration.

S 29. Subdivision 1 of section 2999-i of the public health law, as added by section 52 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

1. (A) The commissioner of taxation and finance shall be the custodian of the fund and the special account established pursuant to section ninety-nine-t of the state finance law. All payments from the fund shall be made by the commissioner of taxation and finance upon certificates signed by the superintendent of financial services, or his or her designee, as hereinafter provided. The fund shall be separate and apart from any other fund and from all other state monies; PROVIDED, HOWEVER, THAT MONIES OF THE FUND MAY BE INVESTED AS SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION. No monies from the fund shall be transferred to any other fund, nor shall any such monies be applied to the making of any payment for any purpose other than the purpose set forth in this title.

(B) ANY MONIES OF THE FUND NOT REQUIRED FOR IMMEDIATE USE MAY, AT THE DISCRETION OF THE COMMISSIONER OF FINANCIAL SERVICES IN CONSULTATION WITH THE COMMISSIONER OF HEALTH AND THE DIRECTOR OF THE BUDGET, BE INVESTED BY THE COMMISSIONER OF TAXATION AND FINANCE IN OBLIGATIONS OF THE UNITED STATES OR THE STATE OR OBLIGATIONS THE PRINCIPAL AND INTEREST OF WHICH ARE GUARANTEED BY THE UNITED STATES OR THE STATE. THE PROCEEDS OF ANY SUCH INVESTMENT SHALL BE RETAINED BY THE FUND AS ASSETS TO BE USED FOR THE PURPOSES OF THE FUND.

S 30. Subdivision 9 of section 2803 of the public health law is REPEALED.

S 31. Paragraph (b) of subdivision 1-a of section 2802 of the public health law, as amended by chapter 174 of the laws of 2011, is amended to read as follows:

(b) repair or maintenance, regardless of cost, including routine purchases and the acquisition of minor equipment undertaken in the course of a hospital's inventory control functions; PROVIDED THAT FOR PROJECTS UNDER THIS PARAGRAPH WITH A TOTAL COST OF UP TO SIX MILLION DOLLARS, NO WRITTEN NOTICE SHALL BE REQUIRED;

S 32. Subdivision 1 of section 1 of chapter 119 of the laws of 1997 relating to authorizing the department of health to establish certain payments to general hospitals, as amended by section 1 of part S2 of chapter 62 of the laws of 2003, is amended to read as follows:

1. Notwithstanding any inconsistent provision of law or regulation, effective for the period [April 1, 1997 through March 31, 1998] APRIL 1, 2012 THROUGH DECEMBER 31, 2012 and for annual periods beginning [April] JANUARY 1 thereafter, the [department] DEPARTMENT of [health] HEALTH is authorized to pay voluntary non-profit general hospitals as defined in subdivision 10 of section 2801 of the public health law additional payments for inpatient hospital services as medical assistance payments pursuant to title 11 of article 5 of the social services law and federal law and regulations governing disproportionate share payments, based on the [amount of state aid for which such general hospitals are eligible pursuant to articles 25, 26 and 41 of the mental hygiene law and as identified in subdivision 2 of this section] COSTS INCURRED IN EXCESS OF REVENUES BY GENERAL HOSPITALS IN PROVIDING SERVICES IN ELIGIBLE PROGRAMS TO UNINSURED PATIENTS AND PATIENTS ELIGIBLE FOR MEDICAL ASSISTANCE. Payment made pursuant to this section shall not exceed each such general hospital's cost of providing services to uninsured patients and patients eligible for medical assistance pursuant to title 11 of article 5 of the social services law after taking into consideration all other medical assistance received, including disproportionate share payments made to such general hospital, and payments from or on behalf of such uninsured patients, and shall also not exceed the total amount of state aid, identified by subdivision 2 of this section, available to such general hospital by law. Payments made to such general hospitals pursuant to this section shall be made in lieu of any state aid payments available to such general hospital by law.

S 33. Subdivision 1 of section 241 of the elder law, as amended by section 29 of part A of chapter 58 of the laws of 2008, is amended to read as follows:

1. "Covered drug" shall mean a drug dispensed subject to a legally authorized prescription pursuant to section sixty-eight hundred ten of the education law, and insulin, an insulin syringe, or an insulin needle. Such term shall not include: (a) any drug determined by the commissioner of the federal food and drug administration to be ineffective or unsafe; (b) any drug dispensed in a package, or form of dosage or administration, as to which the commissioner of health finally determines in accordance with the provisions of section two hundred fifty-two of this title that a less expensive package, or form of dosage or administration, is available that is pharmaceutically equivalent and equivalent in its therapeutic effect for the general health characteristics of the eligible program participant population; (c) any device for the aid or correction of vision; (d) any drug, including vitamins, which is generally available without a physician's prescription; and (e) drugs for the treatment of sexual or erectile dysfunction, unless such drugs are used to treat a condition, other than sexual or erectile dysfunction, for which the drugs have been approved by the federal food and drug administration; and (f) a brand name drug for which a multi-source therapeutically and generically equivalent drug, as determined by the federal food and drug administration, is available, unless previously authorized by the elderly pharmaceutical insurance coverage program, provided, however, that the [elderly pharmaceutical insurance coverage panel] COMMISSIONER is authorized to exempt, for good cause shown, any brand name drug from such restriction, and provided further that such restriction shall not apply to any drug that is included on the preferred drug list under section two hundred seventy-two of the public health law or is in the clinical drug review program under section two hundred seventy-four of the public health law to the extent that the

preferred drug program and the clinical drug review program are applied to the elderly pharmaceutical insurance coverage program pursuant to section two hundred seventy-five of the public health law, or to any drug covered under a program participant's Medicare part D or other primary insurance plan. Any of the drugs enumerated in the preceding sentence shall be considered a covered drug or a prescription drug for purposes of this article if it is added to the preferred drug list under article two-A of the public health law. For the purpose of this title, except as otherwise provided in this section, a covered drug shall be dispensed in quantities no greater than a thirty day supply or one hundred units, whichever is greater. In the case of a drug dispensed in a form of administration other than a tablet or capsule, the maximum allowed quantity shall be a thirty day supply; the [panel] COMMISSIONER is authorized to approve exceptions to these limits for specific products following consideration of recommendations from pharmaceutical or medical experts regarding commonly packaged quantities, unusual forms of administration, length of treatment or cost effectiveness. In the case of a drug prescribed pursuant to section thirty-three hundred thirty-two of the public health law to treat one of the conditions that have been enumerated by the commissioner of health pursuant to regulation as warranting the prescribing of greater than a thirty day supply, such drug shall be dispensed in quantities not to exceed a three month supply.

S 33-a. Subdivision 1 of section 241 of the elder law, as amended by section 12 of part B of chapter 57 of the laws of 2006, is amended to read as follows:

1. "Covered drug" shall mean a drug dispensed subject to a legally authorized prescription pursuant to section sixty-eight hundred ten of the education law, and insulin, an insulin syringe, or an insulin needle. Such term shall not include: (a) any drug determined by the commissioner of the federal food and drug administration to be ineffective or unsafe; (b) any drug dispensed in a package, or form of dosage or administration, as to which the commissioner of health finally determines in accordance with the provisions of section two hundred fifty-two of this title that a less expensive package, or form of dosage or administration, is available that is pharmaceutically equivalent and equivalent in its therapeutic effect for the general health characteristics of the eligible program participant population; (c) any device for the aid or correction of vision, or any drug, including vitamins, which is generally available without a physician's prescription; and (d) drugs for the treatment of sexual or erectile dysfunction, unless such drugs are used to treat a condition, other than sexual or erectile dysfunction, for which the drugs have been approved by the federal food and drug administration. For the purpose of this title, except as otherwise provided in this section, a covered drug shall be dispensed in quantities no greater than a thirty day supply or one hundred units, whichever is greater. In the case of a drug dispensed in a form of administration other than a tablet or capsule, the maximum allowed quantity shall be a thirty day supply; the [panel] COMMISSIONER is authorized to approve exceptions to these limits for specific products following consideration of recommendations from pharmaceutical or medical experts regarding commonly packaged quantities, unusual forms of administration, length of treatment or cost effectiveness. In the case of a drug prescribed pursuant to section thirty-three hundred thirty-two of the public health law to treat one of the conditions that have been enumerated by the commissioner of health pursuant to regulation as warranting the prescribing of

greater than a thirty day supply, such drug shall be dispensed in quantities not to exceed a three month supply.

S 33-b. Paragraph (f) of subdivision 3 of section 242 of the elder law, as amended by section 3-d of part A of chapter 59 of the laws of 2011, is amended to read as follows:

(f) As a condition of eligibility for benefits under this title, a program participant is required to be enrolled in Medicare part D and to maintain such enrollment. FOR UNMARRIED PARTICIPANTS WITH INDIVIDUAL ANNUAL INCOME LESS THAN OR EQUAL TO TWENTY-THREE THOUSAND DOLLARS AND MARRIED PARTICIPANTS WITH JOINT ANNUAL INCOME LESS THAN OR EQUAL TO TWENTY-NINE THOUSAND DOLLARS, THE ELDERLY PHARMACEUTICAL INSURANCE COVERAGE PROGRAM SHALL PAY FOR THE PORTION OF THE PART D MONTHLY PREMIUM THAT IS THE RESPONSIBILITY OF THE PARTICIPANT. SUCH PAYMENT SHALL BE LIMITED TO THE LOW-INCOME BENCHMARK PREMIUM AMOUNT ESTABLISHED BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES AND ANY OTHER AMOUNT WHICH SUCH AGENCY ESTABLISHES UNDER ITS DE MINIMUS PREMIUM POLICY, EXCEPT THAT SUCH PAYMENTS MADE ON BEHALF OF PARTICIPANTS ENROLLED IN A MEDICARE ADVANTAGE PLAN MAY EXCEED THE LOW-INCOME BENCHMARK PREMIUM AMOUNT IF DETERMINED TO BE COST EFFECTIVE TO THE PROGRAM.

S 33-c. Paragraph (b) of subdivision 2 of section 243 of the elder law, as amended by section 3-g of part A of chapter 59 of the laws of 2011, is amended to read as follows:

(b) notifying [each eligible program participant in writing upon the commencement of the annual coverage period of such participant's cost-sharing responsibilities pursuant to section two hundred forty-seven of this title. The contractor shall also notify] each eligible program participant of any adjustment of the co-payment schedule by mail no less than thirty days prior to the effective date of such adjustments and shall inform such eligible program participants of the date such adjustments shall take effect;

S 33-d. Section 245 of the elder law is REPEALED.

S 33-e. Subdivision 1 of section 247 of the elder law, as added by section 3-j of part A of chapter 59 of the laws of 2011, is amended to read as follows:

1. As a condition of eligibility for benefits under this title, participants must [maintain Medicare part D coverage and pay monthly premiums to their Medicare part D drug plan] BE ENROLLED IN MEDICARE PART D AND MAINTAIN SUCH ENROLLMENT.

S 33-f. Subdivision 1 of section 249 of the elder law, as amended by section 111 of part C of chapter 58 of the laws of 2009, is amended to read as follows:

1. The state shall offer an opportunity to participate in this program to all provider pharmacies as defined in section two hundred forty-one of this title, provided, however, that the participation of pharmacies registered in the state pursuant to section sixty-eight hundred eight-b of the education law shall be limited to state assistance provided under this title for prescription drugs covered by a program participant's medicare [or other] drug plan.

S 33-g. Subdivisions 1 and 2 of section 253 of the elder law are amended to read as follows:

1. In counties having a population of seventy-five thousand or less that are in proximity to the state boundary and which are determined by the [executive director] COMMISSIONER OF HEALTH to be not adequately served by provider pharmacies registered in New York, and in Fishers Island in the town of Southold, Suffolk county, the [executive director] COMMISSIONER may approve as provider pharmacies, pharmacies located in

New Jersey, Connecticut, Vermont, Pennsylvania or Massachusetts. Such approvals shall be made after (a) consideration of the convenience and necessity of New York residents in the rural areas served by such pharmacies, (b) consideration of the quality of service of such pharmacies and the standing of such pharmacies with the governmental board or agency of the state in which such pharmacy is located, (c) the [executive director] COMMISSIONER shall give all licensed pharmacies within the county notice of his or her intention to approve such out-of-state provider pharmacies, and (d) the [executive director] COMMISSIONER has held a public hearing at which he or she has determined factually that the licensed pharmacies within such county are not adequately serving as provider pharmacies.

2. The [executive director] COMMISSIONER OF HEALTH shall investigate and determine whether certification shall be granted within ninety days of the filing of an application for certification by the governing body of any city, town or village, within a county determined by the [executive director] COMMISSIONER to be not adequately served by provider pharmacies registered in New York pursuant to subdivision one of this section, claiming to be lacking adequate pharmaceutical service.

S 34. Subdivision 25 of section 2808 of the public health law, as added by section 31 of part B of chapter 109 of the laws of 2010, subparagraph (iii) of paragraph (b) as amended and subparagraph (iv) of paragraph (b) as added by section 69 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

25. Reserved bed days. (a) For purposes of this subdivision, a "reserved bed day" is a day for which a governmental agency pays a residential health care facility to reserve a bed for a person eligible for medical assistance pursuant to title eleven of article five of the social services law while he or she is temporarily hospitalized or on leave of absence from the facility.

(b) Notwithstanding any other provisions of this section or any other law or regulation to the contrary, for reserved bed days provided on behalf of persons twenty-one years of age or older:

(i) payments for reserved bed days shall be made at ninety-five percent of the Medicaid rate otherwise payable to the facility for services provided on behalf of such person;

(ii) payment to a facility for reserved bed days provided on behalf of such person for temporary hospitalizations may not exceed fourteen days in any twelve month period;

(iii) payment to a facility for reserved bed days provided on behalf of such person for non-hospitalization leaves of absence may not exceed ten days in any twelve month period[; and

(iv) payments for reserved bed days for temporary hospitalizations shall only be made to a residential health care facility if at least fifty percent of the facility's residents eligible to participate in a Medicare managed care plan are enrolled in such a plan].

(C)(I) NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SUBDIVISION OR ANY OTHER LAW AND SUBJECT TO THE AVAILABILITY OF FEDERAL FINANCIAL PARTICIPATION, FOR RATE PERIODS ON AND AFTER APRIL FIRST, TWO THOUSAND TWELVE, WITH REGARD TO SERVICES PROVIDED TO RESIDENTIAL HEALTH CARE FACILITY RESIDENTS TWENTY-ONE YEARS OF AGE AND OLDER, THE COMMISSIONER SHALL PROMULGATE REGULATIONS, AND MAY PROMULGATE EMERGENCY REGULATIONS, EFFECTIVE FOR PERIODS ON AND AFTER APRIL FIRST, TWO THOUSAND TWELVE, ESTABLISHING REIMBURSEMENT RATES FOR RESERVED BED DAYS, PROVIDED, HOWEVER, THAT SUCH REGULATIONS SHALL ACHIEVE AN AGGREGATE ANNUALIZED

REDUCTION IN REIMBURSEMENT FOR SUCH RESERVED BED DAYS OF NO LESS THAN FORTY MILLION DOLLARS, AS DETERMINED BY THE COMMISSIONER.

(II) IN THE EVENT THE COMMISSIONER DETERMINES THAT FEDERAL FINANCIAL PARTICIPATION WILL NOT BE AVAILABLE FOR RATE ADJUSTMENTS MADE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH OR REGULATIONS PROMULGATED THEREUNDER, THEN, FOR RATE PERIODS ON AND AFTER APRIL FIRST, TWO THOUSAND TWELVE, MEDICAID RATES FOR INPATIENT SERVICES SHALL NOT INCLUDE ANY FACTOR OR PAYMENT AMOUNT FOR SUCH RESERVED BED DAYS WITH REGARD TO RESIDENTS TWENTY-ONE YEARS OF AGE AND OLDER.

(III) IN THE EVENT THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH ARE INVOKED AND IMPLEMENTED BY THE COMMISSIONER, THEN THE COMMISSIONER SHALL PROMULGATE REGULATIONS, AND MAY PROMULGATE EMERGENCY REGULATIONS, EFFECTIVE FOR RATE PERIODS ON OR AFTER APRIL FIRST, TWO THOUSAND TWELVE, PROVIDING UPWARD REVISIONS TO MEDICAID RATES ISSUED PURSUANT TO SUBDIVISION TWO-C OF THIS SECTION, PROVIDED, HOWEVER, THAT SUCH UPWARD REVISIONS SHALL NOT IN AGGREGATE, AS DETERMINED BY THE COMMISSIONER, EXCEED, ON AN ANNUAL BASIS, AN AMOUNT EQUAL TO CURRENT ANNUAL MEDICAID PAYMENTS FOR RESERVED BED DAYS, LESS FORTY MILLION DOLLARS.

S 35. Paragraphs (l) and (m) of subdivision 1 of section 367-q of the social services law, as added by section 22 of part C of chapter 59 of the laws of 2011, are amended to read as follows:

(l) for the period April first, two thousand twelve through March thirty-first, two thousand thirteen, UP TO twenty-eight million five hundred thousand dollars; and

(m) for the period April first, two thousand thirteen through March thirty-first, two thousand fourteen, UP TO twenty-eight million five hundred thousand dollars.

S 35-a. Clause (K) of subparagraph (i) of paragraph (bb) of subdivision 1 of section 2807-v of the public health law, as amended by section 8 of part C of chapter 59 of the laws of 2011, is amended to read as follows:

(K) UP TO one hundred thirty-six million dollars each state fiscal year for the period April first, two thousand eleven through March thirty-first, two thousand fourteen.

S 35-b. Subparagraph (xi) of paragraph (cc) of subdivision 1 of section 2807-v of the public health law, as amended by section 8 of part C of chapter 59 of the laws of 2011, is amended to read as follows:

(xi) UP TO eleven million two hundred thousand dollars each state fiscal year for the period April first, two thousand eleven through March thirty-first, two thousand fourteen.

S 35-c. Subparagraph (vii) of paragraph (ccc) of subdivision 1 of section 2807-v of the public health law, as amended by section 8 of part C of chapter 59 of the laws of 2011, is amended to read as follows:

(vii) UP TO fifty million dollars each state fiscal year for the period April first, two thousand eleven through March thirty-first, two thousand fourteen.

S 36. Paragraph (g-1) of subdivision 2 of section 365-a of the social services law, as amended by section 23 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

(g-1) drugs provided on an in-patient basis, those drugs contained on the list established by regulation of the commissioner of health pursuant to subdivision four of this section, and those drugs which may not be dispensed without a prescription as required by section sixty-eight hundred ten of the education law and which the commissioner of health shall determine to be reimbursable based upon such factors as the avail-

ability of such drugs or alternatives at low cost if purchased by a medicaid recipient, or the essential nature of such drugs as described by such commissioner in regulations, provided, however, that such drugs, exclusive of long-term maintenance drugs, shall be dispensed in quantities no greater than a thirty day supply or one hundred doses, whichever is greater; provided further that the commissioner of health is authorized to require prior authorization for any refill of a prescription when less than seventy-five percent of the previously dispensed amount per fill should have been used were the product used as normally indicated; provided further that the commissioner of health is authorized to require prior authorization of prescriptions of opioid analgesics in excess of four prescriptions in a thirty-day period in accordance with section two hundred seventy-three of the public health law, EXCEPT THAT PRIOR AUTHORIZATION MAY BE DENIED IF THE DEPARTMENT, AFTER GIVING THE PRESCRIBER A REASONABLE OPPORTUNITY TO PRESENT A JUSTIFICATION, DETERMINES THAT THE ADDITIONAL PRESCRIPTION IS NOT MEDICALLY NECESSARY; medical assistance shall not include any drug provided on other than an in-patient basis for which a recipient is charged or a claim is made in the case of a prescription drug, in excess of the maximum reimbursable amounts to be established by department regulations in accordance with standards established by the secretary of the United States department of health and human services, or, in the case of a drug not requiring a prescription, in excess of the maximum reimbursable amount established by the commissioner of health pursuant to paragraph (a) of subdivision four of this section;

S 37. Subdivision 6 of section 368-d of the social services law, as added by section 6 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

6. The commissioner shall evaluate the results of the study conducted pursuant to subdivision four of this section to determine, after identification of actual direct and indirect costs incurred by public school districts and state operated[/] AND state supported schools FOR BLIND AND DEAF STUDENTS, whether it is advisable to claim federal reimbursement for expenditures under this section as certified public expenditures. In the event such claims are submitted, if federal reimbursement received for certified public expenditures on behalf of medical assistance recipients whose assistance and care are the responsibility of a social services district [in a city with a population of over two million,] results in a decrease in the state share of annual expenditures pursuant to this section for such recipients, then to the extent that the amount of any such decrease when combined with any decrease in the state share of annual expenditures described in subdivision five of section three hundred sixty-eight-e of this title exceeds fifty million dollars IN STATE FISCAL YEAR 2011-12, OR EXCEEDS ONE HUNDRED MILLION DOLLARS IN STATE FISCAL YEAR 2012-13 OR ANY FISCAL YEAR THEREAFTER, the excess amount shall be transferred to such [city] PUBLIC SCHOOL DISTRICTS AND STATE OPERATED AND STATE SUPPORTED SCHOOLS FOR BLIND AND DEAF STUDENTS IN AMOUNTS PROPORTIONAL TO THEIR PERCENTAGE CONTRIBUTION TO THE STATEWIDE SAVINGS. Any such excess amount transferred shall not be considered a revenue received by such social services district in determining the district's actual medical assistance expenditures for purposes of paragraph (b) of section one of part C of chapter fifty-eight of the laws of two thousand five.

S 38. Subdivision 5 of section 368-e of the social services law, as added by section 7 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

5. The commissioner shall evaluate the results of the study conducted pursuant to subdivision three of this section to determine, after identification of actual direct and indirect costs incurred by counties for medical care, services, and supplies furnished to pre-school children with handicapping conditions, whether it is advisable to claim federal reimbursement for expenditures under this section as certified public expenditures. In the event such claims are submitted, if federal reimbursement received for certified public expenditures on behalf of medical assistance recipients whose assistance and care are the responsibility of a social services district [in a city with a population of over two million], results in a decrease in the state share of annual expenditures pursuant to this section for such recipients, then to the extent that the amount of any such decrease when combined with any decrease in the state share of annual expenditures described in subdivision six of section three hundred sixty-eight-d of this title exceeds fifty million dollars IN STATE FISCAL YEAR 2011-12, OR EXCEEDS ONE HUNDRED MILLION DOLLARS IN STATE FISCAL YEAR 2012-13 OR ANY FISCAL YEAR THEREAFTER, the excess amount shall be transferred to such [city] COUNTIES IN AMOUNTS PROPORTIONAL TO THEIR PERCENTAGE CONTRIBUTION TO THE STATEWIDE SAVINGS. Any such excess amount transferred shall not be considered a revenue received by such social services district in determining the district's actual medical assistance expenditures for purposes of paragraph (b) of section one of part C of chapter fifty-eight of the laws of two thousand five.

S 39. Subparagraph (i) of paragraph (a-1) of subdivision 4 of section 365-a of the social services law, as amended by section 46 of part C of chapter 58 of the laws of 2009, is amended to read as follows:

(i) a brand name drug for which a multi-source therapeutically and generically equivalent drug, as determined by the federal food and drug administration, is available, unless previously authorized by the department of health. The commissioner of health is authorized to exempt, for good cause shown, any brand name drug from the restrictions imposed by this subparagraph[. This subparagraph shall not apply to any drug that is in a therapeutic class included on the preferred drug list under section two hundred seventy-two of the public health law or is in the clinical drug review program under section two hundred seventy-four of the public health law];

S 40. Subdivision 8 of section 272 of the public health law, as amended by section 5 of part B of chapter 109 of the laws of 2010, is amended to read as follows:

8. The commissioner shall provide notice of any recommendations developed by the committee regarding the preferred drug program, at least five days before any final determination by the commissioner, by making such information available on the department's website. [Such public notice shall include: a summary of the deliberations of the committee; a summary of the positions of those making public comments at meetings of the committee; the response of the committee to those comments, if any; and the findings and recommendations of the committee.]

S 41. Paragraphs (e), (f) and (g) of subdivision 1 of section 367-a of the social services law, paragraph (e) as added by chapter 433 of the laws of 1997, paragraph (f) as added by section 1 of part E of chapter 58 of the laws of 2008, paragraph (g) as added by section 65-a of part H of chapter 59 of the laws of 2011, are amended to read as follows:

(e) Amounts payable under this title for medical assistance in the form of clinic services pursuant to article twenty-eight of the public health law and article sixteen of the mental hygiene law provided to

eligible persons DIAGNOSED WITH A DEVELOPMENTAL DISABILITY who are also beneficiaries under part [b] B of title [xviii] XVIII of the federal social security act [and who are also], OR PROVIDED TO PERSONS diagnosed with a DEVELOPMENTAL disability WHO ARE QUALIFIED MEDICARE BENEFICIARIES UNDER PART B OF TITLE XVIII OF SUCH ACT shall not be less than the approved medical assistance payment level less the amount payable under part [b] B.

(f) Amounts payable under this title for medical assistance in the form of outpatient mental health services under article thirty-one of the mental hygiene law provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act OR PROVIDED TO QUALIFIED MEDICARE BENEFICIARIES UNDER PART B OF TITLE XVIII OF SUCH ACT shall not be less than the approved medical assistance payment level less the amount payable under part B.

(g) Notwithstanding any provision of this section to the contrary, amounts payable under this title for medical assistance in the form of hospital outpatient services or diagnostic and treatment center services pursuant to article twenty-eight of the public health law provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act OR PROVIDED TO QUALIFIED MEDICARE BENEFICIARIES UNDER PART B OF TITLE XVIII OF SUCH ACT shall not exceed the approved medical assistance payment level less the amount payable under part B.

S 42. Subdivision 6 of section 2818 of the public health law, as added by section 25-a of part A of chapter 59 of the laws of 2011, is amended to read as follows:

6. Notwithstanding any contrary provision of this section, sections one hundred twelve and one hundred sixty-three of the state finance law, or any other contrary provision of law, subject to available appropriations, funds available for expenditure pursuant to this section may be distributed by the commissioner without a competitive bid or request for proposal process for grants to general hospitals, DIAGNOSTIC AND TREATMENT CENTERS, and residential health care facilities for the purpose of facilitating closures, mergers and restructuring of such facilities in order to strengthen and protect continued access to essential health care resources. Prior to an [awarded] AWARD being granted to an eligible applicant without a competitive bid or request for proposal process, the commissioner shall notify the chair of the senate finance committee, the chair of the assembly ways and means committee and the director of the division of budget of the intent to grant such an award. Such notice shall include information regarding how the eligible applicant meets criteria established pursuant to this section.

S 43. Paragraph (a) of subdivision 8-a of section 2807-j of the public health law, as amended by section 16 of part D of chapter 57 of the laws of 2006, is amended to read as follows:

(a) Payments and reports submitted or required to be submitted to the commissioner or to the commissioner's designee pursuant to this section and section twenty-eight hundred seven-s of this article by designated providers of services and by third-party payors which have elected to make payments directly to the commissioner or to the commissioner's designee in accordance with subdivision five-a of this section, shall be subject to audit by the commissioner for a period of six years following the close of the calendar year in which such payments and reports are due, after which such payments shall be deemed final and not subject to further adjustment or reconciliation, INCLUDING THROUGH OFFSET ADJUSTMENTS OR RECONCILIATIONS MADE BY DESIGNATED PROVIDERS OF SERVICES OR BY

THIRD-PARTY PAYORS WITH REGARD TO SUBSEQUENT PAYMENTS, provided, however, that nothing herein shall be construed as precluding the commissioner from pursuing collection of any such payments which are identified as delinquent within such six year period, or which are identified as delinquent as a result of an audit commenced within such six year period, or from conducting an audit of any adjustment or reconciliation made by a designated provider of services or by a third party payor which has elected to make such payments directly to the commissioner or the commissioner's designee, OR FROM CONDUCTING AN AUDIT OF PAYMENTS MADE PRIOR TO SUCH SIX YEAR PERIOD WHICH ARE FOUND TO BE COMMINGLED WITH PAYMENTS WHICH ARE OTHERWISE SUBJECT TO TIMELY AUDIT PURSUANT TO THIS SECTION.

S 44. Paragraph (a) of subdivision 10 of section 2807-t of the public health law, as amended by section 17 of part D of chapter 57 of the laws of 2006, is amended to read as follows:

(a) Payments and reports submitted or required to be submitted to the commissioner or to the commissioner's designee pursuant to this section by specified third-party payors shall be subject to audit by the commissioner for a period of six years following the close of the calendar year in which such payments and reports are due, after which such payments shall be deemed final and not subject to further adjustment or reconciliation, INCLUDING THROUGH OFFSET ADJUSTMENTS OR RECONCILIATIONS MADE BY SUCH SPECIFIED THIRD-PARTY PAYORS WITH REGARD TO SUBSEQUENT PAYMENTS, provided, however, that nothing herein shall be construed as precluding the commissioner from pursuing collection of any such payments which are identified as delinquent within such six year period, or which are identified as delinquent as a result of an audit commenced within such six year period, or from conducting an audit of any adjustments and reconciliation made by a specified third party payor within such six year period, OR FROM CONDUCTING AN AUDIT OF PAYMENTS MADE PRIOR TO SUCH SIX YEAR PERIOD WHICH ARE FOUND TO BE COMMINGLED WITH PAYMENTS WHICH ARE OTHERWISE SUBJECT TO TIMELY AUDIT PURSUANT TO THIS SECTION.

S 45. Subdivision 7 of section 2807-d of the public health law is amended by adding a new paragraph (f) to read as follows:

(F) PAYMENTS AND REPORTS SUBMITTED OR REQUIRED TO BE SUBMITTED TO THE COMMISSIONER OR TO THE COMMISSIONER'S DESIGNEE PURSUANT TO THIS SECTION SHALL BE SUBJECT TO AUDIT BY THE COMMISSIONER FOR A PERIOD OF SIX YEARS FOLLOWING THE CLOSE OF THE CALENDAR YEAR IN WHICH SUCH PAYMENTS AND REPORTS ARE DUE, AFTER WHICH SUCH PAYMENTS SHALL BE DEEMED FINAL AND NOT SUBJECT TO FURTHER ADJUSTMENT OR RECONCILIATION, INCLUDING THROUGH OFFSET ADJUSTMENTS OR RECONCILIATIONS MADE TO SUBSEQUENT PAYMENTS MADE PURSUANT TO THIS SECTION, PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL BE CONSTRUED AS PRECLUDING THE COMMISSIONER FROM PURSUING COLLECTION OF ANY SUCH PAYMENTS WHICH ARE IDENTIFIED AS DELINQUENT WITHIN SUCH SIX YEAR PERIOD, OR WHICH ARE IDENTIFIED AS DELINQUENT AS A RESULT OF AN AUDIT COMMENCED WITHIN SUCH SIX YEAR PERIOD, OR FROM CONDUCTING AN AUDIT OF ANY ADJUSTMENT OR RECONCILIATION MADE BY A HOSPITAL.

