

STATE OF NEW YORK

4840

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IN SENATE

March 3, 2017

Introduced by Sens. RIVERA, ADDABBO, ALCANTARA, BAILEY, BRESLIN, BROOKS, COMRIE, DILAN, GIANARIS, HAMILTON, HOYLMAN, KAMINSKY, KENNEDY, KRUEGER, LATIMER, MONTGOMERY, PARKER, PERALTA, PERSAUD, SANDERS, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the state finance law, in relation to enacting the "New York health act" and to establishing New York Health

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York health act".
3 § 2. Legislative findings and intent. 1. The state constitution
4 states: "The protection and promotion of the health of the inhabitants
5 of the state are matters of public concern and provision therefor shall
6 be made by the state and by such of its subdivisions and in such manner,
7 and by such means as the legislature shall from time to time determine."
8 (Article XVII, §3.) The legislature finds and declares that all resi-
9 dents of the state have the right to health care. While the federal
10 Affordable Care Act brought many improvements in health care and health
11 coverage, it still leaves many New Yorkers without coverage or with
12 inadequate coverage. New Yorkers - as individuals, employers, and
13 taxpayers - have experienced a rise in the cost of health care and
14 coverage in recent years, including rising premiums, deductibles and
15 co-pays, restricted provider networks and high out-of-network charges.
16 Businesses have also experienced increases in the costs of health care
17 benefits for their employees, and many employers are shifting a larger
18 share of the cost of coverage to their employees or dropping coverage
19 entirely. Health care providers are also affected by inadequate health
20 coverage in New York state. A large portion of voluntary and public
21 hospitals, health centers and other providers now experience substantial

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

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1 losses due to the provision of care that is uncompensated. Individuals
2 often find that they are deprived of affordable care and choice because
3 of decisions by health plans guided by the plan's economic needs rather
4 than their health care needs. To address the fiscal crisis facing the
5 health care system and the state and to assure New Yorkers can exercise
6 their right to health care, affordable and comprehensive health coverage
7 must be provided. Pursuant to the state constitution's charge to the
8 legislature to provide for the health of New Yorkers, this legislation
9 is an enactment of state concern for the purpose of establishing a
10 comprehensive universal single-payer health care coverage program and a
11 health care cost control system for the benefit of all residents of the
12 state of New York.

13 2. It is the intent of the Legislature to create the New York Health
14 program to provide a universal health plan for every New Yorker, funded
15 by broad-based revenue based on ability to pay. The state shall work to
16 obtain waivers and other approvals relating to Medicaid, Child Health
17 Plus, Medicare, the Affordable Care Act, and any other appropriate
18 federal programs, under which federal funds and other subsidies that
19 would otherwise be paid to New York State, New Yorkers, and health care
20 providers for health coverage that will be equaled or exceeded by New
21 York Health will be paid by the federal government to New York State and
22 deposited in the New York Health trust fund, and for other program
23 modifications (including elimination of cost sharing and insurance
24 premiums). Under such waivers and approvals, health coverage under
25 those programs will be replaced and merged into New York Health, which
26 will operate as a true single-payer program.

27 If any necessary waiver or approval is not obtained, the state shall
28 use state plan amendments and seek waivers and approvals to maximize,
29 and make as seamless as possible, the use of federally-matched health
30 programs and federal health programs in New York Health. Thus, even
31 where other programs such as Medicaid or Medicare may contribute to
32 paying for care, it is the goal of this legislation that the coverage
33 will be delivered by New York Health and, as much as possible, the
34 multiple sources of funding will be pooled with other New York Health
35 funds and not be apparent to New York Health members or participating
36 providers. This program will promote movement away from fee-for-service
37 payment, which tends to reward quantity and requires excessive adminis-
38 trative expense, and towards alternate payment methodologies, such as
39 global or capitated payments to providers or health care organizations,
40 that promote quality, efficiency, investment in primary and preventive
41 care, and innovation and integration in the organizing of health care.

42 3. This act does not create any employment benefit, nor does it
43 require, prohibit, or limit the providing of any employment benefit.

44 4. In order to promote improved quality of, and access to, health care
45 services and promote improved clinical outcomes, it is the policy of the
46 state to encourage cooperative, collaborative and integrative arrange-
47 ments among health care providers who might otherwise be competitors,
48 under the active supervision of the commissioner of health. It is the
49 intent of the state to supplant competition with such arrangements and
50 regulation only to the extent necessary to accomplish the purposes of
51 this act, and to provide state action immunity under the state and
52 federal antitrust laws to health care providers, particularly with
53 respect to their relations with the single-payer New York Health plan
54 created by this act.

1 § 3. Article 50 and sections 5000, 5001, 5002 and 5003 of the public
2 health law are renumbered article 80 and sections 8000, 8001, 8002 and
3 8003, respectively, and a new article 51 is added to read as follows:

4 ARTICLE 51

5 NEW YORK HEALTH

6 Section 5100. Definitions.

7 5101. Program created.

8 5102. Board of trustees.

9 5103. Eligibility and enrollment.

10 5104. Benefits.

11 5105. Health care providers; care coordination; payment method-
12 ologies.

13 5106. Health care organizations.

14 5107. Program standards.

15 5108. Regulations.

16 5109. Provisions relating to federal health programs.

17 5110. Additional provisions.

18 5111. Regional advisory councils.

19 § 5100. Definitions. As used in this article, the following terms
20 shall have the following meanings, unless the context clearly requires
21 otherwise:

22 1. "Board" means the board of trustees of the New York Health program
23 created by section fifty-one hundred two of this article, and "trustee"
24 means a trustee of the board.

25 2. "Care coordination" means services provided by a care coordinator
26 under subdivision two of section fifty-one hundred five of this article.

27 3. "Care coordinator" means an individual or entity approved to
28 provide care coordination under subdivision two of section fifty-one
29 hundred five of this article.

30 4. "Federally-matched public health program" means the medical assist-
31 ance program under title eleven of article five of the social services
32 law, the basic health program under section three hundred sixty-nine-gg
33 of the social services law, and the child health plus program under
34 title one-A of article twenty-five of this chapter.

35 5. "Health care organization" means an entity that is approved by the
36 commissioner under section fifty-one hundred six of this article to
37 provide health care services to members under the program.

38 6. "Health care service" means any health care service, including care
39 coordination, included as a benefit under the program.

40 7. "Implementation period" means the period under subdivision three of
41 section fifty-one hundred one of this article during which the program
42 will be subject to special eligibility and financing provisions until it
43 is fully implemented under that section.

44 8. "Long term care" means long term care, treatment, maintenance,
45 services and supports, with the exception of short term rehabilitation,
46 as defined by the commissioner.

47 9. "Medicaid" or "medical assistance" means title eleven of article
48 five of the social services law and the program thereunder. "Child
49 health plus" means title one-A of article twenty-five of this chapter
50 and the program thereunder. "Medicare" means title XVIII of the federal
51 social security act and the programs thereunder. "Basic health program"
52 means section three hundred sixty-nine-gg of the social services law and
53 the program thereunder.

54 10. "Member" means an individual who is enrolled in the program.

55 11. "New York Health trust fund" means the New York Health trust fund
56 established under section eighty-nine-i of the state finance law.

1 12. "Out-of-state health care service" means a health care service
2 provided to a member while the member is out of the state and (a) it is
3 medically necessary that the health care service be provided while the
4 member is out of the state, or (b) it is clinically appropriate that the
5 health care service be provided by a particular health care provider
6 located out of the state rather than in the state. However, any health
7 care service provided to a New York Health enrollee by a health care
8 provider qualified under paragraph (a) of subdivision three of section
9 fifty-one hundred five of this article that is located outside the state
10 shall not be considered an out-of-state service and shall be covered as
11 otherwise provided in this article.

