

STATE OF NEW YORK

3577

2019-2020 Regular Sessions

IN SENATE

February 11, 2019

Introduced by Sens. RIVERA, RAMOS, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, CARLUCCI, COMRIE, HARCKHAM, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, MAY, MONTGOMERY, MYRIE, PERSAUD, SALAZAR, SANDERS, SEPULVEDA, SERRANO -- 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. Millions of New Yorkers do not get the health care
13 they need or face financial obstacles and hardships to get it. That is
14 not acceptable. There is no plan other than the New York health act
15 that will enable New York state to meet that need. New Yorkers - as
16 individuals, employers, and taxpayers - have experienced a rise in the
17 cost of health care and coverage in recent years, including rising
18 premiums, deductibles and co-pays, restricted provider networks and high
19 out-of-network charges. Many New Yorkers go without health care because
20 they cannot afford it or suffer financial hardship to get it. Busi-
21 nesses have also experienced increases in the costs of health care bene-

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

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fits for their employees, and many employers are shifting a larger share of the cost of coverage to their employees or dropping coverage entirely. Including long-term services and supports (LTSS) in New York Health is a major step forward for older adults, people with disabilities, and their families. Older adults and people with disabilities often cannot receive the services necessary to stay in the community or other LTSS. Even when older adults and people with disabilities receive LTSS, especially services in the community, it is often at the cost of unreasonable demands on unpaid family caregivers, depleting their own or family resources, or impoverishing themselves to qualify for public coverage. Health care providers are also affected by inadequate health coverage in New York state. A large portion of hospitals, health centers and other providers now experience substantial losses due to the provision of care that is uncompensated. Individuals often find that they are deprived of affordable care and choice because of decisions by health plans guided by the plan's economic interests rather than the individual's health care needs. To address the fiscal crisis facing the health care system and the state and to assure New Yorkers can exercise their right to health care, affordable and comprehensive health coverage must be provided. Pursuant to the state constitution's charge to the legislature to provide for the health of New Yorkers, this legislation is an enactment of state concern for the purpose of establishing a comprehensive universal guaranteed health care coverage program and a health care cost control system for the benefit of all residents of the state of New York.

2. (a) It is the intent of the Legislature to create the New York Health program to provide a universal single payer health plan for every New Yorker, funded by broad-based revenue based on ability to pay. The legislature intends that federal waivers and approvals be sought where they will improve the administration of the New York Health program, but the legislature intends that the program be implemented even in the absence of such waivers or approvals. The state shall work to obtain waivers and other approvals relating to Medicaid, Child Health Plus, Medicare, the Affordable Care Act, and any other appropriate federal programs, under which federal funds and other subsidies that would otherwise be paid to New York State, New Yorkers, and health care providers for health coverage that will be equaled or exceeded by New York Health will be paid by the federal government to New York State and deposited in the New York Health trust fund, or paid to health care providers and individuals in combination with New York Health trust fund payments, and for other program modifications (including elimination of cost sharing and insurance premiums). Under such waivers and approvals, health coverage under those programs will, to the maximum extent possible, be replaced and merged into New York Health, which will operate as a true single-payer program.

(b) If any necessary waiver or approval is not obtained, the state shall use state plan amendments and seek waivers and approvals to maximize, and make as seamless as possible, the use of federally-matched health programs and federal health programs in New York Health. Thus, even where other programs such as Medicaid or Medicare may contribute to paying for care, it is the goal of this legislation that the coverage will be delivered by New York Health and, as much as possible, the multiple sources of funding will be pooled with other New York Health funds and not be apparent to New York Health members or participating providers.

(c) This program will promote movement away from fee-for-service payment, which tends to reward quantity and requires excessive administrative expense, and towards alternate payment methodologies, such as global or capitated payments to providers or health care organizations, that promote quality, efficiency, investment in primary and preventive care, and innovation and integration in the organizing of health care.

(d) The program shall promote the use of clinical data to improve the quality of health care and public health, consistent with protection of patient confidentiality. The program shall maximize patient autonomy in choice of health care providers and health care decision making. Care coordination within the program shall ensure management and coordination among a patient's health care services, consistent with patient autonomy and person-centered service planning, rather than acting as a gatekeeper to needed services.

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

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

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

ARTICLE 51

NEW YORK HEALTH

Section 5100. Definitions.

5101. Program created.

5102. Board of trustees.

5103. Eligibility and enrollment.

5104. Benefits.

5105. Health care providers; care coordination; payment methodologies.

5106. Health care organizations.

5107. Program standards.

5108. Regulations.

5109. Provisions relating to federal health programs.

5110. Additional provisions.

5111. Regional advisory councils.

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

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

2. "Care coordination" means, but is not limited to, managing, referring to, locating, coordinating, and monitoring health care services for the member to assure that all medically necessary health care services are made available to and are effectively used by the member in a timely manner, consistent with patient autonomy. Care coordination does not

1 include a requirement for prior authorization for health care services
2 or for referral for a member to receive a health care service.

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

6 4. "Federally-matched public health program" means the medical assist-
7 ance program under title eleven of article five of the social services
8 law, the basic health program under section three hundred sixty-nine-gg
9 of the social services law, and the child health plus program under
10 title one-A of article twenty-five of this chapter.

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

14 6. "Health care provider" means any individual or entity legally
15 authorized to provide a health care service under Medicaid or Medicare
16 or this article. "Health care professional" means a health care provider
17 that is an individual licensed, certified, registered or otherwise
18 authorized to practice under title eight of the education law to provide
19 such health care service, acting within his or her lawful scope of prac-
20 tice.

21 7. "Health care service" means any health care service, including care
22 coordination, included as a benefit under the program.

23 8. "Implementation period" means the period under subdivision three of
24 section fifty-one hundred one of this article during which the program
25 will be subject to special eligibility and financing provisions until it
26 is fully implemented under that section.

27 10. "Medicaid" or "medical assistance" means title eleven of article
28 five of the social services law and the program thereunder. "Child
29 health plus" means title one-A of article twenty-five of this chapter
30 and the program thereunder. "Medicare" means title XVIII of the federal
31 social security act and the programs thereunder. "Affordable care act"
32 means the federal patient protection and affordable care act, public law
33 111-148, as amended by the health care and education reconciliation act
34 of 2010, public law 111-152, and as otherwise amended and any regu-
35 lations or guidance issued thereunder. "Basic health program" means
36 section three hundred sixty-nine-gg of the social services law and the
37 program thereunder.