S 46. Paragraph (f) of subdivision 18 of section 2807-c of the public health law, as amended by section 15 of part D of chapter 57 of the laws of 2006, is amended to read as follows:

(f) Payments of assessments and allowances required to be submitted by general hospitals pursuant to this subdivision and subdivisions fourteen and fourteen-b of this section and paragraph (a) of subdivision two of section twenty-eight hundred seven-d of this article shall be subject to audit by the commissioner for a period of six years following the close of the calendar year in which such payments are due, after which such

payments shall be deemed final and not subject to further adjustment or reconciliation, INCLUDING THROUGH OFFSET ADJUSTMENTS OR RECONCILIATIONS MADE BY GENERAL HOSPITALS WITH REGARD TO SUBSEQUENT PAYMENTS, provided, however, that nothing herein shall be construed as precluding the commissioner from pursuing collection of any such assessments and allowances which are identified as delinquent within such six year period, or which are identified as delinquent as a result of an audit commenced within such six year audit period, or from conducting an audit of any adjustment or reconciliation made by a general hospital within such six year period, OR FROM CONDUCTING AN AUDIT OF PAYMENTS MADE PRIOR TO SUCH SIX YEAR PERIOD WHICH ARE FOUND TO BE COMMINGLED WITH PAYMENTS WHICH ARE OTHERWISE SUBJECT TO TIMELY AUDIT PURSUANT TO THIS SECTION. General hospitals which, in the course of such an audit, fail to produce data or documentation requested in furtherance of such an audit, within thirty days of such request may be assessed a civil penalty of up to ten thousand dollars for each such failure, provided, however, that such civil penalty shall not be imposed if the hospital demonstrates good cause for such failure. The imposition of such civil penalties shall be subject to the provisions of section twelve-a of this chapter.

S 47. Paragraph (e) of subdivision 2-a of section 2807 of the public health law is amended by adding a new subparagraph (iii) to read as follows:

(III) REGULATIONS ISSUED PURSUANT TO THIS PARAGRAPH MAY INCORPORATE QUALITY RELATED MEASURES LIMITING OR EXCLUDING REIMBURSEMENT RELATED TO POTENTIALLY PREVENTABLE CONDITIONS AND COMPLICATIONS.

S 48. Paragraph (c) of subdivision 7 of section 2807-d of the public health law, as added by chapter 938 of the laws of 1990, is amended to read as follows:

(c) The reports shall be in such form as may be prescribed by the commissioner to accurately disclose information required to implement this section, PROVIDED, HOWEVER, THAT FOR PERIODS ON AND AFTER JULY FIRST, TWO THOUSAND TWELVE, SUCH REPORTS AND ANY ASSOCIATED CERTIFICATIONS SHALL BE SUBMITTED ELECTRONICALLY IN A FORM AS MAY BE REQUIRED BY THE COMMISSIONER.

S 48-a. Subparagraph (i) of paragraph (a) of subdivision 7 of section 2807-j of the public health law, as amended by section 36 of part B of chapter 58 of the laws of 2008, is amended to read as follows;

(i) Every designated provider of services shall submit reports of net patient service revenues received for or on account of patient services for each month which shall be in such form as may be prescribed by the commissioner to accurately disclose information required to implement this section. For periods on and after January first, two thousand five, reports by designated providers of services shall be submitted electronically in a form as may be required by the commissioner; provided, however, any designated provider of services is not prohibited from submitting reports electronically on a voluntary basis prior to such date, AND PROVIDED FURTHER, HOWEVER, THAT ALL SUCH ELECTRONIC SUBMISSIONS SUBMITTED ON AND AFTER JULY FIRST, TWO THOUSAND TWELVE SHALL BE VERIFIED WITH AN ELECTRONIC SIGNATURE AS PRESCRIBED BY THE COMMISSIONER.

S 48-b. Subparagraph (ii) of paragraph (b) of subdivision 7 of section 2807-j of the public health law, as amended by section 25 of part A3 of chapter 62 of the laws of 2003, is amended to read as follows:

(ii) For periods on and after July first, two thousand four, reports submitted on a monthly basis by third-party payors in accordance with subparagraph (i) of this paragraph and reports submitted on a monthly or

annual basis by payors acting in an administrative services capacity on behalf of electing third-party payors in accordance with subparagraph (i) of this paragraph shall be made electronically in a form as may be required by the commissioner; provided, however, any third-party payor, except payors acting in an administrative services capacity on behalf of electing third-party payors, which, on or after January first, two thousand four, elects to make payments directly to the commissioner or the commissioner's designee pursuant to subdivision five of this section, shall be subject to this subparagraph only after one full year of pool payment experience which results in reports being submitted on a monthly basis, AND PROVIDED FURTHER, HOWEVER, THAT ALL SUCH ELECTRONIC SUBMISSIONS SUBMITTED ON AND AFTER JULY FIRST, TWO THOUSAND TWELVE SHALL BE VERIFIED WITH AN ELECTRONIC SIGNATURE AS PRESCRIBED BY THE COMMISSIONER. This subparagraph shall not be interpreted to prohibit any third-party payor from submitting reports electronically on a voluntary basis.

S 48-c. Subparagraph (ii) of paragraph (b) of subdivision 20 of section 2807-c of the public health law, as added by section 26 of part A3 of chapter 62 of the laws of 2003, is amended to read as follows:

(ii) For periods on and after January first, two thousand five, reports submitted by general hospitals to implement the assessment set forth in subdivision eighteen of this section shall be submitted electronically in a form as may be required by the commissioner; provided, however, general hospitals are not prohibited from submitting reports electronically on a voluntary basis prior to such date, AND PROVIDED FURTHER, HOWEVER, THAT ALL SUCH ELECTRONIC SUBMISSIONS SUBMITTED ON AND AFTER JULY FIRST, TWO THOUSAND TWELVE SHALL BE VERIFIED WITH AN ELECTRONIC SIGNATURE AS PRESCRIBED BY THE COMMISSIONER.

S 49. Subdivision 8 of section 3605 of the public health law, as added by chapter 959 of the laws of 1984, is amended to read as follows:

8. Agencies licensed pursuant to this section but not certified pursuant to section three thousand six hundred eight of this article, shall not be qualified to participate as a home health agency under the provisions of title XVIII or XIX of the federal Social Security Act provided, however, an agency which has a contract with a state agency or its locally designated office OR, AS SPECIFIED BY THE COMMISSIONER, WITH A MANAGED CARE ORGANIZATION PARTICIPATING IN THE MANAGED CARE PROGRAM ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SIXTY-FOUR-J OF THE SOCIAL SERVICES LAW OR WITH A MANAGED LONG TERM CARE PLAN ESTABLISHED PURSUANT TO SECTION FORTY-FOUR HUNDRED THREE-F OF THIS CHAPTER, may receive reimbursement under title XIX of the federal Social Security Act.

S 50. Subdivision 6 of section 365-f of the social services law is renumbered subdivision 7 and a new subdivision 6 is added to read as follows:

6. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION OR ANY OTHER CONTRARY PROVISION OF LAW, MANAGED CARE PROGRAMS ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SIXTY-FOUR-J OF THIS TITLE AND MANAGED LONG TERM CARE PLANS AND OTHER CARE COORDINATION MODELS ESTABLISHED PURSUANT TO SECTION FOUR THOUSAND FOUR HUNDRED THREE-F OF THE PUBLIC HEALTH LAW SHALL OFFER CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAMS TO ENROLLEES.

S 51. Subparagraph (ii) of paragraph (e) of subdivision 4 of section 364-j of the social services law, as amended by section 14 of part C of chapter 58 of the laws of 2004, is amended to read as follows:

(ii) In any social services district which has implemented a mandatory managed care program pursuant to this section, the requirements of this

subparagraph shall apply to the extent consistent with federal law and regulations. The department of health, may contract with one or more independent organizations to provide enrollment counseling and enrollment services, for participants required to enroll in managed care programs, for each social services district [requesting the services of an enrollment broker] WHICH HAS IMPLEMENTED A MANDATORY MANAGED CARE PROGRAM. To select such organizations, the department of health shall issue a request for proposals (RFP), shall evaluate proposals submitted in response to such RFP and, pursuant to such RFP, shall award a contract to one or more qualified and responsive organizations. Such organizations shall not be owned, operated, or controlled by any governmental agency, managed care provider, comprehensive HIV special needs plan, mental health special needs plan, or medical services provider.

S 52. Paragraph (b) of subdivision 1 of section 4403-f of the public health law is REPEALED and paragraphs (c) and (d), paragraph (c) as relettered by section 7 of part C of chapter 58 of the laws of 2007, are relettered paragraphs (b) and (c).

S 53. The opening paragraph of subdivision 2 of section 4403-f of the public health law, as amended by section 8 of part C of chapter 58 of the laws of 2007, is amended to read as follows:

An [eligible] applicant shall submit an application for a certificate of authority to operate a managed long term care plan upon forms prescribed by the commissioner. Such [eligible] applicant shall submit information and documentation to the commissioner which shall include, but not be limited to:

S 54. Paragraph (b) of subdivision 4 of section 4403-f of the public health law, as added by section 5 of part C of chapter 58 of the laws of 2010, is amended to read as follows:

(b) Standards established pursuant to this subdivision shall be adequate to protect the interests of enrollees in managed long term care plans. The commissioner shall be satisfied that the [eligible] applicant is financially sound, and has made adequate provisions to pay for services.

S 55. Paragraph (c) of subdivision 6 of section 4403-f of the public health law, as amended by section 41-b of part H of chapter 59 of the laws of 2011, is amended to read as follows:

(c) For the period beginning April first, two thousand twelve and ending March thirty-first, two thousand fifteen, the majority leader of the senate and the speaker of the assembly may each recommend to the commissioner, in writing, up to four [eligible] applicants to convert to be approved managed long term care plans. An applicant shall only be approved and issued a certificate of authority if the commissioner determines that the applicant meets the requirements of subdivision three of this section. The majority leader of the senate or the speaker of the assembly may assign their authority to recommend one or more applicants under this section to the commissioner.

S 56. Paragraph (a) of subdivision 3 of section 366 of the social services law, as amended by chapter 110 of the laws of 1971, is amended to read as follows:

(a) Medical assistance shall be furnished to applicants in cases where, although such applicant has a responsible relative with sufficient income and resources to provide medical assistance as determined by the regulations of the department, the income and resources of the responsible relative are not available to such applicant because of the absence of such relative [or] AND the refusal or failure of such ABSENT relative to provide the necessary care and assistance. In such cases,

however, the furnishing of such assistance shall create an implied contract with such relative, and the cost thereof may be recovered from such relative in accordance with title six of article three OF THIS CHAPTER and other applicable provisions of law.

S 57. Subdivision 1 of section 92 of part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to known and projected department of health state funds Medicaid expenditures, is amended to read as follows:

1. For state fiscal years 2011-12 [and 2012-13] THROUGH 2013-14, the director of the budget, in consultation with the commissioner of health referenced as "commissioner" for purposes of this section, shall assess on a monthly basis, as reflected in monthly reports pursuant to subdivision five of this section known and projected department of health state funds medicaid expenditures by category of service and by geographic regions, as defined by the commissioner, and if the director of the budget determines that such expenditures are expected to cause medicaid disbursements for such period to exceed the projected department of health medicaid state funds disbursements in the enacted budget financial plan pursuant to subdivision 3 of section 23 of the state finance law, the commissioner of health, in consultation with the director of the budget, shall develop a medicaid savings allocation plan to limit such spending to the aggregate limit level specified in the enacted budget financial plan, provided, however, such projections may be adjusted by the director of the budget to account for any changes in the New York state federal medical assistance percentage amount established pursuant to the federal social security act, changes in provider revenues, REDUCTIONS TO LOCAL SOCIAL SERVICES DISTRICT MEDICAL ASSISTANCE ADMINISTRATION, and beginning April 1, 2012 the operational costs of the New York state medical indemnity fund.

S 58. Paragraph (b) of section 90 of part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to types of appropriations exempt from certain reductions, is amended to read as follows:

(b) The following types of appropriations shall be exempt from reductions pursuant to this section:

(i) any reductions that would violate federal law including, but not limited to, payments required pursuant to the federal Medicare program;

(ii) any reductions related to payments pursuant to article 32, article 31 and article 16 of the mental hygiene law;

(iii) payments the state is obligated to make pursuant to court orders or judgments;

(iv) payments for which the non-federal share does not reflect any state funding; [and]

(v) at the discretion of the commissioner of health and the director of the budget, payments with regard to which it is determined by the commissioner of health and the director of the budget that application of reductions pursuant to this section would result, by operation of federal law, in a lower federal medical assistance percentage applicable to such payments; AND

(VI) PAYMENTS MADE WITH REGARD TO THE EARLY INTERVENTION PROGRAM PURSUANT TO SECTION 2540 OF THE PUBLIC HEALTH LAW.

S 59. Subparagraph (ii) of paragraph (a) of subdivision 5 of section 2807-j of the public health law, as amended by section 23 of part A-3 of chapter 62 of the laws of 2003, is amended to read as follows:

(ii) An election shall remain in effect unless revoked in writing by a specified third-party payor, which revocation shall be effective on the

first day of the next [calendar year quarter] MONTH, provided that such payor has provided notice of its intention to so revoke at least [thirty] TWENTY days prior to the beginning of such [calendar quarter] MONTH.

S 60. Paragraph (b) of subdivision 5-a of section 2807-m of the public health law is amended by adding a new clause (H) to read as follows:

(H) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SUBDIVISION, FOR PERIODS ON AND AFTER APRIL FIRST, TWO THOUSAND THIRTEEN, ECRIP GRANT AWARDS SHALL BE MADE IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER.

S 61. Section 1 of part C of chapter 58 of the laws of 2005, relating to authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, is amended by adding a new subdivision (h) to read as follows:

(H) NOTWITHSTANDING THE PROVISIONS OF SECTION 368-A OF THE SOCIAL SERVICES LAW OR ANY OTHER CONTRARY PROVISION OF LAW, NO REIMBURSEMENT SHALL BE MADE FOR SOCIAL SERVICES DISTRICTS' CLAIMS SUBMITTED ON AND AFTER JULY 1, 2006, FOR DISTRICT EXPENDITURES INCURRED PRIOR TO JANUARY 1, 2006, INCLUDING, BUT NOT LIMITED TO, EXPENDITURES FOR SERVICES PROVIDED TO INDIVIDUALS WHO WERE ELIGIBLE FOR MEDICAL ASSISTANCE PURSUANT TO SECTION THREE HUNDRED SIXTY-SIX OF THE SOCIAL SERVICES LAW AS A RESULT OF A MENTAL DISABILITY, FORMERLY REFERRED TO AS HUMAN SERVICES OVERBURDEN AID TO COUNTIES.

S 62. Notwithstanding any inconsistent provision of law, rule or regulation, for purposes of implementing the provisions of the public health law and the social services law, references to titles XIX and XXI of the federal social security act in the public health law and the social services law shall be deemed to include and also to mean any successor titles thereto under the federal social security act.

S 63. Notwithstanding any inconsistent provision of law, rule or regulation, the effectiveness of the provisions of sections 2807 and 3614 of the public health law, section 18 of chapter 2 of the laws of 1988, and 18 NYCRR 505.14(h), as they relate to time frames for notice, approval or certification of rates of payment, are hereby suspended and without force or effect for purposes of implementing the provisions of this act.

S 64. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 65. This act shall take effect immediately, and shall be deemed to have been in full force and effect on and after April 1, 2012, provided, however, that:

(a) the commissioner of health may promulgate emergency regulations necessary to effectuate the provisions of sections two, three and four of this act; and

(a-1) provided, further, that the amendments to section 1 of chapter 119 of the laws of 1997 made by section thirty-two of this act, relating to authorizing the department of health to establish certain payments to general hospitals, shall be subject to the expiration of such chapter and shall be deemed expired therewith;

(a-2) provided, further, that the amendments to subdivision 1 of section 241 of the elder law made by section thirty-three of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 79 of part C of chapter 58 of the laws of 2005, as amended, when upon such date the provisions of section thirty-three-a of this act shall take effect;

(b) the amendments to paragraph (a-1) of subdivision 4 of section 365-a of the social services law made by section thirty-nine of this act shall not affect the expiration and reversion of such paragraph and shall be deemed to expire therewith;

(c) provided, further, that the amendments to section 272 of the public health law made by section forty of this act shall not affect the repeal of such section and shall be deemed repealed therewith;

(d) provided, further, that the amendments to section 2807-j of the public health law made by sections forty-three, forty-eight-a, forty-eight-b and fifty-nine of this act shall not affect the expiration of such section and shall be deemed to expire therewith;

(e) provided, further, that the amendments to section 2807-t of the public health law made by section forty-four of this act shall not affect the expiration of such section and shall be deemed to expire therewith;

(f) provided, further, that the amendments to section 4403-f of the public health law, made by sections fifty-two, fifty-three, fifty-four and fifty-five of this act shall not affect the repeal of such section and shall be deemed to repeal therewith;

(g) provided, further, that the amendments to subparagraph (ii) of paragraph (e) of subdivision 4 of section 364-j of the social services law made by section fifty-one of this act shall not affect the repeal of such section and shall be deemed repealed therewith;

(h) provided, further, that sections ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this act shall take effect April 1, 2013;

(i) provided, further, that any rules or regulations necessary to implement the provisions of this act may be promulgated and any procedures, forms, or instructions necessary for such implementation may be adopted and issued on or after the date this act shall have become a law;

(j) provided, further, that this act shall not be construed to alter, change, affect, impair or defeat any rights, obligations, duties or interests accrued, incurred or conferred prior to the effective date of this act;

(k) provided, further, that the commissioner of health and the superintendent of financial services and any appropriate council may take any steps necessary to implement this act prior to its effective date;

(k-1) provided, further, that the amendments to section 2802 of the public health law made by section thirty-one of this act shall take effect on the same date and in the same manner as section 1 of chapter 174 of the laws of 2011 takes effect, whichever is later;

(l) provided, further, that notwithstanding any inconsistent provision of the state administrative procedure act or any other provision of law, rule or regulation, the commissioner of health and the superintendent of financial services and any appropriate council is authorized to adopt or amend or promulgate on an emergency basis any regulation he or she or such council determines necessary to implement any provision of this act on its effective date; and

(m) provided, further, that the provisions of this act shall become effective notwithstanding the failure of the commissioner of health or the superintendent of financial services or any council to adopt or amend or promulgate regulations implementing this act.

PART E

Section 1. This act shall be known and may be cited as the "New York Health Benefit Exchange Act".

S 2. The public authorities law is amended by adding a new article 10-E to read as follows:

ARTICLE 10-E

NEW YORK HEALTH BENEFIT EXCHANGE

S 3980. STATEMENT OF POLICY AND PURPOSES. THE PURPOSE OF THIS ARTICLE IS TO ESTABLISH AN AMERICAN HEALTH BENEFIT EXCHANGE IN NEW YORK, IN CONFORMANCE WITH THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148, AS AMENDED BY THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUBLIC LAW 111-152. THE EXCHANGE SHALL FACILITATE ENROLLMENT IN HEALTH COVERAGE, THE PURCHASE AND SALE OF QUALIFIED HEALTH PLANS IN THE INDIVIDUAL MARKET IN THIS STATE, AND ENROLL INDIVIDUALS IN HEALTH COVERAGE FOR WHICH THEY ARE ELIGIBLE IN ACCORDANCE WITH FEDERAL LAW. THE EXCHANGE ALSO SHALL INCORPORATE A SMALL BUSINESS HEALTH OPTIONS PROGRAM ("SHOP") TO ASSIST QUALIFIED EMPLOYERS IN FACILITATING THE ENROLLMENT OF THEIR EMPLOYEES IN QUALIFIED HEALTH PLANS OFFERED IN THE GROUP MARKET. IT IS THE INTENT OF THE LEGISLATURE, THROUGH THE ESTABLISHMENT OF THE EXCHANGE, TO PROMOTE QUALITY AND AFFORDABLE HEALTH COVERAGE AND CARE, REDUCE THE NUMBER OF UNINSURED PERSONS, PROVIDE A TRANSPARENT MARKETPLACE, EDUCATE CONSUMERS AND ASSIST INDIVIDUALS WITH ACCESS TO COVERAGE, PREMIUM ASSISTANCE TAX CREDITS AND COST-SHARING REDUCTIONS.

S 3981. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING DEFINITIONS SHALL APPLY:

1. "BOARD" OR "BOARD OF DIRECTORS" MEANS THE BOARD OF DIRECTORS OF THE EXCHANGE.

2. "REGIONAL ADVISORY COMMITTEES" MEANS THE NEW YORK HEALTH BENEFIT EXCHANGE REGIONAL ADVISORY COMMITTEES ESTABLISHED PURSUANT TO THIS ARTICLE.

3. "COMMISSIONER" MEANS THE COMMISSIONER OF HEALTH.

4. "EXCHANGE" MEANS THE NEW YORK HEALTH BENEFIT EXCHANGE ESTABLISHED PURSUANT TO THIS ARTICLE.

5. "FEDERAL ACT" MEANS THE PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148, AS AMENDED BY THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUBLIC LAW 111-152, AND ANY REGULATIONS OR GUIDANCE ISSUED THEREUNDER.

6. "HEALTH PLAN" MEANS A POLICY, CONTRACT OR CERTIFICATE, OFFERED OR ISSUED BY AN INSURER TO PROVIDE, DELIVER, ARRANGE FOR, PAY FOR OR REIMBURSE ANY OF THE COSTS OF HEALTH CARE SERVICES. HEALTH PLAN SHALL NOT INCLUDE THE FOLLOWING:

(A) ACCIDENT INSURANCE OR DISABILITY INCOME INSURANCE, OR ANY COMBINATION THEREOF;

(B) COVERAGE ISSUED AS A SUPPLEMENT TO LIABILITY INSURANCE;

(C) LIABILITY INSURANCE, INCLUDING GENERAL LIABILITY INSURANCE AND AUTOMOBILE LIABILITY INSURANCE;

(D) WORKERS' COMPENSATION OR SIMILAR INSURANCE;

(E) AUTOMOBILE NO-FAULT INSURANCE;

(F) CREDIT INSURANCE;

(G) OTHER SIMILAR INSURANCE COVERAGE, AS SPECIFIED IN FEDERAL REGULATIONS, UNDER WHICH BENEFITS FOR MEDICAL CARE ARE SECONDARY OR INCIDENTAL TO OTHER INSURANCE BENEFITS;

(H) LIMITED SCOPE DENTAL OR VISION BENEFITS, BENEFITS FOR LONG-TERM CARE INSURANCE, NURSING HOME INSURANCE, HOME CARE INSURANCE, OR ANY COMBINATION THEREOF, OR SUCH OTHER SIMILAR, LIMITED BENEFITS HEALTH INSURANCE AS SPECIFIED IN FEDERAL REGULATIONS, IF THE BENEFITS ARE PROVIDED UNDER A SEPARATE POLICY, CERTIFICATE OR CONTRACT OF INSURANCE OR ARE OTHERWISE NOT AN INTEGRAL PART OF THE PLAN;

(I) COVERAGE ONLY FOR A SPECIFIED DISEASE OR ILLNESS, HOSPITAL INDEMNITY, OR OTHER FIXED INDEMNITY COVERAGE;

(J) MEDICARE SUPPLEMENTAL INSURANCE AS DEFINED IN SECTION 1882(G)(1) OF THE FEDERAL SOCIAL SECURITY ACT, COVERAGE SUPPLEMENTAL TO THE COVERAGE PROVIDED UNDER CHAPTER 55 OF TITLE 10 OF THE UNITED STATES CODE, OR SIMILAR SUPPLEMENTAL COVERAGE PROVIDED UNDER A GROUP HEALTH PLAN IF IT IS OFFERED AS A SEPARATE POLICY, CERTIFICATE OR CONTRACT OF INSURANCE; OR

(K) THE MEDICAL INDEMNITY FUND ESTABLISHED PURSUANT TO TITLE FOUR OF ARTICLE TWENTY-NINE-D OF THE PUBLIC HEALTH LAW.

7. "INSURER" MEANS AN INSURANCE COMPANY SUBJECT TO ARTICLE THIRTY-TWO OR FORTY-THREE OF THE INSURANCE LAW, OR A HEALTH MAINTENANCE ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW THAT CONTRACTS OR OFFERS TO CONTRACT TO PROVIDE, DELIVER, ARRANGE, PAY OR REIMBURSE ANY OF THE COSTS OF HEALTH CARE SERVICES.

8. "QUALIFIED DENTAL PLAN" MEANS A LIMITED SCOPE DENTAL PLAN THAT IS ISSUED BY AN INSURER AND CERTIFIED IN ACCORDANCE WITH SECTION THIRTY-NINE HUNDRED EIGHTY-FIVE OF THIS ARTICLE.

9. "QUALIFIED EMPLOYER" MEANS A SMALL EMPLOYER THAT ELECTS TO MAKE ITS FULL-TIME EMPLOYEES ELIGIBLE FOR ONE OR MORE QUALIFIED HEALTH PLANS THROUGH THE EXCHANGE.

10. "QUALIFIED HEALTH PLAN" MEANS A HEALTH PLAN THAT IS ISSUED BY AN INSURER AND CERTIFIED IN ACCORDANCE WITH SECTION THIRTY-NINE HUNDRED EIGHTY-FIVE OF THIS ARTICLE.

11. "QUALIFIED INDIVIDUAL" MEANS AN INDIVIDUAL, INCLUDING A MINOR, WHO:

(A) IS SEEKING TO ENROLL IN A QUALIFIED HEALTH PLAN OFFERED TO INDIVIDUALS THROUGH THE EXCHANGE;

(B) RESIDES IN THIS STATE;

(C) AT THE TIME OF ENROLLMENT, IS NOT INCARCERATED, OTHER THAN INCARCERATION PENDING THE DISPOSITION OF CHARGES; AND

(D) IS, AND IS REASONABLY EXPECTED TO BE, FOR THE ENTIRE PERIOD FOR WHICH ENROLLMENT IS SOUGHT, A CITIZEN OR NATIONAL OF THE UNITED STATES OR AN ALIEN LAWFULLY PRESENT IN THE UNITED STATES.

12. "SECRETARY" MEANS THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

13. "SHOP" MEANS THE SMALL BUSINESS HEALTH OPTIONS PROGRAM DESIGNED TO ASSIST QUALIFIED EMPLOYERS IN THIS STATE IN FACILITATING THE ENROLLMENT OF THEIR EMPLOYEES IN QUALIFIED HEALTH PLANS OFFERED IN THE GROUP MARKET IN THIS STATE.

14. "SMALL EMPLOYER" MEANS, FOR PLAN YEARS PRIOR TO JANUARY FIRST, TWO THOUSAND SIXTEEN, AN EMPLOYER THAT EMPLOYED AN AVERAGE OF AT LEAST ONE BUT NOT MORE THAN FIFTY EMPLOYEES ON BUSINESS DAYS DURING THE PRECEDING CALENDAR YEAR. FOR PLAN YEARS BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, SMALL EMPLOYER MEANS AN EMPLOYER THAT EMPLOYED AN AVERAGE OF AT LEAST ONE BUT NOT MORE THAN ONE HUNDRED EMPLOYEES ON BUSINESS DAYS DURING THE PRECEDING CALENDAR YEAR. FOR PURPOSES OF THE DEFINITION OF SMALL EMPLOYER:

(A) ALL PERSONS TREATED AS A SINGLE EMPLOYER UNDER SUBSECTION (B), (C), (M) OR (O) OF SECTION 414 OF THE INTERNAL REVENUE CODE OF 1986 SHALL BE TREATED AS A SINGLE EMPLOYER;

(B) AN EMPLOYER AND ANY PREDECESSOR EMPLOYER SHALL BE TREATED AS A SINGLE EMPLOYER;

(C) ALL EMPLOYEES SHALL BE COUNTED, INCLUDING PART-TIME EMPLOYEES AND EMPLOYEES WHO ARE NOT ELIGIBLE FOR COVERAGE THROUGH THE EMPLOYER;

(D) IF AN EMPLOYER WAS NOT IN EXISTENCE THROUGHOUT THE PRECEDING CALENDAR YEAR, THEN THE DETERMINATION OF WHETHER THAT EMPLOYER IS A SMALL EMPLOYER SHALL BE BASED UPON THE AVERAGE NUMBER OF EMPLOYEES THAT THE EMPLOYER REASONABLY EXPECTS TO EMPLOY ON BUSINESS DAYS IN THE CURRENT CALENDAR YEAR;

(E) IF A QUALIFIED EMPLOYER THAT MAKES ENROLLMENT IN QUALIFIED HEALTH PLANS AVAILABLE TO ITS EMPLOYEES THROUGH THE EXCHANGE CEASES TO BE A SMALL EMPLOYER BY REASON OF AN INCREASE IN THE NUMBER OF ITS EMPLOYEES, THEN THE EMPLOYER SHALL CONTINUE TO BE TREATED AS A QUALIFIED EMPLOYER FOR PURPOSES OF THIS ARTICLE FOR THE PERIOD BEGINNING WITH THE INCREASE AND ENDING WITH THE FIRST DAY ON WHICH THE EMPLOYER DOES NOT MAKE SUCH ENROLLMENT AVAILABLE TO ITS EMPLOYEES; AND

(F) NOTWITHSTANDING PARAGRAPHS (A) THROUGH (E) OF THIS SUBDIVISION, AN EMPLOYER ALSO SHALL BE CONSIDERED A SMALL EMPLOYER IF THE COVERAGE IT OFFERS WOULD BE CONSIDERED SMALL GROUP COVERAGE UNDER THE INSURANCE LAW AND REGULATIONS PROMULGATED THEREUNDER PROVIDED THAT IT IS NOT OTHERWISE PROHIBITED UNDER THE FEDERAL ACT.

15. "SMALL GROUP MARKET" MEANS THE HEALTH INSURANCE MARKET UNDER WHICH INDIVIDUALS RECEIVE HEALTH INSURANCE COVERAGE ON BEHALF OF THEMSELVES AND THEIR DEPENDENTS THROUGH A GROUP HEALTH PLAN MAINTAINED BY A SMALL EMPLOYER.

16. "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF FINANCIAL SERVICES.

S 3982. ESTABLISHMENT OF THE NEW YORK HEALTH BENEFIT EXCHANGE. 1. THERE IS HEREBY CREATED A PUBLIC BENEFIT CORPORATION TO BE KNOWN AS THE NEW YORK HEALTH BENEFIT EXCHANGE. SUCH CORPORATION SHALL BE A BODY CORPORATE AND POLITIC.