12 13. "Participating provider" means any individual or entity that is a
13 health care provider qualified under subdivision three of section
14 fifty-one hundred five of this article that provides health care
15 services to members under the program, or a health care organization.

16 14. "Affordable care act" means the federal patient protection and
17 affordable care act, public law 111-148, as amended by the health care
18 and education reconciliation act of 2010, public law 111-152, and as
19 otherwise amended and any regulations or guidance issued thereunder.

20 15. "Person" means any individual or natural person, trust, partner-
21 ship, association, unincorporated association, corporation, company,
22 limited liability company, proprietorship, joint venture, firm, joint
23 stock association, department, agency, authority, or other legal entity,
24 whether for-profit, not-for-profit or governmental.

25 16. "Program" means the New York Health program created by section
26 fifty-one hundred one of this article.

27 17. "Prescription and non-prescription drugs" means prescription drugs
28 as defined in section two hundred seventy of this chapter, and non-pres-
29 cription smoking cessation products or devices.

30 18. "Resident" means an individual whose primary place of abode is in
31 the state, without regard to the individual's immigration status, as
32 determined according to regulations of the commissioner.

33 § 5101. Program created. 1. The New York Health program is hereby
34 created in the department. The commissioner shall establish and imple-
35 ment the program under this article. The program shall provide compre-
36 hensive health coverage to every resident who enrolls in the program.

37 2. The commissioner shall, to the maximum extent possible, organize,
38 administer and market the program and services as a single program under
39 the name "New York Health" or such other name as the commissioner shall
40 determine, regardless of under which law or source the definition of a
41 benefit is found including (on a voluntary basis) retiree health bene-
42 fits. In implementing this subdivision, the commissioner shall avoid
43 jeopardizing federal financial participation in these programs and shall
44 take care to promote public understanding and awareness of available
45 benefits and programs.

46 3. The commissioner shall determine when individuals may begin enroll-
47 ing in the program. There shall be an implementation period, which shall
48 begin on the date that individuals may begin enrolling in the program
49 and shall end as determined by the commissioner.

50 4. An insurer authorized to provide coverage pursuant to the insurance
51 law or a health maintenance organization certified under this chapter
52 may, if otherwise authorized, offer benefits that do not cover any
53 service for which coverage is offered to individuals under the program,
54 but may not offer benefits that cover any service for which coverage is
55 offered to individuals under the program. Provided, however, that this
56 subdivision shall not prohibit (a) the offering of any benefits to or

1 for individuals, including their families, who are employed or self-em-
2 ployed in the state but who are not residents of the state, or (b) the
3 offering of benefits during the implementation period to individuals who
4 enrolled or may enroll as members of the program, or (c) the offering of
5 retiree health benefits.

6 5. A college, university or other institution of higher education in
7 the state may purchase coverage under the program for any student, or
8 student's dependent, who is not a resident of the state.

9 6. To the extent any provision of this chapter, the social services
10 law or the insurance law:

11 (a) is inconsistent with any provision of this article or the legisla-
12 tive intent of the New York Health Act, this article shall apply and
13 prevail, except where explicitly provided otherwise by this article; and

14 (b) is consistent with the provisions of this article and the legisla-
15 tive intent of the New York Health Act, the provision of that law shall
16 apply.

17 7. The program shall be deemed to be a health care plan for purposes
18 of utilization review and external appeal under article forty-nine of
19 this chapter.

20 8. No member shall be required to receive any health care service
21 through any entity organized, certified or operating under guidelines
22 under article forty-four of this chapter, or specified under section
23 three hundred sixty-four-j of the social services law. No such entity
24 shall receive payment for health care services (other than care coordi-
25 nation) from the program.

26 § 5102. Board of trustees. 1. The New York Health board of trustees is
27 hereby created in the department. The board of trustees shall, at the
28 request of the commissioner, consider any matter to effectuate the
29 provisions and purposes of this article, and may advise the commissioner
30 thereon; and it may, from time to time, submit to the commissioner any
31 recommendations to effectuate the provisions and purposes of this arti-
32 cle. The commissioner may propose regulations under this article and
33 amendments thereto for consideration by the board. The board of trustees
34 shall have no executive, administrative or appointive duties except as
35 otherwise provided by law. The board of trustees shall have power to
36 establish, and from time to time, amend regulations to effectuate the
37 provisions and purposes of this article, subject to approval by the
38 commissioner.

39 2. The board shall be composed of:

40 (a) the commissioner, the superintendent of financial services, and
41 the director of the budget, or their designees, as ex officio members;

42 (b) twenty-six trustees appointed by the governor;

43 (i) six of whom shall be representatives of health care consumer advoca-
44 cacy organizations which have a statewide or regional constituency, who
45 have been involved in activities related to health care consumer advoca-
46 cy, including issues of interest to low- and moderate-income individ-
47 uals;

48 (ii) two of whom shall be representatives of professional organiza-
49 tions representing physicians;

50 (iii) two of whom shall be representatives of professional organiza-
51 tions representing licensed or registered health care professionals
52 other than physicians;

53 (iv) three of whom shall be representatives of general hospitals, one
54 of whom shall be a representative of public general hospitals;

55 (v) one of whom shall be a representative of community health centers;

56 (vi) two of whom shall be representatives of long term care providers;

1 (vii) two of whom shall be representatives of behavioral or mental
2 health care providers;

3 (viii) two of whom shall be representatives of health care organiza-
4 tions;

5 (ix) two of whom shall be representatives of organized labor;

6 (x) two of whom shall have demonstrated expertise in health care
7 finance; and

8 (xi) two of whom shall be employers or representatives of employers
9 who pay the payroll tax under this article, or, prior to the tax becom-
10 ing effective, will pay the tax;

11 (c) fourteen trustees appointed by the governor; five of whom to be
12 appointed on the recommendation of the speaker of the assembly; five of
13 whom to be appointed on the recommendation of the temporary president of
14 the senate; two of whom to be appointed on the recommendation of the
15 minority leader of the assembly; and two of whom to be appointed on the
16 recommendation of the minority leader of the senate.

17 3. After the end of the implementation period, no person shall be a
18 trustee unless he or she is a member of the program, except the ex offi-
19 cio trustees. Each trustee shall serve at the pleasure of the appointing
20 officer, except the ex officio trustees.

21 4. The chair of the board shall be appointed, and may be removed as
22 chair, by the governor from among the trustees. The board shall meet at
23 least four times each calendar year. Meetings shall be held upon the
24 call of the chair and as provided by the board. A majority of the
25 appointed trustees shall be a quorum of the board, and the affirmative
26 vote of a majority of the trustees voting, but not less than ten, shall
27 be necessary for any action to be taken by the board. The board may
28 establish an executive committee to exercise any powers or duties of the
29 board as it may provide, and other committees to assist the board or the
30 executive committee. The chair of the board shall chair the executive
31 committee and shall appoint the chair and members of all other commit-
32 tees. The board of trustees may appoint one or more advisory committees.
33 Members of advisory committees need not be members of the board of trus-
34 tees.

35 5. Trustees shall serve without compensation but shall be reimbursed
36 for their necessary and actual expenses incurred while engaged in the
37 business of the board.

