

2012-13 NEW YORK STATE EXECUTIVE BUDGET

**HEALTH AND MENTAL HYGIENE
ARTICLE VII LEGISLATION**

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Legislative Bill Drafting Commission
12671-01-2

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

BUDGBI

(Enacts into law major components of
legislation necessary to implement
the health and mental hygiene budget
for the 2012-2013 state fiscal plan)

Article VII; health;mental hygien

AN ACT

to amend the public health law, in
relation to requiring the use of
network providers for evaluations or
services under the early inter-
vention program, state aid
reimbursement to municipalities for
respite services, and service coord-
ination; to repeal subdivision 7 of
section 2551 and subdivision 4 of
section 2557 of the public health
law, relating to administering early
intervention services; to amend the

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gallivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart- Cousins
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	s49 Valesky
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s57 Young
s32 Diaz	s36 Hassell- Thompson	s07 Martins	s56 Robach	s03 Zeldin
s17 Dilan		s62 Maziarz	s41 Saland	s27
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	
s31 Espaillat	s04 Johnson	s18 Montgomery	s23 Savino	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a107 Crouch	a095 Jaffee	a052 Millman	a012 Saladino
a092 Abinanti	a014 Curran	a057 Jeffries	a015 Montesano	a113 Sayward
a105 Amedore	a063 Cusick	a135 Johns	a132 Morelle	a029 Scarborough
a084 Arroyo	a045 Cymbrowitz	a112 Jordan	a039 Moya	a016 Schimel
a035 Aubry	a034 DenDekker	a099 Katz	a003 Murray	a140 Schimminger
a124 Barclay	a081 Dinowitz	a074 Kavanagh	a037 Nolan	a064 Silver
a040 Barron	a114 Duprey	a065 Kellner	a128 Oaks	a027 Simanowitz
a082 Benedetto	a004 Englebright	a129 Kolb	a069 O'Donnell	a036 Simotas
a122 Blankenbush	a054 Espinal	a025 Lancman	a051 Ortiz	a146 Smardz
a055 Boyland	a071 Farrell	a091 Latimer	a136 Palmesano	a079 Stevenson
a008 Boyle	a123 Finch	a013 Lavine	a088 Paulin	a011 Sweeney
a026 Braunstein	a007 Fitzpatrick	a050 Lentol	a141 Peoples- Stokes	a110 Tedisco
a044 Brennan	a137 Friend	a125 Lifton	a058 Perry	a115 Tenney
a116 Brindisi	a143 Gabryszak	a072 Linares	a087 Pretlow	a002 Thiele
a131 Bronson	a090 Galef	a127 Lopez, P.	a073 Quart	a061 Titone
a046 Brook-Krasny	a133 Gantt	a053 Lopez, V.	a021 Ra	a031 Titus
a147 Burling	a077 Gibson	a001 Losquadro	a097 Rabbitt	a062 Tobacco
a117 Butler	a149 Giglio	a126 Lupardo	a009 Raia	a148 Walter
a101 Cahill	a066 Glick	a111 Magee	a006 Ramos	a041 Weinstein
a096 Calhoun	a023 Goldfeder	a120 Magnarelli	a134 Reilich	a020 Weisenberg
a043 Camara	a150 Goodell	a059 Maisel	a109 Reilly	a024 Weprin
a106 Canestrari	a075 Gottfried	a060 Malliotakis	a078 Rivera, J.	a070 Wright
a089 Castelli	a005 Graf	a030 Markey	a080 Rivera, N.	a094 Zebrowski
a086 Castro	a098 Gunther	a019 McDonough	a076 Rivera, P.	a093
a138 Ceretto	a130 Hanna	a104 McEneny	a119 Roberts	a100
a033 Clark	a139 Hawley	a017 McKevitt	a056 Robinson	a103
a047 Colton	a083 Heastie	a108 McLaughlin	a068 Rodriguez	a145
a010 Conte	a028 Hevesi	a022 Meng	a067 Rosenthal	
a032 Cook	a048 Hikind	a121 Miller, D.	a118 Russell	
a142 Corwin	a018 Hooper	a102 Miller, J.	a144 Ryan	
a085 Crespo	a042 Jacobs	a038 Miller, M.		