38 11. "Member" means an individual who is enrolled in the program.

39 12. "New York Health", "New York Health program", and "program" mean
40 the New York Health program created by section fifty-one hundred one of
41 this article.

42 13. "New York Health trust fund" means the New York Health trust fund
43 established under section eighty-nine-j of the state finance law.

44 14. "Out-of-state health care service" means a health care service
45 provided to a member while the member is temporarily out of the state
46 and (a) it is medically necessary that the health care service be
47 provided while the member is out of the state, or (b) it is clinically
48 appropriate that the health care service be provided by a particular
49 health care provider located out of the state rather than in the state.
50 However, any health care service provided to a New York Health enrollee
51 by a health care provider qualified under paragraph (a) of subdivision
52 three of section fifty-one hundred five of this article that is located
53 outside the state shall not be considered an out-of-state service and
54 shall be covered as otherwise provided in this article.

55 15. "Participating provider" means any individual or entity that is a
56 health care provider qualified under subdivision three of section

fifty-one hundred five of this article that provides health care services to members under the program, or a health care organization.

16. "Person" means any individual or natural person, trust, partnership, association, unincorporated association, corporation, company, limited liability company, proprietorship, joint venture, firm, joint stock association, department, agency, authority, or other legal entity, whether for-profit, not-for-profit or governmental.

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

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

§ 5101. Program created. 1. The New York Health program is hereby created in the department. The commissioner shall establish and implement the program under this article. The program shall provide comprehensive health coverage to every resident who enrolls in the program.

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

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

4. An insurer authorized to provide coverage pursuant to the insurance law or a health maintenance organization certified under this chapter may, if otherwise authorized, offer benefits that do not cover any service for which coverage is offered to individuals under the program, but may not offer benefits that cover any service for which coverage is offered to individuals under the program. Provided, however, that this subdivision shall not prohibit (a) the offering of any benefits to or for individuals, including their families, who are employed or self-employed in the state but who are not residents of the state, or (b) the offering of benefits during the implementation period to individuals who enrolled or may enroll as members of the program, or (c) the offering of retiree health benefits.

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

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

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

(b) is consistent with the provisions of this article and the legislative intent of the New York Health Act, the provision of that law shall apply.

7. The program shall be deemed to be a health care plan for purposes of utilization review and external appeal under article forty-nine of this chapter. An enrollee may designate a person or entity, including,

1 but not limited to, a representative of the enrollee's care coordinator,
2 a health care organization providing the service under review or appeal,
3 or a labor union or Taft-Hartley fund of which such enrollee or
4 enrollee's family member is a member to serve as the enrollee's designee
5 for purposes of that article, if the person or entity agrees to be the
6 designee.

7 8. (a) No member shall be required to receive any health care service
8 through any entity organized, certified or operating under guidelines
9 under article forty-four of this chapter, or specified under section
10 three hundred sixty-four-j of the social services law, the insurance law
11 or the elder law. No such entity shall receive payment for health care
12 services (other than care coordination) from the program.

13 (b) However, this subdivision shall not preclude the use of a Medicare
14 managed care ("Medicare advantage") entity or other entity created by or
15 under the direction of the program where reasonably necessary to maxi-
16 mize federal financial participation or other federal financial support
17 under any federally-matched public health program, Medicare or the
18 Affordable Care Act. Any entity under this paragraph shall, to the maxi-
19 mum extent feasible, operate in the background, without burden on or
20 interference with the member and health care provider, without depriving
21 the member or health care provider of any right or benefit under the
22 program and otherwise consistent with this article.

23 9. The program shall include provisions for an appropriate reserve
24 fund.

25 10. (a) This subdivision applies to every person who is a retiree of a
26 public employer, as defined in section two hundred one of the civil
27 service law, and any person who is a beneficiary of the retiree's public
28 employee retiree health benefit. Any reference to the retiree shall mean
29 and include any beneficiary of the retiree. This subdivision does not
30 create or increase any eligibility for any public employee retiree
31 health benefit that would not otherwise exist and does not diminish any
32 public employee retiree health benefit.

33 (b) This paragraph applies to the retiree while he or she is a resi-
34 dent of New York state. The retiree shall enroll in the program. If, by
35 the implementation date, the retiree has not enrolled in the program,
36 the appropriate public employee retirement system and the commissioner
37 shall enroll the retiree in the New York Health program. If the
38 retiree's public employee retiree health benefit includes any service
39 for which coverage is not offered under the New York Health program, the
40 retiree shall continue to receive that benefit from the public employee
41 retirement program.

42 (c) For every retiree, while he or she is not a resident of New York
43 state, the appropriate public employee retirement system shall maintain
44 the retiree's public employee retiree health benefit as if this article
45 had not been enacted.

46 § 5102. Board of trustees. 1. The New York Health board of trustees is
47 hereby created in the department. The board of trustees shall, at the
48 request of the commissioner, consider any matter to effectuate the
49 provisions and purposes of this article, and may advise the commissioner
50 thereon; and it may, from time to time, submit to the commissioner any
51 recommendations to effectuate the provisions and purposes of this arti-
52 cle. The commissioner may propose regulations under this article and
53 amendments thereto for consideration by the board. The board of trustees
54 shall have no executive, administrative or appointive duties except as
55 otherwise provided by law. The board of trustees shall have power to
56 establish, and from time to time, amend regulations to effectuate the

1 provisions and purposes of this article, subject to approval by the
2 commissioner.

3 2. The board shall be composed of:

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

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

7 (i) six of whom shall be representatives of health care consumer advo-
8 cacy organizations which have a statewide or regional constituency, who
9 have been involved in issues of interest to low- and moderate-income
10 individuals, older adults, and people with disabilities; at least three
11 of whom shall represent organizations led by consumers in those groups;

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

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

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

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

20 (vi) two of whom shall be representatives of rehabilitation or home
21 care providers;

22 (vii) two of whom shall be representatives of behavioral or mental
23 health or disability service providers;

24 (viii) two of whom shall be representatives of health care organiza-
25 tions;

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

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

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

32 (c) fourteen trustees appointed by the governor; five of whom to be
33 appointed on the recommendation of the speaker of the assembly; five of
34 whom to be appointed on the recommendation of the temporary president of
35 the senate; two of whom to be appointed on the recommendation of the
36 minority leader of the assembly; and two of whom to be appointed on the
37 recommendation of the minority leader of the senate.

