

5849

2011-2012 Regular Sessions

I N S E N A T E

June 23, 2011

Introduced by Sens. SEWARD, HANNON -- (at request of the Governor) --
read twice and ordered printed, and when printed to be committed to
the Committee on Rules

AN ACT to amend the public authorities law and the public officers law,
in relation to the establishment of the New York Health Benefit
Exchange

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

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

3 S 2. The public authorities law is amended by adding a new article
4 10-E to read as follows:

5 ARTICLE 10-E

6 NEW YORK HEALTH BENEFIT EXCHANGE

7 SECTION 3980. STATEMENT OF POLICY AND PURPOSES.

8 3981. DEFINITIONS.

9 3982. ESTABLISHMENT OF THE NEW YORK HEALTH BENEFIT EXCHANGE.

10 3983. GENERAL POWERS OF THE EXCHANGE.

11 3984. FUNCTIONS OF THE EXCHANGE.

12 3985. SPECIAL FUNCTIONS OF THE EXCHANGE RELATED TO HEALTH PLAN
13 CERTIFICATION AND QUALIFIED HEALTH PLAN OVERSIGHT.

14 3986. REGIONAL ADVISORY COMMITTEES.

15 3987. FUNDING OF THE EXCHANGE.

16 3988. STUDIES, FINDINGS AND RECOMMENDATIONS.

17 3989. TAX EXEMPTION AND TAX CONTRACT BY THE STATE.

18 3990. OFFICERS AND EMPLOYEES.

19 3991. LIMITATION OF LIABILITY; INDEMNIFICATION.

20 3992. CONTINGENCY FOR FEDERAL FUNDING.

21 3993. CONSTRUCTION.

22 S 3980. STATEMENT OF POLICY AND PURPOSES. THE PURPOSE OF THIS ARTICLE
23 IS TO ESTABLISH AN AMERICAN HEALTH BENEFIT EXCHANGE IN NEW YORK, IN

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

LBD12048-11-1

1 CONFORMANCE WITH THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT,
2 PUBLIC LAW 111-148, AS AMENDED BY THE HEALTH CARE AND EDUCATION RECON-
3 CILIATION ACT OF 2010, PUBLIC LAW 111-152. THE EXCHANGE SHALL FACILI-
4 TATE ENROLLMENT IN HEALTH COVERAGE, THE PURCHASE AND SALE OF QUALIFIED
5 HEALTH PLANS IN THE INDIVIDUAL MARKET IN THIS STATE, AND ENROLL INDIVID-
6 UALS IN HEALTH COVERAGE FOR WHICH THEY ARE ELIGIBLE IN ACCORDANCE WITH
7 FEDERAL LAW. THE EXCHANGE ALSO SHALL INCORPORATE A SMALL BUSINESS HEALTH
8 OPTIONS PROGRAM ("SHOP") TO ASSIST QUALIFIED EMPLOYERS IN FACILITATING
9 THE ENROLLMENT OF THEIR EMPLOYEES IN QUALIFIED HEALTH PLANS OFFERED IN
10 THE GROUP MARKET. IT IS THE INTENT OF THE LEGISLATURE, THROUGH THE
11 ESTABLISHMENT OF THE EXCHANGE, TO PROMOTE QUALITY AND AFFORDABLE HEALTH
12 COVERAGE AND CARE, REDUCE THE NUMBER OF UNINSURED PERSONS, PROVIDE A
13 TRANSPARENT MARKETPLACE, EDUCATE CONSUMERS AND ASSIST INDIVIDUALS WITH
14 ACCESS TO COVERAGE, PREMIUM ASSISTANCE TAX CREDITS AND COST-SHARING
15 REDUCTIONS.

16 S 3981. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING DEFINI-
17 TIONS SHALL APPLY:

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

20 2. "REGIONAL ADVISORY COMMITTEES" MEANS THE NEW YORK HEALTH BENEFIT
21 EXCHANGE REGIONAL ADVISORY COMMITTEES ESTABLISHED PURSUANT TO THIS ARTI-
22 CLE.

23 3. "COMMISSIONER" MEANS THE COMMISSIONER OF HEALTH.

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

26 5. "FEDERAL ACT" MEANS THE PATIENT PROTECTION AND AFFORDABLE CARE ACT,
27 PUBLIC LAW 111-148, AS AMENDED BY THE HEALTH CARE AND EDUCATION RECON-
28 CILIATION ACT OF 2010, PUBLIC LAW 111-152, AND ANY REGULATIONS OR GUID-
29 ANCE ISSUED THEREUNDER.