2. THE PURPOSE OF THE EXCHANGE IS TO FACILITATE THE PURCHASE AND SALE OF QUALIFIED HEALTH PLANS, ASSIST QUALIFIED EMPLOYERS IN FACILITATING THE ENROLLMENT OF THEIR EMPLOYEES IN QUALIFIED HEALTH PLANS THROUGH THE SMALL BUSINESS HEALTH OPTIONS PROGRAM, ENROLL INDIVIDUALS IN HEALTH COVERAGE FOR WHICH THEY ARE ELIGIBLE IN ACCORDANCE WITH FEDERAL LAW AND CARRY OUT OTHER FUNCTIONS SET FORTH IN THIS ARTICLE.

3. (A) THE EXCHANGE SHALL BE GOVERNED BY A BOARD OF DIRECTORS CONSISTING OF NINE VOTING DIRECTORS, INCLUDING THE COMMISSIONER AND THE SUPERINTENDENT, WHO SHALL SERVE AS EX OFFICIO DIRECTORS.

(B) SEVEN DIRECTORS SHALL BE APPOINTED BY THE GOVERNOR, TWO OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND TWO OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY. EACH PERSON APPOINTED AS A DIRECTOR PURSUANT TO THIS PARAGRAPH SHALL HAVE EXPERTISE IN ONE OR MORE OF THE FOLLOWING AREAS:

(I) INDIVIDUAL HEALTH CARE COVERAGE;

(II) SMALL EMPLOYER HEALTH CARE COVERAGE;

(III) HEALTH BENEFITS ADMINISTRATION;

(IV) HEALTH CARE FINANCE;

(V) PUBLIC OR PRIVATE HEALTH CARE DELIVERY SYSTEMS; AND

(VI) PURCHASING HEALTH PLAN COVERAGE.

(C) RECOMMENDATIONS AND APPOINTMENTS SHALL TAKE INTO CONSIDERATION THE EXPERTISE OF OTHER DIRECTORS RECOMMENDED AND APPOINTED PURSUANT TO THIS SUBDIVISION, SO THAT THE BOARD COMPOSITION REFLECTS A DIVERSITY OF EXPERIENCE AND COMPLIES WITH ANY REGULATIONS ISSUED BY THE SECRETARY PURSUANT TO THE FEDERAL ACT.

(D) RECOMMENDATIONS BY THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL BE MADE WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE, WITHIN SIXTY DAYS OF THE OCCURRENCE OF A VACANCY OR WITHIN SIXTY DAYS PRIOR TO THE EXPIRATION OF A TERM.

4. THE GOVERNOR SHALL APPOINT A CHAIR OF THE BOARD FROM AMONG THE DIRECTORS WHO SHALL BE SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE. ANY DIRECTOR APPOINTED BY THE GOVERNOR AS CHAIR OF THE BOARD MAY SERVE AS ACTING CHAIR UNTIL SUCH TIME AS A VOTE FOR CONFIRMATION IS TAKEN BY THE SENATE. NO DIRECTOR APPOINTED AS CHAIR SHALL SERVE AS CHAIR, OR CONTINUE TO SERVE AS ACTING CHAIR, IF THE SENATE HAS VOTED NOT TO CONFIRM SUCH DIRECTOR AS CHAIR.

5. (A) THE TERMS OF THE DIRECTORS, OTHER THAN THE EX OFFICIO DIRECTORS, SHALL BE THREE YEARS, PROVIDED, HOWEVER, THAT THE INITIAL TERMS OF ONE OF THE DIRECTORS APPOINTED UPON RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE, ONE OF THE DIRECTORS APPOINTED UPON RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY, AND ONE OF THE DIRECTORS APPOINTED BY THE GOVERNOR WITHOUT RECOMMENDATION SHALL BE FOR TWO YEARS.

(B) VACANCIES OCCURRING OTHERWISE THAN BY EXPIRATION OF TERM OF OFFICE SHALL BE FILLED FOR THE UNEXPIRED TERM IN THE MANNER PROVIDED FOR ORIGINAL APPOINTMENT.

6. THE DIRECTORS SHALL NOT RECEIVE ANY COMPENSATION FOR THEIR SERVICES AS DIRECTORS.

7. (A) EACH DIRECTOR SHALL HAVE THE RESPONSIBILITY AND DUTY TO MEET THE REQUIREMENTS OF THIS ARTICLE, THE FEDERAL ACT, AND ALL APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS TO SERVE THE PUBLIC INTEREST OF THE INDIVIDUALS AND SMALL BUSINESSES SEEKING HEALTH CARE COVERAGE THROUGH THE EXCHANGE, CONSISTENT WITH SECTION TWENTY-EIGHT HUNDRED TWENTY-FOUR OF THIS CHAPTER.

(B) EACH DIRECTOR SHALL BE A STATE OFFICER OR EMPLOYEE FOR THE PURPOSES OF SECTIONS SEVENTY-THREE AND SEVENTY-FOUR OF THE PUBLIC OFFICERS LAW.

(C) NO DIRECTOR MAY BE EMPLOYED OR OTHERWISE RETAINED BY THE EXCHANGE.

8. (A) THE BOARD MAY CREATE SUCH COMMITTEES AS THE BOARD DEEMS NECESSARY. THE FIRST MEETING OF THE BOARD SHALL BE HELD WITHIN FOURTEEN DAYS AFTER ALL DIRECTORS ARE INITIALLY APPOINTED. AT THE FIRST MEETING OF THE BOARD, AND AT THE FIRST MEETING IN EACH SUBSEQUENT YEAR, THE BOARD

SHALL ELECT FROM AMONG ITS MEMBERS A SECRETARY AND A TREASURER. THE BOARD ALSO SHALL ELECT SUCH OTHER OFFICERS AS IT SHALL DEEM NECESSARY. THE OFFICERS SO ELECTED SHALL HAVE SUCH POWERS AND DUTIES AS ARE ASSIGNED BY THE BY-LAWS AND THIS CHAPTER.

(B) THE BOARD, AND ANY COMMITTEE THEREOF, MAY HOLD MEETINGS BY ELECTRONIC MEANS CONSISTENT WITH ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW.

S 3983. GENERAL POWERS OF THE EXCHANGE. THE EXCHANGE SHALL HAVE THE FOLLOWING POWERS TO BE USED IN FURTHERANCE OF ITS CORPORATE PURPOSES:

1. TO SUE AND BE SUED AND TO PARTICIPATE IN ACTIONS AND PROCEEDINGS, WHETHER JUDICIAL, ADMINISTRATIVE, ARBITRATIVE OR OTHERWISE;

2. TO HAVE A CORPORATE SEAL, AND TO ALTER SUCH SEAL AT PLEASURE, AND TO USE IT BY CAUSING IT OR A FACSIMILE TO BE AFFIXED OR IMPRESSED OR REPRODUCED IN ANY OTHER MANNER;

3. TO PURCHASE, RECEIVE, TAKE BY GRANT, GIFT, DEVISE, BEQUEST OR OTHERWISE, LEASE, OR OTHERWISE ACQUIRE, OWN, HOLD, IMPROVE, EMPLOY, USE AND OTHERWISE DEAL IN AND WITH, REAL OR PERSONAL PROPERTY, OR ANY INTEREST THEREIN, WHEREVER SITUATED;

4. TO SELL, CONVEY, LEASE, EXCHANGE, TRANSFER OR OTHERWISE DISPOSE OF, OR MORTGAGE OR PLEDGE, OR CREATE A SECURITY INTEREST IN, ALL OR ANY OF ITS PROPERTY, OR ANY INTEREST THEREIN, WHEREVER SITUATED;

5. TO MAKE CONTRACTS, GIVE GUARANTEES AND INCUR LIABILITIES, AND BORROW MONEY; PROVIDED, HOWEVER, THAT THE EXCHANGE SHALL NOT ISSUE BONDS;

6. TO INVEST AND REINVEST ITS FUNDS, AND TAKE AND HOLD REAL AND PERSONAL PROPERTY AS SECURITY FOR THE PAYMENT OF FUNDS SO LOANED OR INVESTED;

7. TO MAKE AND ALTER BY-LAWS FOR ITS ORGANIZATION AND MANAGEMENT;

8. TO MAKE AND ALTER RULES AND REGULATIONS AS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE, SUBJECT TO THE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT;

9. TO HIRE EMPLOYEES, CONSISTENT WITH SECTION THIRTY-NINE HUNDRED NINETY OF THIS ARTICLE;

10. TO DESIGNATE THE DEPOSITORIES OF ITS MONEY;

11. TO ESTABLISH ITS FISCAL YEAR;

12. TO INSURE OR OTHERWISE PROVIDE FOR THE INSURANCE OF THE EXCHANGE'S PROPERTY OR OPERATIONS AND AGAINST SUCH OTHER RISKS AS THE EXCHANGE MAY DEEM ADVISABLE;

13. TO RECEIVE AND SPEND MONEY FOR ANY OF ITS CORPORATE PURPOSES IN ACCORDANCE WITH THIS ARTICLE; AND

14. TO APPLY FOR, ACCEPT THE AWARD OF, AND SPEND ANY AVAILABLE GRANT MONEY.

S 3984. FUNCTIONS OF THE EXCHANGE. THE EXCHANGE SHALL:

1. (A) MAKE AVAILABLE QUALIFIED HEALTH PLANS TO QUALIFIED INDIVIDUALS AND QUALIFIED EMPLOYERS BEGINNING ON OR BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN, PROVIDED THAT COVERAGE UNDER SUCH QUALIFIED PLANS SHALL NOT BECOME EFFECTIVE PRIOR TO SUCH DATE AND SHALL NOT MAKE AVAILABLE ANY HEALTH PLAN THAT IS NOT A QUALIFIED HEALTH PLAN;

(B) MAKE AVAILABLE QUALIFIED DENTAL PLANS TO QUALIFIED INDIVIDUALS AND QUALIFIED EMPLOYERS BEGINNING ON OR BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN, PROVIDED THAT COVERAGE UNDER SUCH QUALIFIED DENTAL PLANS SHALL NOT BECOME EFFECTIVE PRIOR TO SUCH DATE, EITHER SEPARATELY OR IN CONJUNCTION WITH A QUALIFIED HEALTH PLAN, IF SUCH PLAN PROVIDES PEDIATRIC DENTAL BENEFITS MEETING THE REQUIREMENTS OF SECTION 1302(B)(1)(J) OF THE FEDERAL ACT;

2. ASSIGN A RATING TO EACH QUALIFIED HEALTH PLAN OFFERED THROUGH THE EXCHANGE IN ACCORDANCE WITH THE CRITERIA DEVELOPED BY THE SECRETARY

PURSUANT TO SECTION 1311(C)(3) OF THE FEDERAL ACT, AND DETERMINE EACH QUALIFIED HEALTH PLAN'S LEVEL OF COVERAGE IN ACCORDANCE WITH REGULATIONS ISSUED BY THE SECRETARY PURSUANT TO SECTION 1302(D)(2)(A) OF THE FEDERAL ACT;

3. UTILIZE A STANDARDIZED FORMAT FOR PRESENTING HEALTH BENEFIT OPTIONS IN THE EXCHANGE, INCLUDING THE USE OF THE UNIFORM OUTLINE OF COVERAGE ESTABLISHED UNDER SECTION 2715 OF THE FEDERAL PUBLIC HEALTH SERVICE ACT;

4. PROVIDE FOR ENROLLMENT PERIODS PURSUANT TO THE FEDERAL ACT OR THE INSURANCE LAW, WHICHEVER IS IN THE BEST INTEREST OF QUALIFIED INDIVIDUALS AND QUALIFIED EMPLOYERS, AFTER THE INITIAL ENROLLMENT PERIOD HAS BEEN ESTABLISHED AS REQUIRED IN THE FEDERAL ACT; PROVIDED, HOWEVER, THAT IF ENROLLMENT PERIODS PURSUANT TO THE INSURANCE LAW CONFLICT WITH RULES ADOPTED BY THE SECRETARY, THEN ENROLLMENT PERIODS PURSUANT TO THE FEDERAL ACT SHALL APPLY;

5. IMPLEMENT PROCEDURES FOR THE CERTIFICATION, RECERTIFICATION AND DECERTIFICATION OF HEALTH PLANS AS QUALIFIED HEALTH PLANS, CONSISTENT WITH GUIDELINES DEVELOPED BY THE SECRETARY PURSUANT TO SECTION 1311(C) OF THE FEDERAL ACT AND SECTION THIRTY-NINE HUNDRED EIGHTY-FIVE OF THIS ARTICLE;

6. REQUIRE QUALIFIED HEALTH PLANS TO OFFER THOSE BENEFITS DETERMINED BY THE SECRETARY TO BE ESSENTIAL HEALTH BENEFITS PURSUANT TO SECTION 1302(B) OF THE FEDERAL ACT (EXCEPT AS PROVIDED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THREE THOUSAND NINE HUNDRED EIGHTY-FIVE OF THIS ARTICLE) AND SUCH ADDITIONAL BENEFITS AS MAY BE REQUIRED PURSUANT TO THE INSURANCE LAW, PROVIDED THAT THE STATE HAS ASSUMED THE COST OF SUCH ADDITIONAL BENEFITS AS REQUIRED UNDER SECTION 1311(D)(3)(B) OF THE FEDERAL ACT;

7. ENSURE THAT INSURERS OFFERING HEALTH PLANS THROUGH THE EXCHANGE DO NOT CHARGE AN INDIVIDUAL A FEE OR PENALTY FOR TERMINATION OF COVERAGE;

8. PROVIDE FOR THE OPERATION OF A TOLL-FREE TELEPHONE HOTLINE TO RESPOND TO REQUESTS FOR ASSISTANCE;

9. MAINTAIN AN INTERNET WEBSITE THROUGH WHICH ENROLLEES AND PROSPECTIVE ENROLLEES OF QUALIFIED HEALTH PLANS MAY OBTAIN STANDARDIZED COMPARATIVE INFORMATION ON SUCH PLANS AND PUBLIC HEALTH PROGRAMS;

10. ESTABLISH AND MAKE AVAILABLE BY ELECTRONIC MEANS A CALCULATOR TO DETERMINE THE ACTUAL COST OF COVERAGE AFTER THE APPLICATION OF ANY PREMIUM TAX CREDIT UNDER SECTION 36B OF THE INTERNAL REVENUE CODE OF 1986 AND ANY COST-SHARING REDUCTION UNDER SECTION 1402 OF THE FEDERAL ACT;

11. ESTABLISH A PROGRAM UNDER WHICH THE EXCHANGE AWARDS GRANTS TO ENTITIES TO SERVE AS NAVIGATORS, IN ACCORDANCE WITH SECTION 1311(I) OF THE FEDERAL ACT AND REGULATIONS ADOPTED THEREUNDER;

12. IN ACCORDANCE WITH SECTION 1413 OF THE FEDERAL ACT, INFORM INDIVIDUALS OF ELIGIBILITY REQUIREMENTS FOR THE MEDICAID PROGRAM UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, THE CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP) UNDER TITLE XXI OF THE SOCIAL SECURITY ACT OR ANY APPLICABLE STATE OR LOCAL PUBLIC HEALTH INSURANCE PROGRAM AND IF, THROUGH SCREENING OF THE APPLICATION BY THE EXCHANGE, THE EXCHANGE DETERMINES THAT SUCH INDIVIDUALS ARE ELIGIBLE FOR ANY SUCH PROGRAM, ENROLL SUCH INDIVIDUALS IN SUCH PROGRAM;

13. PURSUANT TO SECTION 1411 OF THE FEDERAL ACT, GRANT A CERTIFICATION ATTESTING THAT, FOR PURPOSES OF THE INDIVIDUAL RESPONSIBILITY PENALTY UNDER SECTION 5000A OF THE INTERNAL REVENUE CODE OF 1986, AN INDIVIDUAL IS EXEMPT FROM THE INDIVIDUAL RESPONSIBILITY REQUIREMENT OR FROM THE PENALTY IMPOSED BY THAT SECTION BECAUSE:

(A) THERE IS NO AFFORDABLE QUALIFIED HEALTH PLAN AVAILABLE THROUGH THE EXCHANGE OR THE INDIVIDUAL'S EMPLOYER, COVERING THE INDIVIDUAL; OR

(B) THE INDIVIDUAL MEETS THE REQUIREMENTS FOR ANY OTHER SUCH EXEMPTION FROM THE INDIVIDUAL RESPONSIBILITY REQUIREMENT OR PENALTY;

14. TRANSMIT TO THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY:

(A) A LIST OF THE INDIVIDUALS TO WHOM THE EXCHANGE GRANTED A CERTIFICATION UNDER SUBDIVISION THIRTEEN OF THIS SECTION, INCLUDING THE NAME AND TAXPAYER IDENTIFICATION NUMBER OF EACH INDIVIDUAL;

(B) THE NAME AND TAXPAYER IDENTIFICATION NUMBER OF EACH INDIVIDUAL WHO WAS AN EMPLOYEE OF AN EMPLOYER WHO WAS DETERMINED TO BE ELIGIBLE FOR THE PREMIUM TAX CREDIT UNDER SECTION 36B OF THE INTERNAL REVENUE CODE OF 1986 BECAUSE:

(I) THE EMPLOYER DID NOT PROVIDE MINIMUM ESSENTIAL COVERAGE AS DETERMINED BY THE SECRETARY PURSUANT TO SECTION 1311(D) OF THE FEDERAL ACT; OR

(II) THE EMPLOYER PROVIDED THE MINIMUM ESSENTIAL COVERAGE AS DETERMINED BY THE SECRETARY PURSUANT TO SECTION 1311(D) OF THE FEDERAL ACT, BUT IT WAS DETERMINED UNDER SECTION 36B(C)(2)(C) OF THE INTERNAL REVENUE CODE OF 1986 TO EITHER BE UNAFFORDABLE TO THE EMPLOYEE OR TO NOT PROVIDE THE REQUIRED MINIMUM ACTUARIAL VALUE; AND

(C) THE NAME AND TAXPAYER IDENTIFICATION NUMBER OF:

(I) EACH INDIVIDUAL WHO NOTIFIES THE EXCHANGE PURSUANT TO SECTION 1411(B)(4) OF THE FEDERAL ACT THAT HE OR SHE HAS CHANGED EMPLOYERS; AND

(II) EACH INDIVIDUAL WHO CEASES COVERAGE UNDER A QUALIFIED HEALTH PLAN DURING A PLAN YEAR AND THE EFFECTIVE DATE OF THAT CESSATION;

15. PROVIDE TO EACH EMPLOYER THE NAME OF EACH EMPLOYEE OF THE EMPLOYER DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION FOURTEEN OF THIS SECTION WHO CEASES COVERAGE UNDER A QUALIFIED HEALTH PLAN DURING A PLAN YEAR AND THE EFFECTIVE DATE OF THE CESSATION;

16. OPERATE A SMALL BUSINESS HEALTH OPTIONS PROGRAM ("SHOP") PURSUANT TO SECTION 1311 OF THE FEDERAL ACT THROUGH WHICH QUALIFIED EMPLOYERS ACCESS COVERAGE FOR THEIR EMPLOYEES, AND MAY:

(A) PERMIT QUALIFIED EMPLOYERS TO SPECIFY A LEVEL OF COVERAGE SO THEIR EMPLOYEES MAY ENROLL IN ANY QUALIFIED HEALTH PLAN OFFERED THROUGH THE SHOP AT THE SPECIFIED LEVEL OF COVERAGE OR, UNLESS PROHIBITED BY THE FEDERAL ACT, PROVIDE A SPECIFIC AMOUNT OR OTHER PAYMENT FORMULATED IN ACCORDANCE WITH THE FEDERAL ACT TO BE USED AS PART OF AN EMPLOYEE CHOICE PLAN; AND

(B) PROVIDE PREMIUM AGGREGATION AND OTHER RELATED SERVICES TO MINIMIZE ADMINISTRATIVE BURDENS FOR QUALIFIED EMPLOYERS;

17. ENTER INTO AGREEMENTS AS NECESSARY WITH: (A) FEDERAL AND STATE AGENCIES AND OTHER STATE EXCHANGES TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS ARTICLE, PROVIDED SUCH AGREEMENTS INCLUDE ADEQUATE PROTECTIONS WITH RESPECT TO THE CONFIDENTIALITY OF ANY INFORMATION TO BE SHARED AND COMPLY WITH ALL STATE AND FEDERAL LAWS AND REGULATIONS; AND

(B) LOCAL DEPARTMENTS OF SOCIAL SERVICES TO COORDINATE ENROLLMENT IN OTHER SOCIAL SERVICES PROGRAMS, AS APPROPRIATE, PROVIDED SUCH AGREEMENTS INCLUDE ADEQUATE PROTECTIONS WITH RESPECT TO THE CONFIDENTIALITY OF ANY INFORMATION TO BE SHARED AND COMPLY WITH ALL STATE AND FEDERAL LAWS AND REGULATIONS;

18. PERFORM DUTIES REQUIRED BY THE SECRETARY OR THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY RELATED TO DETERMINING ELIGIBILITY FOR PREMIUM TAX CREDITS, REDUCED COST-SHARING, OR INDIVIDUAL RESPONSIBILITY REQUIREMENT EXEMPTIONS;

19. MEET FINANCIAL INTEGRITY REQUIREMENTS UNDER SECTION 1313 OF THE FEDERAL ACT AND THIS CHAPTER, INCLUDING:

(A) KEEPING AN ACCURATE ACCOUNTING OF ALL ACTIVITIES, RECEIPTS, AND EXPENDITURES AND ANNUALLY SUBMITTING TO THE SECRETARY A REPORT CONCERNING SUCH ACCOUNTINGS, WITH A COPY OF SUCH REPORT PROVIDED TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY; AND

(B) FULLY COOPERATING WITH ANY INVESTIGATION CONDUCTED BY THE SECRETARY PURSUANT TO THE SECRETARY'S AUTHORITY UNDER SECTION 1313 OF THE FEDERAL ACT AND ALLOWING THE SECRETARY, IN COORDINATION WITH THE INSPECTOR GENERAL OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO:

(I) INVESTIGATE THE AFFAIRS OF THE EXCHANGE;

(II) EXAMINE THE PROPERTIES AND RECORDS OF THE EXCHANGE; AND

(III) REQUIRE PERIODIC REPORTS IN RELATION TO THE ACTIVITIES UNDERTAKEN BY THE EXCHANGE;

20. (A) CONSULT WITH THE REGIONAL ADVISORY COMMITTEES ESTABLISHED PURSUANT TO SECTION THIRTY-NINE HUNDRED EIGHTY-SIX OF THIS ARTICLE; AND

(B) CONSULT WITH STAKEHOLDERS RELEVANT TO CARRYING OUT THE ACTIVITIES REQUIRED UNDER THIS ARTICLE, INCLUDING BUT NOT LIMITED TO:

(I) HEALTH CARE CONSUMERS WHO ARE ENROLLEES IN HEALTH PLANS;

(II) INDIVIDUALS AND ENTITIES WITH EXPERIENCE IN FACILITATING ENROLLMENT IN HEALTH PLANS;

(III) REPRESENTATIVES OF SMALL BUSINESSES AND SELF-EMPLOYED INDIVIDUALS;

(IV) STATE MEDICAID OFFICES, INCLUDING LOCAL DEPARTMENTS OF SOCIAL SERVICES;

(V) ADVOCATES FOR ENROLLING HARD TO REACH POPULATIONS;

(VI) HEALTH CARE PROVIDERS; AND

(VII) INSURERS;

21. SUBMIT INFORMATION PROVIDED BY EXCHANGE APPLICANTS FOR VERIFICATION AS REQUIRED BY SECTION 1411(C) OF THE FEDERAL ACT;

22. ESTABLISH RULES AND REGULATIONS, PURSUANT TO SUBDIVISION EIGHT OF SECTION THIRTY-NINE HUNDRED EIGHTY-THREE OF THIS ARTICLE, THAT DO NOT CONFLICT WITH OR PREVENT THE APPLICATION OF REGULATIONS PROMULGATED BY THE SECRETARY; AND

23. DETERMINE ELIGIBILITY, PROVIDE NOTICES, AND PROVIDE OPPORTUNITIES FOR APPEAL AND REDETERMINATION IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 1411 AND 1413 OF THE FEDERAL ACT.

S 3985. SPECIAL FUNCTIONS OF THE EXCHANGE RELATED TO HEALTH PLAN CERTIFICATION AND QUALIFIED HEALTH PLAN OVERSIGHT. 1. HEALTH PLANS CERTIFIED BY THE EXCHANGE SHALL MEET THE FOLLOWING REQUIREMENTS:

(A) THE INSURER OFFERING THE HEALTH PLAN:

(I) IS LICENSED OR CERTIFIED BY THE SUPERINTENDENT OR COMMISSIONER AND MEETS THE REQUIREMENTS OF SECTION 1301(A)(1)(C)(I) OF THE FEDERAL ACT AND ANY GUIDANCE ISSUED THEREUNDER;

(II) OFFERS AT LEAST ONE QUALIFIED HEALTH PLAN IN EACH OF THE SILVER AND GOLD LEVELS;

(III) HAS FILED WITH AND RECEIVED APPROVAL FROM THE SUPERINTENDENT OF ITS PREMIUM RATES AND POLICY OR CONTRACT FORMS PURSUANT TO THE INSURANCE LAW AND THE PUBLIC HEALTH LAW;

(IV) DOES NOT CHARGE ANY CANCELLATION FEES OR PENALTIES IN VIOLATION OF SUBDIVISION SEVEN OF SECTION THIRTY-NINE HUNDRED EIGHTY-FOUR OF THIS ARTICLE; AND

(V) COMPLIES WITH THE REGULATIONS DEVELOPED BY THE SECRETARY UNDER SECTION 1311(C) OF THE FEDERAL ACT AND SUCH OTHER REQUIREMENTS AS THE EXCHANGE MAY ESTABLISH;

(B) THE HEALTH PLAN: (I) PROVIDES THE ESSENTIAL HEALTH BENEFITS PACKAGE DESCRIBED IN SECTION 1302(A) OF THE FEDERAL ACT AND INCLUDES SUCH ADDITIONAL BENEFITS AS MAY BE REQUIRED PURSUANT TO THE INSURANCE LAW, PROVIDED THAT THE STATE HAS ASSUMED THE COST OF SUCH ADDITIONAL BENEFITS AS REQUIRED UNDER SECTION 1311(D)(3)(B) OF THE FEDERAL ACT, EXCEPT THAT THE HEALTH PLAN SHALL NOT BE REQUIRED TO PROVIDE ESSENTIAL BENEFITS THAT DUPLICATE THE MINIMUM BENEFITS OF QUALIFIED DENTAL PLANS IF:

(A) THE EXCHANGE HAS DETERMINED THAT AT LEAST ONE QUALIFIED DENTAL PLAN IS AVAILABLE TO SUPPLEMENT THE HEALTH PLAN'S COVERAGE; AND

(B) THE INSURER MAKES PROMINENT DISCLOSURE AT THE TIME IT OFFERS THE HEALTH PLAN, IN A FORM APPROVED BY THE EXCHANGE, THAT THE PLAN DOES NOT PROVIDE THE FULL RANGE OF ESSENTIAL PEDIATRIC BENEFITS, AND THAT QUALIFIED DENTAL PLANS PROVIDING THOSE BENEFITS AND OTHER DENTAL BENEFITS NOT COVERED BY THE PLAN ARE OFFERED THROUGH THE EXCHANGE;

(II) PROVIDES AT LEAST A BRONZE LEVEL OF COVERAGE AS DEFINED IN SECTION 1302(D) OF THE FEDERAL ACT, UNLESS THE PLAN IS CERTIFIED AS A QUALIFIED CATASTROPHIC PLAN, AS DEFINED IN SECTION 1302(E) OF THE FEDERAL ACT, AND SHALL ONLY BE OFFERED TO INDIVIDUALS ELIGIBLE FOR CATASTROPHIC COVERAGE;

(III) HAS COST-SHARING REQUIREMENTS, INCLUDING DEDUCTIBLES, WHICH DO NOT EXCEED THE LIMITS ESTABLISHED UNDER SECTION 1302(C) OF THE FEDERAL ACT AND ANY REQUIREMENTS OF THE EXCHANGE;

(IV) COMPLIES WITH REGULATIONS PROMULGATED BY THE SECRETARY PURSUANT TO SECTION 1311(C) OF THE FEDERAL ACT, WHICH INCLUDE MINIMUM STANDARDS IN THE AREAS OF MARKETING PRACTICES, NETWORK ADEQUACY, ESSENTIAL COMMUNITY PROVIDERS IN UNDERSERVED AREAS, ACCREDITATION, QUALITY IMPROVEMENT, UNIFORM ENROLLMENT FORMS AND DESCRIPTIONS OF COVERAGE AND INFORMATION ON QUALITY MEASURES FOR HEALTH BENEFIT PLAN PERFORMANCE;

(V) COMPLIES WITH THE INSURANCE LAW AND THE PUBLIC HEALTH LAW REQUIREMENTS APPLICABLE TO HEALTH INSURANCE ISSUED IN THIS STATE AND ANY REGULATIONS PROMULGATED PURSUANT THERETO THAT DO NOT CONFLICT WITH OR PREVENT THE APPLICATION OF FEDERAL REQUIREMENTS; AND

(C) THE EXCHANGE DETERMINES THAT MAKING THE HEALTH PLAN AVAILABLE THROUGH THE EXCHANGE IS IN THE INTEREST OF QUALIFIED INDIVIDUALS AND QUALIFIED EMPLOYERS IN THIS STATE.

2. THE EXCHANGE SHALL NOT EXCLUDE A HEALTH PLAN:

(A) ON THE BASIS THAT THE HEALTH PLAN IS A FEE-FOR-SERVICE PLAN;

(B) THROUGH THE IMPOSITION OF PREMIUM PRICE CONTROLS BY THE EXCHANGE; OR

(C) ON THE BASIS THAT THE HEALTH PLAN PROVIDES TREATMENTS NECESSARY TO PREVENT PATIENTS' DEATHS IN CIRCUMSTANCES THE EXCHANGE DETERMINES ARE INAPPROPRIATE OR TOO COSTLY.