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

42 4. The chair of the board shall be appointed, and may be removed as
43 chair, by the governor from among the trustees. The board shall meet at
44 least four times each calendar year. Meetings shall be held upon the
45 call of the chair and as provided by the board. A majority of the
46 appointed trustees shall be a quorum of the board, and the affirmative
47 vote of a majority of the trustees voting, but not less than ten, shall
48 be necessary for any action to be taken by the board. The board may
49 establish an executive committee to exercise any powers or duties of the
50 board as it may provide, and other committees to assist the board or the
51 executive committee. The chair of the board shall chair the executive
52 committee and shall appoint the chair and members of all other commit-
53 tees. The board of trustees may appoint one or more advisory committees.
54 Members of advisory committees need not be members of the board of trus-
55 tees.

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

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

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

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

12 (a) The board shall develop proposals for: (i) incorporating retiree
13 health benefits into New York Health; (ii) accommodating employer reti-
14 ree health benefits for people who have been members of New York Health
15 but live as retirees out of the state; and (iii) accommodating employer
16 retiree health benefits for people who earned or accrued such benefits
17 while residing in the state prior to the implementation of New York
18 Health and live as retirees out of the state. The board shall present
19 its proposals to the governor and the legislature.

20 (b) The board shall develop a proposal for New York Health coverage of
21 health care services covered under the workers' compensation law,
22 including whether and how to continue funding for those services under
23 that law and whether and how to incorporate an element of experience
24 rating.

25 § 5103. Eligibility and enrollment. 1. Every resident of the state
26 shall be eligible and entitled to enroll as a member under the program.

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

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

32 § 5104. Benefits. 1. The program shall provide comprehensive health
33 coverage to every member, which shall include all health care services
34 required to be covered under any of the following, without regard to
35 whether the member would otherwise be eligible for or covered by the
36 program or source referred to:

37 (a) child health plus;

38 (b) Medicaid;

39 (c) Medicare;

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

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

44 (f) any cost incurred defined in paragraph one of subsection (a) of
45 section fifty-one hundred two of the insurance law, provided that this
46 coverage shall not replace coverage under article fifty-one of the
47 insurance law;

48 (g) any additional health care service authorized to be added to the
49 program's benefits by the program; and

50 (h) provided that where any state law or regulation related to any
51 federally-matched public health program states that a benefit is contin-
52 gent on federal financial participation, or words to that effect, the
53 benefit shall be included under the New York Health program without
54 regard to federal financial participation.

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

1 3. The program shall provide for payment under the program for:

2 (a) emergency and temporary health care services provided to a member
3 or individual entitled to become a member who has not had a reasonable
4 opportunity to become a member or to enroll with a care coordinator; and

5 (b) health care services provided in an emergency to an individual who
6 is entitled to become a member or enrolled with a care coordinator,
7 regardless of having had an opportunity to do so.

8 § 5105. Health care providers; care coordination; payment methodol-
9 ogies. 1. Choice of health care provider. (a) Any health care provider
10 qualified to participate under this section may provide health care
11 services under the program, provided that the health care provider is
12 otherwise legally authorized to perform the health care service for the
13 individual and under the circumstances involved.

14 (b) A member may choose to receive health care services under the
15 program from any participating provider, consistent with provisions of
16 this article relating to care coordination and health care organiza-
17 tions, the willingness or availability of the provider (subject to
18 provisions of this article relating to discrimination), and the appro-
19 priate clinically-relevant circumstances.

20 2. Care coordination. (a) A care coordinator may be an individual or
21 entity that is approved by the program that is:

22 (i) a health care practitioner who is: (A) the member's primary care
23 practitioner; (B) at the option of a female member, the member's provid-
24 er of primary gynecological care; or (C) at the option of a member who
25 has a chronic condition that requires specialty care, a specialist
26 health care practitioner who regularly and continually provides treat-
27 ment for that condition to the member;

28 (ii) an entity licensed under article twenty-eight of this chapter or
29 certified under article thirty-six of this chapter, or, with respect to
30 a member who receives chronic mental health care services, an entity
31 licensed under article thirty-one of the mental hygiene law or other
32 entity approved by the commissioner in consultation with the commission-
33 er of mental health;

34 (iii) a health care organization;

35 (iv) a Taft-Hartley fund or labor union, with respect to its members
36 and their family members; provided that this provision shall not
37 preclude a Taft-Hartley fund or labor union from becoming a care coordi-
38 nator under subparagraph (v) of this paragraph or a health care organ-
39 ization under section fifty-one hundred six of this article; or

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

41 (b)(i) Every member shall enroll with a care coordinator that agrees
42 to provide care coordination to the member prior to receiving health
43 care services to be paid for under the program. Health care services
44 provided to a member shall not be subject to payment under the program
45 unless the member is enrolled with a care coordinator at the time the
46 health care service is provided.

47 (ii) This paragraph shall not apply to health care services provided
48 under subdivision three of section fifty-one hundred four of this arti-
49 cle.

50 (iii) The member shall remain enrolled with that care coordinator
51 until the member becomes enrolled with a different care coordinator or
52 ceases to be a member. Members have the right to change their care coor-
53 dinator on terms at least as permissive as the provisions of section
54 three hundred sixty-four-j of the social services law relating to an
55 individual changing his or her primary care provider or managed care
56 provider.

1 (c) Care coordination shall be provided to the member by the member's
2 care coordinator. A care coordinator may employ or utilize the services
3 of other individuals or entities to assist in providing care coordi-
4 nation for the member, consistent with regulations of the commissioner.

5 (d) A health care organization may establish rules relating to care
6 coordination for members in the health care organization, different from
7 this subdivision but otherwise consistent with this article and other
8 applicable laws.