38 6. Notwithstanding any provision of law to the contrary, no officer or
39 employee of the state or any local government shall forfeit or be deemed
40 to have forfeited his or her office or employment by reason of being a
41 trustee.

42 7. The board and its committees and advisory committees may request
43 and receive the assistance of the department and any other state or
44 local governmental entity in exercising its powers and duties.

45 8. No later than two years after the effective date of this article:

46 (a) The board shall develop a proposal, consistent with the principles
47 of this article, for provision by the program of long-term care cover-
48 age, including the development of a proposal, consistent with the prin-
49 ciples of this article, for its funding. In developing the proposal,
50 the board shall consult with an advisory committee, appointed by the
51 chair of the board, including representatives of consumers and potential
52 consumers of long-term care, providers of long-term care, labor, and
53 other interested parties. The board shall present its proposal to the
54 governor and the legislature.

55 (b) The board shall develop proposals for: (i) incorporating retiree
56 health benefits into New York Health; (ii) accommodating employer reti-

1 ree health benefits for people who have been members of New York Health
2 but live as retirees out of the state; and (iii) accommodating employer
3 retiree health benefits for people who earned or accrued such benefits
4 while residing in the state prior to the implementation of New York
5 Health and live as retirees out of the state.

6 (c) The board shall develop a proposal for New York Health coverage of
7 health care services covered under the workers' compensation law,
8 including whether and how to continue funding for those services under
9 that law and whether and how to incorporate an element of experience
10 rating.

11 § 5103. Eligibility and enrollment. 1. Every resident of the state
12 shall be eligible and entitled to enroll as a member under the program.

13 2. No member shall be required to pay any premium or other charge for
14 enrolling in or being a member under the program.

15 3. A newborn child shall be enrolled as of the date of the child's
16 birth if enrollment is done prior to the child's birth or within sixty
17 days after the child's birth.

18 4. The program shall provide for payment for health care services
19 provided to members or individuals entitled to become members who have
20 not had a reasonable opportunity to enroll in the program, including
21 newly arrived residents.

22 § 5104. Benefits. 1. The program shall provide comprehensive health
23 coverage to every member, which shall include all health care services
24 required to be covered under any of the following, without regard to
25 whether the member would otherwise be eligible for or covered by the
26 program or source referred to:

27 (a) child health plus;

28 (b) Medicaid;

29 (c) Medicare;

30 (d) article forty-four of this chapter or article thirty-two or
31 forty-three of the insurance law;

32 (e) article eleven of the civil service law, as of the date one year
33 before the beginning of the implementation period;

34 (f) any cost incurred defined in paragraph one of subsection (a) of
35 section fifty-one hundred two of the insurance law, provided that this
36 coverage shall not replace coverage under article fifty-one of the
37 insurance law; and

38 (g) any additional health care service authorized to be added to the
39 program's benefits by the program;

40 (h) provided that none of the above shall include long term care,
41 until a proposal under paragraph (a) of subdivision eight of section
42 fifty-one hundred two of this article is enacted into law.

43 2. No member shall be required to pay any premium, deductible, co-pay-
44 ment or co-insurance under the program.

45 3. The program shall provide for payment under the program for emer-
46 gency and temporary health care services provided to members or individ-
47 uals entitled to become members who have not had a reasonable opportu-
48 nity to become a member or to enroll with a care coordinator.

49 § 5105. Health care providers; care coordination; payment methodol-
50 ogies. 1. Choice of health care provider. (a) Any health care provider
51 qualified to participate under this section may provide health care
52 services under the program, provided that the health care provider is
53 otherwise legally authorized to perform the health care service for the
54 individual and under the circumstances involved.

55 (b) A member may choose to receive health care services under the
56 program from any participating provider, consistent with provisions of

1 this article relating to care coordination and health care organiza-
2 tions, the willingness or availability of the provider (subject to
3 provisions of this article relating to discrimination), and the appro-
4 prate clinically-relevant circumstances.

5 2. Care coordination.

6 (a) Care coordination shall include, but not be limited to, managing,
7 referring to, locating, coordinating, and monitoring health care
8 services for the member to assure that all medically necessary health
9 care services are made available to and are effectively used by the
10 member in a timely manner, consistent with patient autonomy. Care coor-
11 ordination is not a requirement for prior authorization for health care
12 services and referral shall not be required for a member to receive a
13 health care service.

14 (b) A care coordinator may be an individual or entity that is approved
15 by the program that is:

16 (i) a health care practitioner who is: (A) the member's primary care
17 practitioner; (B) at the option of a female member, the member's provid-
18 er of primary gynecological care; or (C) at the option of a member who
19 has a chronic condition that requires specialty care, a specialist
20 health care practitioner who regularly and continually provides treat-
21 ment for that condition to the member;

22 (ii) an entity licensed under article twenty-eight of this chapter or
23 certified under article thirty-six of this chapter, a managed long term
24 care plan under section forty-four hundred three-f of this chapter or
25 other program model under paragraph (b) of subdivision seven of such
26 section, or, with respect to a member who receives chronic mental health
27 care services, an entity licensed under article thirty-one of the mental
28 hygiene law or other entity approved by the commissioner in consultation
29 with the commissioner of mental health;

30 (iii) a health care organization;

31 (iv) a Taft-Hartley fund, with respect to its members and their family
32 members; provided that this provision shall not preclude a Taft-Hartley
33 fund from becoming a care coordinator under subparagraph (v) of this
34 paragraph or a health care organization under section fifty-one hundred
35 six of this article; or

36 (v) any not-for-profit or governmental entity approved by the program.

37 (c) Health care services provided to a member shall not be subject to
38 payment under the program unless the member is enrolled with a care
39 coordinator at the time the health care service is provided, except
40 where provided under subdivision three of section fifty-one hundred four
41 of this article. Every member shall enroll with a care coordinator that
42 agrees to provide care coordination to the member prior to receiving
43 health care services to be paid for under the program. The member shall
44 remain enrolled with that care coordinator until the member becomes
45 enrolled with a different care coordinator or ceases to be a member.
46 Members have the right to change their care coordinator on terms at
47 least as permissive as the provisions of section three hundred sixty-
48 four-j of the social services law relating to an individual changing his
49 or her primary care provider or managed care provider.

50 (d) Care coordination shall be provided to the member by the member's
51 care coordinator. A care coordinator may employ or utilize the services
52 of other individuals or entities to assist in providing care coordi-
53 nation for the member, consistent with regulations of the commissioner.

54 (e) A health care organization may establish rules relating to care
55 coordination for members in the health care organization, different from
56 this subdivision but otherwise consistent with this article and other

1 applicable laws. Nothing in this subdivision shall authorize any indi-
2 vidual to engage in any act in violation of title eight of the education
3 law.

4 (f) The commissioner shall develop and implement procedures and stand-
5 ards for an individual or entity to be approved to be a care coordinator
6 in the program, including but not limited to procedures and standards
7 relating to the revocation, suspension, limitation, or annulment of
8 approval on a determination that the individual or entity is incompetent
9 to be a care coordinator or has exhibited a course of conduct which is
10 either inconsistent with program standards and regulations or which
11 exhibits an unwillingness to meet such standards and regulations, or is
12 a potential threat to the public health or safety. Such procedures and
13 standards shall not limit approval to be a care coordinator in the
14 program for economic purposes and shall be consistent with good profes-
15 sional practice. In developing the procedures and standards, the commis-
16 sioner shall: (i) consider existing standards developed by national
17 accrediting and professional organizations; and (ii) consult with
18 national and local organizations working on care coordination or similar
19 models, including health care practitioners, hospitals, clinics, and
20 consumers and their representatives. When developing and implementing
21 standards of approval of care coordinators for individuals receiving
22 chronic mental health care services, the commissioner shall consult with
23 the commissioner of mental health. An individual or entity may not be a
24 care coordinator unless the services included in care coordination are
25 within the individual's professional scope of practice or the entity's
26 legal authority.