3. THE EXCHANGE SHALL REQUIRE EACH INSURER CERTIFIED OR SEEKING CERTIFICATION OF A HEALTH PLAN AS A QUALIFIED HEALTH PLAN TO:

(A) SUBMIT A JUSTIFICATION FOR ANY PREMIUM INCREASE TO THE EXCHANGE PRIOR TO IMPLEMENTATION OF SUCH INCREASE. THE INSURER SHALL PROMINENTLY POST THE INFORMATION ON ITS INTERNET WEBSITE; PROVIDED, HOWEVER, THAT IF INFORMATION SUBMITTED TO THE SUPERINTENDENT AS A JUSTIFICATION FOR A PREMIUM RATE ADJUSTMENT PURSUANT TO THE INSURANCE LAW, OR INFORMATION POSTED TO AN INSURER'S INTERNET WEBSITE, OTHERWISE MEETS FEDERAL REQUIREMENTS, THEN SUBMISSION OF A COPY OF THE SAME JUSTIFICATION TO THE EXCHANGE OR USE OF THE SAME POSTING SHALL BE DEEMED SUFFICIENT TO MEET THE REQUIREMENTS OF THIS SECTION. THE EXCHANGE SHALL TAKE THIS INFORMA-

TION, AND THE INFORMATION AND THE RECOMMENDATIONS PROVIDED TO THE EXCHANGE BY THE SUPERINTENDENT UNDER SECTION 1003 OF THE FEDERAL ACT (RELATING TO PATTERNS OR PRACTICES OF EXCESSIVE OR UNJUSTIFIED PREMIUM INCREASES), INTO CONSIDERATION WHEN DETERMINING WHETHER TO ALLOW THE INSURER TO MAKE HEALTH PLANS AVAILABLE THROUGH THE EXCHANGE. SUCH RATE INCREASES SHALL BE SUBJECT TO THE PRIOR APPROVAL OF THE SUPERINTENDENT PURSUANT TO THE INSURANCE LAW;

(B)(I) MAKE AVAILABLE TO THE PUBLIC AND SUBMIT TO THE EXCHANGE, THE SECRETARY AND THE SUPERINTENDENT, ACCURATE AND TIMELY DISCLOSURE OF:

(A) CLAIMS PAYMENT POLICIES AND PRACTICES;

(B) PERIODIC FINANCIAL DISCLOSURES;

(C) DATA ON ENROLLMENT AND DISENROLLMENT;

(D) DATA ON THE NUMBER OF CLAIMS THAT ARE DENIED;

(E) DATA ON RATING PRACTICES;

(F) INFORMATION ON COST-SHARING AND PAYMENTS WITH RESPECT TO ANY OUT-OF-NETWORK COVERAGE;

(G) INFORMATION ON ENROLLEE AND PARTICIPANT RIGHTS UNDER TITLE I OF THE FEDERAL ACT; AND

(H) OTHER INFORMATION AS DETERMINED APPROPRIATE BY THE SECRETARY;

(II) THE INFORMATION SHALL BE PROVIDED IN PLAIN LANGUAGE, AS THAT TERM IS DEFINED IN SECTION 1311(E)(3)(B) OF THE FEDERAL ACT, AND IN GUIDANCE JOINTLY ISSUED THEREUNDER BY THE SECRETARY AND THE FEDERAL SECRETARY OF LABOR; AND

(C) PROVIDE TO INDIVIDUALS, IN A TIMELY MANNER UPON THE REQUEST OF THE INDIVIDUAL, THE AMOUNT OF COST-SHARING, INCLUDING DEDUCTIBLES, COPAYMENTS, AND COINSURANCE, UNDER THE INDIVIDUAL'S HEALTH PLAN OR COVERAGE THAT THE INDIVIDUAL WOULD BE RESPONSIBLE FOR PAYING WITH RESPECT TO THE FURNISHING OF A SPECIFIC ITEM OR SERVICE BY A PARTICIPATING PROVIDER. AT A MINIMUM, THIS INFORMATION SHALL BE MADE AVAILABLE TO THE INDIVIDUAL THROUGH AN INTERNET WEBSITE AND THROUGH OTHER MEANS FOR INDIVIDUALS WITHOUT ACCESS TO THE INTERNET; PROVIDED, HOWEVER, THAT TO THE EXTENT THAT REQUIREMENTS UNDER THE INSURANCE LAW OR THE PUBLIC HEALTH LAW MEET THE STANDARDS OF THE FEDERAL ACT, AN INSURER'S COMPLIANCE WITH SUCH STATE REQUIREMENTS SHALL BE SUFFICIENT TO MEET THE REQUIREMENTS OF THIS SECTION.

4. (A) THE PROVISIONS OF THIS ARTICLE THAT APPLY TO QUALIFIED HEALTH PLANS ALSO SHALL APPLY TO THE EXTENT RELEVANT TO QUALIFIED DENTAL PLANS EXCEPT AS MODIFIED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPHS (B) AND (C) OF THIS SUBDIVISION OR OTHERWISE REQUIRED BY THE EXCHANGE.

(B) THE QUALIFIED DENTAL PLAN SHALL BE LIMITED TO DENTAL AND ORAL HEALTH BENEFITS, WITHOUT SUBSTANTIALLY DUPLICATING THE BENEFITS TYPICALLY OFFERED BY HEALTH BENEFIT PLANS WITHOUT DENTAL COVERAGE, AND SHALL INCLUDE, AT A MINIMUM, THE ESSENTIAL PEDIATRIC DENTAL BENEFITS PRESCRIBED BY THE SECRETARY PURSUANT TO SECTION 1302(B)(1)(J) OF THE FEDERAL ACT, AND SUCH OTHER DENTAL BENEFITS AS THE EXCHANGE OR SECRETARY MAY SPECIFY IN REGULATIONS.

(C) INSURERS MAY JOINTLY OFFER A COMPREHENSIVE PLAN THROUGH THE EXCHANGE IN WHICH AN INSURER PROVIDES THE DENTAL BENEFITS THROUGH A QUALIFIED DENTAL PLAN AND AN INSURER PROVIDES THE OTHER BENEFITS THROUGH A QUALIFIED HEALTH PLAN, PROVIDED THAT THE PLANS ARE PRICED SEPARATELY AND ALSO ARE MADE AVAILABLE FOR PURCHASE SEPARATELY AT THE SAME PRICE.

S 3986. REGIONAL ADVISORY COMMITTEES. 1. THERE ARE HEREBY CREATED THE NEW YORK HEALTH BENEFIT EXCHANGE REGIONAL ADVISORY COMMITTEES ("ADVISORY COMMITTEES"). ONE REGIONAL ADVISORY COMMITTEE SHALL BE ESTABLISHED WITHIN EACH OF FIVE REGIONS, TO BE KNOWN AS THE "NEW YORK CITY REGION," "METROPOLITAN SUBURBAN REGION," "NORTHERN REGION," "CENTRAL REGION" AND

"WESTERN REGION." THE BOARD SHALL DETERMINE THE COUNTIES THAT MAKE UP SUCH REGIONS.

2. EACH REGIONAL ADVISORY COMMITTEE SHALL BE COMPRISED OF FIVE MEMBERS APPOINTED BY THE GOVERNOR, ONE OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND ONE OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY.

3. TERMS SHALL BE THREE YEARS. MEMBERS SHALL SERVE UNTIL THEIR SUCCESSORS ARE APPOINTED. MEMBERS MAY SERVE UP TO TWO CONSECUTIVE TERMS.

4. VACANCIES SHALL BE FILLED IN THE SAME MANNER AS ORIGINAL APPOINTMENTS, AND SUCCESSORS SHALL SERVE FOR THE REMAINDER OF THE UNEXPIRED TERM TO WHICH THEY ARE APPOINTED.

5. RECOMMENDATIONS BY THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL BE MADE WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE OR THE OCCURRENCE OF A VACANCY, OR WITHIN SIXTY DAYS PRIOR TO THE EXPIRATION OF A TERM.

6. THE MEMBERS OF EACH REGIONAL ADVISORY COMMITTEE SHALL INCLUDE:

(A) REPRESENTATIVES FROM THE FOLLOWING CATEGORIES, BUT NOT MORE THAN TWO FROM ANY SINGLE CATEGORY:

(I) HEALTH PLAN CONSUMER ADVOCATES;

(II) SMALL BUSINESS CONSUMER REPRESENTATIVES;

(III) HEALTH CARE PROVIDER REPRESENTATIVES;

(IV) REPRESENTATIVES OF THE HEALTH INSURANCE INDUSTRY;

(B) REPRESENTATIVES FROM THE FOLLOWING CATEGORIES, BUT NOT MORE THAN ONE FROM EITHER CATEGORY:

(I) LICENSED INSURANCE PRODUCERS; AND

(II) REPRESENTATIVES OF LABOR ORGANIZATIONS.

7. THE BOARD SHALL SELECT THE CHAIR OF EACH REGIONAL ADVISORY COMMITTEE FROM AMONG THE MEMBERS OF SUCH COMMITTEE. THE BOARD SHALL ADOPT RULES FOR THE GOVERNANCE OF THE REGIONAL ADVISORY COMMITTEES AND EACH REGIONAL ADVISORY COMMITTEE SHALL MEET AT LEAST ONCE EACH QUARTER AND AT SUCH OTHER TIMES AS DETERMINED BY THE BOARD TO BE NECESSARY.

8. MEMBERS OF THE REGIONAL ADVISORY COMMITTEES SHALL SERVE WITHOUT COMPENSATION.

9. THE REGIONAL ADVISORY COMMITTEES SHALL MAKE FINDINGS AND RECOMMENDATIONS REGARDING REGIONAL VARIATIONS IN THE OPERATION OF THE EXCHANGE, WHICH SHALL BE SUBMITTED TO THE BOARD OF DIRECTORS, POSTED ON THE WEBSITE OF THE EXCHANGE, AND CONSIDERED BY THE BOARD IN A REASONABLY TIMELY FASHION. SUCH FINDINGS AND RECOMMENDATIONS SHALL BE MADE ON AN ANNUAL BASIS, ON A DATE DETERMINED BY THE BOARD, AND AT SUCH OTHER TIMES AS THE BOARD OR ANY REGIONAL ADVISORY COMMITTEE DEEMS APPROPRIATE.

S 3987. FUNDING OF THE EXCHANGE. 1. THE EXCHANGE SHALL BE FINANCIALLY SELF-SUFFICIENT BY JANUARY FIRST, TWO THOUSAND FIFTEEN.

2. THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL REPORT ITS RECOMMENDATIONS UPON, THE OPTIONS TO GENERATE FUNDING FOR THE ONGOING OPERATION OF THE EXCHANGE, AS PROVIDED FOR IN SUBDIVISION EIGHT OF SECTION THIRTY-NINE HUNDRED EIGHTY-EIGHT OF THIS ARTICLE AND SUBJECT TO THE PROVISIONS OF SUBDIVISIONS FOURTEEN AND FIFTEEN OF SUCH SECTION.

3. THE EXCHANGE SHALL PUBLISH ON ITS INTERNET WEBSITE THE FEES AND ANY OTHER PAYMENTS REQUIRED BY THE EXCHANGE, AND THE ADMINISTRATIVE COSTS OF THE EXCHANGE, TO EDUCATE CONSUMERS ON SUCH COSTS AND THE AMOUNT OF MONIES LOST TO WASTE, FRAUD AND ABUSE.

4. THE EXCHANGE SHALL NOT UTILIZE ANY FUNDS INTENDED FOR THE ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE EXCHANGE FOR STAFF RETREATS, PROMOTIONAL GIVEAWAYS, EXCESSIVE EXECUTIVE COMPENSATION, OR PROMOTION OF

FEDERAL OR STATE LEGISLATIVE AND REGULATORY MODIFICATIONS PURSUANT TO SECTION 1411(C) OF THE FEDERAL ACT.

5. THE MONEYS OF THE EXCHANGE SHALL, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, BE DEPOSITED IN A GENERAL ACCOUNT CALLED THE NEW YORK HEALTH BENEFIT EXCHANGE ACCOUNT AND SUCH OTHER ACCOUNTS AS THE EXCHANGE MAY DEEM NECESSARY, PURSUANT TO RESOLUTION OF THE BOARD, FOR THE TRANSACTION OF ITS BUSINESS AND SHALL BE PAID OUT AS AUTHORIZED BY THE CHAIR OF THE BOARD OR BY SUCH OTHER PERSON OR PERSONS AS THE CHAIR MAY DESIGNATE.

6. NO FUNDS OF THE EXCHANGE SHALL BE TRANSFERRED TO THE GENERAL FUND OR ANY SPECIAL REVENUE FUND OR SHALL BE USED FOR ANY PURPOSE OTHER THAN THE PURPOSES SET FORTH IN THIS ARTICLE. NO FUNDS SHALL BE TRANSFERRED FROM THE GENERAL FUND OR ANY SPECIAL REVENUE FUND TO THE EXCHANGE WITHOUT AN APPROPRIATION.

7. THE ACCOUNTS OF THE EXCHANGE SHALL BE SUBJECT TO SUPERVISION OF THE COMPTROLLER AND SUCH ACCOUNTS SHALL INCLUDE RECEIPTS, EXPENDITURES, CONTRACTS AND OTHER MATTERS WHICH PERTAIN TO THE FISCAL SOUNDNESS OF THE EXCHANGE.

8. NOTWITHSTANDING ANY LAW TO THE CONTRARY, AND IN ACCORDANCE WITH SECTION FOUR OF THE STATE FINANCE LAW, UPON REQUEST OF THE DIRECTOR OF THE BUDGET, IN CONSULTATION WITH THE COMMISSIONER, THE SUPERINTENDENT AND THE CHAIR OF THE BOARD, THE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO SUBALLOCATE OR TRANSFER SPECIAL REVENUE FEDERAL FUNDS APPROPRIATED TO THE DEPARTMENT OF HEALTH FOR PLANNING AND IMPLEMENTING VARIOUS HEALTHCARE AND INSURANCE REFORM INITIATIVES AUTHORIZED BY FEDERAL LEGISLATION, INCLUDING, BUT NOT LIMITED TO, THE PATIENT PROTECTION AND AFFORDABLE CARE ACT (P.L. 111-148) AND THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010 (P.L. 111-152) TO THE NEW YORK STATE HEALTH BENEFIT EXCHANGE. MONEYS SUBALLOCATED OR TRANSFERRED PURSUANT TO THIS SECTION SHALL BE PAID OUT OF THE FUND UPON AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE EXCHANGE.

S 3988. STUDIES AND RECOMMENDATIONS. 1. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, THE ESSENTIAL HEALTH BENEFITS IDENTIFIED BY THE SECRETARY PURSUANT TO SECTION 1302(B) OF THE FEDERAL ACT AND OF THE BENEFITS REQUIRED UNDER THE INSURANCE LAW OR REGULATIONS PROMULGATED THEREUNDER THAT ARE NOT DETERMINED BY THE SECRETARY TO BE ESSENTIAL HEALTH BENEFITS. SUCH STUDY AND RECOMMENDATIONS SHALL ADDRESS MATTERS INCLUDING BUT NOT LIMITED TO:

(I) WHETHER THE ESSENTIAL HEALTH BENEFITS REQUIRED TO BE INCLUDED IN POLICIES AND CONTRACTS SOLD THROUGH THE EXCHANGE SHOULD BE SOLD TO SIMILARLY SITUATED INDIVIDUALS AND GROUPS PURCHASING COVERAGE OUTSIDE OF THE EXCHANGE;

(II) WHETHER ANY BENEFITS REQUIRED UNDER THE INSURANCE LAW OR REGULATIONS PROMULGATED THEREUNDER THAT ARE NOT IDENTIFIED AS ESSENTIAL HEALTH BENEFITS BY THE SECRETARY SHOULD NO LONGER BE REQUIRED IN POLICIES OR CONTRACTS SOLD EITHER THROUGH THE EXCHANGE OR TO SIMILARLY SITUATED INDIVIDUALS AND GROUPS OUTSIDE OF THE EXCHANGE;

(III) THE COSTS OF EXTENDING ANY BENEFITS REQUIRED UNDER THE INSURANCE LAW OR REGULATIONS PROMULGATED THEREUNDER TO POLICIES AND CONTRACTS SOLD THROUGH THE EXCHANGE; AND

(IV) MECHANISMS TO FINANCE ANY COSTS PURSUANT TO SECTION 1311(D)(3)(B)(II) OF THE FEDERAL ACT OF EXTENDING ANY BENEFITS REQUIRED UNDER THE INSURANCE LAW OR REGULATIONS PROMULGATED THEREUNDER TO POLICIES AND CONTRACTS SOLD THROUGH THE EXCHANGE.

(B) IN MAKING ITS RECOMMENDATIONS, THE EXCHANGE SHALL CONSIDER THE INDIVIDUAL AND SMALL GROUP MARKETS OUTSIDE OF THE EXCHANGE AND CONSIDER APPROACHES TO PREVENT MARKETPLACE DISRUPTION, REMAIN CONSISTENT WITH THE EXCHANGE AND AVOID ANTI-SELECTION.

(C) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

2. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON: (I) WHETHER INSURERS PARTICIPATING IN THE EXCHANGE SHOULD BE REQUIRED TO OFFER ALL HEALTH PLANS SOLD IN THE EXCHANGE TO INDIVIDUALS OR SMALL GROUPS PURCHASING COVERAGE OUTSIDE OF THE EXCHANGE;

(II) WHETHER THE INDIVIDUAL AND SMALL GROUP MARKETS SHOULD BE PLACED ENTIRELY INSIDE THE EXCHANGE;

(III) WHETHER THE BENEFITS IN THE INDIVIDUAL AND SMALL GROUP MARKETS SHOULD BE STANDARDIZED INSIDE THE EXCHANGE OR INSIDE AND OUTSIDE THE EXCHANGE;

(IV) HOW TO DEVELOP AND IMPLEMENT THE TRANSITIONAL REINSURANCE PROGRAM FOR THE INDIVIDUAL MARKET AND ANY OTHER RISK ADJUSTMENT MECHANISMS DEVELOPED IN ACCORDANCE WITH SECTIONS 1341, 1342 AND 1343 OF THE FEDERAL ACT;

(V) WHETHER TO MERGE THE INDIVIDUAL AND SMALL GROUP HEALTH INSURANCE MARKETS FOR RATING PURPOSES INCLUDING AN ANALYSIS OF THE IMPACT SUCH MERGER WOULD HAVE ON PREMIUMS;

(VI) WHETHER TO INCREASE THE SIZE OF SMALL EMPLOYERS FROM AN AVERAGE OF AT LEAST ONE BUT NOT MORE THAN FIFTY EMPLOYEES TO AN AVERAGE OF AT LEAST ONE BUT NOT MORE THAN ONE HUNDRED EMPLOYEES PRIOR TO JANUARY FIRST, TWO THOUSAND SIXTEEN;

(VII) HOW TO ACCOUNT FOR SOLE PROPRIETORS IN DEFINING "SMALL EMPLOYERS"; AND

(VIII) WHETHER TO REVISE THE DEFINITION OF "SMALL EMPLOYER" OUTSIDE THE EXCHANGE TO BE CONSISTENT WITH THE DEFINITION AS IT APPLIES WITHIN THE EXCHANGE.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

3. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, WHETHER THE STATE SHOULD ESTABLISH A BASIC HEALTH PLAN PROGRAM IDENTIFIED BY THE SECRETARY PURSUANT TO SECTION 1331 OF THE FEDERAL ACT.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

4. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, THE ADVANTAGES AND DISADVANTAGES OF THE EXCHANGE SERVING AS AN ACTIVE PURCHASER, A SELECTIVE CONTRACTOR, OR CLEARINGHOUSE OF INSURANCE.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

5. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, (I) THE ANTICIPATED ANNUAL OPERATING EXPENSES OF THE EXCHANGE, INCLUDING BUT NOT LIMITED TO THE DEVELOPMENT OF ANY MULTI-YEAR FINANCIAL MODELS; AND (II) THE OPTIONS TO GENERATE FUNDING FOR THE ONGOING OPERATION AND SELF-SUFFICIENCY OF THE

EXCHANGE INCLUDING BUT NOT LIMITED TO ASSESSMENTS UPON INSURERS AND PROVIDERS.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

6. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, THE BENCHMARK BENEFITS IDENTIFIED BY THE SECRETARY AND OF THE BENEFITS REQUIRED UNDER THE PUBLIC HEALTH LAW OR THE SOCIAL SERVICES LAW OR REGULATIONS PROMULGATED THEREUNDER THAT ARE NOT DETERMINED BY THE SECRETARY TO BE BENCHMARK BENEFITS. SUCH STUDY AND RECOMMENDATIONS SHALL ADDRESS MATTERS INCLUDING BUT NOT LIMITED TO:

(I) WHETHER ANY BENEFITS REQUIRED UNDER THE PUBLIC HEALTH LAW OR THE SOCIAL SERVICES LAW OR REGULATIONS PROMULGATED THEREUNDER THAT ARE NOT IDENTIFIED AS BENCHMARK BENEFITS BY THE SECRETARY SHOULD CONTINUE TO BE REQUIRED AS COVERED BENEFITS AVAILABLE TO NEWLY MEDICAID-ELIGIBLE INDIVIDUALS INSIDE THE EXCHANGE;

(II) THE COSTS OF EXTENDING ANY BENEFITS REQUIRED UNDER THE PUBLIC HEALTH LAW OR THE SOCIAL SERVICES LAW OR REGULATIONS PROMULGATED THEREUNDER AS COVERED BENEFITS AVAILABLE TO NEWLY MEDICAID-ELIGIBLE INDIVIDUALS THROUGH THE EXCHANGE; AND

(III) MECHANISMS TO FINANCE ANY COSTS PURSUANT TO THE FEDERAL ACT OF EXTENDING ANY BENEFITS REQUIRED UNDER THE PUBLIC HEALTH LAW OR THE SOCIAL SERVICES LAW OR REGULATIONS PROMULGATED THEREUNDER TO POLICIES AND CONTRACTS SOLD THROUGH THE EXCHANGE.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

7. (A) THE EXCHANGE SHALL MAKE RECOMMENDATIONS UPON THE IMPACT OF THE ESTABLISHMENT AND OPERATION OF THE EXCHANGE ON THE HEALTHY NEW YORK PROGRAM ESTABLISHED PURSUANT TO SECTION FORTY-THREE HUNDRED TWENTY-SIX OF THE INSURANCE LAW AND THE FAMILY HEALTH PLUS EMPLOYER PARTNERSHIP PROGRAM ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-FF OF THE SOCIAL SERVICES LAW.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

8. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, PROCEDURES UNDER WHICH LICENSED HEALTH INSURANCE PRODUCERS, CHAMBERS OF COMMERCE AND BUSINESS ASSOCIATIONS MAY ENROLL INDIVIDUALS AND EMPLOYERS IN ANY QUALIFIED HEALTH PLAN IN THE INDIVIDUAL OR SMALL GROUP MARKET AS SOON AS THE PLAN IS OFFERED THROUGH THE EXCHANGE; AND TO ASSIST INDIVIDUALS IN APPLYING FOR PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS FOR PLANS SOLD THROUGH THE EXCHANGE; AND

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

9. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, THE CRITERIA FOR ELIGIBILITY TO SERVE AS A NAVIGATOR FOR PURPOSES OF SECTION 1311(I) OF THE FEDERAL ACT, ANY GUIDANCE ISSUED THEREUNDER AND SUBDIVISION FOURTEEN OF SECTION THIRTY-NINE HUNDRED EIGHTY-FOUR OF THIS ARTICLE.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

10. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, THE ROLE OF THE EXCHANGE IN DECREASING HEALTH DISPARITIES IN HEALTH CARE SERVICES AND PERFORMANCE, INCLUDING BUT NOT LIMITED TO DISPARITIES ON THE BASIS OF RACE OR ETHNICITY, IN ACCORDANCE WITH SECTION FORTY-THREE HUNDRED TWO OF THE FEDERAL ACT.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

11. (A) THE EXCHANGE SHALL MAKE RECOMMENDATIONS UPON WHETHER AND TO WHAT EXTENT HEALTH SAVINGS ACCOUNTS SHOULD BE OFFERED THROUGH THE EXCHANGE.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

12. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, WHETHER TO ALLOW LARGE EMPLOYERS TO PARTICIPATE IN THE EXCHANGE BEGINNING JANUARY FIRST, TWO THOUSAND SEVENTEEN, AND SHALL TAKE INTO ACCOUNT ANY EXCESS OF PREMIUM GROWTH OUTSIDE OF THE EXCHANGE AS COMPARED TO THE RATE OF SUCH GROWTH INSIDE THE EXCHANGE.

(B) THE EXCHANGE SHALL SUBMIT ITS RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE DECEMBER FIRST, TWO THOUSAND FIFTEEN.

13. THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND SHALL MAKE RECOMMENDATIONS UPON, THE INTEGRATION OF PUBLIC HEALTH INSURANCE PROGRAMS, INCLUDING MEDICAID, CHILD HEALTH PLUS, AND FAMILY HEALTH PLUS WITHIN THE EXCHANGE, WHICH MAY INCLUDE SUCH REPORTS AS ARE PERIODICALLY SUBMITTED TO THE SECRETARY, ON OR BEFORE AUGUST FIRST, TWO THOUSAND TWELVE.

14. NOTWITHSTANDING ANY PROVISION OF SUBDIVISIONS ONE THROUGH THIRTEEN OF THIS SECTION, IF THE EXCHANGE DETERMINES THAT ANY RECOMMENDATIONS REQUIRED UNDER ANY SUCH SUBDIVISION CANNOT BE SUBMITTED BY THE SPECIFIED DATE BECAUSE FEDERAL GUIDANCE OR REGULATIONS NECESSARY TO COMPLETE SUCH RECOMMENDATIONS HAS NOT BEEN ISSUED, THE EXCHANGE MAY ESTABLISH A NEW AND REASONABLE DATE FOR SUCH COMPLETION AND SUBMISSION.

15. (A) ANY OF THE STUDIES REQUIRED UNDER THIS SECTION MAY BE COMBINED WITH OTHER STUDIES REQUIRED UNDER THIS SECTION OR OTHERWISE UNDERTAKEN BY THE EXCHANGE TO THE EXTENT FEASIBLE AND TIMELY.

(B) IN LIEU OF CONDUCTING OR CAUSING TO BE CONDUCTED ANY OF THE STUDIES REQUIRED UNDER THIS SECTION, THE EXCHANGE MAY RELY UPON ANY OTHER STUDY OR STUDIES, IN WHOLE OR IN PART, COMPLETED PRIOR TO THE DATE ON WHICH THE EXCHANGE SUBMITS ITS RECOMMENDATIONS, IF THE EXCHANGE DETERMINES THAT SUCH STUDY OR STUDIES ARE SUFFICIENTLY RELIABLE.

16. THE EXCHANGE SHALL HAVE NO AUTHORITY, WHETHER EXPRESS OR IMPLIED, TO IMPLEMENT ANY RECOMMENDATION ON THE ISSUES SET FORTH IN SUBDIVISIONS ONE THROUGH TWELVE OF THIS SECTION WITHOUT FURTHER STATUTORY AUTHORITY; PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO ALTER ANY POWERS EXPRESSLY GRANTED ELSEWHERE IN THIS ARTICLE.

S 3989. TAX EXEMPTION AND TAX CONTRACT BY THE STATE. 1. IT IS HEREBY DETERMINED THAT THE CREATION OF THE EXCHANGE AND THE FULFILLMENT OF ITS CORPORATE PURPOSES IS IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF THIS STATE AND IS A PUBLIC PURPOSE. ACCORDINGLY, THE EXCHANGE SHALL BE REGARDED AS PERFORMING AN ESSENTIAL GOVERNMENTAL FUNCTION IN THE EXERCISE OF THE POWERS CONFERRED UPON IT BY THIS ARTICLE, AND THE EXCHANGE SHALL NOT BE REQUIRED TO PAY ANY FEES, TAXES, SPECIAL AD VALOREM LEVIES

OR ASSESSMENTS OF ANY KIND, WHETHER STATE OR LOCAL, INCLUDING BUT NOT LIMITED TO FEES, TAXES, SPECIAL AD VALOREM LEVIES OR ASSESSMENTS ON REAL PROPERTY, FRANCHISE TAXES, SALES TAXES, TRANSFER TAXES, MORTGAGE TAXES OR OTHER TAXES, UPON OR WITH RESPECT TO ANY PROPERTY OWNED BY IT OR UNDER ITS JURISDICTION, CONTROL OR SUPERVISION, OR UPON THE USES THEREOF, OR UPON OR WITH RESPECT TO ITS ACTIVITIES OR OPERATIONS IN FURTHERANCE OF THE POWERS CONFERRED UPON IT BY THIS ARTICLE, OR UPON OR WITH RESPECT TO ANY FARES, TOLLS, RENTALS, RATES, CHARGES, FEES, REVENUES OR OTHER INCOME RECEIVED BY THE EXCHANGE.

2. THE EXCHANGE MAY PAY, OR MAY ENTER INTO AGREEMENTS WITH ANY COUNTY OR MUNICIPALITY TO PAY, A SUM OR SUMS ANNUALLY OR OTHERWISE OR TO PROVIDE OTHER CONSIDERATIONS WITH RESPECT TO REAL PROPERTY OWNED BY THE EXCHANGE LOCATED WITHIN SUCH COUNTY OR MUNICIPALITY.

S 3990. OFFICERS AND EMPLOYEES. 1. THE BOARD SHALL HAVE THE POWER TO APPOINT EMPLOYEES TO SERVE AS SENIOR MANAGERIAL STAFF OF THE EXCHANGE AS NECESSARY, WHO SHALL BE DESIGNATED TO BE IN THE EXEMPT CLASS OF CIVIL SERVICE. THE BOARD SHALL ALSO HAVE THE POWER TO FIX THE SALARIES OF SUCH EMPLOYEES.

2. ANY NEWLY HIRED EMPLOYEES WHO ARE NOT DESIGNATED TO BE IN THE EXEMPT CLASS OF CIVIL SERVICE PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND WHO ARE NOT SUBJECT TO THE TRANSFER PROVISIONS SET FORTH IN SUBDIVISIONS FOUR, FIVE AND SIX OF THIS SECTION SHALL BE CONSIDERED FOR PURPOSES OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW TO BE PUBLIC EMPLOYEES IN THE CIVIL SERVICE OF THE STATE, AND SHALL BE ASSIGNED TO THE APPROPRIATE COLLECTIVE BARGAINING UNIT BY THE EXCHANGE IN THE SAME MANNER AND CONSISTENT WITH THOSE EMPLOYEES DESCRIBED IN SUBDIVISION SIX OF THIS SECTION.

3. ANY PUBLIC OFFICER OR EMPLOYEE OF A STATE DEPARTMENT, AGENCY OR COMMISSION MAY BE TRANSFERRED TO THE EXCHANGE WITHOUT EXAMINATION AND WITHOUT LOSS OF ANY CIVIL SERVICE STATUS OR RIGHTS TO A COMPARABLE OFFICE, POSITION OR EMPLOYMENT WITH THE EXCHANGE; PROVIDED, HOWEVER, NO SUCH TRANSFER MAY BE MADE WITHOUT THE CONSENT OF THE HEAD OF THE DEPARTMENT, AGENCY OR COMMISSION. TRANSFERS SHALL BE MADE PURSUANT TO SUBDIVISION TWO OF SECTION SEVENTY OF THE CIVIL SERVICE LAW.