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

34 (A) ACCIDENT INSURANCE OR DISABILITY INCOME INSURANCE, OR ANY COMBINA-
35 TION THEREOF;

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

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

39 (D) WORKERS' COMPENSATION OR SIMILAR INSURANCE;

40 (E) AUTOMOBILE NO-FAULT INSURANCE;

41 (F) CREDIT INSURANCE;

42 (G) OTHER SIMILAR INSURANCE COVERAGE, AS SPECIFIED IN FEDERAL REGU-
43 LATIONS, UNDER WHICH BENEFITS FOR MEDICAL CARE ARE SECONDARY OR INCI-
44 DENTAL TO OTHER INSURANCE BENEFITS;

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

51 (I) COVERAGE ONLY FOR A SPECIFIED DISEASE OR ILLNESS, HOSPITAL INDEM-
52 NITY, OR OTHER FIXED INDEMNITY COVERAGE;

53 (J) MEDICARE SUPPLEMENTAL INSURANCE AS DEFINED IN SECTION 1882(G)(1)
54 OF THE FEDERAL SOCIAL SECURITY ACT, COVERAGE SUPPLEMENTAL TO THE COVER-
55 AGE PROVIDED UNDER CHAPTER 55 OF TITLE 10 OF THE UNITED STATES CODE, OR
56 SIMILAR SUPPLEMENTAL COVERAGE PROVIDED UNDER A GROUP HEALTH PLAN IF IT

1 IS OFFERED AS A SEPARATE POLICY, CERTIFICATE OR CONTRACT OF INSURANCE;
2 OR

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

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

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

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

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

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

21 (A) IS SEEKING TO ENROLL IN A QUALIFIED HEALTH PLAN OFFERED TO INDI-
22 VIDUALS THROUGH THE EXCHANGE;

23 (B) RESIDES IN THIS STATE;

24 (C) AT THE TIME OF ENROLLMENT, IS NOT INCARCERATED, OTHER THAN INCAR-
25 CERATION PENDING THE DISPOSITION OF CHARGES; AND

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

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

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

35 14. "SMALL EMPLOYER" MEANS, FOR PLAN YEARS PRIOR TO JANUARY FIRST, TWO
36 THOUSAND SIXTEEN, AN EMPLOYER THAT EMPLOYED AN AVERAGE OF AT LEAST ONE
37 BUT NOT MORE THAN FIFTY EMPLOYEES ON BUSINESS DAYS DURING THE PRECEDING
38 CALENDAR YEAR. FOR PLAN YEARS BEGINNING ON AND AFTER JANUARY FIRST, TWO
39 THOUSAND SIXTEEN, SMALL EMPLOYER MEANS AN EMPLOYER THAT EMPLOYED AN
40 AVERAGE OF AT LEAST ONE BUT NOT MORE THAN ONE HUNDRED EMPLOYEES ON BUSI-
41 NESS DAYS DURING THE PRECEDING CALENDAR YEAR. FOR PURPOSES OF THE DEFI-
42 NITION OF SMALL EMPLOYER:

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

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

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

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

55 (E) IF A QUALIFIED EMPLOYER THAT MAKES ENROLLMENT IN QUALIFIED HEALTH
56 PLANS AVAILABLE TO ITS EMPLOYEES THROUGH THE EXCHANGE CEASES TO BE A

1 SMALL EMPLOYER BY REASON OF AN INCREASE IN THE NUMBER OF ITS EMPLOYEES,
2 THEN THE EMPLOYER SHALL CONTINUE TO BE TREATED AS A QUALIFIED EMPLOYER
3 FOR PURPOSES OF THIS ARTICLE FOR THE PERIOD BEGINNING WITH THE INCREASE
4 AND ENDING WITH THE FIRST DAY ON WHICH THE EMPLOYER DOES NOT MAKE SUCH
5 ENROLLMENT AVAILABLE TO ITS EMPLOYEES; AND

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

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

15 16. "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF INSURANCE UNTIL OCTO-
16 BER THIRD, TWO THOUSAND ELEVEN, WHEN SUCH TERM SHALL MEAN THE SUPER-
17 INTENDENT OF FINANCIAL SERVICES.

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

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

28 3. (A) THE EXCHANGE SHALL BE GOVERNED BY A BOARD OF DIRECTORS CONSIST-
29 ING OF NINE VOTING DIRECTORS, INCLUDING THE COMMISSIONER AND THE SUPER-
30 INTENDENT, WHO SHALL SERVE AS EX OFFICIO DIRECTORS.

31 (B) SEVEN DIRECTORS SHALL BE APPOINTED BY THE GOVERNOR, TWO OF WHOM
32 SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF
33 THE SENATE AND TWO OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF
34 THE SPEAKER OF THE ASSEMBLY. EACH PERSON APPOINTED AS A DIRECTOR PURSU-
35 ANT TO THIS PARAGRAPH SHALL HAVE EXPERTISE IN ONE OR MORE OF THE FOLLOW-
36 ING AREAS:

37 (I) INDIVIDUAL HEALTH CARE COVERAGE;

38 (II) SMALL EMPLOYER HEALTH CARE COVERAGE;

39 (III) HEALTH BENEFITS ADMINISTRATION;

40 (IV) HEALTH CARE FINANCE;

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

42 (VI) PURCHASING HEALTH PLAN COVERAGE.

