

STATE OF NEW YORK

4781

2017-2018 Regular Sessions

IN SENATE

March 1, 2017

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

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 Assembly, 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
6
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. Tax exemption and tax contract by the state.

17 3989. Officers and employees.

18 3990. Limitation of liability; indemnification.

19 3991. Construction.

20 § 3980. Statement of policy and purposes. The purpose of this article
21 is to establish an American health benefit exchange in New York. The
22 exchange shall facilitate enrollment in health coverage, the purchase
23 and sale of qualified health plans in the individual market in this

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

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1 state, and enroll individuals in health coverage for which they are
2 eligible in accordance with federal law. The exchange also shall incor-
3 porate a small business health options program ("SHOP") to assist quali-
4 fied employers in facilitating the enrollment of their employees in
5 qualified health plans offered in the group market. It is the intent of
6 the legislature, through the establishment of the exchange, to promote
7 quality and affordable health coverage and care, reduce the number of
8 uninsured persons, provide a transparent marketplace, educate consumers
9 and assist individuals with access to coverage, premium assistance tax
10 credits and cost-sharing reductions.

11 § 3981. Definitions. For purposes of this article, the following defi-
12 nitions shall apply:

13 1. "Board" or "board of directors" means the board of directors of the
14 exchange.

15 2. "Regional advisory committees" means the New York health benefit
16 exchange regional advisory committees established pursuant to this arti-
17 cle.

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

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

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

25 (a) accident insurance or disability income insurance, or any combina-
26 tion thereof;

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

28 (c) liability insurance, including general liability insurance and
29 automobile liability insurance;

30 (d) workers' compensation or similar insurance;

31 (e) automobile no-fault insurance;

32 (f) credit insurance;

33 (g) other similar insurance coverage, as specified in federal regu-
34 lations, under which benefits for medical care are secondary or inci-
35 dental to other insurance benefits;

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

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

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

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

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

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

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

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

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

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

14 (b) resides in this state;

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

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

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

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

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

35 (b) an employer and any predecessor employer shall be treated as a
36 single employer;

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

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

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

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

55 13. "Small group market" means the health insurance market under which
56 individuals receive health insurance coverage on behalf of themselves

1 and their dependents through a group health plan maintained by a small
2 employer.

3 14. "Superintendent" means the superintendent of financial services.
4 § 3982. Establishment of the New York health benefit exchange. 1.
5 There is hereby created a public benefit corporation to be known as the
6 New York health benefit exchange. Such corporation shall be a body
7 corporate and politic.

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

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

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

23 (i) Individual health care coverage;

24 (ii) Small employer health care coverage;

25 (iii) Health benefits administration;

26 (iv) Health care finance;

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

28 (vi) Purchasing health plan coverage.

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

33 (d) 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, within sixty days of the occurrence of a vacancy
36 or within sixty days prior to the expiration of a term.

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

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

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

53 6. The directors shall not receive any compensation for their services
54 as directors.

55 7. (a) Each director shall have the responsibility and duty to meet
56 the requirements of this article and all applicable state and federal

1 laws and regulations to serve the public interest of the individuals and
2 small businesses seeking health care coverage through the exchange,
3 consistent with section twenty-eight hundred twenty-four of this chap-
4 ter.

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

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

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

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

19 § 3983. General powers of the exchange. The exchange shall have the
20 following powers to be used in furtherance of its corporate purposes:

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

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

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

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

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

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

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

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

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

45 10. to designate the depositories of its money;

46 11. to establish its fiscal year;

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

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

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

54 § 3984. Functions of the exchange. The exchange shall:

55 1. (a) make available qualified health plans to qualified individuals
56 and qualified employers beginning on or before January first, two thou-

1 sand eighteen, provided that coverage under such qualified plans shall
2 not become effective prior to such date and shall not make available any
3 health plan that is not a qualified health plan;

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

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

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

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

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

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

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

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

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

31 10. establish and make available by electronic means a calculator to
32 determine the actual cost of coverage after the application of any
33 premium tax credit under section 36B of the Internal Revenue Code of
34 1986 and any cost-sharing reduction;

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

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

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

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

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

52 14. transmit to the comptroller:

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

1 (b) the name and taxpayer identification number of each individual who
2 was an employee of an employer who was determined to be eligible for the
3 premium tax credit under section 36B of the Internal Revenue Code of
4 1986 because:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (i) investigate the affairs of the exchange;

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

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

1 20. (a) consult with the regional advisory committees established
2 pursuant to section thirty-nine hundred eighty-six of this article; and
3 (b) consult with stakeholders relevant to carrying out the activities
4 required under this article, including but not limited to:

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

15 21. submit information provided by exchange applicants for verifica-
16 tion;

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

21 23. determine eligibility, provide notices, and provide opportunities
22 for appeal and redetermination.

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

26 (a) the insurer offering the health plan:
27 (i) is licensed or certified by the superintendent or commissioner;
28 (ii) offers at least one qualified health plan in each of the silver
29 and gold levels;

30 (iii) has filed with and received approval from the superintendent of
31 its premium rates and policy or contract forms pursuant to the insurance
32 law and the public health law;

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

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

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

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

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

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

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

55 (iv) complies with regulations promulgated by the superintendent,
56 which include minimum standards in the areas of marketing practices,

1 network adequacy, essential community providers in underserved areas,
2 accreditation, quality improvement, uniform enrollment forms and
3 descriptions of coverage and information on quality measures for health
4 benefit plan performance;

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

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

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

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

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

15 or

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

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

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

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

38 (A) claims payment policies and practices;

39 (B) periodic financial disclosures;

40 (C) data on enrollment and disenrollment;

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

42 (E) data on rating practices;

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

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

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

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

50 (c) provide to individuals, in a timely manner upon the request of the
51 individual, the amount of cost-sharing, including deductibles, copay-
52 ments, and coinsurance, under the individual's health plan or coverage
53 that the individual would be responsible for paying with respect to the
54 furnishing of a specific item or service by a participating provider. At
55 a minimum, this information shall be made available to the individual

1 through an internet website and through other means for individuals
2 without access to the internet.

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

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

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

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

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

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

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

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

39 6. The members of each regional advisory committee shall include:
40 (a) representatives from the following categories, but not more than
41 two from any single category:

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

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

- 48 (i) licensed insurance producers; and
- 49 (ii) representatives of labor organizations.

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

55 8. Members of the regional advisory committees shall serve without
56 compensation.

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

8 § 3987. Funding of the exchange. 1. The exchange shall be financially
9 self-sufficient by January first, two thousand nineteen.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 § 3990. Limitation of liability; indemnification. The provisions of
2 sections seventeen and nineteen of the public officers law shall be
3 applicable to exchange employees, as such term is defined in sections
4 seventeen and nineteen of the public officers law; provided, however,
5 that nothing contained within this section shall be deemed to permit the
6 exchange to extend the provisions of sections seventeen and nineteen of
7 the public officers law upon any independent contractor.

8 § 3991. Construction. Nothing in this article, and no action taken by
9 the exchange pursuant hereto, shall be construed to:

10 1. preempt or supersede the authority of the superintendent or the
11 commissioner; or

12 2. exempt insurers, insurance producers or qualified health plans from
13 the public health law or the insurance law and regulations promulgated
14 thereunder.

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

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

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

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

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

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

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

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