

STATE OF NEW YORK

11341

IN ASSEMBLY

September 19, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Rozic) --
read once and referred to the Committee on Insurance

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

ARTICLE 10-E

NEW YORK HEALTH BENEFIT EXCHANGE

5 Section 3980. Statement of policy and purposes.

6 3981. Definitions.

7 3982. Establishment of the New York health benefit exchange.

8 3983. General powers of the exchange.

9 3984. Functions of the exchange.

10 3985. Special functions of the exchange related to health plan
11 certification and qualified health plan oversight.

12 3986. Regional advisory committees.

13 3987. Funding of the exchange.

14 3988. Tax exemption and tax contract by the state.

15 3989. Officers and employees.

16 3990. Limitation of liability; indemnification.

17 3991. Construction.

18 § 3980. Statement of policy and purposes. The purpose of this article
19 is to establish an American health benefit exchange in New York. The
20 exchange shall facilitate enrollment in health coverage, the purchase
21 and sale of qualified health plans in the individual market in this
22 state, and enroll individuals in health coverage for which they are
23 eligible in accordance with federal law. The exchange also shall incor-
24 porate a small business health options program ("SHOP") to assist quali-
25 fied employers in facilitating the enrollment of their employees in
26 the exchange.
27

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

LBD10285-02-7

1 qualified health plans offered in the group market. It is the intent of
2 the legislature, through the establishment of the exchange, to promote
3 quality and affordable health coverage and care, reduce the number of
4 uninsured persons, provide a transparent marketplace, educate consumers
5 and assist individuals with access to coverage, premium assistance tax
6 credits and cost-sharing reductions.

7 § 3981. Definitions. For purposes of this article, the following defi-
8 nitions shall apply:

9 1. "Board" or "board of directors" means the board of directors of the
10 exchange.

11 2. "Regional advisory committees" means the New York health benefit
12 exchange regional advisory committees established pursuant to this arti-
13 cle.

14 3. "Commissioner" means the commissioner of health.

15 4. "Exchange" means the New York health benefit exchange established
16 pursuant to this article.

17 5. "Health plan" means a policy, contract or certificate, offered or
18 issued by an insurer to provide, deliver, arrange for, pay for or reim-
19 burse any of the costs of health care services. Health plan shall not
20 include the following:

21 (a) accident insurance or disability income insurance, or any combina-
22 tion thereof;

23 (b) coverage issued as a supplement to liability insurance;

24 (c) liability insurance, including general liability insurance and
25 automobile liability insurance;

26 (d) workers' compensation or similar insurance;

27 (e) automobile no-fault insurance;

28 (f) credit insurance;

29 (g) other similar insurance coverage, as specified in federal regu-
30 lations, under which benefits for medical care are secondary or inci-
31 idental to other insurance benefits;

32 (h) limited scope dental or vision benefits, benefits for long-term
33 care insurance, nursing home insurance, home care insurance, or any
34 combination thereof, or such other similar, limited benefits health
35 insurance as specified in federal regulations, if the benefits are
36 provided under a separate policy, certificate or contract of insurance
37 or are otherwise not an integral part of the plan;

38 (i) coverage only for a specified disease or illness, hospital indem-
39 nity, or other fixed indemnity coverage;

40 (j) Medicare supplemental insurance as defined in section 1882(g)(1)
41 of the federal social security act, coverage supplemental to the cover-
42 age provided under chapter 55 of title 10 of the United States code, or
43 similar supplemental coverage provided under a group health plan if it
44 is offered as a separate policy, certificate or contract of insurance;
45 or

46 (k) the medical indemnity fund established pursuant to title four of
47 article twenty-nine-D of the public health law.

48 6. "Insurer" means an insurance company subject to article thirty-two
49 or forty-three of the insurance law, or a health maintenance organiza-
50 tion certified pursuant to article forty-four of the public health law
51 that contracts or offers to contract to provide, deliver, arrange, pay
52 or reimburse any of the costs of health care services.

53 7. "Qualified dental plan" means a limited scope dental plan that is
54 issued by an insurer and certified in accordance with section thirty-
55 nine hundred eighty-five of this article.

1 8. "Qualified employer" means a small employer that elects to make its
2 full-time employees eligible for one or more qualified health plans
3 through the exchange.

4 9. "Qualified health plan" means a health plan that is issued by an
5 insurer and certified in accordance with section thirty-nine hundred
6 eighty-five of this article.