9 (e) The commissioner shall develop and implement procedures and stand-
10 ards for an individual or entity to be approved to be a care coordinator
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 individual or entity is not compe-
14 tent to be a care coordinator or has exhibited a course of conduct which
15 is 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 care coordinator in the
19 program for economic purposes and shall be consistent with good profes-
20 sional practice. In developing the procedures and standards, the commis-
21 sioner shall: (i) consider existing standards developed by national
22 accrediting and professional organizations; and (ii) consult with
23 national and local organizations working on care coordination or similar
24 models, including health care practitioners, hospitals, clinics, and
25 consumers and their representatives. When developing and implementing
26 standards of approval of care coordinators for individuals receiving
27 chronic mental health care services, the commissioner shall consult with
28 the commissioner of mental health. An individual or entity may not be a
29 care coordinator unless the services included in care coordination are
30 within the individual's professional scope of practice or the entity's
31 legal authority.

32 (f) To maintain approval under the program, a care coordinator must:
33 (i) renew its status at a frequency determined by the commissioner; and
34 (ii) provide data to the department as required by the commissioner to
35 enable the commissioner to evaluate the impact of care coordinators on
36 quality, outcomes and cost.

37 (g) Nothing in this subdivision shall authorize any individual to
38 engage in any act in violation of title eight of the education law.

39 3. Health care providers. (a) The commissioner shall establish and
40 maintain procedures and standards for health care providers to be quali-
41 fied to participate in the program, including but not limited to proce-
42 dures and standards relating to the revocation, suspension, limitation,
43 or annulment of qualification to participate on a determination that the
44 health care provider is not competent to be a provider of specific
45 health care services or has exhibited a course of conduct which is
46 either inconsistent with program standards and regulations or which
47 exhibits an unwillingness to meet such standards and regulations, or is
48 a potential threat to the public health or safety. Such procedures and
49 standards shall not limit health care provider participation in the
50 program for economic purposes and shall be consistent with good profes-
51 sional practice. Such procedures and standards may be different for
52 different types of health care providers and health care professionals.
53 Any health care provider who is qualified to participate under Medicaid,
54 child health plus or Medicare shall be deemed to be qualified to partici-
55 ipate in the program, and any health care provider's revocation, suspen-
56 sion, limitation, or annulment of qualification to participate in any of

1 those programs shall apply to the health care provider's qualification
2 to participate in the program; provided that a health care provider
3 qualified under this sentence shall follow the procedures to become
4 qualified under the program by the end of the implementation period.

5 (b) The commissioner shall establish and maintain procedures and stan-
6 dards for recognizing health care providers located out of the state for
7 purposes of providing coverage under the program for out-of-state health
8 care services.

9 (c) Procedures and standards under this subdivision shall include
10 provisions for expedited temporary qualification to participate in the
11 program for health care professionals who are (i) temporarily authorized
12 to practice in the state or (ii) are recently arrived in the state or
13 recently authorized to practice in the state.

14 4. Payment for health care services. (a) The commissioner may estab-
15 lish by regulation payment methodologies for health care services and
16 care coordination provided to members under the program by participating
17 providers, care coordinators, and health care organizations. There may
18 be a variety of different payment methodologies, including those estab-
19 lished on a demonstration basis. All payment rates under the program
20 shall be reasonable and reasonably related to the cost of efficiently
21 providing the health care service and assuring an adequate and accessi-
22 ble supply of the health care service. Until and unless another payment
23 methodology is established, health care services provided to members
24 under the program shall be paid for on a fee-for-service basis, except
25 for care coordination.

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

30 (c) Notwithstanding any provision of law to the contrary, payment for
31 drugs provided by pharmacies under the program shall be made pursuant to
32 title one of article two-A of this chapter. However, the program shall
33 provide for payment for prescription drugs under section 340B of the
34 federal public service act where applicable. Payment for prescription
35 drugs provided by health care providers other than pharmacies shall be
36 pursuant to other provisions of this article.

37 (d) Payment for health care services established under this article
38 shall be considered payment in full. A participating provider shall not
39 charge any rate in excess of the payment established under this article
40 for any health care service provided under the program and shall not
41 solicit or accept payment from any member or third party for any such
42 service except as provided under section fifty-one hundred nine of this
43 article. However, this paragraph shall not preclude the program from
44 acting as a primary or secondary payer in conjunction with another
45 third-party payer where permitted under section fifty-one hundred nine
46 of this article.

47 (e) The program may provide in payment methodologies for payment for
48 capital related expenses for specifically identified capital expendi-
49 tures incurred by not-for-profit or governmental entities certified
50 under article twenty-eight of this chapter. Any capital related expense
51 generated by a capital expenditure that requires or required approval
52 under article twenty-eight of this chapter must have received that
53 approval for the capital related expense to be paid for under the
54 program.

55 (f) Payment methodologies and rates shall include a distinct component
56 of reimbursement for direct and indirect graduate medical education as

1 defined, calculated and implemented pursuant to section twenty-eight
2 hundred seven-c of this chapter.

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

5 5. Prior authorization. The program shall not require prior authori-
6 zation for any health care service in any manner more restrictive of
7 access to or payment for the service than would be required for the
8 service under Medicare Part A or Part B. Prior authorization for
9 prescription drugs provided by pharmacies under the program shall be
10 under title one of article two-A of this chapter.

11 § 5106. Health care organizations. 1. A member may choose to enroll
12 with and receive health care services under the program from a health
13 care organization.

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

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

18 (b) a Taft-Hartley fund (i) with respect to its members and their
19 family members, and (ii) if allowed by applicable law and approved by
20 the commissioner, for other members of the program.

21 3. A health care organization may be responsible for providing all or
22 part of the health care services to which its members are entitled under
23 the program, consistent with the terms of its approval by the commis-
24 sioner.

25 4. (a) The commissioner shall develop and implement procedures and
26 standards for an entity to be approved to be a health care organization
27 in the program, including but not limited to procedures and standards
28 relating to the revocation, suspension, limitation, or annulment of
29 approval on a determination that the entity is not competent to be a
30 health care organization or has exhibited a course of conduct which is
31 either inconsistent with program standards and regulations or which
32 exhibits an unwillingness to meet such standards and regulations, or is
33 a potential threat to the public health or safety. Such procedures and
34 standards shall not limit approval to be a health care organization in
35 the program for economic purposes and shall be consistent with good
36 professional practice. In developing the procedures and standards, the
37 commissioner shall: (i) consider existing standards developed by
38 national accrediting and professional organizations; and (ii) consult
39 with national and local organizations working in the field of health
40 care organizations, including health care practitioners, hospitals,
41 clinics, long-term supports and service providers, consumers and their
42 representatives and labor organizations representing health care work-
43 ers. When developing and implementing standards of approval of health
44 care organizations, the commissioner shall consult with the commissioner
45 of mental health, the commissioner of developmental disabilities, the
46 director of the state office for the aging and the commissioner of the
47 office of alcoholism and substance abuse services.

