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

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I N S E N A T E

March 11, 2012

Introduced by Sens. SEWARD, HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to establish the New York health insurance exchange study commission providing for a study of whether the state should establish and operate a New York health insurance exchange or participate in a regional exchange and specifying requirements to be included in such study; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. There is hereby created the New York health insurance exchange study commission.

S 2. a. The commission shall consist of nine members to be appointed as follows: the commissioner of the department of health; the superintendent of the department of financial services; three members appointed by the governor from affected state agencies and the governor's office, one of whom shall be appointed chair of the commission by the governor; two senators appointed by the temporary president of the senate; and two members of the assembly appointed by the speaker of the assembly. Vacancies in the membership of the commission shall be filled in the manner provided for original appointments. Membership on the commission shall not constitute a public office.

b. Appointments by the temporary president of the senate and the speaker of the assembly shall be made within fifteen days of the effective date of this act.

c. The first meeting of the New York health insurance exchange study commission shall be held within fifteen days after all members of the commission are appointed.

S 3. a. (1) The New York health insurance exchange study commission shall conduct a study to evaluate whether to create a New York health insurance exchange or participate in a regional exchange, as provided in the federal Patient Protection and Affordable Care Act, P.L. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152.

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

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(2) The study shall be paid for, to the extent possible, by a federal grant awarded to the state for planning and establishment of insurance exchanges.

(3) The New York health insurance exchange study commission shall conduct or cause to be conducted a study of, and shall make recommendations upon:

(i) whether the state should proceed with the development of an exchange;

(ii) where the recommendation is that the state should proceed with the development of an exchange, provide a work plan for the development of the exchange and identify any legislation needed to implement the exchange during the 2012 legislative budget session or subsequent legislative sessions;

(iii) whether the state should proceed with the development of an exchange within the state, as a partner with other states or defer the decision until 2013. If a deferral is recommended, the study shall identify the additional work needed before a final decision can be made;

(iv) options being considered by other states in developing and operating health insurance exchanges;

(v) whether New York should proceed with the development of a health insurance exchange if the related provisions in the federal Patient Protection and Affordable Care Act, P.L. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152 are repealed;

(vi) the costs associated with the development and implementation of a state based exchange, including but not limited to:

(A) the projected costs associated with the increased enrollment in Medicaid, particularly as more individuals enroll to avoid the requirement of the individual mandate;

(B) the impact of the health insurance industry fee, an annual fee imposed on health insurance providers, including Medicaid, under the federal Patient Protection and Affordable Care Act, P.L. 111-148;

(C) the cost and coverage impacts of the exchange, including the cost to the insurance market outside of the exchange;

(D) the estimated five year budget for the exchange operations and an analysis of funding options to achieve self-sustainability by January 1, 2015;

(E) the costs to both individual and group policies associated with any benefits required under the insurance law or regulations thereunder, that are not to be identified as essential health benefits;

(F) the costs to both individual and group policies associated with any benefits permitted by the insurance law or regulations thereunder, that are not to be identified as essential health benefits;

(G) the costs of the essential health benefit plan; and

(H) the costs and/or savings associated with establishing a basic health plan; and

(vii) the structure and mission of health insurance exchange regional advisory committees and the role the regional advisory committees will have in an exchange.

b. (1) The commission shall conduct or cause to be conducted a study of, and shall make recommendations upon, the essential health benefits identified by the federal secretary of health and human services pursuant to section 1302(b) of the federal Patient Protection and Affordable Care Act, P.L. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152 and of the benefits required under the insurance law or regulations promulgated thereunder

that are not determined by the federal secretary of health and human services 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 Patient Protection and Affordable Care Act, P.L. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152 of extending any benefits required under the insurance law or regulations promulgated thereunder to policies and contracts sold through the exchange.

(2) In making its recommendations, the commission 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 commission shall conduct or cause to be conducted a study of, and shall make recommendations upon:

(1) 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;

(2) whether the individual and small group markets should be placed entirely inside the exchange;

(3) whether the benefits in the individual and small group markets should be standardized inside the exchange or inside and outside the exchange;

(4) 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 Patient Protection and Affordable Care Act, P.L. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152;

(5) 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;

(6) 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;

(7) how to account for sole proprietors in defining small employers; and

(8) whether to revise the definition of small employer outside the exchange to be consistent with the definition as it applies within the exchange.

d. The commission 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 federal secretary of

health and human services pursuant to section 1331 of the federal Patient Protection and Affordable Care Act, P.L. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152.

e. The commission 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.

f. The commission shall conduct or cause to be conducted a study of, and shall make recommendations upon:

(1) the anticipated annual operating expenses of the exchange, including but not limited to the development of any multi-year financial models; and

(2) 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.

g. The commission 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:

(1) 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;

(2) 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

(3) 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.

h. The commission 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.

i. The commission 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

j. The commission 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 Patient Protection and Affordable Care Act, P.L. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152 and any guidance issued thereunder.

k. The commission 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 Patient Protection and Affordable Care Act, P.L. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152.

l. The commission shall make recommendations upon whether and to what extent health savings accounts should be offered through the exchange.

m. The commission 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.

n. The commission 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 federal secretary of health and human services, on or before August first, two thousand twelve.

o. Notwithstanding any provision of subdivisions a through m of this section, if the commission 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 have not been issued, the exchange may establish a new and reasonable date for such completion and submission.

p. (1) 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.

(2) 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.

S 4. The New York health insurance exchange study commission shall receive and have access to all studies and evaluations conducted by the department of health and the department of financial services, and any studies and evaluations conducted by third party organizations on behalf of the department of health and the department of financial services, in relation to the health insurance exchange.

S 5. The New York health insurance exchange study commission shall have the authority to contract with experts and consultants as may be useful in conducting the study.

S 6. The members of the commission shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this act.

S 7. The commission may meet within and without the state and shall have all the powers of a legislative committee pursuant to the legislative law.

S 8. a. The commission shall submit its recommendations under subdivisions a, b, c, d, e, f, g, h, i, j, k and l of section three of this act to the governor, the temporary president of the senate and the speaker of the assembly on or before August 1, 2012.

b. The commission shall submit its recommendations under subdivisions m and n of section three of this act to the governor, the temporary president of the senate and the speaker of the assembly on or before December 1, 2015.

S 9. This act shall take effect immediately and shall expire and be deemed repealed April 1, 2016.