4. THE SALARY OR COMPENSATION OF ANY SUCH OFFICER OR EMPLOYEE, AFTER SUCH TRANSFER, SHALL BE PAID BY THE EXCHANGE.

5. ANY OFFICER OR EMPLOYEE TRANSFERRED TO THE EXCHANGE PURSUANT TO THIS SECTION, WHO ARE MEMBERS OF OR BENEFIT UNDER ANY EXISTING PENSION OR RETIREMENT FUND OR SYSTEM, SHALL CONTINUE TO HAVE ALL RIGHTS, PRIVILEGES, OBLIGATIONS AND STATUS WITH RESPECT TO SUCH FUND OR SYSTEM AS ARE NOW PRESCRIBED BY LAW, BUT DURING THE PERIOD OF THEIR EMPLOYMENT BY THE EXCHANGE, ALL CONTRIBUTIONS TO SUCH FUNDS OR SYSTEMS TO BE PAID BY THE EMPLOYER ON ACCOUNT OF SUCH OFFICERS OR EMPLOYEES SHALL BE PAID BY THE EXCHANGE.

6. A TRANSFERRED EMPLOYEE SHALL REMAIN IN THE SAME COLLECTIVE BARGAINING UNIT AS WAS THE CASE PRIOR TO HIS OR HER TRANSFER; SUCCESSOR EMPLOYEES TO THE POSITIONS HELD BY SUCH TRANSFERRED EMPLOYEES SHALL, CONSISTENT WITH THE PROVISIONS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, BE INCLUDED IN THE SAME UNIT AS THEIR PREDECESSORS. EMPLOYEES SERVING IN POSITIONS IN NEWLY CREATED TITLES SHALL BE ASSIGNED TO THE SAME COLLECTIVE BARGAINING UNIT AS THEY WOULD HAVE BEEN ASSIGNED TO WERE SUCH TITLES CREATED PRIOR TO THE ESTABLISHMENT OF THE EXCHANGE. NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED (A) TO DIMINISH THE RIGHTS OF EMPLOYEES PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT OR (B) TO AFFECT EXISTING LAW WITH RESPECT TO AN APPLICATION TO THE PUBLIC EMPLOY-

MENT RELATIONS BOARD SEEKING A DESIGNATION BY THE BOARD THAT CERTAIN PERSONS ARE MANAGERIAL OR CONFIDENTIAL.

S 3991. LIMITATION OF LIABILITY; INDEMNIFICATION. THE PROVISIONS OF SECTIONS SEVENTEEN AND NINETEEN OF THE PUBLIC OFFICERS LAW SHALL BE APPLICABLE TO EXCHANGE EMPLOYEES, AS SUCH TERM IS DEFINED IN SECTIONS SEVENTEEN AND NINETEEN OF THE PUBLIC OFFICERS LAW; PROVIDED, HOWEVER, THAT NOTHING CONTAINED WITHIN THIS SECTION SHALL BE DEEMED TO PERMIT THE EXCHANGE TO EXTEND THE PROVISIONS OF SECTIONS SEVENTEEN AND NINETEEN OF THE PUBLIC OFFICERS LAW UPON ANY INDEPENDENT CONTRACTOR.

S 3992. CONTINGENCY FOR FEDERAL FUNDING. THE IMPLEMENTATION OF THE PROVISIONS OF THIS ARTICLE SHALL BE CONTINGENT, AS DETERMINED BY THE DIRECTOR OF THE BUDGET, ON THE AVAILABILITY OF SUFFICIENT FEDERAL FINANCIAL SUPPORT FOR THE PLANNING AND IMPLEMENTATION OF HEALTH CARE AND INSURANCE REFORM INITIATIVES AUTHORIZED BY FEDERAL LEGISLATION TO ESTABLISH AND IMPLEMENT THE HEALTH BENEFIT EXCHANGE.

S 3993. CONSTRUCTION. NOTHING IN THIS ARTICLE, AND NO ACTION TAKEN BY THE EXCHANGE PURSUANT HERETO, SHALL BE CONSTRUED TO:

1. PREEMPT OR SUPERSEDE THE AUTHORITY OF THE SUPERINTENDENT OR THE COMMISSIONER; OR

2. EXEMPT INSURERS, INSURANCE PRODUCERS OR QUALIFIED HEALTH PLANS FROM THE PUBLIC HEALTH LAW OR THE INSURANCE LAW AND REGULATIONS PROMULGATED THEREUNDER.

S 3. Subdivision 1 of section 17 of the public officers law is amended by adding a new paragraph (x) to read as follows:

(X) FOR PURPOSES OF THIS SECTION, THE TERM "EMPLOYEE" SHALL INCLUDE DIRECTORS, OFFICERS AND EMPLOYEES OF THE NEW YORK HEALTH BENEFIT EXCHANGE ESTABLISHED PURSUANT TO ARTICLE TEN-E OF THE PUBLIC AUTHORITIES LAW.

S 4. Subdivision 1 of section 19 of the public officers law is amended by adding a new paragraph (j) to read as follows:

(J) FOR PURPOSES OF THIS SECTION, THE TERM "EMPLOYEE" SHALL INCLUDE DIRECTORS, OFFICERS AND EMPLOYEES OF THE NEW YORK HEALTH BENEFIT EXCHANGE ESTABLISHED PURSUANT TO ARTICLE TEN-E OF THE PUBLIC AUTHORITIES LAW.

S 5. If any provision or application of this act shall be held to be invalid, or to violate or be inconsistent with any applicable federal law or regulation, that shall not affect other provisions or applications of this act which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable; provided, however, that nothing in this section shall be deemed to invalidate the provisions of section 3992 of the public authorities law, as added by section two of this act.

S 6. If the federal act is held to be unconstitutional by the supreme court of the United States or repealed by the United States Congress, the legislature shall convene within 180 days of such decision or congressional act to consider appropriate legislative options.

S 7. This act shall take effect immediately; provided, however, that until such time as the members of the board of directors of the New York health benefit exchange are initially appointed pursuant to section 3982 of the public authorities law, as added by section two of this act, and the first meeting of such board is convened, nothing in this act shall be deemed to prevent the commissioner of health or the superintendent of financial services from applying for, accepting the award of, and spending any available grant money pertaining to the establishment or operation of such exchange for purposes consistent with this act or, at any

time, from accepting or spending grant money awarded prior to the enactment of this act.

PART F

Section 1. Section 1 of part C of chapter 58 of the laws of 2005, authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, is amended by adding a new subdivision (c-1) to read as follows:

(C-1) NOTWITHSTANDING ANY PROVISIONS OF SUBDIVISION (C) OF THIS SECTION TO THE CONTRARY, EFFECTIVE APRIL 1, 2013, FOR THE PERIOD JANUARY 1, 2013 THROUGH DECEMBER 31, 2013 AND FOR EACH CALENDAR YEAR THEREAFTER, THE MEDICAL ASSISTANCE EXPENDITURE AMOUNT FOR THE SOCIAL SERVICES DISTRICT FOR SUCH PERIOD SHALL BE EQUAL TO THE PREVIOUS CALENDAR YEAR'S MEDICAL ASSISTANCE EXPENDITURE AMOUNT, EXCEPT THAT:

(1) FOR THE PERIOD JANUARY 1, 2013 THROUGH DECEMBER 31, 2013, THE PREVIOUS CALENDAR YEAR MEDICAL ASSISTANCE EXPENDITURE AMOUNT WILL BE INCREASED BY 2%;

(2) FOR THE PERIOD JANUARY 1, 2014 THROUGH DECEMBER 31, 2014, THE PREVIOUS CALENDAR YEAR MEDICAL ASSISTANCE EXPENDITURE AMOUNT WILL BE INCREASED BY 1%.

S 2. Paragraph (iii) of subdivision (g) of section 1 of part C of chapter 58 of the laws of 2005, authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, as amended by section 59 of part A of chapter 57 of the laws of 2006, is amended to read as follows:

(iii) During each state fiscal year subject to the provisions of this section AND PRIOR TO STATE FISCAL YEAR 2015-16, the commissioner shall maintain an accounting, for each social services district, of the net amounts that would have been expended by, or on behalf of, such district had the social services district medical assistance shares provisions in effect on January 1, 2005 been applied to such district. For purposes of this paragraph, fifty percent of the payments made by New York State to the secretary of the federal department of health and human services pursuant to section 1935(c) of the social security act shall be deemed to be payments made on behalf of social services districts; such fifty percent share shall be apportioned to each district in the same ratio as the number of "full-benefit dual eligible individuals," as that term is defined in section 1935(c)(6) of such act, for whom such district has fiscal responsibility pursuant to section 365 of the social services law, relates to the total of such individuals for whom districts have fiscal responsibility. As soon as practicable after the conclusion of each such fiscal year, but in no event later than six months after the conclusion of each such fiscal year, the commissioner shall reconcile such net amounts with such fiscal year's social services district expenditure cap amount. Such reconciliation shall be based on actual expenditures made by or on behalf of social services districts, and revenues received by social services districts, during such fiscal year and shall be made without regard to expenditures made, and revenues received, outside such fiscal year that are related to services provided during, or prior to, such fiscal year. The commissioner shall pay to each social services district the amount, if any, by which such district's expenditure cap amount exceeds such net amount.

S 3. Paragraph (i) of subdivision (b) of section 2 of part C of chapter 58 of the laws of 2005, authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, is amended to read as follows:

(i) A social services district shall exercise the option described in this section through the adoption of a resolution by its local legislative body, in the form set forth in subparagraph (ii) of this paragraph, to elect the medical assistance reimbursement methodology set forth in paragraph (a) of this section and to elect the tax intercept methodology set forth in subdivision (f) of section 1261 of the tax law or subdivision (g) of section 1261 and subdivision (h) of section 1313 of the tax law, as applicable. A social services district, acting through its local legislative body, is hereby authorized to adopt such a resolution. Such a resolution shall be effective only if it is adopted exactly as set forth in subparagraph (ii) of this paragraph no later than September 30, 2007, and a certified copy of such resolution is mailed to the commissioner of health by certified mail by such date. The commissioner of health shall, no later than October 31, 2007, certify to the commissioner of taxation and finance a list of those social services districts which have elected the option described in this section. A social services district [shall have no authority] MAY BE ALLOWED to rescind the exercise of the option described in this section NO LATER THAN JANUARY 1, 2013, WITH THE APPROVAL OF AND SUBJECT TO CONDITIONS SPECIFIED BY THE COMMISSIONER OF HEALTH AND THE COMMISSIONER OF TAXATION AND FINANCE.

S 4. Part C of chapter 58 of the laws of 2005, authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, is amended by adding a new section 4-a to read as follows:

S 4-A. (A) FOR STATE FISCAL YEAR 2012-13, AND FOR EACH STATE FISCAL YEAR THEREAFTER, A SOCIAL SERVICES DISTRICT WILL BE REIMBURSED BY THE STATE FOR THE FULL NON-FEDERAL SHARE OF EXPENDITURES BY THE DISTRICT FOR THE ADMINISTRATION OF THE MEDICAL ASSISTANCE PROGRAM, NOT TO EXCEED THE ADMINISTRATIVE CAP AMOUNT DETERMINED IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION. ANY PORTION OF THE NON-FEDERAL SHARE OF SUCH EXPENDITURES IN EXCESS OF THE ADMINISTRATIVE CAP AMOUNT SHALL BE THE RESPONSIBILITY OF THE SOCIAL SERVICES DISTRICT AND SHALL BE IN ADDITION TO THE MEDICAL ASSISTANCE EXPENDITURE AMOUNT CALCULATED IN ACCORDANCE WITH SUBDIVISIONS (B), (C), (C-1), AND (D) OF SECTION ONE OF THIS ACT. BEGINNING IN STATE FISCAL YEAR 2013-14, NO REIMBURSEMENT WILL BE MADE FOR ADMINISTRATIVE EXPENDITURES IN EXCESS OF SUCH CAP.

(B) THE ADMINISTRATIVE CAP AMOUNT FOR A SOCIAL SERVICES DISTRICT SHALL BE EQUAL TO A PERCENTAGE OF THE AMOUNT INCLUDED IN THE STATE FISCAL YEAR 2011-12 ENACTED BUDGET FOR THE NON-FEDERAL SHARE OF MEDICAL ASSISTANCE ADMINISTRATIVE COSTS PURSUANT TO THIS SECTION. EACH SOCIAL SERVICES DISTRICT'S PERCENTAGE SHALL BE EQUAL TO THE PERCENTAGE OF MEDICAL ASSISTANCE ADMINISTRATIVE COSTS CLAIMED BY SUCH DISTRICT IN THE 2011 CALENDAR YEAR IN RELATION TO ALL OTHER SOCIAL SERVICES DISTRICTS.

(C) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (B) OF THIS SECTION, THE COMMISSIONER OF HEALTH MAY, AT HIS OR HER SOLE DISCRETION, REDUCE A SOCIAL SERVICES DISTRICT'S ADMINISTRATIVE CAP AMOUNT TO ACCOUNT FOR A REDUCTION IN THE SCOPE OR VOLUME OF THE DISTRICT'S ADMINISTRATIVE RESPONSIBILITIES, INCLUDING BUT NOT LIMITED TO SUCH A REDUCTION RESULTING FROM THE PROCESS OF CONVERTING THE MEDICAL ASSISTANCE PROGRAM TO A DEPARTMENT-ADMINISTERED PROGRAM PURSUANT TO SECTION 365-N OF THE SOCIAL SERVICES LAW.

S 5. Section 91 of part H of chapter 59 of the laws of 2011 amending the public health law and other laws relating to general hospital reimbursement for annual rates is amended to read as follows:

S 91. 1. Notwithstanding any inconsistent provision of state law, rule or regulation to the contrary, subject to federal approval, the year to year rate of growth of department of health state funds Medicaid spending shall not exceed the ten year rolling average of the medical component of the consumer price index as published by the United States department of labor, bureau of labor statistics, for the preceding ten years.

2. EXCEPT AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION, FOR STATE FISCAL YEAR 2013-14 AND FOR EACH FISCAL YEAR THEREAFTER, THE SPENDING LIMIT CALCULATED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE INCREASED BY AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE TOTAL SOCIAL SERVICES DISTRICT MEDICAL ASSISTANCE EXPENDITURE AMOUNTS CALCULATED FOR SUCH PERIOD IN CONFORMANCE WITH SUBDIVISIONS (B), (C), (C-1), AND (D) OF SECTION 1 OF PART C OF CHAPTER 58 OF THE LAWS OF 2005 AND THE TOTAL SOCIAL SERVICES DISTRICT MEDICAL EXPENDITURE AMOUNTS THAT WOULD HAVE RESULTED IF THE PROVISIONS OF SUBDIVISION (C-1) OF SUCH SECTION HAD NOT BEEN APPLIED.

3. WITH RESPECT TO A SOCIAL SERVICES DISTRICT THAT RESCINDS THE EXERCISE OF THE OPTION PROVIDED IN PARAGRAPH (I) OF SUBDIVISION (B) OF SECTION 2 OF PART C OF CHAPTER 58 OF THE LAWS OF 2005, FOR STATE FISCAL YEAR 2013-14 AND FOR EACH FISCAL YEAR THEREAFTER, THE SPENDING LIMIT CALCULATED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE REDUCED BY THE AMOUNT OF THE MEDICAL ASSISTANCE EXPENDITURE AMOUNT CALCULATED FOR SUCH DISTRICT FOR SUCH PERIOD.

S 6. The social services law is amended by adding a new section 365-n to read as follows:

S 365-N. DEPARTMENT ASSUMPTION OF PROGRAM ADMINISTRATION. 1. LEGISLATIVE INTENT. (A) THE LEGISLATURE FINDS THAT TO ENSURE THE MEDICAL ASSISTANCE PROGRAM CONTINUES TO FUNCTION IN AN EFFICIENT MANNER TO MAKE HIGH QUALITY MEDICAL CARE, SERVICES, AND SUPPLIES AVAILABLE TO ELIGIBLE PERSONS, AND TO ACHIEVE TIMELY COMPLIANCE WITH THE REQUIREMENTS OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT RELATED TO THE EXPANSION OF THE MEDICAL ASSISTANCE PROGRAM AND THE CREATION OF A HEALTH CARE EXCHANGE, IT IS NECESSARY TO CONVERT THE PROGRAM OF MEDICAL ASSISTANCE FROM ONE PRIMARILY ADMINISTERED BY SOCIAL SERVICES DISTRICTS, UNDER THE SUPERVISION OF THE DEPARTMENT OF HEALTH ("DEPARTMENT"), TO ONE ADMINISTERED BY THE DEPARTMENT, WITH SUCH ASSISTANCE FROM SOCIAL SERVICES DISTRICTS AS THE COMMISSIONER OF HEALTH ("COMMISSIONER") MAY DETERMINE NECESSARY, AND THAT SUCH CONVERSION SHOULD BE COMPLETED BY APRIL FIRST, TWO THOUSAND EIGHTEEN. RECOGNIZING THE COMPLEXITY AND DIFFICULTY OF COMPLETING THIS CONVERSION WITHIN SUCH TIME FRAME, IT IS THE INTENT OF THE LEGISLATURE TO GRANT THE COMMISSIONER BROAD AUTHORITY AND FLEXIBILITY TO TAKE ACTIONS NECESSARY TO ACHIEVE THIS GOAL, AS DETERMINED BY THE COMMISSIONER, AND TO HAVE THE PROVISIONS OF THIS SECTION CONSTRUED IN LIGHT OF THE AUTHORITY AND FLEXIBILITY SO GRANTED. THE ADMINISTRATION OF THE PROGRAM BY THE DEPARTMENT MAY BE ACCOMPLISHED THROUGH THE USE OF DEPARTMENT STAFF, CONTRACTED ENTITIES, OR SOME COMBINATION THEREOF, AS DETERMINED ADVISABLE BY THE COMMISSIONER TO ACHIEVE THE GOALS OF THIS SECTION, SUBJECT TO THE LIMITATIONS PRESCRIBED HEREIN. THE COMMISSIONER WILL CONSULT WITH SOCIAL SERVICES DISTRICTS IN FORMULATING THE OPTIMAL PLAN FOR IMPLEMENTING THIS CONVERSION.

(B) THE LEGISLATURE FURTHER FINDS THAT THE CONTINUED, UNINTERRUPTED, ADEQUATE AND EFFICIENT OPERATION OF FUNCTIONS RELATED TO MEDICAL ASSIST-

ANCE ELIGIBILITY AND COVERED BENEFITS IS NECESSARY FOR THE GENERAL WELFARE OF THE PEOPLE OF THE STATE; THAT SUCH OPERATION INVOLVES AND REQUIRES PERSONNEL WITH TRAINING, PRACTICAL EXPERIENCE AND KNOWLEDGE IN MEDICAL ASSISTANCE ELIGIBILITY AND COVERED BENEFITS; AND THAT REQUIRING COMPETITIVE EXAMINATION FOR APPOINTMENT OF PERSONS CURRENTLY PERFORMING SUCH FUNCTIONS IN COUNTIES IN THE STATE TO POSITIONS IN THE CLASSIFIED SERVICE OF THE STATE UPON THE ASSUMPTION OF SUCH FUNCTIONS BY THE DEPARTMENT WOULD IRREPARABLY DISRUPT, DELAY AND IMPEDE OPERATIONS AND INTERRUPT THE CONTINUANCE AND PERFORMANCE OF IMPORTANT SERVICES.

2. NOTWITHSTANDING THE PROVISIONS OF TITLE TWO OF ARTICLE THREE OF THIS CHAPTER OR OF SECTION THREE HUNDRED SIXTY-FIVE OF THIS TITLE OR OF ANY OTHER LAW TO THE CONTRARY, THE COMMISSIONER IS AUTHORIZED TO TAKE ANY AND ALL ACTIONS NECESSARY TO TRANSFER RESPONSIBILITY FOR THE ADMINISTRATION OF THE MEDICAL ASSISTANCE PROGRAM FROM SOCIAL SERVICES DISTRICTS TO THE DEPARTMENT.

3. FOR PURPOSES OF THIS SECTION, ADMINISTRATION OF THE MEDICAL ASSISTANCE PROGRAM INCLUDES PROCESSING APPLICATIONS FOR BENEFITS AND SERVICES AVAILABLE UNDER THIS TITLE AND TITLE ELEVEN-D OF THIS ARTICLE, MAKING DETERMINATIONS OF INITIAL AND ONGOING ELIGIBILITY FOR SUCH BENEFITS AND SERVICES AND MAKING COVERAGE DETERMINATIONS WITH RESPECT TO BENEFITS AND SERVICES REQUIRING PRIOR AUTHORIZATION, NOTIFYING APPLICANTS AND RECIPIENTS OF THESE DETERMINATIONS AND OF THEIR RIGHTS AND RESPONSIBILITIES, AUTHORIZING BENEFITS AND SERVICES FOR PERSONS FOUND ELIGIBLE, EXERCISING SUBROGATION RIGHTS WITH RESPECT TO AMOUNTS RECEIVED FROM INSURANCE CARRIERS OR OTHER LIABLE THIRD PARTIES, IMPOSING LIENS AND PURSUING RECOVERIES, AND ANY OTHER TASKS AND FUNCTIONS IDENTIFIED BY THE COMMISSIONER.

4. NOTWITHSTANDING THE PROVISIONS OF THE CIVIL SERVICE LAW OR ANY PROVISIONS TO THE CONTRARY CONTAINED IN ANY GENERAL, SPECIAL, OR LOCAL LAWS, ALL LAWFUL APPOINTEES OF A COUNTY PERFORMING FUNCTIONS RELATED TO MEDICAL ASSISTANCE ELIGIBILITY AND COVERED BENEFITS AS OF THE EFFECTIVE DATE OF THIS SECTION WILL BE ELIGIBLE TO TRANSFER TO APPROPRIATE POSITIONS IN THE DEPARTMENT OF HEALTH CLASSIFIED TO PERFORM SUCH FUNCTIONS WITHOUT FURTHER EXAMINATION OR QUALIFICATION AND, UPON SUCH TRANSFER, WILL HAVE ALL THE RIGHTS AND PRIVILEGES OF THE JURISDICTIONAL CLASSIFICATION TO WHICH SUCH POSITIONS MAY BE ALLOCATED IN THE CLASSIFIED SERVICE OF THE STATE.

5. SUBJECT TO THE PROVISIONS OF SUBDIVISIONS SIX AND SEVEN OF THIS SECTION, THE COMMISSIONER MAY CONTRACT WITH ONE OR MORE ENTITIES, INCLUDING UNITS OF LOCAL GOVERNMENT, FOR THE PURPOSE OF EXERCISING HIS OR HER AUTHORITY UNDER THIS SECTION. SUCH ENTITIES MAY BE CONTRACTED TO PERFORM ALL OR A PORTION OF THE FUNCTIONS DESCRIBED IN SUBDIVISION THREE OF THIS SECTION, AND MAY PERFORM SUCH FUNCTIONS WITH RESPECT TO THE ENTIRE STATE OR WITH RESPECT TO A SPECIFIC REGION OR REGIONS, AS DETERMINED BY THE COMMISSIONER. IN NO EVENT, HOWEVER, SHALL THE DEPARTMENT, BY MEANS OF SUCH A CONTRACT, DELEGATE ITS AUTHORITY TO EXERCISE ADMINISTRATIVE DISCRETION IN THE ADMINISTRATION OR SUPERVISION OF THE STATE PLAN FOR MEDICAL ASSISTANCE SUBMITTED PURSUANT TO SECTION THREE HUNDRED SIXTY-THREE-A OF THIS TITLE, OR TO ISSUE POLICIES, RULES, AND REGULATIONS ON PROGRAM MATTERS, NOR MAY ANY CONTRACTED ENTITY BE GIVEN THE AUTHORITY TO CHANGE OR DISAPPROVE ANY ADMINISTRATIVE DECISION OF THE DEPARTMENT, OR OTHERWISE SUBSTITUTE THE ENTITY'S JUDGMENT FOR THAT OF THE DEPARTMENT WITH RESPECT TO THE APPLICATION OF POLICIES, RULES, AND REGULATIONS ISSUED BY THE DEPARTMENT.

6. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SECTIONS ONE HUNDRED TWELVE AND ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW, OR SECTIONS

ONE HUNDRED FORTY-TWO AND ONE HUNDRED FORTY-THREE OF THE ECONOMIC DEVELOPMENT LAW, OR ANY OTHER CONTRARY PROVISION OF LAW, THE COMMISSIONER IS AUTHORIZED TO AMEND THE TERMS OF EXISTING CONTRACTS, INCLUDING A CONTRACT ENTERED INTO PURSUANT TO SUBDIVISION TWENTY-FOUR OF SECTION TWO HUNDRED SIX OF THE PUBLIC HEALTH LAW, AS ADDED BY SECTION THIRTY-NINE OF PART C OF CHAPTER FIFTY-EIGHT OF THE LAWS OF TWO THOUSAND EIGHT, WITHOUT A COMPETITIVE BID OR REQUEST FOR PROPOSAL PROCESS, UPON A DETERMINATION THAT THE EXISTING CONTRACTOR IS QUALIFIED TO PROVIDE ASSISTANCE WITH ONE OR MORE FUNCTIONS RELATED TO THE ADMINISTRATION OF THE MEDICAL ASSISTANCE PROGRAM OR TO ACHIEVING THE GOALS OF THIS SECTION.

7. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SECTIONS ONE HUNDRED TWELVE AND ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW, OR SECTIONS ONE HUNDRED FORTY-TWO AND ONE HUNDRED FORTY-THREE OF THE ECONOMIC DEVELOPMENT LAW, OR ANY OTHER CONTRARY PROVISION OF LAW, THE COMMISSIONER IS AUTHORIZED TO ENTER INTO A CONTRACT OR CONTRACTS UNDER THIS SUBDIVISION WITHOUT A COMPETITIVE BID OR REQUEST FOR PROPOSAL PROCESS, PROVIDED, HOWEVER, THAT WITH RESPECT TO A CONTRACT WITH AN ENTITY OTHER THAN A LOCAL UNIT OF GOVERNMENT:

(A) THE DEPARTMENT SHALL POST ON ITS WEBSITE, FOR A PERIOD OF NO LESS THAN THIRTY DAYS:

(I) A DESCRIPTION OF THE PROPOSED SERVICES TO BE PROVIDED PURSUANT TO THE CONTRACT OR CONTRACTS;

(II) THE CRITERIA FOR SELECTION OF A CONTRACTOR OR CONTRACTORS;

(III) THE PERIOD OF TIME DURING WHICH A PROSPECTIVE CONTRACTOR MAY SEEK SELECTION, WHICH SHALL BE NO LESS THAN THIRTY DAYS AFTER SUCH INFORMATION IS FIRST POSTED ON THE WEBSITE; AND

(IV) THE MANNER BY WHICH A PROSPECTIVE CONTRACTOR MAY SEEK SUCH SELECTION, WHICH MAY INCLUDE SUBMISSION BY ELECTRONIC MEANS;

(B) ALL REASONABLE AND RESPONSIVE SUBMISSIONS THAT ARE RECEIVED FROM PROSPECTIVE CONTRACTORS IN TIMELY FASHION SHALL BE REVIEWED BY THE COMMISSIONER; AND

(C) THE COMMISSIONER SHALL SELECT SUCH CONTRACTOR OR CONTRACTORS THAT, IN HIS OR HER DISCRETION, ARE BEST SUITED TO SERVE THE PURPOSES OF THIS SECTION.

8. THE COMMISSIONER SHALL PROMULGATE SUCH REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION, WHICH REGULATIONS MAY BE PROMULGATED ON AN EMERGENCY BASIS. IN ADDITION, THE COMMISSIONER SHALL MAKE ANY AMENDMENTS TO THE STATE PLAN FOR MEDICAL ASSISTANCE, OR DEVELOP AND SUBMIT AN APPLICATION FOR ANY WAIVER OR APPROVAL UNDER THE FEDERAL SOCIAL SECURITY ACT, THAT MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

S 7. Subdivision 7 of section 369 of the social services law, as added by section 71-a of part C of chapter 58 of the laws of 2008, is amended to read as follows:

7. Notwithstanding any provision of law to the contrary, the department [may commence] SHALL, WHEN IT DETERMINES NECESSARY PROGRAM FEATURES ARE IN PLACE, ASSUME SOLE RESPONSIBILITY FOR COMMENCING actions or proceedings in accordance with the provisions of this section, sections one hundred one, one hundred four, one hundred four-b, paragraph (a) of subdivision three of section three hundred sixty-six, subparagraph one of paragraph (h) of subdivision four of section three hundred sixty-six, and paragraph (b) of subdivision two of section three hundred sixty-seven-a of this chapter, to recover the cost of medical assistance furnished pursuant to this title and title eleven-D of this article. The department is authorized to contract with an entity that shall conduct activities on behalf of the department pursuant to this subdivision.

PRIOR TO ASSUMING SUCH RESPONSIBILITY FROM A SOCIAL SERVICES DISTRICT, THE DEPARTMENT OF HEALTH SHALL, IN CONSULTATION WITH THE DISTRICT, DEFINE THE SCOPE OF THE SERVICES THE DISTRICT WILL BE REQUIRED TO PERFORM ON BEHALF OF THE DEPARTMENT OF HEALTH PURSUANT TO THIS SUBDIVISION.

S 8. Notwithstanding any inconsistent provision of law, rule or regulation, for purposes of implementing the provisions of the public health law and the social services law, references to titles XIX and XXI of the federal social security act in the public health law and the social services law shall be deemed to include and also to mean any successor titles thereto under the federal social security act.

S 9. Notwithstanding any inconsistent provision of law, rule or regulation, the effectiveness of the provisions of sections 2807 and 3614 of the public health law, section 18 of chapter 2 of the laws of 1988, and 18 NYCRR 505.14(h), as they relate to time frames for notice, approval or certification of rates of payment, are hereby suspended and without force or effect for purposes of implementing the provisions of this act.

S 10. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 11. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012, provided that:

1. section one of this act shall take effect April 1, 2013;

2. any rules or regulations necessary to implement the provisions of this act may be promulgated and any procedures, forms, or instructions necessary for such implementation may be adopted and issued on or after the date this act shall have become a law;

3. this act shall not be construed to alter, change, affect, impair or defeat any rights, obligations, duties or interests accrued, incurred or conferred prior to the effective date of this act;

4. the commissioner of health and the superintendent of insurance and any appropriate council may take any steps necessary to implement this act prior to its effective date;

5. notwithstanding any inconsistent provision of the state administrative procedure act or any other provision of law, rule or regulation, the commissioner of health and the superintendent of insurance and any appropriate council is authorized to adopt or amend or promulgate on an emergency basis any regulation he or she or such council determines necessary to implement any provision of this act on its effective date;

6. the amendment to section 91 of part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to general hospital reimbursement for annual rates, made by section five of this act shall take effect on the same date and in the same manner as such section takes effect;

7. the provisions of this act shall become effective notwithstanding the failure of the commissioner of health or the superintendent of insurance or any council to adopt or amend or promulgate regulations implementing this act.