27 (g) To maintain approval under the program, a care coordinator must:
28 (i) renew its status at a frequency determined by the commissioner; and
29 (ii) provide data to the department as required by the commissioner to
30 enable the commissioner to evaluate the impact of care coordinators on
31 quality, outcomes and cost.

32 3. Health care providers. (a) The commissioner shall establish and
33 maintain procedures and standards for health care providers to be quali-
34 fied to participate in the program, including but not limited to proce-
35 dures and standards relating to the revocation, suspension, limitation,
36 or annulment of qualification to participate on a determination that the
37 health care provider is an incompetent provider of specific health care
38 services or has exhibited a course of conduct which is either inconsist-
39 ent with program standards and regulations or which exhibits an unwill-
40 ingness to meet such standards and regulations, or is a potential threat
41 to the public health or safety. Such procedures and standards shall not
42 limit health care provider participation in the program for economic
43 purposes and shall be consistent with good professional practice. Any
44 health care provider who is qualified to participate under Medicaid,
45 child health plus or Medicare shall be deemed to be qualified to partic-
46 ipate in the program, and any health care provider's revocation, suspen-
47 sion, limitation, or annulment of qualification to participate in any of
48 those programs shall apply to the health care provider's qualification
49 to participate in the program; provided that a health care provider
50 qualified under this sentence shall follow the procedures to become
51 qualified under the program by the end of the implementation period.

52 (b) The commissioner shall establish and maintain procedures and stan-
53 dards for recognizing health care providers located out of the state for
54 purposes of providing coverage under the program for out-of-state health
55 care services.

1 4. Payment for health care services. (a) The commissioner may estab-
2 lish by regulation payment methodologies for health care services and
3 care coordination provided to members under the program by participating
4 providers, care coordinators, and health care organizations. There may
5 be a variety of different payment methodologies, including those estab-
6 lished on a demonstration basis. All payment rates under the program
7 shall be reasonable and reasonably related to the cost of efficiently
8 providing the health care service and assuring an adequate and accessi-
9 ble supply of health care service. Until and unless another payment
10 methodology is established, health care services provided to members
11 under the program shall be paid for on a fee-for-service basis, except
12 for care coordination.

13 (b) The program shall engage in good faith negotiations with health
14 care providers' representatives under title III of article forty-nine of
15 this chapter, including, but not limited to, in relation to rates of
16 payment and payment methodologies.

17 (c) Notwithstanding any provision of law to the contrary, payment for
18 drugs provided by pharmacies under the program shall be made pursuant to
19 title one of article two-A of this chapter. However, the program shall
20 provide for payment for prescription drugs under section 340B of the
21 federal public service act where applicable. Payment for prescription
22 drugs provided by health care providers other than pharmacies shall be
23 pursuant to other provisions of this article.

24 (d) Payment for health care services established under this article
25 shall be considered payment in full. A participating provider shall not
26 charge any rate in excess of the payment established under this article
27 for any health care service under the program provided to a member and
28 shall not solicit or accept payment from any member or third party for
29 any such service except as provided under section fifty-one hundred nine
30 of this article. However, this paragraph shall not preclude the program
31 from acting as a primary or secondary payer in conjunction with another
32 third-party payer where permitted under section fifty-one hundred nine
33 of this article.

34 (e) The program may provide in payment methodologies for payment for
35 capital related expenses for specifically identified capital expendi-
36 tures incurred by not-for-profit or governmental entities certified
37 under article twenty-eight of this chapter. Any capital related expense
38 generated by a capital expenditure that requires or required approval
39 under article twenty-eight of this chapter must have received that
40 approval for the capital related expense to be paid for under the
41 program.

42 (f) Payment methodologies and rates shall include a distinct component
43 of reimbursement for direct and indirect graduate medical education as
44 defined, calculated and implemented pursuant to section twenty-eight
45 hundred seven-c of this chapter.

46 (g) The commissioner shall provide by regulation for payment method-
47 ologies and procedures for paying for out-of-state health care services.

48 § 5106. Health care organizations. 1. A member may choose to enroll
49 with and receive health care services under the program from a health
50 care organization.

51 2. A health care organization shall be a not-for-profit or govern-
52 mental entity that is approved by the commissioner that is:

53 (a) an accountable care organization under article twenty-nine-E of
54 this chapter; or

55 (b) a Taft-Hartley fund (i) with respect to its members and their
56 family members, and (ii) if allowed by applicable law and approved by

1 the commissioner, for other members of the program; provided that the
2 commissioner shall provide by regulation that where a Taft-Hartley fund
3 is acting under this subparagraph there are protections for health care
4 providers and patients comparable to those applicable to accountable
5 care organizations.

6 3. A health care organization may be responsible for all or part of
7 the health care services to which its members are entitled under the
8 program, consistent with the terms of its approval by the commissioner.

9 4. (a) The commissioner shall develop and implement procedures and
10 standards for an entity to be approved to be a health care organization
11 in the program, including but not limited to procedures and standards
12 relating to the revocation, suspension, limitation, or annulment of
13 approval on a determination that the entity is incompetent to be a
14 health care organization or has exhibited a course of conduct which is
15 either inconsistent with program standards and regulations or which
16 exhibits an unwillingness to meet such standards and regulations, or is
17 a potential threat to the public health or safety. Such procedures and
18 standards shall not limit approval to be a health care organization in
19 the program for economic purposes and shall be consistent with good
20 professional practice. In developing the procedures and standards, the
21 commissioner shall: (i) consider existing standards developed by
22 national accrediting and professional organizations; and (ii) consult
23 with national and local organizations working in the field of health
24 care organizations, including health care practitioners, hospitals,
25 clinics, and consumers and their representatives. When developing and
26 implementing standards of approval of health care organizations, the
27 commissioner shall consult with the commissioner of mental health and
28 the commissioner of developmental disabilities.

29 (b) To maintain approval under the program, a health care organization
30 must: (i) renew its status at a frequency determined by the commis-
31 ioner; and (ii) provide data to the department as required by the commis-
32 sioner to enable the commissioner to evaluate the health care organiza-
33 tion in relation to quality of health care services, health care
34 outcomes, and cost.

35 5. The commissioner shall make regulations relating to health care
36 organizations consistent with and to ensure compliance with this arti-
37 cle.

38 6. The provision of health care services directly or indirectly by a
39 health care organization through health care providers shall not be
40 considered the practice of a profession under title eight of the educa-
41 tion law by the health care organization.

42 § 5107. Program standards. 1. The commissioner shall establish
43 requirements and standards for the program and for health care organiza-
44 tions, care coordinators, and health care providers, consistent with
45 this article, including requirements and standards for, as applicable:

46 (a) the scope, quality and accessibility of health care services;

47 (b) relations between health care organizations or health care provid-
48 ers and members; and

49 (c) relations between health care organizations and health care
50 providers, including (i) credentialing and participation in the health
51 care organization; and (ii) terms, methods and rates of payment.