7 10. "Qualified individual" means an individual, including a minor,
8 who:

9 (a) is seeking to enroll in a qualified health plan offered to indi-
10 viduals through the exchange;

11 (b) resides in this state;

12 (c) at the time of enrollment, is not incarcerated, other than incar-
13 ceration pending the disposition of charges; and

14 (d) is, and is reasonably expected to be, for the entire period for
15 which enrollment is sought, a citizen or national of the United States
16 or an alien lawfully present in the United States.

17 11. "SHOP" means the small business health options program designed to
18 assist qualified employers in this state in facilitating the enrollment
19 of their employees in qualified health plans offered in the group market
20 in this state.

21 12. "Small employer" means, for plan years prior to January first, two
22 thousand sixteen, an employer that employed an average of at least one
23 but not more than fifty employees on business days during the preceding
24 calendar year. For plan years beginning on and after January first, two
25 thousand sixteen, small employer means an employer that employed an
26 average of at least one but not more than one hundred employees on busi-
27 ness days during the preceding calendar year. For purposes of the defi-
28 nition of small employer:

29 (a) all persons treated as a single employer under subsection (b),
30 (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986
31 shall be treated as a single employer;

32 (b) an employer and any predecessor employer shall be treated as a
33 single employer;

34 (c) all employees shall be counted, including part-time employees and
35 employees who are not eligible for coverage through the employer;

36 (d) if an employer was not in existence throughout the preceding
37 calendar year, then the determination of whether that employer is a
38 small employer shall be based upon the average number of employees that
39 the employer reasonably expects to employ on business days in the
40 current calendar year;

41 (e) if a qualified employer that makes enrollment in qualified health
42 plans available to its employees through the exchange ceases to be a
43 small employer by reason of an increase in the number of its employees,
44 then the employer shall continue to be treated as a qualified employer
45 for purposes of this article for the period beginning with the increase
46 and ending with the first day on which the employer does not make such
47 enrollment available to its employees; and

48 (f) notwithstanding paragraphs (a) through (e) of this subdivision, an
49 employer also shall be considered a small employer if the coverage it
50 offers would be considered small group coverage under the insurance law
51 and regulations promulgated thereunder.

52 13. "Small group market" means the health insurance market under which
53 individuals receive health insurance coverage on behalf of themselves
54 and their dependents through a group health plan maintained by a small
55 employer.

56 14. "Superintendent" means the superintendent of financial services.

1 § 3982. Establishment of the New York health benefit exchange. 1.
2 There is hereby created a public benefit corporation to be known as the
3 New York health benefit exchange. Such corporation shall be a body
4 corporate and politic.

5 2. The purpose of the exchange is to facilitate the purchase and sale
6 of qualified health plans, assist qualified employers in facilitating
7 the enrollment of their employees in qualified health plans through the
8 small business health options program, enroll individuals in health
9 coverage for which they are eligible in accordance with federal law and
10 carry out other functions set forth in this article.

11 3. (a) The exchange shall be governed by a board of directors consist-
12 ing of nine voting directors, including the commissioner and the super-
13 intendent, who shall serve as ex officio directors.

14 (b) Seven directors shall be appointed by the governor, two of whom
15 shall be appointed upon the recommendation of the temporary president of
16 the senate and two of whom shall be appointed upon the recommendation of
17 the speaker of the assembly. Each person appointed as a director pursu-
18 ant to this paragraph shall have expertise in one or more of the follow-
19 ing areas:

20 (i) Individual health care coverage;

21 (ii) Small employer health care coverage;

22 (iii) Health benefits administration;

23 (iv) Health care finance;

24 (v) Public or private health care delivery systems; and

25 (vi) Purchasing health plan coverage.

26 (c) Recommendations and appointments shall take into consideration the
27 expertise of other directors recommended and appointed pursuant to this
28 subdivision, so that the board composition reflects a diversity of expe-
29 rience.

30 (d) Recommendations by the temporary president of the senate and the
31 speaker of the assembly shall be made within sixty days of the effective
32 date of this article, within sixty days of the occurrence of a vacancy
33 or within sixty days prior to the expiration of a term.

34 4. The governor shall appoint a chair of the board from among the
35 directors who shall be subject to the advice and consent of the senate.
36 Any director appointed by the governor as chair of the board may serve
37 as acting chair until such time as a vote for confirmation is taken by
38 the senate. No director appointed as chair shall serve as chair, or
39 continue to serve as acting chair, if the senate has voted not to
40 confirm such director as chair.