PART G

Section 1. Subdivision 1 of section 79 of part C of chapter 58 of the laws of 2005 relating to the preferred drug program is amended and a new subdivision 1-a is added to read as follows:

1. sections ten [through], ELEVEN, TWELVE AND fifteen of this act shall expire and be deemed repealed on and after June 15, [2012] 2019;

1-A. SECTION FOURTEEN OF THIS ACT SHALL EXPIRE AND BE DEEMED REPEALED ON AND AFTER JUNE 15, 2012;

S 2. Subparagraph (v) of paragraph (b) of subdivision 35 of section 2807-c of the public health law, as amended by section 35-a of part H of chapter 59 of the laws of 2011, is amended to read as follows:

(v) such regulations shall incorporate quality related measures, including, but not limited to, potentially preventable re-admissions (PPRs) and provide for rate adjustments or payment disallowances related to PPRs and other potentially preventable negative outcomes (PPNOs), which shall be calculated in accordance with methodologies as determined by the commissioner, provided, however, that such methodologies shall be based on a comparison of the actual and risk adjusted expected number of PPRs and other PPNOs in a given hospital and with benchmarks established by the commissioner and provided further that such rate adjustments or payment disallowances shall result in an aggregate reduction in Medicaid payments of no less than thirty-five million dollars for the period July first, two thousand ten through March thirty-first, two thousand eleven and no less than fifty-one million dollars for [the period] ANNUAL PERIODS BEGINNING April first, two thousand eleven through March thirty-first, two thousand [twelve] THIRTEEN, provided further that such aggregate reductions shall be offset by Medicaid payment reductions occurring as a result of decreased PPRs during the period July first, two thousand ten through March thirty-first, two thousand eleven and the period April first, two thousand eleven through March thirty-first, two thousand [twelve] THIRTEEN and as a result of decreased PPNOs during the period April first, two thousand eleven through March thirty-first, two thousand [twelve] THIRTEEN; and provided further that for the period July first, two thousand ten through March thirty-first, two thousand [twelve] THIRTEEN, such rate adjustments or payment disallowances shall not apply to behavioral health PPRs; or to readmissions that occur on or after fifteen days following an initial admission. By no later than July first, two thousand eleven the commissioner shall enter into consultations with representatives of the health care facilities subject to this section regarding potential prospective revisions to applicable methodologies and benchmarks set forth in regulations issued pursuant to this subparagraph;

S 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012.

PART H

Section 1. Section 4 of part C of chapter 57 of the laws of 2006, relating to establishing a cost of living adjustment for designated human services programs, as amended by section 2 of part F of chapter 59 of the laws of 2011, is amended to read as follows:

S 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2006; provided section one of this act shall expire and be deemed repealed April 1,

[2015] 2012; provided, further, that sections two and three of this act shall expire and be deemed repealed December 31, 2009.

S 2. Notwithstanding any other provision of law to the contrary, effective April 1, 2013 and annually thereafter, state agencies including, but not limited to, the office for people with developmental disabilities, office of mental health, office of alcoholism and substance abuse services, office of children and family services, office of temporary and disability assistance, department of health, office for the aging, division of criminal justice services, office of victim services, and state education department that operate, license, certify, or fund providers of services shall develop and calculate annual adjustments to established payments to providers of such services, based on factors to be determined by the commissioner of the agency. Such adjustments shall be based on performance metrics to be developed by the commissioners of such agencies which shall include, but not be limited to the following to the extent practicable: the actual costs of providing such services, the percentages of administrative costs, the determination and levels of executive compensation, and such other criteria as such commissioners may determine. Such annual adjustments shall be subject to any necessary federal approvals and restrictions. The amount of any annual adjustment and the metrics used to determine such adjustment shall be subject to the review and approval of the director of the budget.

S 3. Notwithstanding any other provision of law to the contrary, commencing on April 1, 2012, the commissioner or director of each state agency subject to section two of this act shall have the authority, subject to approval by the director of the budget, to promulgate regulations or to address by other means the extent and nature of a provider's administrative costs and executive compensation which shall be eligible to be reimbursed with state financial assistance or state-authorized payments for operating expenses. Each agency shall require that providers of services that receive reimbursements directly or indirectly from such agency must comply with the following restrictions:

(a) No less than seventy-five percent of the state financial assistance or state-authorized payments for operating expenses shall be directed to provide direct care or services rather than to support the costs of administration, as these terms are defined by the applicable state agency in implementing these requirements. This percentage shall increase by five percent each year until it shall, no later than April 1, 2015, remain at no less than eighty-five percent thereafter.

(b) To the extent practicable, reimbursement shall not be provided for compensation paid or given to any executive by such provider in an amount greater than $199,000 per annum; provided, however, that the commissioner of each state agency shall have discretion to adjust this figure annually based on appropriate factors subject to the approval of the director of the budget, but in no event shall such figure exceed Level I of the federal government's Rates of Basic Pay for the Executive Schedule promulgated by the United States Office of Personnel Management. The applicable state agency shall define these terms as necessary in implementing these requirements.

A provider's failure to comply with the requirements established by the applicable state agency may, in the sole discretion of the commissioner of each state agency, form the basis for termination or non-renewal of the agency's contract with or continued support of the provider. Upon a showing of good cause, a provider may be granted a waiver from compliance with these requirements in whole or in part subject to the approval of the applicable state agency and the director of the budget.

S 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012.

PART I

Section 1. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law to the contrary, the commissioner of developmental disabilities, pursuant to a pilot program established in accordance with an application made under section 1115 of the federal social security act, 42 U.S.C. 1315, is authorized to enter into a contract or contracts without a competitive bid or request for proposal process, with the approval of the director of the budget, provided, however, that:

(a) the office for people with developmental disabilities shall post on its website, for a period of not less than thirty days, a pilot application, and the following information:

(i) a description of the proposed services to be provided pursuant to the pilot program;

(ii) the procedure for application to participate in the pilot program and criteria for selection of an applicant to participate in the pilot program;

(iii) the period of time during which an applicant may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) the manner by which an applicant may seek such selection, which may include submission by electronic means;

(b) all reasonable and responsive submissions that are received from applicants in a timely fashion shall be reviewed by the commissioner; and

(c) the commissioner of developmental disabilities shall select such applicant or applicants that, in the commissioner's discretion, have demonstrated the ability to effectively, efficiently, and economically provide services pursuant to the pilot program; have the requisite expertise and financial resources; have demonstrated that their directors, sponsors, members, managers, partners or operators have the requisite character, competence and standing in the community, and are best suited to serve the purposes of this section.

S 2. This act shall take effect immediately.

PART J

Section 1. Section 13.17 of the mental hygiene law, as added by chapter 978 of the laws of 1977, the section heading as amended by chapter 168 of the laws of 2010, subdivisions (b) and (d) as amended by chapter 37 of the laws of 2011, and subdivision (c) as amended by chapter 538 of the laws of 1987, is amended to read as follows:

S 13.17 Programs, services, and operations [of facilities] in the office for people with developmental disabilities.

(a) The commissioner shall establish policy and procedures for the organization, administration, and [operation of the facilities] SERVICE DELIVERY SYSTEM under his OR HER jurisdiction[. He] AND shall make provision for the effective rendition of SUPPORTS AND services to [patients by such facilities or office personnel] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

(b) [There shall be in the office the developmental disabilities services offices named below serving the areas either currently or previously served by a school, for the care and treatment of persons with developmental disabilities and for research and teaching in the science and skills required for the care and treatment of such persons with developmental disabilities:
Bernard M. Fineson Developmental Disabilities Services Office
Brooklyn Developmental Disabilities Services Office
Broome Developmental Disabilities Services Office
Capital District Developmental Disabilities Services Office
Central New York Developmental Disabilities Services Office
Finger Lakes Developmental Disabilities Services Office
Institute for Basic Research in Developmental Disabilities
Hudson Valley Developmental Disabilities Services Office
Metro New York Developmental Disabilities Services Office
Long Island Developmental Disabilities Services Office
Sunmount Developmental Disabilities Services Office
Taconic Developmental Disabilities Services Office
Western New York Developmental Disabilities Services Office
Staten Island Developmental Disabilities Services Office
The New York State Institute for Basic Research in Developmental Disabilities is designated as an institute for the conduct of medical research and other scientific investigation directed towards furthering knowledge of the etiology, diagnosis, treatment and prevention of developmental disabilities.
(c)] The commissioner shall establish [the areas which each facility or], AT HIS OR HER DISCRETION, developmental disabilities [services office under his jurisdiction shall serve and the categories of clients which shall be served thereby] REGIONAL OFFICES AND SHALL ESTABLISH STATE OPERATIONS OFFICES THAT PROVIDE FOR THE DIRECT DELIVERY OF SUPPORTS AND SERVICES BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.
[(d)] (C) The commissioner may [permit] AUTHORIZE other offices of the department and any public or private non-profit organization or political subdivision of the state to [operate programs for persons] DELIVER SUPPORTS AND SERVICES TO INDIVIDUALS with developmental disabilities[, not inconsistent with the programs and objectives of the office in any facility under his jurisdiction. The commissioner may permit any facility under his jurisdiction to operate programs for persons with mental disabilities, not inconsistent with programs and objectives of the department, under contracts or agreements with other offices within the department].

S 2. Section 13.19 of the mental hygiene law, as added by chapter 978 of the laws of 1977, subdivisions (a) and (d) as amended by chapter 168 of the laws of 2010, and subdivision (e) as added by chapter 307 of the laws of 1979, is amended to read as follows:

S 13.19 Personnel of the office; regulations.

(a) The commissioner may, within the amounts appropriated therefor, appoint and remove in accordance with law and applicable rules of the state civil service commission, such officers and employees of the office for people with developmental disabilities [and school and facility officers and employees who are designated managerial or confidential pursuant to article fourteen of the civil service law] as are necessary for efficient administration. THE COMMISSIONER SHALL, IN EXERCISING HIS OR HER APPOINTING AUTHORITY, TAKE, CONSISTENT WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, ALL REASONABLE AND NECESSARY STEPS

TO ENSURE THAT ANY SUCH PERSON SO APPOINTED HAS NOT PREVIOUSLY ENGAGED IN ANY ACT IN VIOLATION OF ANY LAW WHICH COULD COMPROMISE THE HEALTH AND SAFETY OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

(b) [The director of a hospital or institute in the office shall have professional qualifications and experience to be prescribed by the commissioner.

(c)] Notwithstanding the provisions of any other law, the [positions] POSITION of [psychiatrist III and] deputy director in [any] AN office facility may be filled BY NEW HIRE OR by promotion open to employees [of all such facilities] who possess the minimum qualifications for the [respective positions. Promotion lists which are established for those positions shall be general eligible promotion lists from which names are certified in the order of final earned ratings and from which certification shall not be subdivided by the facility or department in which such persons are employed. Nothing in this subdivision shall prevent the use of open competitive examinations] POSITION.

[(d)] (C) The use of volunteers [at facilities] in the office for people with developmental disabilities shall be encouraged. The commissioner may establish regulations governing such volunteer services.

[(e)] (D) Where, and to the extent that, an agreement between the state and an employee organization entered into pursuant to article fourteen of the civil service law so provides, the commissioner is authorized to implement the provisions of such agreement relating to discipline consistent with the terms thereof.

S 3. Section 13.21 of the mental hygiene law, as added by chapter 978 of the laws of 1977, the section heading and subdivisions (a) and (c) as amended by chapter 168 of the laws of 2010, subdivision (b) as amended by chapter 558 of the laws of 2011, subdivision (d) as added by chapter 355 of the laws of 1987 and subdivision (e) as added by chapter 492 of the laws of 1978 and as relettered by chapter 355 of the laws of 1987, is amended to read as follows:

S 13.21 Directors of [schools] STATE OPERATIONS OFFICES AND DEVELOPMENTAL DISABILITIES REGIONAL OFFICES in the office for people with developmental disabilities.

(a) The [director] DIRECTORS of [a school] BOTH THE STATE OPERATIONS OFFICES AND DEVELOPMENTAL DISABILITIES REGIONAL OFFICES in the office for people with developmental disabilities shall be appointed by the commissioner [and shall be its chief executive officer. The director of a school shall be the director of the developmental disabilities services office serving the areas designated by the commissioner in regulation, and in such context, the term facility shall also refer to such developmental disabilities services office]. Each such director shall be in the non-competitive class and designated as confidential as defined by subdivision two-a of section forty-two of the civil service law and shall serve at the pleasure of the commissioner. [Except for school and facility officers and employees for which subdivision (a) of section 13.19 of this article makes the commissioner the appointing and removing authority, the director of a school shall have the power, within amounts appropriated therefor, to appoint and remove in accordance with law and applicable rules of the state civil service commission such officers and employees of the facility of which he or she is director as are necessary for its efficient administration. He or she shall in exercising his or her appointing authority take, consistent with article twenty-three-A of the correction law, all reasonable and necessary steps to insure that any such person so appointed has not previously engaged in any act in violation of any law which could compromise the health and

safety of patients in the facility of which he or she is director.] He or she shall manage the [facility, and administer its personnel system,] STATE OPERATIONS OFFICE OR DEVELOPMENTAL DISABILITIES REGIONAL OFFICE subject to applicable law, the regulations of the commissioner, and the rules of the state civil service commission. [Before the commissioner shall issue any such regulation or any amendment or revision thereof, he or she shall consult with the directors of schools in the office regarding its suitability.] The [director] DIRECTORS OF THE DEVELOPMENTAL DISABILITIES REGIONAL OFFICES AND STATE OPERATIONS OFFICES shall maintain effective [supervision] OVERSIGHT of all parts of [the facility and over all persons employed therein or coming thereon and] THEIR RESPECTIVE OFFICES. THE DIRECTORS OF STATE OPERATIONS OFFICES shall generally [direct] PROVIDE FOR the [care and treatment of patients. Directors presently serving at facilities of the office shall continue to serve under the terms of their original appointment] ADMINISTRATION OF SUPPORTS AND SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES IN STATE OPERATED PROGRAMS. DIRECTORS OF REGIONAL OFFICES SHALL GENERALLY OVERSEE THE ADMINISTRATION OF SUPPORTS AND SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES IN SETTINGS OUTSIDE THE STATE OPERATED PROGRAMS.

(b) Such [director] DIRECTORS shall have the responsibility of seeing that there is humane treatment of [the patients at his facility and shall investigate every case of alleged patient abuse or mistreatment] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES RECEIVING SERVICES IN SETTINGS OPERATED, LICENSED, CERTIFIED, FUNDED OR APPROVED BY THIS OFFICE. [The] A director OF STATE OPERATIONS shall notify immediately, and in any event within three working days the board of visitors of the facility and the mental hygiene legal service located in the same judicial department as [the hospital, school or institution] THE STATE OPERATIONS OFFICE of every complaint of patient abuse or mistreatment and shall inform the board and the mental hygiene legal service of the results of his OR HER investigation. If it appears that a crime may have been committed, the STATE OPERATIONS director shall give notice thereof to the district attorney or other appropriate law enforcement official as soon as possible, and in any event within three working days unless it appears that the crime includes an employee, intern, volunteer, consultant, contractor, or visitor and the alleged conduct caused physical injury or the patient was subject to unauthorized sexual contact, or if it appears the crime is endangering the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the penal law, or if the crime was any felony under state or federal law, then the district attorney or other appropriate law enforcement official must be contacted immediately, and in any event no later than twenty-four hours.

(c) In any investigation into the treatment and care of [patients] INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES or the conduct, performance, or neglect of duty of officers or employees, the [director of a school in the office for people with developmental disabilities] COMMISSIONER OR HIS OR HER DESIGNEE shall be authorized to subpoena witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the inquiry or investigation. A subpoena issued under this section shall be regulated by the civil practice law and rules.

(d) [Such] THE director of a [school] STATE OPERATIONS OFFICE shall be responsible for the provision of STATE OPERATED community developmental disabilities services, in those areas that the commissioner may assign. Such responsibility shall, consistent with article forty-one of this

chapter, include the operation of STATE OPERATED facilities[,] AND the development of needed facilities[, and the provision of assistance to service providers in such areas and any necessarily related activities. All powers and duties as set forth in this section shall apply to such responsibilities]. REGIONAL DIRECTORS SHALL BE RESPONSIBLE FOR THE PROVISION OF COMMUNITY DEVELOPMENTAL DISABILITIES SERVICES TO INDIVIDUALS IN SETTINGS OTHER THEN STATE OPERATED PROGRAMS. THE REGIONAL DIRECTOR'S RESPONSIBILITY SHALL, CONSISTENT WITH ARTICLE FORTY-ONE OF THIS CHAPTER, INCLUDE THE OVERSIGHT OF FACILITIES AND PROGRAMS OTHER THAN THOSE OPERATED BY THE STATE.

(e) Each [facility] STATE OPERATIONS director of the office shall, upon notice from the commissioner or upon knowledge that programs of such facility may be contracted or terminated, implement procedures to ensure timely notification to affected employees. Such procedures shall include, but not be limited to:

(1) dissemination and posting of all decisions, policies and procedures with respect to all aspects of such actions and their impact on facility staff; and

(2) compliance with all requirements and protection of employee rights pursuant to collective bargaining agreements with the designated legal representative of the employees and the civil service law.

S 4. Section 13.33 of the mental hygiene law, as added by chapter 978 of the laws of 1977, subdivision (a) as amended by chapter 37 of the laws of 2011, subdivision (d) as amended by chapter 686 of the laws of 1995, subdivisions (f) and (h) as amended by chapter 175 of the laws of 1986, subdivision (i) as amended by chapter 14 of the laws of 1990, paragraph 1 of subdivision (i) as amended by chapter 75 of the laws of 1992, paragraph 2 of subdivision (i) and subdivision (m) as amended by chapter 168 of the laws of 2010, subdivision (j) as amended by chapter 264 of the laws of 1980 and subdivisions (j) and (k) as relettered by chapter 84 of the laws of 1980, subdivision (l) as amended by chapter 406 of the laws of 1994, and subdivision (n) as amended by chapter 662 of the laws of 1995, is amended to read as follows:

S 13.33 Boards of visitors.

(a) Each [developmental disabilities services] STATE OPERATIONS office under the jurisdiction of the commissioner shall have a MINIMUM OF ONE board of visitors consisting of at least seven but not more than fourteen members[; provided, however, that the Central New York developmental disabilities services office shall have a board of visitors consisting of at least ten, but not more than seventeen members; and that the Finger Lakes developmental disabilities services office shall have a board of visitors consisting of at least fourteen, but not more than twenty-one members. When a school is replaced by a developmental disabilities services office, the members of that school's board of visitors shall continue to serve their terms as the board of visitors for the new developmental disabilities services office]. Members appointed or reappointed after the effective date of this chapter shall be appointed by the governor, by and with the advice and consent of the senate. Members shall be appointed for four year terms to expire on the thirty-first day of December of the fourth year of the term of office provided however, when more than three terms expire in any one year, members may be appointed for terms of fewer years as designated by the governor so that no more than three members' terms expire in any one year. All terms of office shall expire on the thirty-first day of December of the designated year. A member whose term has expired shall, however, remain in office until such member's successor has been

appointed and has taken office, or until such member shall have resigned or have been removed from office in the manner hereinafter provided. Should any member resign or be removed from office, the governor shall promptly submit, for senate consent, a successor candidate to fill the remaining term of the vacated office. A visitor may be removed by the governor for cause after notice and an opportunity for a hearing on the charges. In making appointments to boards of visitors, the governor shall endeavor to ensure that the membership of each such board shall adequately reflect the composition of the community or communities served by the [facility] STATE OPERATIONS OFFICE, that the membership of each such board includes at least three individuals who are parents or relatives of patients or of former patients and that the remainder includes only those persons, including former patients, who shall have expressed an active interest in, or shall have obtained professional knowledge in the care of persons with developmental disabilities or in developmental disability endeavors generally.

(b) No elected state officer or member of the legislature may serve as a visitor.

(c) If the [facility] STATE OPERATIONS OFFICE serves an area, as established by the regulations of the commissioner, the visitors shall reside at the time of appointment or reappointment in such area. [If no specific area is designated, the visitors shall reside at the time of appointment or reappointment in the developmental disabilities area, established by the commissioner, in which the facility is located.]

(d) Each board shall, at the first meeting of each calendar year elect one member to serve as president of the board and one member to serve as secretary; provided however, that no member may serve for more than two consecutive years as president.

(e) Visitors shall not receive compensation but shall be reimbursed for their actual expenses in connection with their service as visitors.

(f) (1) Each board of visitors shall hold six bi-monthly regular meetings annually, but a greater number of regular meetings may be scheduled by the board. Each board of visitors shall establish in their by-laws or otherwise, in writing, whether these six meetings shall be held during months represented by odd numbers or months represented by even numbers. The president of the board shall notify the chairman of the commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES and the [facility] STATE OPERATIONS director of the determination made concerning the designated months for the six bi-monthly regular meetings. The president of the board, the commissioner, the director, or the members as determined by the rules of the board may call special meetings. The board may require the director to submit a report at each meeting. Each board shall keep a record of its proceedings and activities. A member of a board of visitors who has failed to attend three consecutive bi-monthly regular meetings shall be considered to have vacated his office unless otherwise ordered by the governor. The board shall cause notice of any of its public meetings to be sent to the mental hygiene legal service located in the same judicial department as the school. The mental hygiene legal service may send a representative to any such public meeting, and may request the board to review patient complaints or investigate alleged incidents of abuse or mistreatment. The board shall notify the appropriate representative of the mental hygiene legal service of the board's actions and findings in relation to any such request.

(2) The president of the board of visitors shall notify a member by certified or registered mail return receipt requested when such member

of the board has failed to attend any two consecutive bi-monthly regular meetings. This notice shall be sent within ten days following the second meeting and shall include the dates of the two meetings which were missed, the date of the next bi-monthly regular meeting, and a statement concerning the consequences of failure to attend the next meeting.

(3) Within three days after the third consecutive absence at a bi-monthly regular meeting by a member, the president of the board of visitors shall notify, in writing, the governor, the commissioner, the chairman of the commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES and the [facility] STATE OPERATIONS director of such absences. The president of the board of visitors shall send a copy of this notice by registered or certified mail return receipt requested to the member to whom it pertains. The member may petition the governor to excuse his absences. If the governor does not excuse the absences within forty-five days of the date of the third consecutive meeting absence, the office of the member shall be deemed vacated.

(g) Upon the request of the commissioner or the director, or upon the board's initiative, the board shall consult, advise, and work with the director with respect to community relations, conditions at the STATE OPERATIONS facility, preliminary plans for construction and alterations, and programs and activities of the STATE OPERATED facility.

(h) Each board or any member of the board may visit and inspect [the] A STATE OPERATED facility WHICH IS IN THE CATCHMENT AREA OF THE STATE OPERATIONS REGION IN WHICH SUCH MEMBER OR MEMBERS SERVE at any time without prior notice and may report on conditions to the governor, to the commissioner and to the chairman of the state commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES. In addition, each board shall ensure that a member or committee of members shall inspect [the] SUCH facility once every three months without prior notice. A report on conditions may be submitted to the governor, to the commissioner or to the chairman of the state commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES. Each board member shall visit and inspect [the] ANY SUCH facility at least twice during each calendar year. Within thirty days after the conclusion of each calendar year, the president of the board of visitors shall notify the governor, the commissioner, the chairman of the commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES, and the [facility] STATE OPERATIONS director, if any member of the board has failed to visit and inspect [the] ANY SUCH facility at least twice during that year. The president of the board of visitors shall send a copy of this notice by certified or registered mail return receipt requested to the member to whom it pertains. A member of a board of visitors who has failed to visit and inspect [the] A facility at least twice a year shall be considered to have vacated his OR HER office unless otherwise ordered by the governor within forty-five days after the end of the calendar year. The board shall have the power to investigate all charges against the STATE OPERATIONS director and all cases of alleged patient abuse or mistreatment made against any employee and shall have the power to interview patients and employees of the [facility] FACILITIES in pursuit of such investigations. In conducting such an investigation, the board shall have the power, in accordance with the civil practice law and rules, to subpoena witnesses, compel their testimony, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the investigation. A board or

a member may include in the report or separately at any time any matter pertaining to the management and affairs of [the facility] SUCH FACILITIES and may make recommendations to the governor, to the commissioner and to the chairman of the state commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES. Each board member shall enter in a book, kept at each SUCH facility for that purpose, the date of each visit.

(i) (1) Any member or members of the board may visit and inspect a family care home, which is within the catchment area of the [school on the board of] STATE OPERATIONS REGION IN which such member or members serve. Such member or members shall be granted access to such facility and to all books, records and data pertaining to such facility deemed necessary for carrying out the purposes of such visit. Information, books, records or data which are confidential as provided by law shall be kept confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to such member or members of the board. After any such visits or inspections, a report containing findings and recommendations may be submitted to the governor, to the commissioner or to the state commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES.

(2) Any member or members of the board may visit and inspect a community residence operated by the office for people with developmental disabilities, which is within the catchment area of the [school on the board of] STATE OPERATIONS REGION IN which such member or members serve. Such member or members shall be granted access to such facility and to all books, records and data pertaining to such facility deemed necessary for carrying out the purposes of such visit and inspection. Information, books, records or data which are confidential as provided by law shall be kept confidential and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to such member or members of the board. After any such visits or inspection, a report containing findings and recommendations shall be submitted promptly to the commissioner and to the chairman of the state commission on quality of care and advocacy for persons with disabilities.

(j) Once each year, each board shall make an independent assessment of conditions at [the facility] SUCH FACILITIES and shall submit a report on the assessment and recommendations to the governor, to the commissioner and to the chairman of the state commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES.

(k) The commissioner shall notify the board of visitors of a [school] FACILITY under his OR HER jurisdiction of the proposed appointment of a STATE OPERATIONS director [to such facility] or the proposed transfer of a STATE OPERATIONS director [from such facility], with a request that the board report an expression of its opinion of the appointment or transfer and, if it objects thereto, the reasons for such objection.

(l) The commissioner shall appoint representatives of the office [department] to serve as liaison between the office and the boards of visitors. At least once each year the commissioner shall meet with the boards collectively. The commissioner, or his OR HER designee, shall meet quarterly with representatives of boards of visitors.

(m) Members of the boards of visitors shall be considered officers of the office for people with developmental disabilities for the purposes of sections seventy-three, to the extent provided therein, and seventy-

four of the public officers law relating to business or professional activities by state officers and employees and the code of ethics.

(n) Each member shall attend, within one year of the initial appointment or any subsequent reappointment, an orientation training program provided by the commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES for members of boards of visitors. The chairman of the commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES shall notify the governor and the appointed member of any such member's failure to attend such a training program. A member who has failed to attend such a training program scheduled for such member shall be considered to have vacated his office unless otherwise ordered by the governor within forty-five days after the notice.

S 5. Paragraph (c) of subdivision 3 of section 2963 of the public health law, as added by chapter 818 of the laws of 1987, is amended to read as follows:

(c) If the attending physician determines that a patient lacks capacity because of a developmental disability, the concurring determination required by paragraph (a) of this subdivision shall be provided by a physician or psychologist employed by [a school named in section 13.17 of the mental hygiene law] THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, or who has been approved by the commissioner of [mental retardation and] developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or psychologist possess specialized training or three years experience in treating developmental disabilities.

S 6. Paragraph (c) of subdivision 2 of section 2981 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

(c) For persons who reside in a mental hygiene facility operated or licensed by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, at least one witness shall be an individual who is not affiliated with the facility and at least one witness shall be a physician or clinical psychologist who either is employed by [a school named in section 13.17 of the mental hygiene law] THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, or who has been approved by the commissioner of [mental retardation and] developmental disabilities in accordance with regulations approved by the commissioner. Such regulations shall require that a physician or clinical psychologist possess specialized training or three years experience in treating developmental disabilities.

S 7. Paragraph (c) of subdivision 1 of section 2983 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

(c) If the attending physician determines that a patient lacks capacity because of a developmental disability, the attending physician who makes the determination must be, or must consult, for the purpose of confirming the determination, with a physician or clinical psychologist who either is employed by [a school named in section 13.17 of the mental hygiene law] THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, or

who has been employed for a minimum of two years to render care and service in a facility operated or licensed by the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, or who has been approved by the commissioner of [mental retardation and] developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or clinical psychologist possess specialized training or three years experience in treating developmental disabilities. A record of such consultation shall be included in the patient's medical record.

S 8. Subparagraph ii of paragraph c of subdivision 3 of section 2994-c of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

(ii) If the attending physician makes an initial determination that a patient lacks decision-making capacity because of mental retardation or a developmental disability, either such physician must have the following qualifications, or another professional with the following qualifications must independently determine whether the patient lacks decision-making capacity: a physician or clinical psychologist who either is employed by [a school named in section 13.17 of the mental hygiene law, or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by] the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, or who has been approved by the commissioner of [mental retardation and] developmental disabilities in accordance with regulations promulgated by such commissioner. Such regulations shall require that a physician or clinical psychologist possess specialized training or three years experience in treating developmental disabilities. A record of such consultation shall be included in the patient's medical record.

S 9. Subdivision 10 of section 2994-aa of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

10. "Hospital" means a general hospital as defined in subdivision ten of section twenty-eight hundred one of this chapter and a residential health care facility as defined in subdivision three of section twenty-eight hundred one of this chapter or a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law [or a school named in section 13.17 of the mental hygiene law].

S 10. Subdivision 6 of section 2994-dd of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

6. The commissioner may authorize the use of one or more alternative forms for issuing a nonhospital order not to resuscitate (in place of the standard form prescribed by the commissioner under subdivision two of this section). Such alternative form or forms may also be used to issue a non-hospital do not intubate order. Any such alternative forms intended for use for persons with [mental retardation or] developmental disabilities or persons with mental illness who are incapable of making their own health care decisions or who have a guardian of the person appointed pursuant to article eighty-one of the mental hygiene law or article seventeen-A of the surrogate's court procedure act must also be approved by the commissioner of [mental retardation and] developmental disabilities or the commissioner of mental health, as appropriate. An alternative form under this subdivision shall otherwise conform with applicable federal and state law. This subdivision does not limit, restrict or impair the use of an alternative form for issuing an order not to resuscitate in a general hospital or residential health care facility under article twenty-eight of this chapter or a hospital under

subdivision ten of section 1.03 of the mental hygiene law [or a school under section 13.17 of the mental hygiene law].

S 11. Subparagraph (B) of paragraph (vi) of subdivision (c) of section 958 of the general municipal law, as amended by chapter 708 of the laws of 1993, is amended to read as follows:

(B) a state-operated hospital or facility listed in [sections] SECTION 7.17 [or 13.17] of the mental hygiene law OR A FACILITY OPERATED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, which has been designated by either the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities for contraction or discontinuance. Provided however, that not more than one-third of the zones designated pursuant to paragraph (iii) or (iv) of subdivision (b) of section nine hundred sixty OF THIS ARTICLE, shall be based on applications filed pursuant to THIS paragraph [(vi) of this subdivision].