52 2. Requirements and standards under the program shall include, but not
53 be limited to, provisions to promote the following:

54 (a) simplification, transparency, uniformity, and fairness in health
55 care provider credentialing and participation in health care organiza-

1 tion networks, referrals, payment procedures and rates, claims process-
2 ing, and approval of health care services, as applicable;

3 (b) primary and preventive care, care coordination, efficient and
4 effective health care services, quality assurance, coordination and
5 integration of health care services, including use of appropriate tech-
6 nology, and promotion of public, environmental and occupational health;

7 (c) elimination of health care disparities;

8 (d) non-discrimination with respect to members and health care provid-
9 ers on the basis of race, ethnicity, national origin, religion, disabili-
10 ty, age, sex, sexual orientation, gender identity or expression, or
11 economic circumstances; provided that health care services provided
12 under the program shall be appropriate to the patient's clinically-rele-
13 vant circumstances; and

14 (e) accessibility of care coordination, health care organization
15 services and health care services, including accessibility for people
16 with disabilities and people with limited ability to speak or understand
17 English, and the providing of care coordination, health care organiza-
18 tion services and health care services in a culturally competent manner.

19 3. Any participating provider or care coordinator that is organized as
20 a for-profit entity shall be required to meet the same requirements and
21 standards as entities organized as not-for-profit entities, and payments
22 under the program paid to such entities shall not be calculated to
23 accommodate the generation of profit or revenue for dividends or other
24 return on investment or the payment of taxes that would not be paid by a
25 not-for-profit entity.

26 4. Every participating provider shall furnish to the program such
27 information to, and permit examination of its records by, the program,
28 as may be reasonably required for purposes of reviewing accessibility
29 and utilization of health care services, quality assurance, and cost
30 containment, the making of payments, and statistical or other studies of
31 the operation of the program or for protection and promotion of public,
32 environmental and occupational health.

33 5. In developing requirements and standards and making other policy
34 determinations under this article, the commissioner shall consult with
35 representatives of members, health care providers, care coordinators,
36 health care organizations and other interested parties.

37 6. The program shall maintain the confidentiality of all data and
38 other information collected under the program when such data would be
39 normally considered confidential data between a patient and health care
40 provider. Aggregate data of the program which is derived from confiden-
41 tial data but does not violate patient confidentiality shall be public
42 information.

43 § 5108. Regulations. The commissioner may approve regulations and
44 amendments thereto, under subdivision one of section fifty-one hundred
45 two of this article. The commissioner may make regulations or amendments
46 thereto to effectuate the provisions and purposes of this article on an
47 emergency basis under section two hundred two of the state administra-
48 tive procedure act, provided that such regulations or amendments shall
49 not become permanent unless adopted under subdivision one of section
50 fifty-one hundred two of this article.

51 § 5109. Provisions relating to federal health programs. 1. The commis-
52 sioner shall seek all federal waivers and other federal approvals and
53 arrangements and submit state plan amendments necessary to operate the
54 program consistent with this article.

55 2. (a) The commissioner shall apply to the secretary of health and
56 human services or other appropriate federal official for all waivers of

1 requirements, and make other arrangements, under Medicare, any federal-
2 ly-matched public health program, the affordable care act, and any other
3 federal programs that provide federal funds for payment for health care
4 services, that are necessary to enable all New York Health members to
5 receive all benefits under the program through the program to enable the
6 state to implement this article and to receive and deposit all federal
7 payments under those programs (including funds that may be provided in
8 lieu of premium tax credits, cost-sharing subsidies, and small business
9 tax credits) in the state treasury to the credit of the New York Health
10 trust fund created under section eighty-nine-i of the state finance law
11 and to use those funds for the New York Health program and other
12 provisions under this article. To the extent possible, the commissioner
13 shall negotiate arrangements with the federal government in which bulk
14 or lump-sum federal payments are paid to New York Health in place of
15 federal spending or tax benefits for federally-matched health programs
16 or federal health programs.

17 (b) The commissioner may require members or applicants to be members
18 to provide information necessary for the program to comply with any
19 waiver or arrangement under this subdivision.

20 3. (a) If actions taken under subdivision two of this section do not
21 accomplish all results intended under that subdivision, then this subdivi-
22 vision shall apply and shall authorize additional actions to effectively
23 implement New York Health to the maximum extent possible as a single-
24 payer program consistent with this article.

25 (b) The commissioner may take actions consistent with this article to
26 enable New York Health to administer Medicare in New York state and to
27 be a provider of drug coverage under Medicare part D for eligible
28 members of New York Health.

29 (c) The commissioner may waive or modify the applicability of
30 provisions of this section relating to any federally-matched public
31 health program or Medicare as necessary to implement any waiver or
32 arrangement under this section or to maximize the benefit to the New
33 York Health program under this section, provided that the commissioner,
34 in consultation with the director of the budget, shall determine that
35 such waiver or modification is in the best interests of the members
36 affected by the action and the state.

37 (d) The commissioner may apply for coverage under any federally-
38 matched public health program on behalf of any member and enroll the
39 member in the federally-matched public health program or Medicare if the
40 member is eligible for it. Enrollment in a federally-matched public
41 health program or Medicare shall not cause any member to lose any health
42 care service provided by the program or diminish any right the member
43 would otherwise have.

44 (e) The commissioner shall by regulation increase the income eligibil-
45 ity level, increase or eliminate the resource test for eligibility,
46 simplify any procedural or documentation requirement for enrollment, and
47 increase the benefits for any federally-matched public health program,
48 and for any program to reduce or eliminate an individual's coinsurance,
49 cost-sharing or premium obligations or increase an individual's eligi-
50 bility for any federal financial support related to Medicare or the
51 affordable care act notwithstanding any law or regulation to the contra-
52 ry. The commissioner may act under this paragraph upon a finding,
53 approved by the director of the budget, that the action (i) will help to
54 increase the number of members who are eligible for and enrolled in
55 federally-matched public health programs, or for any program to reduce
56 or eliminate an individual's coinsurance, cost-sharing or premium obli-

1 gations or increase an individual's eligibility for any federal finan-
2 cial support related to Medicare or the affordable care act; (ii) will
3 not diminish any individual's access to any health care service or right
4 the individual would otherwise have; (iii) is in the interest of the
5 program; and (iv) does not require or has received any necessary federal
6 waivers or approvals to ensure federal financial participation. Actions
7 under this paragraph shall not apply to eligibility for payment for long
8 term care.

9 (f) To enable the commissioner to apply for coverage under any feder-
10 ally-matched public health program or Medicare on behalf of any member
11 and enroll the member in the federally-matched public health program or
12 Medicare if the member is eligible for it, the commissioner may require
13 that every member or applicant to be a member shall provide information
14 to enable the commissioner to determine whether the applicant is eligi-
15 ble for a federally-matched public health program and for Medicare (and
16 any program or benefit under Medicare). The program shall make a reason-
17 able effort to notify members of their obligations under this paragraph.
18 After a reasonable effort has been made to contact the member, the
19 member shall be notified in writing that he or she has sixty days to
20 provide such required information. If such information is not provided
21 within the sixty day period, the member's coverage under the program may
22 be terminated.

23 (g) As a condition of continued eligibility for health care services
24 under the program, a member who is eligible for benefits under Medicare
25 shall enroll in Medicare, including parts A, B and D.

26 (h) The program shall provide premium assistance for all members
27 enrolling in a Medicare part D drug coverage under section 1860D of
28 Title XVIII of the federal social security act limited to the low-income
29 benchmark premium amount established by the federal centers for Medicare
30 and Medicaid services and any other amount which such agency establishes
31 under its de minimis premium policy, except that such payments made on
32 behalf of members enrolled in a Medicare advantage plan may exceed the
33 low-income benchmark premium amount if determined to be cost effective
34 to the program.