48 (b) To maintain approval under the program, a health care organization
49 must: (i) renew its status at a frequency determined by the commis-
50 sioner; and (ii) provide data to the department as required by the commis-
51 sioner to enable the commissioner to evaluate the health care organiza-
52 tion in relation to quality of health care services, health care
53 outcomes, and cost.

54 5. The commissioner shall make regulations relating to health care
55 organizations consistent with and to ensure compliance with this arti-
56 cle.

6. The provision of health care services directly or indirectly by a health care organization through health care providers shall not be considered the practice of a profession under title eight of the education law by the health care organization.

§ 5107. Program standards. 1. The commissioner shall establish requirements and standards for the program and for health care organizations, care coordinators, and health care providers, consistent with this article, including requirements and standards for, as applicable:

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

(b) relations between health care organizations or health care providers and members; and

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

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

(a) simplification, transparency, uniformity, and fairness in health care provider credentialing and participation in health care organization networks, referrals, payment procedures and rates, claims processing, and approval of health care services, as applicable;

(b) primary and preventive care, care coordination, efficient and effective health care services, quality assurance, coordination and integration of health care services, including use of appropriate technology, and promotion of public, environmental and occupational health;

(c) elimination of health care disparities;

(d) non-discrimination with respect to members and health care providers on the basis of race, ethnicity, national origin, religion, disability, age, sex, sexual orientation, gender identity or expression, or economic circumstances; provided that health care services provided under the program shall be appropriate to the patient's clinically-relevant circumstances;

(e) accessibility of care coordination, health care organization services and health care services, including accessibility for people with disabilities and people with limited ability to speak or understand English, and the providing of care coordination, health care organization services and health care services in a culturally competent manner; and

(f) especially in relation to long-term supports and services, the maximization and prioritization of the most integrated community-based supports and services.

3. Any participating provider or care coordinator that is organized as a for-profit entity (other than a professional practice of one or more health care professionals) shall be required to meet the same requirements and standards as entities organized as not-for-profit entities, and payments under the program paid to such entities shall not be calculated to accommodate the generation of profit or revenue for dividends or other return on investment or the payment of taxes that would not be paid by a not-for-profit entity.

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

1 5. In developing requirements and standards and making other policy
2 determinations under this article, the commissioner shall consult with
3 representatives of members, health care providers, care coordinators,
4 health care organizations employers, organized labor including repre-
5 sentatives of health care workers, and other interested parties.

6 6. The program shall maintain the security and confidentiality of all
7 data and other information collected under the program when such data
8 would be normally considered confidential patient data. Aggregate data
9 of the program which is derived from confidential data but does not
10 violate patient confidentiality shall be public information including
11 for purposes of article six of the public officers law.

12 § 5108. Regulations. The commissioner may make regulations under this
13 article by approving regulations and amendments thereto, under subdivi-
14 sion one of section fifty-one hundred two of this article. The commis-
15 sioner may make regulations or amendments thereto under this article on
16 an emergency basis under section two hundred two of the state adminis-
17 trative procedure act, provided that such regulations or amendments
18 shall not become permanent unless adopted under subdivision one of
19 section fifty-one hundred two of this article.

20 § 5109. Provisions relating to federal health programs. 1. The commis-
21 sioner shall seek all federal waivers and other federal approvals and
22 arrangements and submit state plan amendments necessary to operate the
23 program consistent with this article to the maximum extent possible.

24 2. (a) The commissioner shall apply to the secretary of health and
25 human services or other appropriate federal official for all waivers of
26 requirements, and make other arrangements, under Medicare, any federal-
27 ly-matched public health program, the affordable care act, and any other
28 federal programs that provide federal funds for payment for health care
29 services, that are necessary to enable all New York Health members to
30 receive all benefits under the program through the program to enable the
31 state to implement this article and to receive and deposit all federal
32 payments under those programs (including funds that may be provided in
33 lieu of premium tax credits, cost-sharing subsidies, and small business
34 tax credits) in the state treasury to the credit of the New York Health
35 trust fund and to use those funds for the New York Health program and
36 other provisions under this article. To the extent possible, the commis-
37 sioner shall negotiate arrangements with the federal government in which
38 bulk or lump-sum federal payments are paid to New York Health in place
39 of federal spending or tax benefits for federally-matched health
40 programs or federal health programs. The commissioner shall take
41 actions under paragraph (b) of subdivision eight of section fifty-one
42 hundred one of this article as reasonably necessary.

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

46 3. (a) The commissioner may take actions consistent with this article
47 to enable New York Health to administer Medicare in New York state, to
48 create a Medicare managed care plan ("Medicare Advantage") that would
49 operate consistent with this article, and to be a provider of drug
50 coverage under Medicare part D for eligible members of New York Health.

51 (b) The commissioner may waive or modify the applicability of
52 provisions of this section relating to any federally-matched public
53 health program or Medicare as necessary to implement any waiver or
54 arrangement under this section or to maximize the benefit to the New
55 York Health program under this section, provided that the commissioner,
56 in consultation with the director of the budget, shall determine that

1 such waiver or modification is in the best interests of the members
2 affected by the action and the state.

3 (c) The commissioner may apply for coverage under any federally-
4 matched public health program on behalf of any member and enroll the
5 member in the federally-matched public health program or Medicare if the
6 member is eligible for it. Enrollment in a federally-matched public
7 health program or Medicare shall not cause any member to lose any health
8 care service provided by the program or diminish any right the member
9 would otherwise have.

10 (d) The commissioner shall by regulation increase the income eligibil-
11 ity level, increase or eliminate the resource test for eligibility,
12 simplify any procedural or documentation requirement for enrollment, and
13 increase the benefits for any federally-matched public health program,
14 and for any program to reduce or eliminate an individual's coinsurance,
15 cost-sharing or premium obligations or increase an individual's eligi-
16 bility for any federal financial support related to Medicare or the
17 affordable care act notwithstanding any law or regulation to the contra-
18 ry. The commissioner may act under this paragraph upon a finding,
19 approved by the director of the budget, that the action (i) will help to
20 increase the number of members who are eligible for and enrolled in
21 federally-matched public health programs, or for any program to reduce
22 or eliminate an individual's coinsurance, cost-sharing or premium obli-
23 gations or increase an individual's eligibility for any federal finan-
24 cial support related to Medicare or the affordable care act; (ii) will
25 not diminish any individual's access to any health care service, benefit
26 or right the individual would otherwise have; (iii) is in the interest
27 of the program; and (iv) does not require or has received any necessary
28 federal waivers or approvals to ensure federal financial participation.