43 (C) RECOMMENDATIONS AND APPOINTMENTS SHALL TAKE INTO CONSIDERATION THE
44 EXPERTISE OF OTHER DIRECTORS RECOMMENDED AND APPOINTED PURSUANT TO THIS
45 SUBDIVISION, SO THAT THE BOARD COMPOSITION REFLECTS A DIVERSITY OF EXPE-
46 RIENCE.

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

51 4. THE GOVERNOR SHALL APPOINT A CHAIR OF THE BOARD FROM AMONG THE
52 DIRECTORS WHO SHALL BE SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE.
53 ANY DIRECTOR APPOINTED BY THE GOVERNOR AS CHAIR OF THE BOARD MAY SERVE
54 AS ACTING CHAIR UNTIL SUCH TIME AS A VOTE FOR CONFIRMATION IS TAKEN BY
55 THE SENATE. NO DIRECTOR APPOINTED AS CHAIR SHALL SERVE AS CHAIR, OR

1 CONTINUE TO SERVE AS ACTING CHAIR, IF THE SENATE HAS VOTED NOT TO
2 CONFIRM SUCH DIRECTOR AS CHAIR.

3 5. (A) THE TERMS OF THE DIRECTORS, OTHER THAN THE EX OFFICIO DIREC-
4 TORS, SHALL BE THREE YEARS, PROVIDED, HOWEVER, THAT THE INITIAL TERMS OF
5 ONE OF THE DIRECTORS APPOINTED UPON RECOMMENDATION OF THE TEMPORARY
6 PRESIDENT OF THE SENATE, ONE OF THE DIRECTORS APPOINTED UPON RECOMMENDA-
7 TION OF THE SPEAKER OF THE ASSEMBLY, AND ONE OF THE DIRECTORS APPOINTED
8 BY THE GOVERNOR WITHOUT RECOMMENDATION SHALL BE FOR TWO YEARS.

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

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

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

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

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

24 8. (A) THE BOARD MAY CREATE SUCH COMMITTEES AS THE BOARD DEEMS NECES-
25 SARY. THE FIRST MEETING OF THE BOARD SHALL BE HELD WITHIN THIRTY DAYS
26 AFTER ALL DIRECTORS ARE INITIALLY APPOINTED. AT THE FIRST MEETING OF
27 THE BOARD, AND AT THE FIRST MEETING IN EACH SUBSEQUENT YEAR, THE BOARD
28 SHALL ELECT FROM AMONG ITS MEMBERS A SECRETARY AND A TREASURER. THE
29 BOARD ALSO SHALL ELECT SUCH OTHER OFFICERS AS IT SHALL DEEM NECESSARY.
30 THE OFFICERS SO ELECTED SHALL HAVE SUCH POWERS AND DUTIES AS ARE
31 ASSIGNED BY THE BY-LAWS AND THIS CHAPTER.

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

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

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

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

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

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

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

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

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

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

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

6 10. TO DESIGNATE THE DEPOSITORIES OF ITS MONEY;

7 11. TO ESTABLISH ITS FISCAL YEAR;

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

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

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

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

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

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

28 2. ASSIGN A RATING TO EACH QUALIFIED HEALTH PLAN OFFERED THROUGH THE
29 EXCHANGE IN ACCORDANCE WITH THE CRITERIA DEVELOPED BY THE SECRETARY
30 PURSUANT TO SECTION 1311(C)(3) OF THE FEDERAL ACT, AND DETERMINE EACH
31 QUALIFIED HEALTH PLAN'S LEVEL OF COVERAGE IN ACCORDANCE WITH REGULATIONS
32 ISSUED BY THE SECRETARY PURSUANT TO SECTION 1302(D)(2)(A) OF THE FEDERAL
33 ACT;

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

37 4. PROVIDE FOR ENROLLMENT PERIODS PURSUANT TO THE FEDERAL ACT OR THE
38 INSURANCE LAW, WHICHEVER IS IN THE BEST INTEREST OF QUALIFIED INDIVID-
39 UALS AND QUALIFIED EMPLOYERS, AFTER THE INITIAL ENROLLMENT PERIOD HAS
40 BEEN ESTABLISHED AS REQUIRED IN THE FEDERAL ACT; PROVIDED, HOWEVER, THAT
41 IF ENROLLMENT PERIODS PURSUANT TO THE INSURANCE LAW CONFLICT WITH RULES
42 ADOPTED BY THE SECRETARY, THEN ENROLLMENT PERIODS PURSUANT TO THE FEDER-
43 AL ACT SHALL APPLY;