35 (i) If the commissioner has reasonable grounds to believe that a
36 member could be eligible for an income-related subsidy under section
37 1860D-14 of Title XVIII of the federal social security act, the member
38 shall provide, and authorize the program to obtain, any information or
39 documentation required to establish the member's eligibility for such
40 subsidy, provided that the commissioner shall attempt to obtain as much
41 of the information and documentation as possible from records that are
42 available to him or her.

43 (j) The program shall make a reasonable effort to notify members of
44 their obligations under this subdivision. After a reasonable effort has
45 been made to contact the member, the member shall be notified in writing
46 that he or she has sixty days to provide such required information. If
47 such information is not provided within the sixty day period, the
48 member's coverage under the program may be terminated.

49 § 5110. Additional provisions. 1. The commissioner shall contract
50 with not-for-profit organizations to provide:

51 (a) consumer assistance to individuals with respect to selection of a
52 care coordinator or health care organization, enrolling, obtaining
53 health care services, disenrolling, and other matters relating to the
54 program;

55 (b) health care provider assistance to health care providers providing
56 and seeking or considering whether to provide, health care services

1 under the program, with respect to participating in a health care organ-
2 ization and dealing with a health care organization; and

3 (c) care coordinator assistance to individuals and entities providing
4 and seeking or considering whether to provide, care coordination to
5 members.

6 2. The commissioner shall provide grants from funds in the New York
7 Health trust fund or otherwise appropriated for this purpose, to health
8 systems agencies under section twenty-nine hundred four-b of this chap-
9 ter to support the operation of such health systems agencies.

10 3. The commissioner shall provide funds from the New York Health trust
11 fund or otherwise appropriated for this purpose to the commissioner of
12 labor for a program for retraining and assisting job transition for
13 individuals employed or previously employed in the field of health
14 insurance and other third-party payment for health care or providing
15 services to health care providers to deal with third-party payers for
16 health care, whose jobs may be or have been ended as a result of the
17 implementation of the New York Health program, consistent with otherwise
18 applicable law.

19 4. The commissioner shall, directly and through grants to not-for-pro-
20 fit entities, conduct programs using data collected through the New York
21 Health program, to promote and protect public, environmental and occupa-
22 tional health, including cooperation with other data collection and
23 research programs of the department, consistent with this article and
24 otherwise applicable law.

25 § 5111. Regional advisory councils. 1. The New York Health regional
26 advisory councils (each referred to in this article as a "regional advi-
27 sory council") are hereby created in the department.

28 2. There shall be a regional advisory council established in each of
29 the following regions:

30 (a) Long Island, consisting of Nassau and Suffolk counties;

31 (b) New York City;

32 (c) Hudson Valley, consisting of Delaware, Dutchess, Orange, Putnam,
33 Rockland, Sullivan, Ulster, Westchester counties;

34 (d) Northern, consisting of Albany, Clinton, Columbia, Essex, Frank-
35 lin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga,
36 Schenectady, Schoharie, Warren, Washington counties;

37 (e) Central, consisting of Broome, Cayuga, Chemung, Chenango, Cort-
38 land, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Oneida,
39 Onondaga, Ontario, Oswego, Schuyler, Seneca, St. Lawrence, Steuben,
40 Tioga, Tompkins, Wayne, Yates counties; and

41 (f) Western, consisting of Allegany, Cattaraugus, Chautauqua, Erie,
42 Genesee, Niagara, Orleans, Wyoming counties.

43 3. Each regional advisory council shall be composed of not fewer than
44 twenty-seven members, as determined by the commissioner and the board,
45 as necessary to appropriately represent the diverse needs and concerns
46 of the region. Members of a regional advisory council shall be residents
47 of or have their principal place of business in the region served by the
48 regional advisory council.

49 4. Appointment of members of the regional advisory councils.

50 (a) The twenty-seven members shall be appointed as follows:

51 (i) nine members shall be appointed by the governor;

52 (ii) six members shall be appointed by the governor on the recommenda-
53 tion of the speaker of the assembly;

54 (iii) six members shall be appointed by the governor on the recommen-
55 dation of the temporary president of the senate;

1 (iv) three members shall be appointed by the governor on the recommen-
2 dation of the minority leader of the assembly; and

3 (v) three members shall be appointed by the governor on the recommen-
4 dation of the minority leader of the senate. Where a regional advisory
5 council has more than twenty-seven members, the additional members shall
6 be appointed and recommended by these officials in the same proportion
7 as the twenty-seven members.

8 Where a regional advisory council has more than twenty-seven members,
9 additional members shall be appointed and recommended by these officials
10 in the same proportion as the twenty-seven members.

11 (b) Regional advisory council membership shall include but not be
12 limited to:

13 (i) representatives of health care consumer advocacy organizations
14 with a regional constituency, who shall represent at least one third of
15 the membership of each regional council;

16 (ii) representatives of professional organizations representing physi-
17 cians;

18 (iii) representatives of professional organizations representing
19 health care professionals other than physicians;

20 (iv) representatives of general hospitals, including public hospitals;

21 (v) representatives of community health centers;

22 (vi) representatives of health care organizations;

23 (vii) representatives of organized labor; and

24 (viii) representatives of municipal and county government.

25 5. Members of a regional advisory council shall be appointed for terms
26 of three years provided, however, that of the members first appointed,
27 one-third shall be appointed for one year terms and one-third shall be
28 appointed for two year terms. Vacancies shall be filled in the same
29 manner as original appointments for the remainder of any unexpired term.
30 No person shall be an appointed member of a regional advisory council
31 for more than six years in any period of twelve consecutive years.

32 6. Members of the regional advisory councils shall serve without
33 compensation but shall be reimbursed for their necessary and actual
34 expenses incurred while engaged in the business of the advisory coun-
35 cils. The program shall provide financial support for such expenses and
36 other expenses of the regional advisory councils.

37 7. Each regional advisory council shall meet at least quarterly. Each
38 regional advisory council may form committees to assist it in its work.
39 Members of a committee need not be members of the regional advisory
40 council. The New York City regional advisory council shall form a
41 committee for each borough of New York City, to assist the regional
42 advisory council in its work as it relates particularly to that borough.

43 8. Each regional advisory council shall advise the commissioner, the
44 board, the governor and the legislature on all matters relating to the
45 development and implementation of the New York Health program.

46 9. Each regional advisory council shall adopt, and from time to time
47 revise, a community health improvement plan for its region for the
48 purpose of:

49 (a) promoting the delivery of health care services in the region,
50 improving the quality and accessibility of care, including cultural
51 competency, clinical integration of care between service providers
52 including but not limited to physical, mental, and behavioral health,
53 physical and developmental disability services, and long-term care;

54 (b) facility and health services planning in the region;

55 (c) identifying gaps in regional health care services; and

1 (d) promoting increased public knowledge and responsibility regarding
2 the availability and appropriate utilization of health care services.
3 Each community health improvement plan shall be submitted to the commis-
4 sioner and the board and shall be posted on the department's website.

5 10. Each regional advisory council shall hold at least four public
6 hearings annually on matters relating to the New York Health program and
7 the development and implementation of the community health improvement
8 plan.

9 11. Each regional advisory council shall publish an annual report to
10 the commissioner and the board on the progress of the community health
11 improvement plan. These reports shall be posted on the department's
12 website.

13 12. All meetings of the regional advisory councils and committees
14 shall be subject to article six of the public officers law.