41 5. (a) The terms of the directors, other than the ex officio direc-
42 tors, shall be three years, provided, however, that the initial terms of
43 one of the directors appointed upon recommendation of the temporary
44 president of the senate, one of the directors appointed upon recommenda-
45 tion of the speaker of the assembly, and one of the directors appointed
46 by the governor without recommendation shall be for two years.

47 (b) Vacancies occurring otherwise than by expiration of term of office
48 shall be filled for the unexpired term in the manner provided for
49 original appointment.

50 6. The directors shall not receive any compensation for their services
51 as directors.

52 7. (a) Each director shall have the responsibility and duty to meet
53 the requirements of this article and all applicable state and federal
54 laws and regulations to serve the public interest of the individuals and
55 small businesses seeking health care coverage through the exchange,

1 consistent with section twenty-eight hundred twenty-four of this chap-
2 ter.

3 (b) Each director shall be a state officer or employee for the
4 purposes of sections seventy-three and seventy-four of the public offi-
5 cers law.

6 (c) No director may be employed or otherwise retained by the exchange.

7 8. (a) The board may create such committees as the board deems neces-
8 sary. The first meeting of the board shall be held within thirty days
9 after all directors are initially appointed. At the first meeting of
10 the board, and at the first meeting in each subsequent year, the board
11 shall elect from among its members a secretary and a treasurer. The
12 board also shall elect such other officers as it shall deem necessary.
13 The officers so elected shall have such powers and duties as are
14 assigned by the by-laws and this chapter.

15 (b) The board, and any committee thereof, may hold meetings by elec-
16 tronic means consistent with article seven of the public officers law.

17 § 3983. General powers of the exchange. The exchange shall have the
18 following powers to be used in furtherance of its corporate purposes:

19 1. to sue and be sued and to participate in actions and proceedings,
20 whether judicial, administrative, arbitrative or otherwise;

21 2. to have a corporate seal, and to alter such seal at pleasure, and
22 to use it by causing it or a facsimile to be affixed or impressed or
23 reproduced in any other manner;

24 3. to purchase, receive, take by grant, gift, devise, bequest or
25 otherwise, lease, or otherwise acquire, own, hold, improve, employ, use
26 and otherwise deal in and with, real or personal property, or any inter-
27 est therein, wherever situated;

28 4. to sell, convey, lease, exchange, transfer or otherwise dispose of,
29 or mortgage or pledge, or create a security interest in, all or any of
30 its property, or any interest therein, wherever situated;

31 5. to make contracts, give guarantees and incur liabilities, and
32 borrow money; provided, however, that the exchange shall not issue
33 bonds;

34 6. to invest and reinvest its funds, and take and hold real and
35 personal property as security for the payment of funds so loaned or
36 invested;

37 7. to make and alter by-laws for its organization and management;

38 8. to make and alter rules and regulations as necessary to implement
39 the provisions of this article, subject to the provisions of the state
40 administrative procedure act;

41 9. to hire employees, consistent with section thirty-nine hundred
42 eighty-nine of this article;

43 10. to designate the depositories of its money;

44 11. to establish its fiscal year;

45 12. to insure or otherwise provide for the insurance of the exchange's
46 property or operations and against such other risks as the exchange may
47 deem advisable;

48 13. to receive and spend money for any of its corporate purposes in
49 accordance with this article; and

50 14. to apply for, accept the award of, and spend any available grant
51 money.

52 § 3984. Functions of the exchange. The exchange shall:

53 1. (a) make available qualified health plans to qualified individuals
54 and qualified employers beginning on or before January first, two thou-
55 sand eighteen, provided that coverage under such qualified plans shall

1 not become effective prior to such date and shall not make available any
2 health plan that is not a qualified health plan;

3 (b) make available qualified dental plans to qualified individuals and
4 qualified employers beginning on or before January first, two thousand
5 eighteen, provided that coverage under such qualified dental plans shall
6 not become effective prior to such date, either separately or in
7 conjunction with a qualified health plan, if such plan provides pedia-
8 tric dental benefits;

9 2. assign a rating to each qualified health plan offered through the
10 exchange, and determine each qualified health plan's level of coverage;

11 3. utilize a standardized format for presenting health benefit options
12 in the exchange, including the use of the uniform outline of coverage
13 established under section 2715 of the federal public health service act;