29 (e) To enable the commissioner to apply for coverage or financial
30 support under any federally-matched public health program, the Afforda-
31 ble Care Act, or Medicare on behalf of any member and enroll the member
32 in any such program, including an entity under paragraph (b) of subdivi-
33 sion eight of section fifty-one hundred one of this article if the
34 member is eligible for it, the commissioner may require that every
35 member or applicant to be a member shall provide information to enable
36 the commissioner to determine whether the applicant is eligible for such
37 program. The program shall make a reasonable effort to notify members
38 of their obligations under this paragraph. After a reasonable effort has
39 been made to contact the member, the member shall be notified in writing
40 that he or she has sixty days to provide such required information. If
41 such information is not provided within the sixty day period, the
42 member's coverage under the program may be terminated.

43 (f) To the extent necessary for purposes of this section, as a condi-
44 tion of continued eligibility for health care services under the
45 program, a member who is eligible for benefits under Medicare shall
46 enroll in Medicare, including parts A, B and D.

47 (g) The program shall provide premium assistance for all members
48 enrolling in a Medicare part D drug coverage under section 1860D of
49 Title XVIII of the federal social security act limited to the low-income
50 benchmark premium amount established by the federal centers for Medicare
51 and Medicaid services and any other amount which such agency establishes
52 under its de minimis premium policy, except that such payments made on
53 behalf of members enrolled in a Medicare advantage plan may exceed the
54 low-income benchmark premium amount if determined to be cost effective
55 to the program.

1 (h) If the commissioner has reasonable grounds to believe that a
2 member could be eligible for an income-related subsidy under section
3 1860D-14 of Title XVIII of the federal social security act, the member
4 shall provide, and authorize the program to obtain, any information or
5 documentation required to establish the member's eligibility for such
6 subsidy, provided that the commissioner shall attempt to obtain as much
7 of the information and documentation as possible from records that are
8 available to him or her.

9 (i) The program shall make a reasonable effort to notify members of
10 their obligations under this subdivision. After a reasonable effort has
11 been made to contact the member, the member shall be notified in writing
12 that he or she has sixty days to provide such required information. If
13 such information is not provided within the sixty day period, the
14 member's coverage under the program may be terminated.

15 § 5110. Additional provisions. 1. The commissioner shall contract
16 with not-for-profit organizations to provide:

17 (a) consumer assistance to individuals with respect to selection and
18 changing selection of a care coordinator or health care organization,
19 enrolling, obtaining health care services, and other matters relating to
20 the program;

21 (b) health care provider assistance to health care providers providing
22 and seeking or considering whether to provide, health care services
23 under the program, with respect to participating in a health care organ-
24 ization and dealing with a health care organization; and

25 (c) care coordinator assistance to individuals and entities providing
26 and seeking or considering whether to provide, care coordination to
27 members.

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

32 3. Retraining and re-employment of impacted employees. (a) As used in
33 this subdivision:

34 (i) "Third party payer" means an insurer authorized to provide health
35 coverage under the insurance law, a health maintenance organization
36 under article forty-four of this chapter, a self-insured plan providing
37 health coverage, or any other third party payer for health care
38 services.

39 (ii) "Health care provider administrative employee" means an employee
40 of a health care provider primarily engaged in relations or dealings
41 with third party payers or seeking payment or reimbursement for health
42 care services from third party payers.

43 (iii) "Impacted employee" means an individual who, at any time from
44 the date this section becomes a law until two years after the end of the
45 implementation period, is employed by a third party payer or is a health
46 care provider administrative employee, and whose employment ends as a
47 result of the implementation of the New York Health program.

48 (b) Within ninety days after this section shall become a law, the
49 commissioner of labor shall convene a retraining and re-employment task
50 force including but not limited to: representatives of potential
51 impacted employees, human resource departments of third party payers and
52 health care providers, individuals with experience and expertise in
53 retraining and re-employment programs relevant to the circumstances of
54 impacted employees, and representatives of the commissioner of labor.
55 The commissioner of labor and the task force shall review and provide:

1 (i) analysis of potential impacted employees by job title and
2 geography;

3 (ii) competency mapping and labor market analysis of impacted employee
4 occupations with job openings; and

5 (iii) establishment of regional retraining and re-employment systems,
6 including but not limited to job boards, outplacement services, job
7 search services, career advisement services, and retraining advisement,
8 to be coordinated with the regional advisory councils established under
9 section fifty-one hundred eleven of this article.

10 (c) (i) Three or more impacted employees, a recognized union of work-
11 ers including impacted employees, or an employer of impacted employees
12 may file a petition with the commissioner of labor to certify such
13 employees as being impacted employees.

14 (ii) Impacted employees shall be eligible for:

15 (A) up to two years of retraining at any training provider approved by
16 the commissioner of labor; and

17 (B) up to two years of unemployment benefits, provided that the
18 impacted employee is enrolled in a department of labor approved training
19 program, is actively seeking employment, and is not currently employed
20 full time; provided, however, that such impacted employee may maintain
21 unemployment benefits for up to two years even if he or she does not
22 meet the criteria set forth in this clause but is sixty-three years of
23 age or older at the time of loss of employment as an impacted employee.

24 (d) The commissioner shall provide funds from the New York Health
25 trust fund or otherwise appropriated for this purpose to the commission-
26 er of labor for retraining and re-employment programs for impacted
27 employees under this subdivision.

28 (e) The commissioner of labor shall make regulations and take other
29 actions reasonably necessary to implement this subdivision. This subdi-
30 vision shall be implemented consistent with applicable law and regu-
31 lations.

32 4. The commissioner shall, directly and through grants to not-for-pro-
33 fit entities, conduct programs using data collected through the New York
34 Health program, to promote and protect the quality of health care
35 services, patient outcomes, and public, environmental and occupational
36 health, including cooperation with other data collection and research
37 programs of the department, consistent with this article, the protection
38 of the security and confidentiality of individually identifiable patient
39 information, and otherwise applicable law.