15 § 4. Financing of New York Health. 1. The governor shall submit to the
16 legislature a revenue plan and legislative bills to implement the plan
17 (referred to collectively in this section as the "revenue proposal") to
18 provide the revenue necessary to finance the New York Health program, as
19 created by article 51 of the public health law (referred to in this
20 section as the "program"), taking into consideration anticipated federal
21 revenue available for the program. The revenue proposal shall be submit-
22 ted to the legislature as part of the executive budget under article VII
23 of the state constitution, for the fiscal year commencing on the first
24 day of April in the calendar year after this act shall become a law. In
25 developing the revenue proposal, the governor shall consult with appro-
26 priate officials of the executive branch; the temporary president of the
27 senate; the speaker of the assembly; the chairs of the fiscal and health
28 committees of the senate and assembly; and representatives of business,
29 labor, consumers and local government.

30 2. (a) Basic structure. The basic structure of the revenue proposal
31 shall be as follows: Revenue for the program shall come from two premi-
32 ums (referred to collectively in this section as the "premiums"). First,
33 there shall be a progressively graduated premium on all payroll and
34 self-employed income (referred to in this section as the "payroll premi-
35 um"), paid by employers, employees and self-employed, similar to the
36 Medicare tax. Higher brackets of income subject to this premium shall be
37 assessed at a higher marginal rate than lower brackets. Second, there
38 shall be a progressively graduated premium on taxable income (such as
39 interest, dividends, and capital gains) not subject to the payroll
40 premium (referred to in this section as the "non-payroll premium"). The
41 premiums will be set at levels anticipated to produce sufficient revenue
42 to finance the program and other provisions of article 51 of the public
43 health law, to be scaled up as enrollment grows, taking into consider-
44 ation anticipated federal revenue available for the program. Provision
45 shall be made for state residents (who are eligible for the program) who
46 are employed out-of-state, and non-residents (who are not eligible for
47 the program) who are employed in the state.

48 (b) Payroll premium. The income to be subject to the payroll premium
49 shall be all income subject to the Medicare tax. The premium shall be
50 set at a percentage of that income, which shall be progressively gradu-
51 ated, so the percentage is higher on higher brackets of income. For
52 employed individuals, the employer shall pay eighty percent of the
53 premium and the employee shall pay twenty percent of the premium, except
54 that an employer may agree to pay all or part of the employee's share.
55 A self-employed individual shall pay the full premium.

1 (c) Non-payroll income premium. There shall be a premium on upper-
2 bracket taxable personal income that is not subject to the payroll
3 premium. It shall be set at a percentage of that income, which shall be
4 progressively graduated, so the percentage is higher on higher brackets
5 of income.

6 (d) Phased-in rates. Early in the program, when enrollment is growing,
7 the amount of the premiums shall be at an appropriate level, and shall
8 be raised as anticipated enrollment grows, to cover the actual cost of
9 the program and other provisions of article 51 of the public health law.
10 The revenue proposal shall include a mechanism for determining the rates
11 of the premiums.

12 (e) Cross-border employees. (i) State residents employed out-of-state.
13 If an individual is employed out-of-state by an employer that is subject
14 to New York state law, the employer and employee shall be required to
15 pay the payroll premium as to that employee as if the employment were in
16 the state. If an individual is employed out-of-state by an employer that
17 is not subject to New York state law, either (A) the employer and
18 employee shall voluntarily comply with the premium or (B) the employee
19 shall pay the premium as if he or she were self-employed.

20 (ii) Out-of-state residents employed in the state. (A) The payroll
21 premium shall apply to any out-of-state resident who is employed or
22 self-employed in the state. (B) In the case of an out-of-state resident
23 who is employed or self-employed in the state, such individual and indi-
24 vidual's employer shall be able to take a credit against the payroll
25 premiums they would otherwise pay, as to the individual for amounts they
26 spend on health benefits for the individual that would otherwise be
27 covered by the program if the individual were a member of the program.
28 For employers, the credit shall be available regardless of the form of
29 the health benefit (e.g., health insurance, a self-insured plan, direct
30 services, or reimbursement for services), to make sure that the revenue
31 proposal does not relate to employment benefits in violation of the
32 federal ERISA. For non-employment-based spending by individuals, the
33 credit shall be available for and limited to spending for health cover-
34 age (not out-of-pocket health spending). The credit shall be available
35 without regard to how little is spent or how sparse the benefit. The
36 credit may only be taken against the payroll premiums. Any excess amount
37 may not be applied to other tax liability. For employment-based health
38 benefits, the credit shall be distributed between the employer and
39 employee in the same proportion as the spending by each for the benefit.
40 The employer and employee may each apply their respective portion of the
41 credit to their respective portion of the premium. If any provision of
42 this clause or any application of it shall be ruled to violate federal
43 ERISA, the provision or the application of it shall be null and void and
44 the ruling shall not affect any other provision or application of this
45 section or the act that enacted it.

46 3. The revenue proposal shall include a plan and legislative
47 provisions for ending the requirement for local social services
48 districts to pay part of the cost of Medicaid and replacing those
49 payments with revenue from the premiums under the revenue proposal.

50 4. To the extent that the revenue proposal differs from the terms of
51 subdivision two of this section, the revenue proposal shall state how it
52 differs from those terms and reasons for and the effects of the differ-
53 ences.

54 5. All revenue from the premiums shall be deposited in the New York
55 Health trust fund account under section 89-i of the state finance law.

1 § 5. Article 49 of the public health law is amended by adding a new
2 title 3 to read as follows:

3 TITLE III
4 COLLECTIVE NEGOTIATIONS BY HEALTH CARE PROVIDERS WITH
5 NEW YORK HEALTH

6 Section 4920. Definitions.

7 4921. Collective negotiation authorized.

8 4922. Collective negotiation requirements.

9 4923. Requirements for health care providers' representative.

10 4924. Certain collective action prohibited.

11 4925. Fees.

12 4926. Confidentiality.

13 4927. Severability and construction.

14 § 4920. Definitions. For purposes of this title:

15 1. "New York Health" means the program under article fifty-one of this
16 chapter.

17 2. "Person" means an individual, association, corporation, or any
18 other legal entity.

19 3. "Health care providers' representative" means a third party that is
20 authorized by health care providers to negotiate on their behalf with
21 New York Health over terms and conditions affecting those health care
22 providers.

23 4. "Strike" means a work stoppage in part or in whole, direct or indi-
24 rect, by a body of workers to gain compliance with demands made on an
25 employer.

26 5. "Health care provider" means a person who is licensed, certified,
27 registered or authorized to practice a health care profession pursuant
28 to title eight of the education law and who practices that profession as
29 a health care provider as an independent contractor or who is an owner,
30 officer, shareholder, or proprietor of a health care provider; or an
31 entity that employs or utilizes health care providers to provide health
32 care services, including but not limited to a hospital licensed under
33 article twenty-eight of this chapter or an accountable care organization
34 under article twenty-nine-E of this chapter. A health care provider
35 under title eight of the education law who practices as an employee of a
36 health care provider shall not be deemed a health care provider for
37 purposes of this title.

38 § 4921. Collective negotiation authorized. 1. Health care providers
39 may meet and communicate for the purpose of collectively negotiating
40 with New York Health on any matter relating to New York Health, includ-
41 ing but not limited to rates of payment and payment methodologies.

42 2. Nothing in this section shall be construed to allow or authorize an
43 alteration of the terms of the internal and external review procedures
44 set forth in law.