14 4. provide for enrollment periods pursuant to the insurance law,
15 whichever is in the best interest of qualified individuals and qualified
16 employers;

17 5. implement procedures for the certification, recertification and
18 decertification of health plans as qualified health plans, consistent
19 with guidelines developed by the superintendent;

20 6. require qualified health plans to offer those benefits determined
21 by the superintendent to be essential health benefits and such addi-
22 tional benefits as may be required pursuant to the insurance law;

23 7. ensure that insurers offering health plans through the exchange do
24 not charge an individual a fee or penalty for termination of coverage;

25 8. provide for the operation of a toll-free telephone hotline to
26 respond to requests for assistance;

27 9. maintain an internet website through which enrollees and prospec-
28 tive enrollees of qualified health plans may obtain standardized compar-
29 ative information on such plans and public health programs;

30 10. establish and make available by electronic means a calculator to
31 determine the actual cost of coverage after the application of any
32 premium tax credit under section 36B of the Internal Revenue Code of
33 1986 and any cost-sharing reduction;

34 11. establish a program under which the exchange awards grants to
35 entities to serve as navigators;

36 12. inform individuals of eligibility requirements for the medicaid
37 program under title XIX of the social security act, the children's
38 health insurance program (CHIP) under title XXI of the social security
39 act or any applicable state or local public health insurance program and
40 if, through screening of the application by the exchange, the exchange
41 determines that such individuals are eligible for any such program,
42 enroll such individuals in such program;

43 13. grant a certification attesting that, for purposes of the indi-
44 vidual responsibility penalty under section 5000A of the Internal Reven-
45 ue Code of 1986, an individual is exempt from the individual responsi-
46 bility requirement or from the penalty imposed by that section because:

47 (a) there is no affordable qualified health plan available through the
48 exchange or the individual's employer, covering the individual; or

49 (b) the individual meets the requirements for any other such exemption
50 from the individual responsibility requirement or penalty;

51 14. transmit to the comptroller:

52 (a) a list of the individuals to whom the exchange granted a certif-
53 ication under subdivision thirteen of this section, including the name
54 and taxpayer identification number of each individual;

55 (b) the name and taxpayer identification number of each individual who
56 was an employee of an employer who was determined to be eligible for the

1 premium tax credit under section 36B of the Internal Revenue Code of
2 1986 because:

3 (i) the employer did not provide minimum essential coverage as deter-
4 mined by the superintendent; or

5 (ii) the employer provided the minimum essential coverage as deter-
6 mined by the superintendent, but it was determined under section
7 36B(c)(2)(C) of the Internal Revenue Code of 1986 to either be unafford-
8 able to the employee or to not provide the required minimum actuarial
9 value; and

10 (c) the name and taxpayer identification number of:

11 (i) each individual who notifies the exchange that he or she has
12 changed employers; and

13 (ii) each individual who ceases coverage under a qualified health plan
14 during a plan year and the effective date of that cessation;

15 15. provide to each employer the name of each employee of the employer
16 described in paragraph (b) of subdivision fourteen of this section who
17 ceases coverage under a qualified health plan during a plan year and the
18 effective date of the cessation;

19 16. operate a small business health options program ("SHOP") through
20 which qualified employers access coverage for their employees, and may:

21 (a) permit qualified employers to specify a level of coverage so their
22 employees may enroll in any qualified health plan offered through the
23 SHOP at the specified level of coverage or provide a specific amount or
24 other payment formulated to be used as part of an employee choice plan;
25 and

26 (b) provide premium aggregation and other related services to minimize
27 administrative burdens for qualified employers;

28 17. enter into agreements as necessary with: (a) federal and state
29 agencies and other state exchanges to carry out its responsibilities
30 under this article, provided such agreements include adequate
31 protections with respect to the confidentiality of any information to be
32 shared and comply with all state and federal laws and regulations; and

33 (b) local departments of social services to coordinate enrollment in
34 other social services programs, as appropriate, provided such agreements
35 include adequate protections with respect to the confidentiality of any
36 information to be shared and comply with all state and federal laws and
37 regulations;

38 18. perform duties required by the superintendent or the secretary of
39 the United States department of the treasury related to determining
40 eligibility for premium tax credits, reduced cost-sharing, or individual
41 responsibility requirement exemptions;

42 19. meet financial integrity requirements of this chapter, including:

43 (a) keeping an accurate accounting of all activities, receipts, and
44 expenditures and annually submitting to the superintendent a report
45 concerning such accountings, with a copy of such report provided to the
46 governor, the temporary president of the senate and the speaker of the
47 assembly; and

48 (b) fully cooperating with any investigation conducted by the super-
49 intendent pursuant to his or her authority and allowing the superinten-
50 dent to:

51 (i) investigate the affairs of the exchange;

52 (ii) examine the properties and records of the exchange; and

53 (iii) require periodic reports in relation to the activities undertak-
54 en by the exchange;

55 20. (a) consult with the regional advisory committees established
56 pursuant to section thirty-nine hundred eighty-six of this article; and

1 (b) consult with stakeholders relevant to carrying out the activities
2 required under this article, including but not limited to:

- 3 (i) health care consumers who are enrollees in health plans;
4 (ii) individuals and entities with experience in facilitating enroll-
5 ment in health plans;
6 (iii) representatives of small businesses and self-employed individ-
7 uals;
8 (iv) state medicaid offices, including local departments of social
9 services;
10 (v) advocates for enrolling hard to reach populations;
11 (vi) health care providers; and
12 (vii) insurers;

13 21. submit information provided by exchange applicants for verifica-
14 tion;

15 22. establish rules and regulations, pursuant to subdivision eight of
16 section thirty-nine hundred eighty-three of this article, that do not
17 conflict with or prevent the application of regulations promulgated by
18 the superintendent; and

19 23. determine eligibility, provide notices, and provide opportunities
20 for appeal and redetermination.

21 § 3985. Special functions of the exchange related to health plan
22 certification and qualified health plan oversight. 1. Health plans
23 certified by the exchange shall meet the following requirements:

- 24 (a) the insurer offering the health plan:
25 (i) is licensed or certified by the superintendent or commissioner;
26 (ii) offers at least one qualified health plan in each of the silver
27 and gold levels;
28 (iii) has filed with and received approval from the superintendent of
29 its premium rates and policy or contract forms pursuant to the insurance
30 law and the public health law;

31 (iv) does not charge any cancellation fees or penalties in violation
32 of subdivision seven of section thirty-nine hundred eighty-four of this
33 article; and

34 (v) complies with the regulations developed by the superintendent and
35 such other requirements as the exchange may establish;

36 (b) the health plan: (i) provides the essential health benefits pack-
37 age and includes such additional benefits as may be required pursuant to
38 the insurance law, except that the health plan shall not be required to
39 provide essential benefits that duplicate the minimum benefits of quali-
40 fied dental plans if:

41 (A) the exchange has determined that at least one qualified dental
42 plan is available to supplement the health plan's coverage; and

43 (B) the insurer makes prominent disclosure at the time it offers the
44 health plan, in a form approved by the exchange, that the plan does not
45 provide the full range of essential pediatric benefits, and that quali-
46 fied dental plans providing those benefits and other dental benefits not
47 covered by the plan are offered through the exchange;

48 (ii) provides at least a bronze level of coverage, unless the plan is
49 certified as a qualified catastrophic plan, and shall only be offered to
50 individuals eligible for catastrophic coverage;

51 (iii) has cost-sharing requirements, including deductibles, which do
52 not exceed the limits established and any requirements of the exchange;

53 (iv) complies with regulations promulgated by the superintendent,
54 which include minimum standards in the areas of marketing practices,
55 network adequacy, essential community providers in underserved areas,
56 accreditation, quality improvement, uniform enrollment forms and

1 descriptions of coverage and information on quality measures for health
2 benefit plan performance;

3 (v) complies with the insurance law and the public health law require-
4 ments applicable to health insurance issued in this state and any regu-
5 lations promulgated pursuant thereto that do not conflict with or
6 prevent the application of federal requirements; and

7 (c) the exchange determines that making the health plan available
8 through the exchange is in the interest of qualified individuals and
9 qualified employers in this state.

10 2. The exchange shall not exclude a health plan:

11 (a) on the basis that the health plan is a fee-for-service plan;

12 (b) through the imposition of premium price controls by the exchange;

13 or

14 (c) on the basis that the health plan provides treatments necessary to
15 prevent patients' deaths in circumstances the exchange determines are
16 inappropriate or too costly.