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

49 6. REQUIRE QUALIFIED HEALTH PLANS TO OFFER THOSE BENEFITS DETERMINED
50 BY THE SECRETARY TO BE ESSENTIAL HEALTH BENEFITS PURSUANT TO SECTION
51 1302(B) OF THE FEDERAL ACT (EXCEPT AS PROVIDED IN PARAGRAPH (B) OF
52 SUBDIVISION ONE OF SECTION THREE THOUSAND NINE HUNDRED EIGHTY-FIVE OF
53 THIS ARTICLE) AND SUCH ADDITIONAL BENEFITS AS MAY BE REQUIRED PURSUANT
54 TO THE INSURANCE LAW, PROVIDED THAT THE STATE HAS ASSUMED THE COST OF
55 SUCH ADDITIONAL BENEFITS AS REQUIRED UNDER SECTION 1311(D)(3)(B) OF THE
56 FEDERAL ACT;

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

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

5 9. MAINTAIN AN INTERNET WEBSITE THROUGH WHICH ENROLLEES AND PROSPEC-
6 TIVE ENROLLEES OF QUALIFIED HEALTH PLANS MAY OBTAIN STANDARDIZED COMPAR-
7 ATIVE INFORMATION ON SUCH PLANS AND PUBLIC HEALTH PROGRAMS;

8 10. ESTABLISH AND MAKE AVAILABLE BY ELECTRONIC MEANS A CALCULATOR TO
9 DETERMINE THE ACTUAL COST OF COVERAGE AFTER THE APPLICATION OF ANY
10 PREMIUM TAX CREDIT UNDER SECTION 36B OF THE INTERNAL REVENUE CODE OF
11 1986 AND ANY COST-SHARING REDUCTION UNDER SECTION 1402 OF THE FEDERAL
12 ACT;

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

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

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

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

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

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

35 (A) A LIST OF THE INDIVIDUALS TO WHOM THE EXCHANGE GRANTED A CERTIF-
36 ICATION UNDER SUBDIVISION THIRTEEN OF THIS SECTION, INCLUDING THE NAME
37 AND TAXPAYER IDENTIFICATION NUMBER OF EACH INDIVIDUAL;

38 (B) THE NAME AND TAXPAYER IDENTIFICATION NUMBER OF EACH INDIVIDUAL WHO
39 WAS AN EMPLOYEE OF AN EMPLOYER WHO WAS DETERMINED TO BE ELIGIBLE FOR THE
40 PREMIUM TAX CREDIT UNDER SECTION 36B OF THE INTERNAL REVENUE CODE OF
41 1986 BECAUSE:

42 (I) THE EMPLOYER DID NOT PROVIDE MINIMUM ESSENTIAL COVERAGE AS DETER-
43 MINED BY THE SECRETARY PURSUANT TO SECTION 1311(D) OF THE FEDERAL ACT;
44 OR

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

50 (C) THE NAME AND TAXPAYER IDENTIFICATION NUMBER OF:

51 (I) EACH INDIVIDUAL WHO NOTIFIES THE EXCHANGE PURSUANT TO SECTION
52 1411(B)(4) OF THE FEDERAL ACT THAT HE OR SHE HAS CHANGED EMPLOYERS; AND

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

55 15. PROVIDE TO EACH EMPLOYER THE NAME OF EACH EMPLOYEE OF THE EMPLOYER
56 DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION FOURTEEN OF THIS SECTION WHO

1 CEASES COVERAGE UNDER A QUALIFIED HEALTH PLAN DURING A PLAN YEAR AND THE
2 EFFECTIVE DATE OF THE CESSATION;

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

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

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

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

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

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

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

30 (A) KEEPING AN ACCURATE ACCOUNTING OF ALL ACTIVITIES, RECEIPTS, AND
31 EXPENDITURES AND ANNUALLY SUBMITTING TO THE SECRETARY A REPORT CONCERN-
32 ING SUCH ACCOUNTINGS, WITH A COPY OF SUCH REPORT PROVIDED TO THE GOVER-
33 NOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEM-
34 BLY; AND

35 (B) FULLY COOPERATING WITH ANY INVESTIGATION CONDUCTED BY THE SECRE-
36 TARY PURSUANT TO THE SECRETARY'S AUTHORITY UNDER SECTION 1313 OF THE
37 FEDERAL ACT AND ALLOWING THE SECRETARY, IN COORDINATION WITH THE INSPEC-
38 TOR GENERAL OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
39 SERVICES, TO:

40 (I) INVESTIGATE THE AFFAIRS OF THE EXCHANGE;

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

42 (III) REQUIRE PERIODIC REPORTS IN RELATION TO THE ACTIVITIES UNDERTAK-
43 EN BY THE EXCHANGE;

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

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

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

49 (II) INDIVIDUALS AND ENTITIES WITH EXPERIENCE IN FACILITATING ENROLL-
50 MENT IN HEALTH PLANS;

51 (III) REPRESENTATIVES OF SMALL BUSINESSES AND SELF-EMPLOYED INDIVID-
52 UALS;

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

55 (V) ADVOCATES FOR ENROLLING HARD TO REACH POPULATIONS;

56 (VI) HEALTH CARE PROVIDERS; AND

1 (VII) INSURERS;