S 12. Paragraph (b) of subdivision 4 of section 6810 of the education law, as added by chapter 519 of the laws of 2002, is amended to read as follows:

(b) Oral prescriptions for patients in general hospitals, nursing homes, residential health care facilities as defined in section twenty-eight hundred one of the public health law, hospitals as defined in subdivision ten of section 1.03 of the mental hygiene law, or [developmental centers or developmental disabilities services offices listed in subdivision (b) of section 13.17 of the mental hygiene law] FACILITIES OPERATED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, may be communicated to a pharmacist serving as a vendor of pharmaceutical services based upon a contractual arrangement by an agent designated by and under the direction of the prescriber or the institution. Such agent shall be a health care practitioner currently licensed and registered under this title.

S 13. Paragraph (b) of subdivision 7 of section 6810 of the education law, as amended by chapter 519 of the laws of 2002, is amended to read as follows:

(b) With respect to drugs other than controlled substances, the provisions of this subdivision shall not apply to pharmacists employed by or providing services under contract to general hospitals, nursing homes, residential health care facilities as defined in section twenty-eight hundred one of the public health law, hospitals as defined in subdivision ten of section 1.03 of the mental hygiene law, or [developmental centers or developmental disabilities services offices listed in subdivision (b) of section 13.17 of the mental hygiene law] FACILITIES OPERATED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, who dispense drugs in the course of said employment or in the course of providing such services under contract. With respect to such pharmacists, each prescription shall be transcribed on a patient specific prescription form.

S 14. Paragraph 1 of subdivision (b) of section 5.05 of the mental hygiene law, as amended by chapter 168 of the laws of 2010, is amended to read as follows:

(1) The commissioners of the office of mental health, the office for people with developmental disabilities and the office of alcoholism and substance abuse services shall constitute an inter-office coordinating council which, consistent with the autonomy of each office for matters within its jurisdiction, shall ensure that the state policy for the prevention, care, treatment and rehabilitation of individuals with mental illness and developmental disabilities, alcoholism, alcohol abuse, substance abuse, substance dependence, and chemical dependence is

planned, developed and implemented comprehensively; that gaps in services to individuals with multiple disabilities are eliminated and that no person is denied treatment and services because he or she has more than one disability; that procedures for the regulation of programs which offer care and treatment for more than one class of persons with mental disabilities be coordinated between the offices having jurisdiction over such programs; and that research projects of the institutes, as identified in section 7.17 [or 13.17] of this chapter OR AS OPERATED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, are coordinated to maximize the success and cost effectiveness of such projects and to eliminate wasteful duplication.

S 15. Subdivision (b) of section 13.11 of the mental hygiene law, as added by chapter 978 of the laws of 1977, is amended to read as follows:

(b) The commissioner shall control the organization of the office and may continue, establish, discontinue, expand, and contract facilities under his OR HER jurisdiction. [The facilities set forth in section 13.17 may not be discontinued by the commissioner.] Units and facilities shall have such functions, duties, and responsibilities as may be assigned to them by the commissioner.

S 16. Subdivisions 1 and 2 of section 13.34 of the mental hygiene law, as amended by chapter 542 of the laws of 2011, are amended to read as follows:

1. There shall be at each developmental center facility [listed in section 13.17 of this article], an ombudsman who shall be an employee of the commission on quality of care and advocacy for persons with disabilities under article forty-five of this chapter and who shall be responsible for receiving and responding to any complaints regarding individual clients residing in such facility. The ombudsman shall have the following powers and duties:

i. to advise and consult with parents, guardians, correspondents and other interested persons with respect to any complaints, or issues related to the conditions of clients' residents;

ii. to review and attempt to remedy specific complaints with responsible and appropriate staff;

iii. where it appears that care has not been rendered as required by applicable standards to refer the complaint to the appropriate agency or body for its attention;

iv. to receive and keep confidential any complaint, information or inquiry from any source. The records of the ombudsman shall be confidential, and shall not be available to the public;

v. to advise and consult with the board of visitors of the developmental center served by the ombudsman with respect to any complaints or issues relating to conditions of client's residence and to regularly attend the meetings of such board; and

vi. to meet with the commissioner, or a representative of the commissioner, on a quarterly basis regarding systemic issues in the ombudsman's jurisdiction.

2. The president of the board of visitors of each [developmental center facility listed in section 13.17 of this article] REGION IN THE CATCHMENT AREA OF THE STATE OPERATIONS REGION IN WHICH SUCH MEMBER SERVES, shall, in consultation with the members of such board, recommend three persons to serve as ombudsman at the facility. In making such recommendation, the president shall also consider the expressed opinion of parents, guardians and correspondents of clients residing at such facility. The persons so recommended as ombudsman shall have expressed an active interest or shall have had professional knowledge in advocat-

ing for persons who are mentally disabled. The commission on quality of care and advocacy for persons with disabilities shall select one of the recommended persons as ombudsman. The ombudsman may only be removed from office for just cause. An individual appointed as ombudsman shall be an exempt class employee as defined by section forty-one of the civil service law and may be removed by the commissioner upon the recommendation of the president of the board of visitors, for cause after notice and opportunity for a hearing on the charges.

S 17. Subdivision 1 of section 157 of the social services law, as amended by section 43 of part B of chapter 436 of the laws of 1997, is amended to read as follows:

1. Safety net assistance means allowances pursuant to section one hundred thirty-one-a OF THIS ARTICLE for all support, maintenance and need, and costs of suitable training in a trade to enable a person to become self-supporting, furnished eligible needy persons in accordance with applicable provisions of law, by a municipal corporation, or a town where safety net assistance is a town charge, to persons or their dependents in their abode or habitation whenever possible and includes such relief granted to veterans under existing laws but does not include hospital or institutional care, except as otherwise provided in this subdivision, or family assistance or medical assistance for needy persons granted under titles ten and eleven OF THIS ARTICLE, respectively, or aid to persons receiving federal supplemental security income payments and/or additional state payments. Safety net assistance may also be provided in a family home or boarding home, operated in compliance with the regulations of the department, and on and after January first, nineteen hundred seventy-four, in facilities in which a person is receiving family care or residential care, as those terms are used in title six of [article five of] this [chapter] ARTICLE, and to persons receiving care in a facility supervised by the office of alcoholism and substance abuse SERVICES or in a residential facility for the mentally disabled approved, licensed or operated by the office of mental health or the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, other than those facilities defined in [sections] SECTION 7.17 [and 13.17] of the mental hygiene law, IN A DEVELOPMENTAL CENTER FACILITY OPERATED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES or residential care centers for adults operated by the office of mental health, when such type of care is deemed necessary. Payments to such homes and facilities for care and maintenance provided by them shall be at rates established pursuant to law and regulations of the department. The department, however, shall not establish rates of payment to such homes or facilities without approval of the director of the budget.

S 18. Subparagraph (i) of paragraph (a) and clause A of subparagraph (i) of paragraph (e) of subdivision 4 of section 1750-b of the surrogate's court procedure act, as added by chapter 500 of the laws of 2002, are amended to read as follows:

(i) be employed by [a developmental disabilities services office named in section 13.17 of the mental hygiene law] THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, or

A. be employed by [a developmental disabilities services office named in section 13.17 of the mental hygiene law] THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, or

S 19. (a) Wherever the terms "directors of office facilities" or "directors of schools" or "director of facilities" appear in the mental hygiene law in reference to a facility operated by the office for people

with developmental disabilities, such terms are hereby changed to "directors of state operations offices".

(b) Wherever the term "developmental disabilities services offices" appears in the mental hygiene law, such term is hereby changed to "state operations office".

(c) The legislative bill drafting commission is hereby directed to effectuate this provision, and shall be guided by a memorandum of instruction setting forth the specific provisions of law to be amended. Such memorandum shall be transmitted to the legislative bill drafting commission within sixty days of enactment of this provision. Such memorandum shall be issued jointly by the governor, the temporary president of the senate and the speaker of the assembly, or by the delegate of each.

S 20. This act shall take effect immediately.

PART K

Section 1. Sections 19 and 21 of chapter 723 of the laws of 1989 amending the mental hygiene law and other laws relating to comprehensive psychiatric emergency programs, as amended by section 1 of part F of chapter 58 of the laws of 2008, are amended to read as follows:

S 19. Notwithstanding any other provision of law, the commissioner of mental health shall, until July 1, [2012] 2016, be solely authorized, in his or her discretion, to designate those general hospitals, local governmental units and voluntary agencies which may apply and be considered for the approval and issuance of an operating certificate pursuant to article 31 of the mental hygiene law for the operation of a comprehensive psychiatric emergency program.

S 21. This act shall take effect immediately, and sections one, two and four through twenty of this act shall remain in full force and effect, until July 1, [2012] 2016, at which time the amendments and additions made by such sections of this act shall be deemed to be repealed, and any provision of law amended by any of such sections of this act shall revert to its text as it existed prior to the effective date of this act.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012.

PART L

Section 1. Legislative findings. It is the finding of the legislature that the integration and coordination of physical and behavioral health services results in an improvement in the quality of services being provided to recipients, with a resultant improvement in outcomes and reduction in the costs of care. It is the further finding of the legislature that the reduction or elimination of redundant or unnecessary licensing and oversight requirements and procedures will facilitate the provision of integrated and coordinated care and result in a more efficient use of governmental resources.

S 2. (a) Notwithstanding any law, rule or regulation to the contrary, the commissioners of the department of health, the office of mental health, the office of alcoholism and substance abuse services, and/or the office for people with developmental disabilities are jointly authorized to establish operating, reporting and construction requirements, as well as joint survey requirements and procedures for entities that:

(1) can demonstrate experience and competence in the delivery of health, mental health, alcohol and substance abuse services and/or services to persons with developmental disabilities and the capacity to offer the integrated delivery of such services at locations as may be approved by two or more of the respective commissioners; and

(2) meet the standards that may be established by the respective commissioners for the provision of such services; provided, however, that an entity meeting the standards established pursuant to this section shall not be required to be an integrated service provider pursuant to subdivision 7 of section 365-l of the social services law.

(b) In establishing one or more sets of joint requirements or procedures for entities described in this section, the commissioners of the department of health, the office of mental health, the office of alcoholism and substance abuse services, and/or the office for people with developmental disabilities are authorized to waive any regulatory requirements, or to determine that compliance with another commissioner's regulatory requirements shall be deemed to meet the regulatory requirements of his or her agency, as may be necessary or desirable to avoid duplication of requirements and/or to permit the integrated delivery of health and behavioral health services in an efficient and effective manner.

(c) The authority granted the commissioners in this section is intended to complement and supplement the authority granted to such commissioners pursuant to subdivision 7 of section 365-l of the social services law.

S 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012.

PART M

Section 1. Legislative findings. It is the finding of the legislature that patients hospitalized in facilities operated by the office of mental health who are between the ages of five and twenty-one are entitled to receive an education comparable to that which they would otherwise be entitled to receive in their local school districts pursuant to the education law and the regulations of the commissioner of education.

S 2. (a) Notwithstanding any other provision of law to the contrary, the office of mental health shall be authorized to enter into an agreement with the state education department for the purposes of providing education programming and services for patients residing in hospitals operated by the office of mental health who are between the ages of five and twenty-one, that is comparable to that which they would otherwise be entitled to receive in their local school districts pursuant to the education law and the regulations of the commissioner. The commissioner of education shall be authorized to require local school districts, including the school district located in a city with a million persons or more, and/or boards of cooperative educational services to provide such comparable educational programming and services, provided, however, the commissioner of mental health shall be authorized to contract directly with local school districts, including the school district located in a city with a million persons or more, and/or boards of cooperative educational services to provide such comparable educational programming and services. Such comparable education programming and services for such children shall be authorized to be provided, in the 2012-2013 and 2013-2014 and 2014-2015 school years within a city with a population of a million persons or more, and in the 2013-2014 and 2014-

2015 school year in the rest of the state, in accordance with implementation standards issued by the commissioner of education, and in accordance with a plan for educational services jointly approved by the commissioners of education and mental health.

(b) The commissioner of education, or pursuant to contract the commissioner of mental health, shall reimburse districts and boards of cooperative educational services for unreimbursed, approved expenses for the cost of such programming and services for such children pursuant to this section, as may be determined through a reimbursement methodology developed by the commissioner of education and approved by the director of the budget.

(c) The commissioner of mental health, with the approval of the director of the budget, shall be authorized to transfer funding to the commissioner of education for the provision of educational programming and services to patients residing in hospitals operated by the office of mental health who are between the ages of five and twenty-one.

S 3. The commissioners of education and mental health shall jointly submit to the governor and to the temporary president of the senate and the speaker of the assembly a report by February 1, 2015, which shall state whether additional actions should be taken to ensure that children who are patients residing in hospitals operated by the office of mental health receive education programming and services that are comparable to that which they would otherwise be entitled to receive in their local school districts pursuant to education law and the regulations of the commissioner. Such commissioners shall also recommend whether this act should be amended and whether it should be made permanent.

S 4. This act shall take effect July 1, 2012 and shall expire June 30, 2015 when upon such date the provisions of this act shall be deemed repealed.

PART N

Section 1. Section 1.03 of the mental hygiene law is amended by adding two new subdivisions 56 and 57 to read as follows:

56. "SUBSTANCE USE DISORDER" MEANS THE MISUSE, DEPENDENCE, OR ADDICTION TO ALCOHOL AND/OR LEGAL OR ILLEGAL DRUGS LEADING TO EFFECTS THAT ARE DETRIMENTAL TO THE INDIVIDUAL'S PHYSICAL AND MENTAL HEALTH, OR THE WELFARE OF OTHERS AND SHALL INCLUDE ALCOHOLISM, ALCOHOL ABUSE, SUBSTANCE ABUSE, SUBSTANCE DEPENDENCE, CHEMICAL ABUSE, AND/OR CHEMICAL DEPENDENCE.

57. "SUBSTANCE USE DISORDER SERVICES" SHALL MEAN AND INCLUDE EXAMINATION, EVALUATION, DIAGNOSIS, CARE, TREATMENT, REHABILITATION, OR TRAINING OF PERSONS WITH SUBSTANCE USE DISORDERS AND THEIR FAMILIES OR SIGNIFICANT OTHERS.

S 2. The mental hygiene law is amended by adding a new section 5.06 to read as follows:

S 5.06 BEHAVIORAL HEALTH SERVICES ADVISORY COUNCIL.

(A) THERE IS HEREBY CREATED WITHIN THE DEPARTMENT A BEHAVIORAL HEALTH SERVICES ADVISORY COUNCIL, THE PURPOSE OF WHICH SHALL BE TO ADVISE THE OFFICES OF MENTAL HEALTH AND ALCOHOLISM AND SUBSTANCE ABUSE SERVICES ON MATTERS RELATING TO THE PROVISION OF BEHAVIORAL HEALTH SERVICES; ISSUES OF JOINT CONCERN TO THE OFFICES, INCLUDING THE INTEGRATION OF VARIOUS BEHAVIORAL HEALTH SERVICES AND THE INTEGRATION OF BEHAVIORAL HEALTH SERVICES WITH HEALTH SERVICES; AND ISSUES RELATED TO THE DELIVERY OF BEHAVIORAL HEALTH SERVICES THAT ARE RESPONSIVE TO LOCAL, STATE AND FEDERAL CONCERNS. THE COUNCIL SHALL CONSIST OF THE COMMISSIONER OF

MENTAL HEALTH AND THE COMMISSIONER OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES WHO SHALL NOT HAVE THE RIGHT TO VOTE, THE CHAIR OF THE CONFERENCE OF LOCAL MENTAL HYGIENE DIRECTORS OR HIS OR HER DESIGNEE, AND TWENTY-EIGHT MEMBERS APPOINTED BY THE GOVERNOR. MEMBERS SHALL BE APPOINTED ONLY IF THEY HAVE PROFESSIONAL KNOWLEDGE IN THE CARE OF PERSONS RECEIVING BEHAVIORAL HEALTH SERVICES, OR AN ACTIVE INTEREST IN THE BEHAVIORAL HEALTH SERVICES SYSTEM.

(B) THE GOVERNOR SHALL DESIGNATE ONE OF THE MEMBERS OF THE COUNCIL AS CHAIR. AT LEAST ONE-HALF OF THE MEMBERS OF THE COUNCIL SHALL NOT BE PROVIDERS OF BEHAVIORAL HEALTH SERVICES. MEMBERSHIP SHALL REFLECT A BALANCED REPRESENTATION OF PERSONS WITH INTERESTS IN MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES AND SHALL INCLUDE:

(1) AT LEAST FIVE CURRENT OR FORMER CONSUMERS OF BEHAVIORAL HEALTH SERVICES;

(2) AT LEAST THREE INDIVIDUALS WHO ARE PARENTS OR RELATIVES OF CURRENT OR FORMER CONSUMERS OF BEHAVIORAL HEALTH SERVICES;

(3) AT LEAST THREE MEMBERS WHO ARE NOT PROVIDERS OF BEHAVIORAL HEALTH SERVICES AND WHO REPRESENT NON-GOVERNMENTAL ORGANIZATIONS, SUCH AS NOT-FOR-PROFIT ENTITIES REPRESENTING HEALTH OR BEHAVIORAL HEALTH CARE EMPLOYEES, OR OTHER ORGANIZATIONS CONCERNED WITH THE PROVISION OF BEHAVIORAL HEALTH SERVICES;

(4) AT LEAST FIVE REPRESENTATIVES OF PROVIDERS OF SERVICES TO PERSONS WITH MENTAL ILLNESS AND AT LEAST FIVE REPRESENTATIVES OF PROVIDERS OF SERVICES TO PERSONS WITH SUBSTANCE USE DISORDERS, AT LEAST TWO OF WHOM SHALL BE PHYSICIANS;

(5) ONE MEMBER APPOINTED ON THE RECOMMENDATION OF THE DIRECTOR OF THE DIVISION OF VETERANS' AFFAIRS;

(6) ONE MEMBER APPOINTED ON THE RECOMMENDATION OF THE ADJUTANT GENERAL OF THE DIVISION OF MILITARY AND NAVAL AFFAIRS;

(7) AT LEAST THREE REPRESENTATIVES OF LOCAL GOVERNMENTS OR OTHER STATE AND LOCAL AGENCIES CONCERNED WITH THE PROVISION OF BEHAVIORAL HEALTH SERVICES; AND

(8) AT LEAST TWO MEMBERS WHO ARE ALSO MEMBERS OF THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL PURSUANT TO SECTION TWO HUNDRED TWENTY OF THE PUBLIC HEALTH LAW.

(C) MEMBERS SHALL BE APPOINTED FOR TERMS OF THREE YEARS PROVIDED, HOWEVER, THAT OF THE MEMBERS FIRST APPOINTED, ONE-THIRD SHALL BE APPOINTED FOR ONE YEAR TERMS AND ONE-THIRD SHALL BE APPOINTED FOR TWO YEAR TERMS. VACANCIES SHALL BE FILLED IN THE SAME MANNER AS ORIGINAL APPOINTMENTS FOR THE REMAINDER OF ANY UNEXPIRED TERM. NO PERSON SHALL BE AN APPOINTED MEMBER OF THE COUNCIL FOR MORE THAN SIX YEARS IN ANY PERIOD OF TWELVE CONSECUTIVE YEARS.

(D) THE COUNCIL SHALL MEET AT LEAST FOUR TIMES IN EACH FULL CALENDAR YEAR. THE COUNCIL SHALL MEET AT THE REQUEST OF ITS CHAIR OR EITHER COMMISSIONER.

(E) THE COUNCIL SHALL ESTABLISH SUCH COMMITTEES AS IT DEEMS NECESSARY TO ADDRESS THE SERVICE NEEDS OF SPECIAL POPULATIONS AND TO ADDRESS PARTICULAR SUBJECTS OF IMPORTANCE IN THE DEVELOPMENT AND MANAGEMENT OF BEHAVIORAL HEALTH SERVICES.

(F) THE COUNCIL MAY CONSIDER ANY MATTER RELATING TO THE IMPROVEMENT OF BEHAVIORAL HEALTH SERVICES IN THE STATE AND SHALL ADVISE THE COMMISSIONERS ON ANY SUCH MATTER, INCLUDING, BUT NOT LIMITED TO:

(1) CARE AND SERVICES TO PERSONS WITH BEHAVIORAL HEALTH DISORDERS, INCLUDING SPECIAL AND UNDERSERVED POPULATIONS AS DETERMINED BY THE COMMISSIONER;

(2) FINANCING BEHAVIORAL HEALTH SERVICES;

(3) INTEGRATION OF BEHAVIORAL HEALTH SERVICES WITH HEALTH SERVICES;
(4) CARE AND SERVICES FOR PERSONS WITH CO-OCCURRING DISORDERS OR MULTIPLE DISABILITIES;
(5) PREVENTION OF BEHAVIORAL HEALTH DISORDERS; AND
(6) IMPROVEMENT OF CARE IN STATE OPERATED OR COMMUNITY BASED PROGRAMS, RECRUITMENT, EDUCATION AND TRAINING OF QUALIFIED DIRECT CARE PERSONNEL, AND PROTECTION OF THE INTERESTS OF EMPLOYEES AFFECTED BY ADJUSTMENTS IN THE BEHAVIORAL HEALTH SERVICE SYSTEM.
(G) THE COUNCIL SHALL, IN COOPERATION WITH THE COMMISSIONERS, ESTABLISH STATEWIDE GOALS AND OBJECTIVES FOR SERVICES TO PERSONS WITH BEHAVIORAL HEALTH DISORDERS, PURSUANT TO SECTION 5.07 OF THIS ARTICLE.
(H) (1) THE COUNCIL SHALL REVIEW THE PORTION OF THE STATEWIDE PLAN TO BE DEVELOPED AND UPDATED ANNUALLY BY THE COMMISSIONERS PURSUANT TO SECTION 5.07 OF THIS ARTICLE AND REPORT ITS RECOMMENDATIONS THEREON TO THE COMMISSIONERS.
(2) THE COUNCIL SHALL REVIEW ANY MENTAL HEALTH OR SUBSTANCE USE COMPONENT OF STATEWIDE HEALTH PLANS DEVELOPED IN ACCORDANCE WITH ANY APPLICABLE FEDERAL LAW AND SHALL REPORT ITS RECOMMENDATIONS THEREON TO THE COMMISSIONERS.
(I) THE COUNCIL SHALL REVIEW APPLICATIONS FILED IN ACCORDANCE WITH:
(1) SECTION 31.22 OF THIS CHAPTER FOR APPROVAL OF INCORPORATION OR ESTABLISHMENT OF A FACILITY, AND SECTION 31.23 OF THIS CHAPTER FOR APPROVAL OF THE CONSTRUCTION OF A FACILITY FOR WHICH APPROVAL FROM THE COMMISSIONER OF MENTAL HEALTH IS REQUIRED; AND
(2) SECTION 32.29 OR 32.31 OF THIS CHAPTER FOR APPROVAL OF INCORPORATION OR ESTABLISHMENT OR CONSTRUCTION OF A FACILITY FOR WHICH APPROVAL TO OPERATE IS REQUIRED FROM THE COMMISSIONER OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES PURSUANT TO ARTICLE THIRTY-TWO OF THIS CHAPTER, AND AS OTHERWISE REQUESTED BY SUCH COMMISSIONER;
(J) AT LEAST SIXTY DAYS PRIOR TO THE COMMISSIONERS' FINAL APPROVAL OF RULES AND REGULATIONS UNDER THEIR RESPECTIVE JURISDICTION, OTHER THAN EMERGENCY RULES AND REGULATIONS AND REGULATIONS PROMULGATED PURSUANT TO SECTION 43.01 OF THIS CHAPTER, THE COMMISSIONERS SHALL SUBMIT SUCH PROPOSED RULES AND REGULATIONS TO THE COUNCIL FOR ITS REVIEW. THE COUNCIL SHALL REVIEW ALL PROPOSED RULES AND REGULATIONS AND REPORT ITS RECOMMENDATIONS THEREON TO THE COMMISSIONERS WITHIN SIXTY DAYS. THE COMMISSIONER HAVING STATUTORY JURISDICTION OVER THE PROPOSED RULE OR REGULATION SHALL NOT ACT IN A MANNER INCONSISTENT WITH THE RECOMMENDATIONS OF THE COUNCIL WITHOUT FIRST APPEARING BEFORE THE COUNCIL TO REPORT THE REASONS THEREFOR. THE COUNCIL, UPON A MAJORITY VOTE OF ITS MEMBERS, MAY REQUIRE THAT AN ALTERNATIVE APPROACH TO THE PROPOSED RULES AND REGULATIONS BE PUBLISHED WITH THE NOTICE OF THE PROPOSED RULES AND REGULATIONS PURSUANT TO SECTION TWO HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT. WHEN AN ALTERNATIVE APPROACH IS PUBLISHED PURSUANT TO THIS SECTION, THE COMMISSIONER HAVING STATUTORY JURISDICTION OF THE SUBJECT PROPOSED RULE OR REGULATION SHALL STATE THE REASONS FOR NOT SELECTING SUCH ALTERNATIVE APPROACH.
(K) THE COUNCIL, BY A MAJORITY VOTE OF ITS MEMBERS, MAY PROPOSE RULES AND REGULATIONS ON ANY MATTER WITHIN THE REGULATORY JURISDICTION OF THE OFFICES OF MENTAL HEALTH OR ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OTHER THAN ESTABLISHMENT OF FEE SCHEDULES PURSUANT TO SECTION 43.01 OF THIS CHAPTER, AND FORWARD SUCH PROPOSED RULES AND REGULATIONS TO BOTH COMMISSIONERS FOR REVIEW AND CONSIDERATION, PROVIDED, HOWEVER, THAT ONLY THE APPROVAL OF THE COMMISSIONER WITH STATUTORY JURISDICTION OF THE PROPOSED RULE OR REGULATION SHALL BE REQUIRED. PRIOR TO SUCH COMMISSIONER'S FINAL APPROVAL AND PROMULGATION OF SUCH PROPOSED RULES AND REGU-

LATIONS, IF SUCH RULES AND REGULATIONS ARE MODIFIED IN ANY RESPECT, THEY SHALL BE SUBMITTED TO THE COUNCIL PURSUANT TO SUBDIVISION (J) OF THIS SECTION. IF SUCH COMMISSIONER DETERMINES NOT TO PROMULGATE SUCH PROPOSED RULES AND REGULATIONS, THE COMMISSIONER SHALL APPEAR BEFORE THE COUNCIL TO REPORT THE REASONS THEREFOR.

(L) THE MEMBERS OF THE COUNCIL SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES BUT SHALL BE REIMBURSED FOR EXPENSES ACTUALLY AND NECESSARILY INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

(M) THE COMMISSIONERS, UPON REQUEST OF THE COUNCIL, SHALL DESIGNATE ONE OR MORE OFFICERS OR EMPLOYEES FROM EITHER OR BOTH OFFICES TO PROVIDE ADMINISTRATIVE SUPPORT SERVICES TO THE COUNCIL, AND MAY ASSIGN FROM TIME TO TIME SUCH OTHER EMPLOYEES AS THE COUNCIL MAY REQUEST.

(N) NO CIVIL ACTION SHALL BE BROUGHT IN ANY COURT AGAINST ANY MEMBER OF THE BEHAVIORAL HEALTH SERVICES COUNCIL FOR ANY ACT DONE, FAILURE TO ACT, OR STATEMENT OR OPINION MADE, WHILE DISCHARGING HIS OR HER DUTIES AS A MEMBER OF THE COUNCIL, WITHOUT LEAVE FROM A JUSTICE OF THE SUPREME COURT, FIRST HAD AND OBTAINED. IN ANY EVENT SUCH MEMBER SHALL NOT BE LIABLE FOR DAMAGES IN ANY SUCH ACTION IF HE OR SHE SHALL HAVE ACTED IN GOOD FAITH, WITH REASONABLE CARE AND UPON PROBABLE CAUSE. MEMBERS OF THE COUNCIL SHALL BE CONSIDERED PUBLIC OFFICERS FOR THE PURPOSES OF SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW.

(O) THE COUNCIL MAY ESTABLISH SUCH COMMITTEES AS IT DEEMS NECESSARY.

(P) THE COUNCIL MAY ESTABLISH WRITTEN BYLAWS.

(Q) FOR PURPOSES OF THIS SECTION, "BEHAVIORAL HEALTH SERVICES" SHALL MEAN EXAMINATION, DIAGNOSIS, CARE, TREATMENT, REHABILITATION, OR TRAINING FOR PERSONS WITH MENTAL ILLNESS AND/OR FOR PERSONS WITH SUBSTANCE USE OR COMPULSIVE GAMBLING DISORDERS.

S 3. The section heading, subdivision (a), the opening paragraph and paragraphs 1 and 3 of subdivision (b) and subdivision (c) of section 5.07 of the mental hygiene law, the section heading as amended by chapter 55 of the laws of 1992, subdivision (a), the opening paragraph and paragraphs 1 and 3 of subdivision (b) and subdivision (c) as amended by chapter 223 of the laws of 1992, paragraph 1 of subdivision (a) as amended by chapter 37 of the laws of 2011, the opening paragraph of paragraph 1 of subdivision (b) as amended by chapter 168 of the laws of 2010, subparagraphs h and i as amended and subparagraph j of paragraph 1 of subdivision (b) as added by chapter 413 of the laws of 2009 and paragraph 3 of subdivision (b) as renumbered by chapter 322 of the laws of 1992, are amended to read as follows:

Establishment of [statewide goals and objectives;] statewide comprehensive plans of services for [the mentally disabled] PERSONS WITH MENTAL DISABILITIES.

(a) (1) The [mental health] BEHAVIORAL HEALTH services ADVISORY council and the advisory [councils] COUNCIL on developmental disabilities [and alcoholism and substance abuse services] shall [each establish] PROVIDE RECOMMENDATIONS FOR statewide PRIORITIES AND goals [and objectives] to guide comprehensive planning, resource allocation and evaluation processes for state and local services for persons with mental illness, developmental disabilities [and], AND/OR those [suffering from chemical abuse or dependence, respectively] WITH SUBSTANCE USE OR COMPULSIVE GAMBLING DISORDERS. Such goals and objectives shall:

a. be measurable in terms of attainment AND FOCUSED ON OUTCOMES FOR THOSE BEING SERVED;

b. be DEVELOPED IN COLLABORATION WITH, AND communicated to, providers of services, department facilities, consumers and consumer representatives, and other appropriate state and local governmental agencies;

c. [require that all state and local public and private services for persons with mental disabilities be organized, staffed and financed to best meet the needs of all persons with mental disabilities whether receiving in-patient or non in-patient services;

d.] reflect the partnership between state and local governmental units; and

[e.] D. emphasize [that gaps in services be filled and that services are provided to persons with mental disabilities] THE NEED TO INTEGRATE BEHAVIORAL HEALTH AND HEALTH SERVICES.

(2) Such advisory councils shall [establish, review, augment or delete from such goals and objectives, as appropriate,] ACCOMPLISH THEIR DUTIES by means of a [continuing annual goal-setting] process which is:

a. open, visible and accessible to the public; and

b. consistent with the statewide AND FEDERALLY MANDATED planning, appropriation and evaluation processes and activities for services to [the mentally disabled] PERSONS WITH MENTAL DISABILITIES.