45 3. Nothing in this section shall be construed to allow a strike of New
46 York Health by health care providers.

47 4. Nothing in this section shall be construed to allow or authorize
48 terms or conditions which would impede the ability of New York Health to
49 obtain or retain accreditation by the national committee for quality
50 assurance or a similar body or to comply with applicable state or feder-
51 al law.

52 § 4922. Collective negotiation requirements. 1. Collective negotiation
53 rights granted by this title must conform to the following requirements:

54 (a) health care providers may communicate with other health care
55 providers regarding the terms and conditions to be negotiated with New
56 York Health;

1 (b) health care providers may communicate with health care providers'
2 representatives;

3 (c) a health care providers' representative is the only party author-
4 ized to negotiate with New York Health on behalf of the health care
5 providers as a group;

6 (d) a health care provider can be bound by the terms and conditions
7 negotiated by the health care providers' representatives; and

8 (e) in communicating or negotiating with the health care providers'
9 representative, New York Health is entitled to offer and provide differ-
10 ent terms and conditions to individual competing health care providers.

11 2. Nothing in this title shall affect or limit the right of a health
12 care provider or group of health care providers to collectively petition
13 a government entity for a change in a law, rule, or regulation.

14 3. Nothing in this title shall affect or limit collective action or
15 collective bargaining on the part of any health care provider with his
16 or her employer or any other lawful collective action or collective
17 bargaining.

18 § 4923. Requirements for health care providers' representative. Before
19 engaging in collective negotiations with New York Health on behalf of
20 health care providers, a health care providers' representative shall
21 file with the commissioner, in the manner prescribed by the commis-
22 ioner, information identifying the representative, the representative's
23 plan of operation, and the representative's procedures to ensure compli-
24 ance with this title.

25 § 4924. Certain collective action prohibited. 1. This title is not
26 intended to authorize competing health care providers to act in concert
27 in response to a health care providers' representative's discussions or
28 negotiations with New York Health except as authorized by other law.

29 2. No health care providers' representative shall negotiate any agree-
30 ment that excludes, limits the participation or reimbursement of, or
31 otherwise limits the scope of services to be provided by any health care
32 provider or group of health care providers with respect to the perform-
33 ance of services that are within the health care provider's scope of
34 practice, license, registration, or certificate.

35 § 4925. Fees. Each person who acts as the representative of negotiat-
36 ing parties under this title shall pay to the department a fee to act as
37 a representative. The commissioner, by rule, shall set fees in amounts
38 deemed reasonable and necessary to cover the costs incurred by the
39 department in administering this title.

40 § 4926. Confidentiality. All reports and other information required to
41 be reported to the department under this title shall not be subject to
42 disclosure under article six of the public officers law or article thir-
43 ty-one of the civil practice law and rules.

44 § 4927. Severability and construction. If any provision or application
45 of this title shall be held to be invalid, or to violate or be incon-
46 sistent with any applicable federal law or regulation, that shall not
47 affect other provisions or applications of this title which can be given
48 effect without that provision or application; and to that end, the
49 provisions and applications of this title are severable. The provisions
50 of this title shall be liberally construed to give effect to the
51 purposes thereof.

52 § 6. Subdivision 11 of section 270 of the public health law, as
53 amended by section 2-a of part C of chapter 58 of the laws of 2008, is
54 amended to read as follows:

55 11. "State public health plan" means the medical assistance program
56 established by title eleven of article five of the social services law

1 (referred to in this article as "Medicaid"), the elderly pharmaceutical
2 insurance coverage program established by title three of article two of
3 the elder law (referred to in this article as "EPIC"), and the [~~family
4 health plus program established by section three hundred sixty-nine-ee
5 of the social services law to the extent that section provides that the
6 program shall be subject to this article~~] New York Health program estab-
7 lished by article fifty-one of this chapter.

8 § 7. The state finance law is amended by adding a new section 89-i to
9 read as follows:

10 § 89-i. New York Health trust fund. 1. There is hereby established in
11 the joint custody of the state comptroller and the commissioner of taxa-
12 tion and finance a special revenue fund to be known as the "New York
13 Health trust fund", hereinafter known as "the fund". The definitions in
14 section fifty-one hundred of the public health law shall apply to this
15 section.

16 2. The fund shall consist of:

17 (a) all monies obtained from premiums pursuant to legislation enacted
18 as proposed under section three of the New York Health act;

19 (b) federal payments received as a result of any waiver of require-
20 ments granted or other arrangements agreed to by the United States
21 secretary of health and human services or other appropriate federal
22 officials for health care programs established under Medicare, any
23 federally-matched public health program, or the affordable care act;

24 (c) the amounts paid by the department of health that are equivalent
25 to those amounts that are paid on behalf of residents of this state
26 under Medicare, any federally-matched public health program, or the
27 affordable care act for health benefits which are equivalent to health
28 benefits covered under New York Health;

29 (d) federal and state funds for purposes of the provision of services
30 authorized under title XX of the federal social security act that would
31 otherwise be covered under article fifty-one of the public health law;
32 and

33 (e) state monies that would otherwise be appropriated to any govern-
34 mental agency, office, program, instrumentality or institution which
35 provides health services, for services and benefits covered under New
36 York Health. Payments to the fund pursuant to this paragraph shall be in
37 an amount equal to the money appropriated for such purposes in the
38 fiscal year beginning immediately preceding the effective date of the
39 New York Health act.

40 3. Monies in the fund shall only be used for purposes established
41 under article fifty-one of the public health law.

42 § 8. Temporary commission on implementation. 1. There is hereby estab-
43 lished a temporary commission on implementation of the New York Health
44 program, hereinafter to be known as the commission, consisting of
45 fifteen members: five members, including the chair, shall be appointed
46 by the governor; four members shall be appointed by the temporary presi-
47 dent of the senate, one member shall be appointed by the senate minority
48 leader; four members shall be appointed by the speaker of the assembly,
49 and one member shall be appointed by the assembly minority leader. The
50 commissioner of health, the superintendent of financial services, and
51 the commissioner of taxation and finance, or their designees shall serve
52 as non-voting ex-officio members of the commission.

53 2. Members of the commission shall receive such assistance as may be
54 necessary from other state agencies and entities, and shall receive
55 necessary expenses incurred in the performance of their duties. The

1 commission may employ staff as needed, prescribe their duties, and fix
2 their compensation within amounts appropriated for the commission.

3 3. The commission shall examine the laws and regulations of the state
4 and make such recommendations as are necessary to conform the laws and
5 regulations of the state and article 51 of the public health law estab-
6 lishing the New York Health program and other provisions of law relating
7 to the New York Health program, and to improve and implement the
8 program. The commission shall report its recommendations to the governor
9 and the legislature. The commission shall immediately begin development
10 of proposals consistent with the principles of this article for
11 provision of long-term care coverage; health care services covered under
12 the workers' compensation law; and incorporation of retiree health bene-
13 fits, as described in paragraphs (a), (b) and (c) of subdivision 8 of
14 section 5102 of the public health law. The commission shall provide its
15 work product and assistance to the board established pursuant to section
16 5102 of the public health law upon completion of the appointment of the
17 board.

18 § 9. Severability. If any provision or application of this act shall
19 be held to be invalid, or to violate or be inconsistent with any appli-
20 cable federal law or regulation, that shall not affect other provisions
21 or applications of this act which can be given effect without that
22 provision or application; and to that end, the provisions and applica-
23 tions of this act are severable.

24 § 10. This act shall take effect immediately.