2 21. SUBMIT INFORMATION PROVIDED BY EXCHANGE APPLICANTS FOR VERIFICA-
3 TION AS REQUIRED BY SECTION 1411(C) OF THE FEDERAL ACT;

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

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

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

14 (A) THE INSURER OFFERING THE HEALTH PLAN:

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

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

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

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

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

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

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

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

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

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

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

1 (V) COMPLIES WITH THE INSURANCE LAW AND THE PUBLIC HEALTH LAW REQUIRE-
2 MENTS APPLICABLE TO HEALTH INSURANCE ISSUED IN THIS STATE AND ANY REGU-
3 LATIONS PROMULGATED PURSUANT THERETO THAT DO NOT CONFLICT WITH OR
4 PREVENT THE APPLICATION OF FEDERAL REQUIREMENTS; AND

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

8 2. THE EXCHANGE SHALL NOT EXCLUDE A HEALTH PLAN:

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

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

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

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

17 (A) SUBMIT A JUSTIFICATION FOR ANY PREMIUM INCREASE TO THE EXCHANGE
18 PRIOR TO IMPLEMENTATION OF SUCH INCREASE. THE INSURER SHALL PROMINENTLY
19 POST THE INFORMATION ON ITS INTERNET WEBSITE; PROVIDED, HOWEVER, THAT IF
20 INFORMATION SUBMITTED TO THE SUPERINTENDENT AS A JUSTIFICATION FOR A
21 PREMIUM RATE ADJUSTMENT PURSUANT TO THE INSURANCE LAW, OR INFORMATION
22 POSTED TO AN INSURER'S INTERNET WEBSITE, OTHERWISE MEETS FEDERAL
23 REQUIREMENTS, THEN SUBMISSION OF A COPY OF THE SAME JUSTIFICATION TO THE
24 EXCHANGE OR USE OF THE SAME POSTING SHALL BE DEEMED SUFFICIENT TO MEET
25 THE REQUIREMENTS OF THIS SECTION. THE EXCHANGE SHALL TAKE THIS INFORMA-
26 TION, AND THE INFORMATION AND THE RECOMMENDATIONS PROVIDED TO THE
27 EXCHANGE BY THE SUPERINTENDENT UNDER SECTION 1003 OF THE FEDERAL ACT
28 (RELATING TO PATTERNS OR PRACTICES OF EXCESSIVE OR UNJUSTIFIED PREMIUM
29 INCREASES), INTO CONSIDERATION WHEN DETERMINING WHETHER TO ALLOW THE
30 INSURER TO MAKE HEALTH PLANS AVAILABLE THROUGH THE EXCHANGE. SUCH RATE
31 INCREASES SHALL BE SUBJECT TO THE PRIOR APPROVAL OF THE SUPERINTENDENT
32 PURSUANT TO THE INSURANCE LAW;

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

35 (A) CLAIMS PAYMENT POLICIES AND PRACTICES;

36 (B) PERIODIC FINANCIAL DISCLOSURES;

37 (C) DATA ON ENROLLMENT AND DISENROLLMENT;

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

39 (E) DATA ON RATING PRACTICES;

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

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

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

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

49 (C) PROVIDE TO INDIVIDUALS, IN A TIMELY MANNER UPON THE REQUEST OF THE
50 INDIVIDUAL, THE AMOUNT OF COST-SHARING, INCLUDING DEDUCTIBLES, COPAY-
51 MENTS, AND COINSURANCE, UNDER THE INDIVIDUAL'S HEALTH PLAN OR COVERAGE
52 THAT THE INDIVIDUAL WOULD BE RESPONSIBLE FOR PAYING WITH RESPECT TO THE
53 FURNISHING OF A SPECIFIC ITEM OR SERVICE BY A PARTICIPATING PROVIDER. AT
54 A MINIMUM, THIS INFORMATION SHALL BE MADE AVAILABLE TO THE INDIVIDUAL
55 THROUGH AN INTERNET WEBSITE AND THROUGH OTHER MEANS FOR INDIVIDUALS
56 WITHOUT ACCESS TO THE INTERNET; PROVIDED, HOWEVER, THAT TO THE EXTENT

1 THAT REQUIREMENTS UNDER THE INSURANCE LAW OR THE PUBLIC HEALTH LAW MEET
2 THE STANDARDS OF THE FEDERAL ACT, AN INSURER'S COMPLIANCE WITH SUCH
3 STATE REQUIREMENTS SHALL BE SUFFICIENT TO MEET THE REQUIREMENTS OF THIS
4 SECTION.

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

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

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

21 S 3986. REGIONAL ADVISORY COMMITTEES. 1. THERE ARE HEREBY CREATED THE
22 NEW YORK HEALTH BENEFIT EXCHANGE REGIONAL ADVISORY COMMITTEES ("ADVISORY
23 COMMITTEES"). ONE REGIONAL ADVISORY COMMITTEE SHALL BE ESTABLISHED WITH-
24 IN EACH OF FIVE REGIONS, TO BE KNOWN AS THE "NEW YORK CITY REGION,"
25 "METROPOLITAN SUBURBAN REGION," "NORTHERN REGION," "CENTRAL REGION" AND
26 "WESTERN REGION." THE BOARD SHALL DETERMINE THE COUNTIES THAT MAKE UP
27 SUCH REGIONS.