(3) The advisory councils are hereby empowered to hold public hearings and meetings to enable them to accomplish their duties.

Statewide comprehensive plan for services to [the mentally disabled] PERSONS WITH MENTAL DISABILITIES.

(1) The office of mental health, the office for people with developmental disabilities and the office of alcoholism and substance abuse services shall [each] formulate a statewide comprehensive [five-year] plan for the provision of all state and local services for persons with mental illness [and], developmental disabilities, [and] AND/OR those [suffering from alcoholism and] WITH substance [abuse, respectively] USE OR COMPULSIVE GAMBLING DISORDERS. [Each] THE STATEWIDE COMPREHENSIVE plan shall be [formulated from] BASED UPON AN ANALYSIS OF local [comprehensive] SERVICES plans developed by each local governmental unit, with participation of consumers, consumer groups, providers of services and departmental facilities [furnishing] THAT FURNISH services to individuals with mental disabilities [of the area] in conformance with statewide PRIORITIES AND goals [and objectives] established [by] WITH RECOMMENDATIONS OF the advisory council of each office. [Each] THE plan shall:

a. identify [needs and problems which must be addressed during the next ensuing five years which such plan encompasses] STATEWIDE PRIORITIES;

b. specify [time-limited] STATEWIDE goals [to meet those needs] THAT REFLECT THE STATEWIDE PRIORITIES AND ARE FOCUSED ON OBTAINING POSITIVE MEASURABLE OUTCOMES;

c. [identify resources to achieve the goals, including but not limited to resource reallocations;

d. establish] PROPOSE STRATEGIES AND INITIATIVES TO ADDRESS THE priorities [for resource allocation] AND FACILITATE ACHIEVEMENT OF STATEWIDE GOALS;

[e. define the authority and responsibility for state and local participation in the delivery of services] D. IDENTIFY SERVICES AND SUPPORTS, WHICH MAY INCLUDE PROGRAMS RUN OR LED BY PEERS, THAT ARE DESIGNED TO PROMOTE THE HEALTH AND WELLNESS OF PERSONS WITH MENTAL ILLNESS, DEVELOPMENTAL DISABILITIES, AND/OR SUBSTANCE USE OR COMPULSIVE GAMBLING DISORDERS;

[f. propose programs to achieve the goals, which programs may include direct services, development of multi-purpose facilities, contracts for services, and innovative financial and organizational relationships with public and private providers;

g. identify services and programs that assist the informal caregiver to care for the mentally disabled; make recommendations to enhance the ability of the informal caregiver to continue providing care; and develop strategies for creating informal caregivers for clients in the community who do not have a system in place;

h. analyze] E. PROVIDE ANALYSIS OF current and anticipated utilization of state and local, and public and private facilities [and], programs, SERVICES, AND/OR SUPPORTS;

[i.] F. encourage and promote PERSON-CENTERED, CULTURALLY AND LINGUISTICALLY COMPETENT community-based programs, SERVICES, AND/OR SUPPORTS which reflect the partnership between state and local governmental units; and

[j.] G. include progress reports on the implementation of both short-term and long-term recommendations of the children's plan required pursuant to section four hundred eighty-three-f of the social services law.

(3) The commissioners of each of the offices shall be responsible for the development of such statewide [five-year] plan for services within the jurisdiction of their respective offices and after giving due notice shall conduct one or more public hearings on such plan. The BEHAVIORAL HEALTH SERVICES advisory council [of each office] AND THE ADVISORY COUNCIL ON DEVELOPMENTAL DISABILITIES shall review the statewide [five year] COMPREHENSIVE plan developed by such office OR OFFICES and report its recommendations thereon to such commissioner OR COMMISSIONERS. Each commissioner shall submit the plan, with appropriate modifications, to the governor no later than the first day of [October] NOVEMBER of each year in order that such plan may be considered with the estimates of the offices for the preparation of the executive budget of the state of New York for the next succeeding state fiscal year. [Each commissioner shall also submit such plan to the legislature. The statewide plan] SUCH PLANS SHALL ALSO BE POSTED TO THE WEBSITE OF EACH OFFICE. STATEWIDE PLANS shall [be reassessed and updated at least annually to encompass the next ensuing five years to] ensure responsiveness to changing needs and goals and [to] SHALL reflect the development of new information and the completion of program evaluations. [An interim report detailing the commissioner's actions in fulfilling the requirements of this section in preparation of the plan and modifications in the plan of services being considered by the commissioner shall be submitted to the governor and the legislature on or before the fifteenth day of February of each year. Such interim report shall include, but need not be limited to:

(a) actions to include participation of consumers, consumer groups, providers of services and departmental facilities, as required by this subdivision; and

(b) any modifications in the plan of services being considered by the commissioner, to include: (i) compelling budgetary, programmatic or clinical justifications or other major appropriate reason for any significant new statewide programs or policy changes from a prior (approved) five year comprehensive plan; and (ii) procedures to involve or inform local governmental units of such actions or plans.

(c) Three year capital plan. (1) On or before July first of each year, the commissioners of the offices of the department of mental hygiene shall each submit to the advisory council of their respective offices a statewide three year capital plan for facilities within the jurisdiction of their respective offices. The capital plan shall set forth the projects proposed to be designed, constructed, acquired, reconstructed, rehabilitated or otherwise substantially altered pursuant to appropri-

ation to meet the capital development needs of the respective agencies for the next ensuing three years; the years of such plan shall correspond to the years of the statewide five year plan as required by subdivision (b) of this section.

(2) Such plan for each office shall include but not be limited to a detailed project schedule indicating the location by county or borough and estimated cost of each project, the anticipated dates on which the design and construction of the project is to commence, the proposed method of financing for the project, the estimated economic life of the project and whether the proposed project constitutes design, new construction or rehabilitation.

(3) Such plan shall further specify for each project whether the project is to be a residential or nonresidential facility, a state or voluntary operated facility, and, the number of clients, by source of clients, proposed to utilize the facility. The information on the source of the client shall include but not be limited to identification of clients currently living independently, or at home with families, or with caretakers, clients defined by their respective agencies as special populations, or clients currently residing in an institutional setting under the jurisdiction of the offices of the department.

(4) The advisory council of the appropriate office shall review such plan and report its recommendation to the commissioner for inclusion, provided, however, that the mental health services council shall forward its comments on the capital plan of the office of mental health to the mental health planning council which shall forward such recommendations after review to the commissioner of mental health. The commissioner shall submit his or her plan with the formal recommendations of the advisory council of his or her office and any subsequent appropriate modifications to the governor no later than the first day of October of each year or concurrent with the annual submission of estimates and information required by section one of article seven of the constitution in order that such plans shall be considered with the estimates of the offices for the preparation of the executive budget of the state of New York for the next succeeding state fiscal year. The commissioners shall also submit such plans to the chairmen of the senate finance committee and the assembly ways and means committee.

(5) Each statewide three year capital plan for facilities shall be evaluated and revised annually to encompass the fiscal year then in progress and the next ensuing two fiscal years to ensure responsiveness to the changing needs and goals of the department, and to reflect the development of new information and project completion.]

S 4. Section 7.05 of the mental hygiene law is REPEALED.

S 5. Subdivision (c) of section 13.05 of the mental hygiene law, as amended by chapter 37 of the laws of 2011, is amended to read as follows:

(c) The developmental disabilities advisory council shall have no executive, administrative or appointive duties. The council shall have the duty to foster public understanding and acceptance of developmental disabilities. It shall, in cooperation with the commissioner of developmental disabilities, [establish] PROVIDE RECOMMENDATIONS FOR statewide PRIORITIES AND goals [and objectives] for services for individuals with developmental disabilities and shall advise the commissioner on matters related to development and implementation of the [OPWDD's triennial state developmental disabilities] STATEWIDE comprehensive plan as required under [paragraph two of subdivision (b) of] section 5.07 of this chapter. The advisory council shall have the power to consider any

matter relating to the improvement of the state developmental disabilities program and shall advise the commissioner of developmental disabilities thereon and on any matter relating to the performance of their duties with relation to individuals with developmental disabilities and on policies, goals, budget and operation of developmental disabilities services.

S 6. Section 19.05 of the mental hygiene law is REPEALED.

S 7. Subdivision (c) of section 41.16 of the mental hygiene law, as amended by section 16 of part E of chapter 111 of the laws of 2010, is amended to read as follows:

(c) A local services plan shall be developed, in accordance with the regulations of the commissioner or commissioners of the office or offices of the department having jurisdiction of the services by the local governmental unit or units which shall direct and administer a local comprehensive planning process for its geographic area, consistent with statewide goals and objectives established pursuant to section 5.07 of this chapter. The planning process shall involve the directors of any department facilities, directors of hospital based mental health services, directors of community mental health centers, THE DIRECTOR OF THE LOCAL OFFICE FOR THE AGING OR HIS OR HER REPRESENTATIVE, consumers, consumer groups, voluntary agencies, other providers of services, and local correctional facilities and other local criminal justice agencies. The local governmental unit, or units, shall determine the proposed local services plan to be submitted for approval. If any provider of services including facilities in the department, or any representative of the consumer or community interests within the local planning process, disputes any element of the proposed plan for the area which it serves, the objection shall be presented in writing to the director of the local governmental unit. If such dispute cannot be resolved to the satisfaction of all parties, the director shall determine the plan to be submitted. If requested and supplied by the objecting party, a written objection to the plan shall be appended thereto and transmitted to the single agent of the department jointly designated by the commissioners.

S 8. Section 220 of the public health law, as amended by section 45 of part A of chapter 58 of the laws of 2010, is amended to read as follows:

S 220. Public health and health planning council; appointment of members. There shall continue to be in the department a public health and health planning council to consist of the commissioner and fourteen members to be appointed by the governor with the advice and consent of the senate; provided that effective December first, two thousand ten, the membership of the council shall consist of the commissioner and twenty-four members to be appointed by the governor with the advice and consent of the senate. Membership on the council shall be reflective of the diversity of the state's population including, but not limited to, the various geographic areas and population densities throughout the state. The members shall include representatives of the public health system, health care providers that comprise the state's health care delivery system, individuals with expertise in the clinical and administrative aspects of health care delivery, issues affecting health care consumers, health planning, health care financing and reimbursement, health care regulation and compliance, and public health practice and at least two members shall also be members of the [mental] BEHAVIORAL health services council; at least four members shall be representatives of general hospitals or nursing homes; and at least one member shall be a representative of each of the following groups: home care agencies,

diagnostic and treatment centers, health care payors, labor organizations for health care employees, and health care consumer advocacy organizations.

S 9. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012; provided, however, that sections one through six of this act shall take effect on the one hundred twentieth day after it shall have become a law.

PART O

Section 1. Subdivision (b) of section 7.17 of the mental hygiene law, as amended by section 1 of part G of chapter 59 of the laws of 2011, is amended to read as follows:

(b) There shall be in the office the hospitals named below for the care, treatment and rehabilitation of persons with mental illness and for research and teaching in the science and skills required for the care, treatment and rehabilitation of such persons with mental illness.

Greater Binghamton Health Center
Bronx Psychiatric Center
Buffalo Psychiatric Center
Capital District Psychiatric Center
Central New York Psychiatric Center
Creedmoor Psychiatric Center
Elmira Psychiatric Center
[Hudson River Psychiatric Center
Kingsboro Psychiatric Center]
Kirby Forensic Psychiatric Center
Manhattan Psychiatric Center
Mid-Hudson Forensic Psychiatric Center
Mohawk Valley Psychiatric Center
Nathan S. Kline Institute for Psychiatric Research
New York State Psychiatric Institute
Pilgrim Psychiatric Center
Richard H. Hutchings Psychiatric Center
Rochester Psychiatric Center
Rockland Psychiatric Center
St. Lawrence Psychiatric Center
South Beach Psychiatric Center
[Bronx Children's Psychiatric Center
Brooklyn Children's Center
Queens Children's Psychiatric Center]
NEW YORK CITY CHILDREN'S CENTER
Rockland Children's Psychiatric Center
Sagamore Children's Psychiatric Center
Western New York Children's Psychiatric Center

The New York State Psychiatric Institute and The Nathan S. Kline Institute for Psychiatric Research are designated as institutes for the conduct of medical research and other scientific investigation directed towards furthering knowledge of the etiology, diagnosis, treatment and prevention of mental illness. [The Brooklyn Children's Center is a facility operated by the office to provide community-based mental health services for children with serious emotional disturbances.]

S 2. Notwithstanding the provisions of subdivisions (b) and (e) of section 7.17 of the mental hygiene law, section 41.55 of the mental hygiene law, or any other law to the contrary, the office of mental health is authorized to close, consolidate, reduce, transfer or other-

wise redesign services of hospitals, other facilities and programs operated by the office of mental health, and to implement significant service reductions and reconfigurations according to this section as shall be determined by the commissioner of mental health to be necessary for the cost-effective and efficient operation of such hospitals, other facilities and programs. One of the intents of actions taken that result in closure, consolidation, reduction, transfer or other redesign services of hospitals is to reinvest appropriate levels of funding for community based mental health services and programs as determined by the commissioner of mental health with approval from the director of the division of the budget.

(a) In addition to the closure, consolidation or merger of one or more facilities, the commissioner of mental health is authorized to perform any significant service reductions that would reduce inpatient bed capacity, which shall include but not be limited to, closures of wards at a state-operated psychiatric center or the conversion of beds to transitional placement programs, provided that the commissioner provide at least 30 days notice of such reductions to the temporary president of the senate and the speaker of the assembly and simultaneously post such notice upon its public website. In assessing which significant service reductions to undertake, the commissioner shall consider data related to inpatient census, indicating nonutilization or under utilization of beds, and the efficient operation of facilities.

(b) At least sixty days prior to the anticipated closure, consolidation or merger of any hospitals named in subdivision (b) of section 7.17 of the mental hygiene law, the commissioner of mental health shall provide notice of such closure, consolidation or merger to the temporary president of the senate, and speaker of the assembly, the chief executive officer of the county in which the facility is located, and shall post such notice upon its public website. The commissioner shall be authorized to conduct any and all preparatory actions which may be required to effectuate such closures during such sixty day period. In assessing which of such hospitals to close, the commissioner shall consider the following factors: (1) the size, scope and type of services provided by the hospital; (2) the relative quality of the care and treatment provided by the hospital, as may be informed by internal or external quality or accreditation reviews; (3) the current and anticipated long-term need for the types of services provided by the facility within its catchment area, which may include, but not be limited to, services for adults or children, or other specialized services, such as forensic services; (4) the availability of staff sufficient to address the current and anticipated long term service needs; (5) the long term capital investment required to ensure that the facility meets relevant state and federal regulatory and capital construction requirements, and national accreditation standards; (6) the proximity of the facility to other facilities with space that could accommodate anticipated need, the relative cost of any necessary renovations of such space, the relative potential operating efficiency of such facilities, and the size, scope and types of services provided by the other facilities; (7) anticipated savings based upon economies of scale or other factors; (8) community mental health services available in the facility catchment area and the ability of such community mental health services to meet the behavioral health needs of the impacted consumers; (9) the obligations of the state to place persons with mental disabilities in community settings rather than in institutions, when appropriate; and (10) the anticipated impact of the closure on access to mental health services.

(c) Any transfers of inpatient capacity or any resulting transfer of functions shall be authorized to be made by the commissioner of mental health and any transfer of personnel upon such transfer of capacity or transfer of functions shall be accomplished in accordance with the provisions of section 70 of the civil service law.

S 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012; provided that the date for the closure of Kingsboro psychiatric center shall be on a date certified by the commissioner of mental health.

PART P

Section 1. Subdivision (o) of section 10.03 of the mental hygiene law, as amended by chapter 168 of the laws of 2010, is amended to read as follows:

(o) "Secure treatment facility" means a facility or a portion of a facility, designated by the commissioner, that may include a facility located on the grounds of a correctional facility, that is staffed with personnel from the office of mental health or the office for people with developmental disabilities for the purposes of providing care and treatment to persons confined under this article, and persons defined in paragraph five of subdivision (g) of this section. Personnel from these same agencies may provide security services, provided that such staff are adequately trained in security methods and so equipped as to minimize the risk or danger of escape. THE COMMISSIONER SHALL HAVE THE DISCRETION TO ENTER INTO AGREEMENTS FOR THE PROVISION OF CARE AND TREATMENT TO PERSONS HELD AT A SECURE TREATMENT FACILITY PURSUANT TO THIS ARTICLE, OR FOR THE PROVISION OF APPROPRIATE SECURITY SERVICES, BY INDIVIDUALS WHO ARE NOT PERSONNEL OF SUCH AGENCIES.

S 2. Subdivision (k) of section 10.06 of the mental hygiene law, as amended by section 118-c of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(k) At the conclusion of the hearing, the court shall determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management. If the court determines that probable cause has not been established, the court shall issue an order dismissing the petition, and the respondent's release shall be in accordance with other applicable provisions of law. If the court determines that probable cause has been established: (i) the court shall order that the respondent be committed to a secure treatment facility designated by the commissioner for care, treatment and control upon his or her release, provided, however, that a respondent who otherwise would be required to be transferred to a secure treatment facility [may,] SHALL REMAIN IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION PENDING THE OUTCOME OF THE PROCEEDINGS UNDER THIS ARTICLE UNTIL HE OR SHE HAS REACHED THE MAXIMUM EXPIRATION OF HIS OR HER SENTENCE OR HAS BEEN APPROVED FOR RELEASE TO PAROLE SUPERVISION BY THE

STATE BOARD OF PAROLE, PROVIDED, FURTHER THAT A RESPONDENT MAY, upon a written consent signed by the respondent and his or her counsel, consent to remain in the custody of the department of corrections and community supervision pending the outcome of the proceedings under this article, and that such consent may be revoked in writing at any time; (ii) the court shall set a date for trial in accordance with subdivision (a) of section 10.07 of this article; and (iii) the respondent shall not be released pending the completion of such trial.

S 3. Subdivision (f) of section 10.07 of the mental hygiene law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(f) If the jury, or the court if a jury trial is waived, determines that the respondent is a detained sex offender who suffers from a mental abnormality, then the court shall consider whether the respondent is a dangerous sex offender requiring confinement or a sex offender requiring strict and intensive supervision. The parties may offer additional evidence, and the court shall hear argument, as to that issue. If the court finds by clear and convincing evidence that the respondent has a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility, then the court shall find the respondent to be a dangerous sex offender requiring confinement. In such case, the respondent shall be committed to a secure treatment facility for care, treatment, and control until such time as he or she no longer requires confinement. FAILURE OF A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT TO MEANINGFULLY PARTICIPATE IN TREATMENT IN A SECURE TREATMENT FACILITY SHALL CONSTITUTE A VIOLATION OF THE ORDER OF CONFINEMENT. If the court does not find that the respondent is a dangerous sex offender requiring confinement, then the court shall make a finding of disposition that the respondent is a sex offender requiring strict and intensive supervision, and the respondent shall be subject to a regimen of strict and intensive supervision and treatment in accordance with section 10.11 of this article. In making a finding of disposition, the court shall consider the conditions that would be imposed upon the respondent if subject to a regimen of strict and intensive supervision, and all available information about the prospects for the respondent's possible re-entry into the community.

S 4. Section 10.08 of the mental hygiene law is amended by adding a new subdivision (i) to read as follows:

(I) AT ANY PROCEEDING CONDUCTED PURSUANT TO THIS ARTICLE OTHER THAN A TRIAL CONDUCTED PURSUANT TO SECTION 10.07 OF THIS ARTICLE, THE RESPONDENT OR ANY WITNESS SHALL BE PERMITTED, UPON GOOD CAUSE SHOWN, TO MAKE AN ELECTRONIC APPEARANCE IN THE COURT BY MEANS OF AN INDEPENDENT AUDIO-VISUAL SYSTEM, AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 182.10 OF THE CRIMINAL PROCEDURE LAW, FOR PURPOSES OF A COURT APPEARANCE OR FOR GIVING TESTIMONY. IT SHALL CONSTITUTE GOOD CAUSE THAT A WITNESS IS CURRENTLY EMPLOYED BY THE STATE AT A SECURE TREATMENT FACILITY OR ANOTHER WORK LOCATION, UNLESS THERE ARE COMPELLING CIRCUMSTANCES REQUIRING THE WITNESS'S PERSONAL PRESENCE AT THE COURT PROCEEDING. FOR PURPOSES OF THIS SUBDIVISION, AN "ELECTRONIC APPEARANCE" MEANS AN APPEARANCE AT WHICH A PARTICIPANT IS NOT PRESENT IN THE COURT, BUT IN WHICH: (I) ALL OF THE PARTICIPANTS ARE ABLE TO SEE AND HEAR THE SIMULTANEOUS REPRODUCTIONS OF THE VOICES AND IMAGES OF THE JUDGE, COUNSEL, RESPONDENT OR ANY OTHER APPROPRIATE PARTICIPANT, AND (II) COUNSEL IS PRESENT WITH THE RESPONDENT OR THE RESPONDENT AND COUNSEL ARE ABLE TO SEE AND HEAR EACH OTHER AND ENGAGE IN PRIVATE CONVERSATION. WHEN A

RESPONDENT OR A WITNESS MAKES AN ELECTRONIC APPEARANCE, THE COURT STENOGRAPHER SHALL RECORD ANY STATEMENTS IN THE SAME MANNER AS IF THE RESPONDENT OR WITNESS HAD MADE A PERSONAL APPEARANCE. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO PROHIBIT THE RESPONDENT OR ANY WITNESS FROM MAKING AN ELECTRONIC APPEARANCE IN THE COURT AT A TRIAL CONDUCTED PURSUANT TO SECTION 10.07 OF THIS ARTICLE BY MEANS OF AN INDEPENDENT AUDIO-VISUAL SYSTEM, UPON GOOD CAUSE SHOWN AND CONSENT OF THE PARTIES.

S 5. The section heading and subdivisions (a), (b), (c), (d), and (f) of section 10.09 of the mental hygiene law, as added by chapter 7 of the laws of 2007, are amended to read as follows:

[Annual] BIENNIAL examinations and petitions for discharge.

(a) The commissioner shall provide the respondent and counsel for respondent with [an annual] A BIENNIAL written notice of the right to petition the court for discharge. The notice shall contain a form for the waiver of the right to petition for discharge.

(b) The commissioner shall also assure that each respondent committed under this article shall have an examination for evaluation of his or her mental condition made at least once every [year] TWO YEARS by a psychiatric examiner who shall report to the commissioner his or her written findings as to whether the respondent is currently a dangerous sex offender requiring confinement. At such time, the respondent also shall have the right to be evaluated by an independent psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following such evaluation, each psychiatric examiner shall report his or her findings in writing to the commissioner and to counsel for respondent. The commissioner shall review relevant records and reports, along with the findings of the psychiatric examiners, and shall make a determination in writing as to whether the respondent is currently a dangerous sex offender requiring confinement.

(c) The commissioner shall [annually] BIENNIALLY forward the notice and waiver form, along with a report including the commissioner's written determination and the findings of the psychiatric examination, to the supreme or county court where the respondent is located.

(d) The court shall hold an evidentiary hearing as to retention of the respondent within forty-five days if it appears from one of the [annual] BIENNIAL submissions to the court under subdivision (c) of this section (i) that the respondent has petitioned, or has not affirmatively waived the right to petition, for discharge, or (ii) that even if the respondent has waived the right to petition, and the commissioner has determined that the respondent remains a dangerous sex offender requiring confinement, the court finds on the basis of the materials described in subdivision (b) of this section that there is a substantial issue as to whether the respondent remains a dangerous sex offender requiring confinement. At an evidentiary hearing on that issue under this subdivision, the attorney general shall have the burden of proof.

(f) The respondent may at any time petition the court for discharge and/or release to the community under a regimen of strict and intensive supervision and treatment. Upon review of the respondent's petition, other than in connection with [annual] BIENNIAL reviews as described in subdivisions (a), (b) and (d) of this section, the court may order that an evidentiary hearing be held, or may deny an evidentiary hearing and deny the petition upon a finding that the petition is frivolous or does not provide sufficient basis for reexamination prior to the next [annual] BIENNIAL review. If the court orders an evidentiary hearing under

this subdivision, the attorney general shall have the burden of proof as to whether the respondent is currently a dangerous sex offender requiring confinement.

S 6. Subdivision (a) of section 10.10 of the mental hygiene law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(a) If the respondent is found to be a dangerous sex offender requiring confinement and committed to a secure treatment facility, that facility shall provide care, treatment, and control of the respondent until such time that a court discharges the respondent in accordance with the provisions of this article. FAILURE OF A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT TO MEANINGFULLY PARTICIPATE IN TREATMENT IN A SECURE TREATMENT FACILITY SHALL CONSTITUTE A VIOLATION OF THE ORDER OF CONFINEMENT.

S 7. Subdivision (c) of section 10.11 of the mental hygiene law, as amended by section 118-e of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(c) An order for a regimen of strict and intensive supervision and treatment places the person in the custody and control of the department of corrections and community supervision. A person ordered to undergo a regimen of strict and intensive supervision and treatment pursuant to this article is subject to lawful conditions set by the court and the department of corrections and community supervision. A VIOLATION OF A CONDITION OF THE REGIMEN OF STRICT AND INTENSIVE SUPERVISION AND TREATMENT FOR A PERSON UNDER COMMUNITY SUPERVISION, AS DEFINED IN SUBDIVISION THREE OF SECTION TWO HUNDRED FIFTY-NINE OF THE EXECUTIVE LAW, MAY BE THE BASIS FOR REVOCATION OF PAROLE PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW. A PERSON WHO INTENTIONALLY VIOLATES A MATERIAL CONDITION OF THE REGIMEN OF STRICT AND INTENSIVE SUPERVISION AND TREATMENT SHALL BE GUILTY OF A CLASS E FELONY.

S 8. Section 120.05 of the penal law is amended by adding a new subdivision 13 to read as follows:

13. HAVING BEEN FOUND TO BE A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT AND WHILE CONFINED IN A SECURE TREATMENT FACILITY, AS DEFINED IN SECTION 7.18 OF THE MENTAL HYGIENE LAW, WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON, HE CAUSES SUCH INJURY TO SUCH PERSON OR TO A THIRD PERSON.

S 9. This act shall take effect immediately.

PART Q

Section 1. Section 730.10 of the criminal procedure law is amended by adding a new subdivision 9 to read as follows:

9. "APPROPRIATE INSTITUTION" MEANS: (A) A HOSPITAL OPERATED BY THE OFFICE OF MENTAL HEALTH OR A DEVELOPMENTAL CENTER OPERATED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES; (B) A LOCAL CORRECTIONAL FACILITY, AS SUCH TERMS ARE DEFINED IN SECTION TWO OF THE CORRECTION LAW, WHICH OPERATES A MENTAL HEALTH UNIT; OR (C) A HOSPITAL LICENSED BY THE DEPARTMENT OF HEALTH WHICH OPERATES A PSYCHIATRIC UNIT LICENSED BY THE OFFICE OF MENTAL HEALTH, AS DETERMINED BY THE COMMISSIONER.

S 2. Subdivision 1 of section 730.40 of the criminal procedure law, as amended by chapter 231 of the laws of 2008, is amended to read as follows:

1. When a local criminal court, following a hearing conducted pursuant to subdivision three or four of section 730.30, is satisfied that the defendant is not an incapacitated person, the criminal action against him OR HER must proceed. If it is satisfied that the defendant is an

incapacitated person, or if no motion for such a hearing is made, such court must issue a final or temporary order of observation committing him OR HER to the custody of the commissioner for care and treatment in an appropriate institution for a period not to exceed ninety days from the date of the order, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this subdivision. When a local criminal court accusatory instrument other than a felony complaint has been filed against the defendant, such court must issue a final order of observation[; when]. WHEN a felony complaint has been filed against the defendant, such court must issue a temporary order of observation COMMITTING HIM OR HER TO THE JURISDICTION OF THE COMMISSIONER FOR CARE AND TREATMENT IN AN APPROPRIATE INSTITUTION OR ON AN OUT-PATIENT BASIS FOR A PERIOD NOT TO EXCEED NINETY DAYS FROM THE DATE OF SUCH ORDER, except that, with the consent of the district attorney, it may issue a final order of observation.

S 3. Subdivision 1 of section 730.50 of the criminal procedure law, as amended by chapter 231 of the laws of 2008, is amended to read as follows:

1. When a superior court, following a hearing conducted pursuant to subdivision three or four of section 730.30, is satisfied that the defendant is not an incapacitated person, the criminal action against him OR HER must proceed. If it is satisfied that the defendant is an incapacitated person, or if no motion for such a hearing is made, it must adjudicate him OR HER an incapacitated person, and must issue a final order of observation or an order of commitment. When the indictment does not charge a felony or when the defendant has been convicted of an offense other than a felony, such court (a) must issue a final order of observation committing the defendant to the custody of the commissioner for care and treatment in an appropriate institution for a period not to exceed ninety days from the date of such order, provided, however, that the commissioner may designate an appropriate hospital for placement of a defendant for whom a final order of observation has been issued, where such hospital is licensed by the office of mental health and has agreed to accept, upon referral by the commissioner, defendants subject to final orders of observation issued under this subdivision, and (b) must dismiss the indictment filed in such court against the defendant, and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in such indictment. When the indictment charges a felony or when the defendant has been convicted of a felony, it must issue an order of commitment committing the defendant to the [custody] JURISDICTION of the commissioner for care and treatment in an appropriate institution OR ON AN OUT-PATIENT BASIS for a period not to exceed one year from the date of such order. Upon the issuance of an order of commitment, the court must exonerate the defendant's bail if he OR SHE was previously at liberty on bail; PROVIDED, HOWEVER, THAT EXONERATION OF BAIL IS NOT REQUIRED WHEN A DEFENDANT IS COMMITTED TO THE JURISDICTION OF THE COMMISSIONER FOR CARE AND TREATMENT ON AN OUT-PATIENT BASIS.

S 4. This act shall take effect immediately.

PART R

Section 1. Section 1 of part D of chapter 111 of the laws of 2010 relating to the recovery of exempt income by the office of mental health for community residences and family-based treatment programs is amended to read as follows:

Section 1. The office of mental health is authorized to recover funding from community residences and family-based treatment providers licensed by the office of mental health, consistent with contractual obligations of such providers, and notwithstanding any other inconsistent provision of law to the contrary, in an amount equal to 50 percent of the income received by such providers which exceeds the fixed amount of annual Medicaid revenue limitations, as established by the commissioner of mental health. Recovery of such excess income shall be for the following fiscal periods: for programs in counties located outside of the city of New York, the applicable fiscal periods shall be January 1, 2003 through December 31, 2009 AND JANUARY 1, 2011 THROUGH DECEMBER 31, 2013; and for programs located within the city of New York, the applicable fiscal periods shall be July 1, 2003 through June 30, 2010 AND JULY 1, 2011 THROUGH JUNE 30, 2013.

S 2. This act shall take effect immediately.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through R of this act shall be as specifically set forth in the last section of such Parts.