40 § 5111. Regional advisory councils. 1. The New York Health regional
41 advisory councils (each referred to in this article as a "regional advi-
42 sory council") are hereby created in the department.

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

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

46 (b) New York City;

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

49 (d) Northern, consisting of Albany, Clinton, Columbia, Essex, Frank-
50 lin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Montgomery,
51 Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence,
52 Warren, Washington counties;

53 (e) Central, consisting of Broome, Cayuga, Chemung, Chenango, Cort-
54 land, Livingston, Madison, Monroe, Oneida, Onondaga, Ontario, Oswego,
55 Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Yates counties; and

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

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

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

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

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

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

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

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

18 (v) three members shall be appointed by the governor on the recommen-
19 dation of the minority leader of the senate.

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

23 (b) Regional advisory council membership shall include but not be
24 limited to:

25 (i) representatives of organizations with a regional constituency that
26 advocate for health care consumers, older adults, and people with disa-
27 bilities including organizations led by members of those groups, who
28 shall constitute at least one third of the membership of each regional
29 council;

30 (ii) representatives of professional organizations representing physi-
31 cians;

32 (iii) representatives of professional organizations representing
33 health care professionals other than physicians;

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

35 (v) representatives of community health centers;

36 (vi) representatives of mental health, behavioral health (including
37 substance use), physical disability, developmental disability, rehabili-
38 tation, home care and other service providers;

39 (vii) representatives of women's health service providers;

40 (viii) representatives of health care organizations;

41 (ix) representatives of organized labor including representatives of
42 health care workers;

43 (x) representatives of employers; and

44 (xi) representatives of municipal and county government.

45 5. Members of a regional advisory council shall be appointed for terms
46 of three years provided, however, that of the members first appointed,
47 one-third shall be appointed for one year terms and one-third shall be
48 appointed for two year terms. Vacancies shall be filled in the same
49 manner as original appointments for the remainder of any unexpired term.
50 No person shall be a member of a regional advisory council for more than
51 six years in any period of twelve consecutive years.

52 6. Members of the regional advisory councils shall serve without
53 compensation but shall be reimbursed for their necessary and actual
54 expenses incurred while engaged in the business of the advisory coun-
55 cils. The program shall provide financial support for such expenses and
56 other expenses of the regional advisory councils.

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

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

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

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

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

(c) identifying gaps in regional health care services;

(d) promoting increased public knowledge and responsibility regarding the availability and appropriate utilization of health care services. Each community health improvement plan shall be submitted to the commissioner and the board and shall be posted on the department's website;

(e) identifying needs in professional and service personnel required to deliver health care services; and

(f) coordinating regional implementation of retraining and re-employment programs for impacted employees under subdivision three of section fifty-one hundred ten of this article.

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

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

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

§ 4. Financing of New York Health. 1. The governor shall submit to the legislature a revenue plan and legislative bills to implement the plan (referred to collectively in this section as the "revenue proposal") to provide the revenue necessary to finance the New York Health program, as created by article 51 of the public health law and all provisions of that article (referred to in this section as the "program"), taking into consideration anticipated federal revenue available for the program. The revenue proposal shall be submitted to the legislature as part of the executive budget under article VII of the state constitution, for the fiscal year commencing on the first day of April in the calendar year after this act shall become a law. In developing the revenue proposal, the governor shall consult with appropriate officials of the executive branch; the temporary president of the senate; the speaker of the assembly; the chairs of the fiscal and health committees of the senate and assembly; and representatives of business, labor, consumers and local government.

2. (a) Basic structure. The basic structure of the revenue proposal shall be as follows: Revenue for the program shall come from two taxes (referred to collectively in this section as the "taxes"). First, there shall be a progressively graduated tax on all payroll and self-employed income (referred to in this section as the "payroll tax"), paid by employers, employees and self-employed individuals. Second, there shall be a progressively graduated tax on taxable income (such as interest, dividends, and capital gains) not subject to the payroll tax (referred to in this section as the "non-payroll tax"). Income in the bracket below twenty-five thousand dollars per year shall be exempt from the taxes. Higher brackets of income subject to the taxes shall be assessed at a higher marginal rate than lower brackets. The taxes shall be set at levels anticipated to produce sufficient revenue to finance the program, to be scaled up as enrollment grows, taking into consideration anticipated federal revenue available for the program. Provision shall be made for state residents (who are eligible for the program) who are employed out-of-state, and non-residents (who are not eligible for the program) who are employed in the state.

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

(c) Non-payroll income tax. There shall be a tax on income that is subject to the personal income tax under article 22 of the tax law and is not subject to the payroll tax. It shall be set at a percentage of that income, which shall be progressively graduated, so the percentage is higher on higher brackets of income.

(d) Phased-in rates. Early in the program, when enrollment is growing, the amount of the taxes shall be at an appropriate level, and shall be changed as anticipated enrollment grows, to cover the actual cost of the program. The revenue proposal shall include a mechanism for determining the rates of the taxes.

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

(ii) Out-of-state residents employed in the state. (A) The payroll tax shall apply to any out-of-state resident who is employed or self-employed in the state. (B) In the case of an out-of-state resident who is employed or self-employed in the state, such individual and individual's employer shall be able to take a credit against the payroll taxes each would otherwise pay as to that individual for amounts they spend respectively on health benefits for the individual that would otherwise be covered by the program if the individual were a member of the program. For the employer, the credit shall be available regardless of the form of the health benefit (e.g., health insurance, a self-insured plan, direct services, or reimbursement for services), to make sure that the revenue proposal does not relate to employment benefits in violation of

the federal ERISA. For non-employment-based spending by the individual, the credit shall be available for and limited to spending for health coverage (not out-of-pocket health spending). The credit shall be available without regard to how little is spent or how sparse the benefit. The credit may only be taken against the payroll tax. Any excess amount may not be applied to other tax liability. The credit shall be distributed between the employer and employee in the same proportion as the spending by each for the benefit and may be applied to their respective portion of the tax. (C) If any provision of this subparagraph or any application of it shall be ruled to violate federal ERISA, the provision or the application of it shall be null and void and the ruling shall not affect any other provision or application of this section or the act that enacted it.