17 3. The exchange shall require each insurer certified or seeking
18 certification of a health plan as a qualified health plan to:

19 (a) submit a justification for any premium increase to the exchange
20 prior to implementation of such increase. The insurer shall prominently
21 post the information on its internet website; provided, however, that if
22 information submitted to the superintendent as a justification for a
23 premium rate adjustment pursuant to the insurance law, or information
24 posted to an insurer's internet website, otherwise meets federal
25 requirements, then submission of a copy of the same justification to the
26 exchange or use of the same posting shall be deemed sufficient to meet
27 the requirements of this section. The exchange shall take this informa-
28 tion, and the information and the recommendations provided to the
29 exchange by the superintendent relating to patterns or practices of
30 excessive or unjustified premium increases, into consideration when
31 determining whether to allow the insurer to make health plans available
32 through the exchange. Such rate increases shall be subject to the prior
33 approval of the superintendent pursuant to the insurance law;

34 (b)(i) make available to the public and submit to the exchange and the
35 superintendent, accurate and timely disclosure of:

36 (A) claims payment policies and practices;

37 (B) periodic financial disclosures;

38 (C) data on enrollment and disenrollment;

39 (D) data on the number of claims that are denied;

40 (E) data on rating practices;

41 (F) information on cost-sharing and payments with respect to any out-
42 of-network coverage;

43 (G) information on enrollee and participant rights; and

44 (H) other information as determined appropriate by the superintendent;

45 (ii) the information shall be provided in plain language and in guid-
46 ance jointly issued thereunder by the superintendent and the federal
47 secretary of labor; and

48 (c) provide to individuals, in a timely manner upon the request of the
49 individual, the amount of cost-sharing, including deductibles, copay-
50 ments, and coinsurance, under the individual's health plan or coverage
51 that the individual would be responsible for paying with respect to the
52 furnishing of a specific item or service by a participating provider. At
53 a minimum, this information shall be made available to the individual
54 through an internet website and through other means for individuals
55 without access to the internet.

1 4. (a) The provisions of this article that apply to qualified health
2 plans also shall apply to the extent relevant to qualified dental plans
3 except as modified in accordance with the provisions of paragraphs (b)
4 and (c) of this subdivision or otherwise required by the exchange.

5 (b) The qualified dental plan shall be limited to dental and oral
6 health benefits, without substantially duplicating the benefits typical-
7 ly offered by health benefit plans without dental coverage, and shall
8 include, at a minimum, the essential pediatric dental benefits
9 prescribed by the superintendent and such other dental benefits as the
10 exchange or the superintendent may specify in regulations.

11 (c) Insurers may jointly offer a comprehensive plan through the
12 exchange in which an insurer provides the dental benefits through a
13 qualified dental plan and an insurer provides the other benefits through
14 a qualified health plan, provided that the plans are priced separately
15 and also are made available for purchase separately at the same price.

16 § 3986. Regional advisory committees. 1. There are hereby created the
17 New York health benefit exchange regional advisory committees ("advisory
18 committees"). One regional advisory committee shall be established with-
19 in each of five regions, to be known as the "New York City region,"
20 "metropolitan suburban region," "northern region," "central region" and
21 "western region." The board shall determine the counties that make up
22 such regions.

23 2. Each regional advisory committee shall be comprised of five members
24 appointed by the governor, one of whom shall be appointed upon the
25 recommendation of the temporary president of the senate and one of whom
26 shall be appointed upon the recommendation of the speaker of the assem-
27 bly.

28 3. Terms shall be three years. Members shall serve until their
29 successors are appointed. Members may serve up to two consecutive terms.

30 4. Vacancies shall be filled in the same manner as original appoint-
31 ments, and successors shall serve for the remainder of the unexpired
32 term to which they are appointed.

33 5. Recommendations by the temporary president of the senate and the
34 speaker of the assembly shall be made within sixty days of the effective
35 date of this article or the occurrence of a vacancy, or within sixty
36 days prior to the expiration of a term.

37 6. The members of each regional advisory committee shall include:

38 (a) representatives from the following categories, but not more than
39 two from any single category:

- 40 (i) health plan consumer advocates;
- 41 (ii) small business consumer representatives;
- 42 (iii) health care provider representatives;
- 43 (iv) representatives of the health insurance industry;

44 (b) representatives from the following categories, but not more than
45 one from either category:

- 46 (i) licensed insurance producers; and
- 47 (ii) representatives of labor organizations.