28 2. EACH REGIONAL ADVISORY COMMITTEE SHALL BE COMPRISED OF FIVE MEMBERS
29 APPOINTED BY THE GOVERNOR, ONE OF WHOM SHALL BE APPOINTED UPON THE
30 RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND ONE OF WHOM
31 SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEM-
32 BLY.

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

35 4. VACANCIES SHALL BE FILLED IN THE SAME MANNER AS ORIGINAL APPOINT-
36 MENTS, AND SUCCESSORS SHALL SERVE FOR THE REMAINDER OF THE UNEXPIRED
37 TERM TO WHICH THEY ARE APPOINTED.

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

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

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

- 45 (I) HEALTH PLAN CONSUMER ADVOCATES;
- 46 (II) SMALL BUSINESS CONSUMER REPRESENTATIVES;
- 47 (III) HEALTH CARE PROVIDER REPRESENTATIVES;
- 48 (IV) REPRESENTATIVES OF THE HEALTH INSURANCE INDUSTRY;

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

- 51 (I) LICENSED INSURANCE PRODUCERS; AND
- 52 (II) REPRESENTATIVES OF LABOR ORGANIZATIONS.

53 7. THE BOARD SHALL SELECT THE CHAIR OF EACH REGIONAL ADVISORY COMMIT-
54 TEE FROM AMONG THE MEMBERS OF SUCH COMMITTEE. THE BOARD SHALL ADOPT
55 RULES FOR THE GOVERNANCE OF THE REGIONAL ADVISORY COMMITTEES AND EACH

1 REGIONAL ADVISORY COMMITTEE SHALL MEET AT LEAST ONCE EACH QUARTER AND AT
2 SUCH OTHER TIMES AS DETERMINED BY THE BOARD TO BE NECESSARY.

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

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

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

14 2. THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF, AND
15 SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS UPON, THE OPTIONS TO
16 GENERATE FUNDING FOR THE ONGOING OPERATION OF THE EXCHANGE, AS PROVIDED
17 FOR IN SUBDIVISION EIGHT OF SECTION THIRTY-NINE HUNDRED EIGHTY-EIGHT OF
18 THIS ARTICLE.

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

23 4. THE EXCHANGE SHALL NOT UTILIZE ANY FUNDS INTENDED FOR THE ADMINIS-
24 TRATIVE AND OPERATIONAL EXPENSES OF THE EXCHANGE FOR STAFF RETREATS,
25 PROMOTIONAL GIVEAWAYS, EXCESSIVE EXECUTIVE COMPENSATION, OR PROMOTION OF
26 FEDERAL OR STATE LEGISLATIVE AND REGULATORY MODIFICATIONS PURSUANT TO
27 SECTION 1411(C) OF THE FEDERAL ACT.

28 5. THE MONEYS OF THE EXCHANGE SHALL, EXCEPT AS OTHERWISE PROVIDED IN
29 THIS SECTION, BE DEPOSITED IN A GENERAL ACCOUNT CALLED THE NEW YORK
30 HEALTH BENEFIT EXCHANGE ACCOUNT AND SUCH OTHER ACCOUNTS AS THE EXCHANGE
31 MAY DEEM NECESSARY, PURSUANT TO RESOLUTION OF THE BOARD, FOR THE TRANS-
32 ACTION OF ITS BUSINESS AND SHALL BE PAID OUT AS AUTHORIZED BY THE CHAIR
33 OF THE BOARD OR BY SUCH OTHER PERSON OR PERSONS AS THE CHAIR MAY DESIG-
34 NATE.

35 6. NO FUNDS OF THE EXCHANGE SHALL BE TRANSFERRED TO THE GENERAL FUND
36 OR ANY SPECIAL REVENUE FUND OR SHALL BE USED FOR ANY PURPOSE OTHER THAN
37 THE PURPOSES SET FORTH IN THIS ARTICLE. NO FUNDS SHALL BE TRANSFERRED
38 FROM THE GENERAL FUND OR ANY SPECIAL REVENUE FUND TO THE EXCHANGE WITH-
39 OUT AN APPROPRIATION.