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

(b) The taxes under this section shall not supplant the spending of other state revenue to pay for the Medicaid program as it exists as of the enactment of the revenue proposal as amended, unless the revenue proposal as amended provides otherwise.

4. To the extent that the revenue proposal differs from the terms of subdivision two or paragraph (b) of subdivision three of this section, the revenue proposal shall state how it differs from those terms and reasons for and the effects of the differences.

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

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

TITLE III

COLLECTIVE NEGOTIATIONS BY HEALTH CARE PROVIDERS WITH NEW YORK HEALTH

Section 4920. Definitions.

4921. Collective negotiation authorized.

4922. Collective negotiation requirements.

4923. Requirements for health care providers' representative.

4924. Mediation.

4925. Certain collective action prohibited.

4926. Fees.

4927. Confidentiality.

4928. Severability and construction.

§ 4920. Definitions. For purposes of this title:

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

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

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

4. "Strike" means a work stoppage in part or in whole, direct or indirect, by a body of workers to gain compliance with demands made on an employer.

5. "Health care provider" means a health care provider under article fifty-one of this chapter. A health care professional as defined in article fifty-one of this chapter who practices as an employee or inde-

pendent contractor of another health care provider shall not be deemed a health care provider for purposes of this title.

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

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

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

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

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

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

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

(c) a health care providers' representative is the only party authorized to negotiate with New York Health on behalf of the health care providers as a group;

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

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

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

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

§ 4923. Requirements for health care providers' representative. Before engaging in collective negotiations with New York Health on behalf of health care providers, a health care providers' representative shall file with the commissioner, in the manner prescribed by the commissioner, information identifying the representative, the representative's plan of operation, and the representative's procedures to ensure compliance with this title.

§ 4924. Mediation. 1. In the event the commissioner determines that an impasse exists in the negotiations, the commissioner shall render assistance as follows:

(a) to assist the parties to effect a voluntary resolution of the negotiations, the commissioner shall appoint a mediator who is mutually acceptable to both the health care providers' representative and the representative of New York Health. If the mediator is successful in resolving the impasse, then the health care providers' representative shall proceed as set forth in this article;

(b) if an impasse continues, the commissioner shall appoint a fact-finding board of not more than three members, who are mutually accepta-

ble to both the health care providers' representative and the representative of New York Health. The fact-finding board shall have, in addition to the powers delegated to it by the board, the power to make recommendations for the resolution of the dispute;

(c) the fact-finding board, acting by a majority of its members, shall transmit its findings of fact and recommendations for resolution of the dispute to the commissioner, and may thereafter assist the parties to effect a voluntary resolution of the dispute. The fact-finding board shall also share its findings of fact and recommendations with the health care providers' representative and the representative of New York Health. If within twenty days after the submission of the findings of fact and recommendations, the impasse continues, the commissioner shall order a resolution to the negotiations based upon the findings of fact and recommendations submitted by the fact-finding board.

§ 4925. Certain collective action prohibited. 1. This title is not intended to authorize competing health care providers to act in concert in response to a health care providers' representative's discussions or negotiations with New York Health except as authorized by other law.

2. No health care providers' representative shall negotiate any agreement that excludes, limits the participation or reimbursement of, or otherwise limits the scope of services to be provided by any health care provider or group of health care providers with respect to the performance of services that are within the health care provider's lawful scope or terms of practice, license, registration, or certificate.

§ 4926. Fees. Each person who acts as the representative of negotiating parties under this title shall pay to the department a fee to act as a representative. The commissioner, by regulation, shall set fees in amounts deemed reasonable and necessary to cover the costs incurred by the department in administering this title.

§ 4927. Confidentiality. All reports and other information required to be reported to the department under this title shall not be subject to disclosure under article six of the public officers law.

§ 4928. Severability and construction. If any provision or application of this title shall be held to be invalid, or to violate or be inconsistent with any applicable federal law or regulation, that shall not affect other provisions or applications of this title which can be given effect without that provision or application; and to that end, the provisions and applications of this title are severable. The provisions of this title shall be liberally construed to give effect to the purposes thereof.

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

11. "State public health plan" means the medical assistance program established by title eleven of article five of the social services law (referred to in this article as "Medicaid"), the elderly pharmaceutical insurance coverage program established by title three of article two of the elder law (referred to in this article as "EPIC"), and the ~~family health plus program established by section three hundred sixty-nine-ee of the social services law to the extent that section provides that the program shall be subject to this article~~ New York Health program established by article fifty-one of this chapter.

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

§ 89-j. New York Health trust fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxa-

tion and finance a special revenue fund to be known as the "New York Health trust fund", referred to in this section as "the fund". The definitions in section fifty-one hundred of the public health law shall apply to this section.

2. The fund shall consist of:

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

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

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

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

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

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

§ 8. Temporary commission on implementation. 1. There is hereby established a temporary commission on implementation of the New York Health program, referred to in this section as the commission, consisting of fifteen members: five members, including the chair, shall be appointed by the governor; four members shall be appointed by the temporary president of the senate, one member shall be appointed by the senate minority leader; four members shall be appointed by the speaker of the assembly, and one member shall be appointed by the assembly minority leader. The commissioner of health, the superintendent of financial services, and the commissioner of taxation and finance, or their designees shall serve as non-voting ex-officio members of the commission.

2. Members of the commission shall receive such assistance as may be necessary from other state agencies and entities, and shall receive reasonable and necessary expenses incurred in the performance of their duties. The commission may employ staff as needed, prescribe their duties, and fix their compensation within amounts appropriated for the commission.

3. The commission shall examine the laws and regulations of the state and make such recommendations as are necessary to conform the laws and regulations of the state and article 51 of the public health law establishing the New York Health program and other provisions of law relating to the New York Health program, and to improve and implement the program. The commission shall report its recommendations to the governor and the legislature. The commission shall immediately begin development of proposals consistent with the principles of article 51 of the public health law for provision of health care services covered under the work-

1 ers' compensation law; and incorporation of retiree health benefits, as
2 described in paragraphs (a), (b) and (c) of subdivision 8 of section
3 5102 of the public health law. The commission shall provide its work
4 product and assistance to the board established pursuant to section 5102
5 of the public health law upon completion of the appointment of the
6 board.

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

13 § 10. This act shall take effect immediately.