48 7. The board shall select the chair of each regional advisory commit-
49 tee from among the members of such committee. The board shall adopt
50 rules for the governance of the regional advisory committees and each
51 regional advisory committee shall meet at least once each quarter and at
52 such other times as determined by the board to be necessary.

53 8. Members of the regional advisory committees shall serve without
54 compensation.

55 9. The regional advisory committees shall make findings and recommen-
56 dations regarding regional variations in the operation of the exchange,

1 which shall be submitted to the board of directors, posted on the
2 website of the exchange, and considered by the board in a reasonably
3 timely fashion. Such findings and recommendations shall be made on an
4 annual basis, on a date determined by the board, and at such other times
5 as the board or any regional advisory committee deems appropriate.

6 § 3987. Funding of the exchange. 1. The exchange shall be financially
7 self-sufficient by January first, two thousand nineteen.

8 2. The exchange shall conduct or cause to be conducted a study of, and
9 shall report its findings and recommendations upon, the options to
10 generate funding for the ongoing operation of the exchange.

11 3. The exchange shall publish on its internet website the fees and
12 any other payments required by the exchange, and the administrative
13 costs of the exchange, to educate consumers on such costs and the amount
14 of monies lost to waste, fraud and abuse.

15 4. The exchange shall not utilize any funds intended for the adminis-
16 trative and operational expenses of the exchange for staff retreats,
17 promotional giveaways, excessive executive compensation, or promotion of
18 federal or state legislative and regulatory modifications.

19 5. The moneys of the exchange shall, except as otherwise provided in
20 this section, be deposited in a general account called the New York
21 health benefit exchange account and such other accounts as the exchange
22 may deem necessary, pursuant to resolution of the board, for the trans-
23 action of its business and shall be paid out as authorized by the chair
24 of the board or by such other person or persons as the chair may desig-
25 nate.

26 6. No funds of the exchange shall be transferred to the general fund
27 or any special revenue fund or shall be used for any purpose other than
28 the purposes set forth in this article. No funds shall be transferred
29 from the general fund or any special revenue fund to the exchange with-
30 out an appropriation.

31 7. The accounts of the exchange shall be subject to supervision of the
32 comptroller and such accounts shall include receipts, expenditures,
33 contracts and other matters which pertain to the fiscal soundness of the
34 exchange.

35 8. Notwithstanding any law to the contrary, and in accordance with
36 section four of the state finance law, upon request of the director of
37 the budget, in consultation with the commissioner, the superintendent
38 and the chair of the board, the comptroller is hereby authorized and
39 directed to suballocate or transfer special revenue federal funds appro-
40 riated to the department of health for planning and implementing vari-
41 ous healthcare and insurance reform initiatives authorized by federal
42 legislation to the New York state health benefit exchange. Moneys subal-
43 located or transferred pursuant to this section shall be paid out of the
44 fund upon audit and warrant of the state comptroller on vouchers certi-
45 fied or approved by the exchange.

46 § 3988. Tax exemption and tax contract by the state. 1. It is hereby
47 determined that the creation of the exchange and the fulfillment of its
48 corporate purposes is in all respects for the benefit of the people of
49 this state and is a public purpose. Accordingly, the exchange shall be
50 regarded as performing an essential governmental function in the exer-
51 cise of the powers conferred upon it by this article, and the exchange
52 shall not be required to pay any fees, taxes, special ad valorem levies
53 or assessments of any kind, whether state or local, including but not
54 limited to fees, taxes, special ad valorem levies or assessments on real
55 property, franchise taxes, sales taxes, transfer taxes, mortgage taxes
56 or other taxes, upon or with respect to any property owned by it or

1 under its jurisdiction, control or supervision, or upon the uses there-
2 of, or upon or with respect to its activities or operations in further-
3 ance of the powers conferred upon it by this article, or upon or with
4 respect to any fares, tolls, rentals, rates, charges, fees, revenues or
5 other income received by the exchange.

6 2. The exchange may pay, or may enter into agreements with any county
7 or municipality to pay, a sum or sums annually or otherwise or to
8 provide other considerations with respect to real property owned by the
9 exchange located within such county or municipality.

10 § 3989. Officers and employees. 1. The board shall have the power to
11 appoint employees to serve as senior managerial staff of the exchange as
12 necessary, who shall be designated to be in the exempt class of civil
13 service. The board shall also have the power to fix the salaries of such
14 employees.