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

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

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

9 (I) WHETHER THE ESSENTIAL HEALTH BENEFITS REQUIRED TO BE INCLUDED IN
10 POLICIES AND CONTRACTS SOLD THROUGH THE EXCHANGE SHOULD BE SOLD TO SIMI-
11 LARLY SITUATED INDIVIDUALS AND GROUPS PURCHASING COVERAGE OUTSIDE OF THE
12 EXCHANGE;

13 (II) WHETHER ANY BENEFITS REQUIRED UNDER THE INSURANCE LAW OR REGU-
14 LATIONS PROMULGATED THEREUNDER THAT ARE NOT IDENTIFIED AS ESSENTIAL
15 HEALTH BENEFITS BY THE SECRETARY SHOULD NO LONGER BE REQUIRED IN POLI-
16 CIES OR CONTRACTS SOLD EITHER THROUGH THE EXCHANGE OR TO SIMILARLY SITU-
17 ATED INDIVIDUALS AND GROUPS OUTSIDE OF THE EXCHANGE;

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

21 (IV) MECHANISMS TO FINANCE ANY COSTS PURSUANT TO SECTION
22 1311(D)(3)(B)(II) OF THE FEDERAL ACT OF EXTENDING ANY BENEFITS REQUIRED
23 UNDER THE INSURANCE LAW OR REGULATIONS PROMULGATED THEREUNDER TO POLI-
24 CIES AND CONTRACTS SOLD THROUGH THE EXCHANGE.

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

29 (C) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
30 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
31 SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

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

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

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

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

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

53 (VII) HOW TO ACCOUNT FOR SOLE PROPRIETORS IN DEFINING "SMALL EMPLOY-
54 ERS"; AND

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

4 (B) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
5 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
6 SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

11 (B) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
12 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
13 SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

14 4. (A) THE EXCHANGE SHALL CONDUCT OR CAUSE TO BE CONDUCTED A STUDY OF,
15 AND SHALL MAKE FINDINGS AND RECOMMENDATIONS UPON, THE ADVANTAGES AND
16 DISADVANTAGES OF THE EXCHANGE SERVING AS AN ACTIVE PURCHASER, A SELEC-
17 TIVE CONTRACTOR, OR CLEARINGHOUSE OF INSURANCE.

18 (B) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
19 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
20 SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

28 (B) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
29 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
30 SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

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

43 (II) THE COSTS OF EXTENDING ANY BENEFITS REQUIRED UNDER THE PUBLIC
44 HEALTH LAW OR THE SOCIAL SERVICES LAW OR REGULATIONS PROMULGATED THERE-
45 UNDER AS COVERED BENEFITS AVAILABLE TO NEWLY MEDICAID-ELIGIBLE INDIVID-
46 UALS THROUGH THE EXCHANGE; AND

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

51 (B) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
52 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
53 SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

54 7. (A) THE EXCHANGE SHALL MAKE RECOMMENDATIONS UPON THE IMPACT OF THE
55 ESTABLISHMENT AND OPERATION OF THE EXCHANGE ON THE HEALTHY NEW YORK
56 PROGRAM ESTABLISHED PURSUANT TO SECTION FORTY-THREE HUNDRED TWENTY-SIX

1 OF THE INSURANCE LAW AND THE FAMILY HEALTH PLUS EMPLOYER PARTNERSHIP
2 PROGRAM ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-FF OF
3 THE SOCIAL SERVICES LAW.

4 (B) THE EXCHANGE SHALL NOTIFY THE GOVERNOR, THE TEMPORARY PRESIDENT OF
5 THE SENATE AND THE SPEAKER OF THE ASSEMBLY OF ITS RECOMMENDATIONS ON OR
6 BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

15 (B) THE BOARD SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
16 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER
17 OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

23 (B) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
24 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
25 SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

32 (B) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
33 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
34 SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

38 (B) THE EXCHANGE SHALL NOTIFY THE GOVERNOR, THE TEMPORARY PRESIDENT OF
39 THE SENATE AND THE SPEAKER OF THE ASSEMBLY OF ITS RECOMMENDATIONS ON OR
40 BEFORE APRIL FIRST, TWO THOUSAND TWELVE.

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

47 (B) THE EXCHANGE SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDA-
48 TIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
49 SPEAKER OF THE ASSEMBLY ON OR BEFORE DECEMBER FIRST, TWO THOUSAND
50 SIXTEEN.

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

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

7 15. ANY OF THE STUDIES AND REPORTS REQUIRED UNDER THIS SECTION MAY BE
8 COMBINED WITH OTHER STUDIES AND REPORTS REQUIRED UNDER THIS SECTION OR
9 OTHERWISE UNDERTAKEN BY THE EXCHANGE TO THE EXTENT FEASIBLE AND TIMELY.