15 2. Any newly hired employees who are not designated to be in the
16 exempt class of civil service pursuant to subdivision one of this
17 section and who are not subject to the transfer provisions set forth in
18 subdivisions four, five and six of this section shall be considered for
19 purposes of article fourteen of the civil service law to be public
20 employees in the civil service of the state, and shall be assigned to
21 the appropriate collective bargaining unit by the exchange in the same
22 manner and consistent with those employees described in subdivision six
23 of this section.

24 3. Any public officer or employee of a state department, agency or
25 commission may be transferred to the exchange without examination and
26 without loss of any civil service status or rights to a comparable
27 office, position or employment with the exchange; provided, however, no
28 such transfer may be made without the consent of the head of the depart-
29 ment, agency or commission. Transfers shall be made pursuant to subdi-
30 vision two of section seventy of the civil service law.

31 4. The salary or compensation of any such officer or employee, after
32 such transfer, shall be paid by the exchange.

33 5. Any officer or employee transferred to the exchange pursuant to
34 this section, who are members of or benefit under any existing pension
35 or retirement fund or system, shall continue to have all rights, privi-
36 leges, obligations and status with respect to such fund or system as are
37 now prescribed by law, but during the period of their employment by the
38 exchange, all contributions to such funds or systems to be paid by the
39 employer on account of such officers or employees shall be paid by the
40 exchange.

41 6. A transferred employee shall remain in the same collective bargain-
42 ing unit as was the case prior to his or her transfer; successor employ-
43 ees to the positions held by such transferred employees shall, consist-
44 ent with the provisions of article fourteen of the civil service law, be
45 included in the same unit as their predecessors. Employees serving in
46 positions in newly created titles shall be assigned to the same collec-
47 tive bargaining unit as they would have been assigned to were such
48 titles created prior to the establishment of the exchange. Nothing
49 contained in this article shall be construed (a) to diminish the rights
50 of employees pursuant to a collective bargaining agreement or (b) to
51 affect existing law with respect to an application to the public employ-
52 ment relations board seeking a designation by the board that certain
53 persons are managerial or confidential.

54 § 3990. Limitation of liability; indemnification. The provisions of
55 sections seventeen and nineteen of the public officers law shall be
56 applicable to exchange employees, as such term is defined in sections

1 seventeen and nineteen of the public officers law; provided, however,
2 that nothing contained within this section shall be deemed to permit the
3 exchange to extend the provisions of sections seventeen and nineteen of
4 the public officers law upon any independent contractor.

5 § 3991. Construction. Nothing in this article, and no action taken by
6 the exchange pursuant hereto, shall be construed to:

7 1. preempt or supersede the authority of the superintendent or the
8 commissioner; or

9 2. exempt insurers, insurance producers or qualified health plans from
10 the public health law or the insurance law and regulations promulgated
11 thereunder.

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

14 (z) For purposes of this section, the term "employee" shall include
15 directors, officers and employees of the New York health benefit
16 exchange established pursuant to article ten-E of the public authorities
17 law.

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

20 (k) For purposes of this section, the term "employee" shall include
21 directors, officers and employees of the New York health benefit
22 exchange established pursuant to article ten-E of the public authorities
23 law.

24 § 5. If any provision or application of this act shall be held to be
25 invalid, or to violate or be inconsistent with any applicable federal
26 law or regulation, that shall not affect other provisions or applica-
27 tions of this act which can be given effect without that provision or
28 application; and to that end, the provisions and applications of this
29 act are severable.

30 § 6. The superintendent of the department of financial services is
31 authorized to promulgate rules and regulations, and may promulgate emer-
32 gency regulations, necessary for the implementation of the provisions of
33 this act on or before its effective date.

34 § 7. This act shall take effect upon the occurrence of the earlier of:
35 (a) the repeal of the Patient Protection and Affordable Care Act, 42
36 U.S.C. § 18001 et seq. (2010); or

37 (b) the rescinding of Executive Order {Cuomo} No. 42 {9 NYCRR 8.42},
38 Establishing the New York Health Benefit Exchange;

39 provided that the governor of the state of New York shall notify the
40 legislative bill drafting commission upon the occurrence of the rescind-
41 ing of Executive Order {Cuomo} No. 42 {9 NYCRR 8.42}, Establishing the
42 New York Health Benefit Exchange in order that the commission may main-
43 tain an accurate and timely effective data base of the official text of
44 the laws of the state of New York in furtherance of effecting the
45 provisions of section 44 of the legislative law and section 70-b of the
46 public officers law.