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

15 S 3989. TAX EXEMPTION AND TAX CONTRACT BY THE STATE. 1. IT IS HEREBY
16 DETERMINED THAT THE CREATION OF THE EXCHANGE AND THE FULFILLMENT OF ITS
17 CORPORATE PURPOSES IS IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF
18 THIS STATE AND IS A PUBLIC PURPOSE. ACCORDINGLY, THE EXCHANGE SHALL BE
19 REGARDED AS PERFORMING AN ESSENTIAL GOVERNMENTAL FUNCTION IN THE EXER-
20 CISE OF THE POWERS CONFERRED UPON IT BY THIS ARTICLE, AND THE EXCHANGE
21 SHALL NOT BE REQUIRED TO PAY ANY FEES, TAXES, SPECIAL AD VALOREM LEVIES
22 OR ASSESSMENTS OF ANY KIND, WHETHER STATE OR LOCAL, INCLUDING BUT NOT
23 LIMITED TO FEES, TAXES, SPECIAL AD VALOREM LEVIES OR ASSESSMENTS ON REAL
24 PROPERTY, FRANCHISE TAXES, SALES TAXES, TRANSFER TAXES, MORTGAGE TAXES
25 OR OTHER TAXES, UPON OR WITH RESPECT TO ANY PROPERTY OWNED BY IT OR
26 UNDER ITS JURISDICTION, CONTROL OR SUPERVISION, OR UPON THE USES THERE-
27 OF, OR UPON OR WITH RESPECT TO ITS ACTIVITIES OR OPERATIONS IN FURTHER-
28 ANCE OF THE POWERS CONFERRED UPON IT BY THIS ARTICLE, OR UPON OR WITH
29 RESPECT TO ANY FARES, TOLLS, RENTALS, RATES, CHARGES, FEES, REVENUES OR
30 OTHER INCOME RECEIVED BY THE EXCHANGE.

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

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

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

49 3. ANY PUBLIC OFFICER OR EMPLOYEE OF A STATE DEPARTMENT, AGENCY OR
50 COMMISSION MAY BE TRANSFERRED TO THE EXCHANGE WITHOUT EXAMINATION AND
51 WITHOUT LOSS OF ANY CIVIL SERVICE STATUS OR RIGHTS TO A COMPARABLE
52 OFFICE, POSITION OR EMPLOYMENT WITH THE EXCHANGE; PROVIDED, HOWEVER, NO
53 SUCH TRANSFER MAY BE MADE WITHOUT THE CONSENT OF THE HEAD OF THE DEPART-
54 MENT, AGENCY OR COMMISSION. TRANSFERS SHALL BE MADE PURSUANT TO SUBDI-
55 VISION TWO OF SECTION SEVENTY OF THE CIVIL SERVICE LAW.

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

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

11 6. A TRANSFERRED EMPLOYEE SHALL REMAIN IN THE SAME COLLECTIVE BARGAIN-
12 ING UNIT AS WAS THE CASE PRIOR TO HIS OR HER TRANSFER; SUCCESSOR EMPLOY-
13 EES TO THE POSITIONS HELD BY SUCH TRANSFERRED EMPLOYEES SHALL, CONSIST-
14 ENT WITH THE PROVISIONS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, BE
15 INCLUDED IN THE SAME UNIT AS THEIR PREDECESSORS. EMPLOYEES SERVING IN
16 POSITIONS IN NEWLY CREATED TITLES SHALL BE ASSIGNED TO THE SAME COLLEC-
17 TIVE BARGAINING UNIT AS THEY WOULD HAVE BEEN ASSIGNED TO WERE SUCH
18 TITLES CREATED PRIOR TO THE ESTABLISHMENT OF THE EXCHANGE. NOTHING
19 CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED (A) TO DIMINISH THE RIGHTS
20 OF EMPLOYEES PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT OR (B) TO
21 AFFECT EXISTING LAW WITH RESPECT TO AN APPLICATION TO THE PUBLIC EMPLOY-
22 MENT RELATIONS BOARD SEEKING A DESIGNATION BY THE BOARD THAT CERTAIN
23 PERSONS ARE MANAGERIAL OR CONFIDENTIAL.

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

31 S 3992. CONTINGENCY FOR FEDERAL FUNDING. THE IMPLEMENTATION OF THE
32 PROVISIONS OF THIS ARTICLE SHALL BE CONTINGENT, AS DETERMINED BY THE
33 DIRECTOR OF THE BUDGET, ON THE AVAILABILITY OF SUFFICIENT FEDERAL FINAN-
34 CIAL SUPPORT FOR THE PLANNING AND IMPLEMENTATION OF HEALTH CARE AND
35 INSURANCE REFORM INITIATIVES AUTHORIZED BY FEDERAL LEGISLATION TO ESTAB-
36 LISH AND IMPLEMENT THE HEALTH BENEFIT EXCHANGE.

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

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

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

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

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

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

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

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

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

13 S 7. This act shall take effect immediately; provided, however, that
14 until such time as the members of the board of directors of the New York
15 health benefit exchange are initially appointed pursuant to section 3982
16 of the public authorities law, as added by section two of this act, and
17 the first meeting of such board is convened, nothing in this act shall
18 be deemed to prevent the commissioner of health or the superintendent of
19 insurance or, after October 3, 2011, the superintendent of financial
20 services, from applying for, accepting the award of, and spending any
21 available grant money pertaining to the establishment or operation of
22 such exchange for purposes consistent with this act or, at any time,
23 from accepting or spending grant money awarded prior to the enactment of
24 this act.