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

public health law, in relation to requiring that each municipality be responsible for providing early intervention services; to amend the public health law, in relation to removing the authorization of the commissioner of health to collect data from counties on early intervention programs for the purpose of improving efficiency, cost effectiveness and quality; to amend the public health law, in relation to requiring health maintenance organizations to include coverage for otherwise covered services that are part of an early intervention program; to amend the insurance law, in relation to payment for early intervention services; to amend the education law, in relation to special education services and programs for preschool children with handicapping conditions; and to repeal subdivision 18 of section 4403 of the education law, relating to the power of the education department to approve the provision of early intervention services (Part A); to amend the public authorities law, in relation to funding and operations of the Roswell Park Cancer Institute (Part B); to amend the public health law, in relation to establishment of an electronic death registration system (Part C); to amend the public health law, in relation to establishing the supportive housing development reinvestment program; to amend the social services law, in relation to applicability of the assisted living program; to amend the social services law, in relation to including podiatry services and lactation services under the term medical assistance; to amend the public health law and education law, in relation to medical prescriptions for limited English proficient individuals; to amend the social services law, in relation to education, outreach services and facilitated enrollment activities for certain aged, blind and disabled persons; to amend the public health law, in relation to including

certain violations by a pharmacy as professional misconduct; expanding prenatal care programs, establishing the primary care service corps practitioner loan repayment program, requiring changes in directors of not-for-profit corporations that operate hospitals to be approved by the department, authorizing the commissioner of health to temporarily suspend or limit hospital operating certificates, revoking of hospital operating certificates, appointment and duties of temporary operators of a general hospital or diagnostic and treatment center, authorizing moneys in the medical indemnity fund to be invested in obligations of the United States or the state or obligations where the principal and interest are guaranteed by the United States or the state and moneys distributed as non-Medicaid grants to non-major public academic medical centers; to amend the social services law, in relation to prescriptions of opioid analgesics and brand name drugs covered by medical assistance; to amend the public health law, in relation to notice requirement for preferred drug program, payment to the commissioner of health by third-party payors, audit of payments to the commissioner of health, electronic submission of reports by hospitals, and changing the definition of eligible applicant; to amend the social services law, in relation to medical assistance where relative is absent or refuses or fails to provide necessary care; to amend the public health law, in relation to third-party payor's election to make payments; to amend the elder law, in relation to the elderly pharmaceutical insurance coverage program; to amend the public health law, in relation to reserved bed days; to amend the social services law, in relation to the personal care services worker recruitment and retention program; to amend the public health law, in relation to the tobacco control and insurance initiatives pool distrib-

utions; to amend the social services law, in relation to certain public school districts and state operated/state supported schools; to amend the public health law, in relation to the licensure of home care services agencies; to amend the social services law, in relation to managed care programs; to amend the public health law, in relation to the distribution of the professional education pools; to amend chapter 584 of the laws of 2011, amending the public authorities law, relating to the powers and duties of the dormitory authority of the state of New York relative to the establishment of subsidiaries for certain purposes, in relation to the effectiveness thereof; to amend chapter 119 of the laws of 1997 relating to authorizing the department of health to establish certain payments to general hospitals, in relation to costs incurred in excess of revenues by general hospitals in providing services in eligible programs to uninsured patients and patients eligible for Medicaid assistance; to amend subdivision 1 of section 92 of part H of chapter 59 of the laws of 2011, relating to known and projected department of health state funds Medicaid expenditures, in relation to the effectiveness thereof; to amend section 90 of part H of chapter 59 of the laws of 2011, relating to types of appropriations exempt from certain reductions, in relation to certain payments with regard to local governments; to amend section 1 of part C of chapter 58 of the laws of 2005, relating to authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, in relation to Medicaid reimbursement; and to repeal certain provisions of the public health law, the social services law and the elder law relating thereto (Part D); to amend the public authorities law and the public officers law, in relation to the establishment of the New York

Health Benefit Exchange (Part E); to amend chapter 58 of the laws of 2005 authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, in relation to an administrative cap on such program; to amend chapter 59 of the laws of 2011, amending the public health law and other laws relating to general hospital reimbursement for annual rates, in relation to the cap on local Medicaid expenditures; and to amend the social services law, in relation to the department assumption of program administration for medical assistance (Part F); to amend the public health law, in relation to regulations for computing hospital inpatient rates and to amend chapter 58 of the laws of 2005 relating to the preferred drug program, in relation to the effectiveness thereof (Part G); to amend chapter 57 of the laws of 2006, relating to establishing a cost of living adjustment for designated human services programs, in relation to foregoing such adjustment during the 2012-2013 state fiscal year; and in relation to directing limits on state reimbursement for executive compensation and administrative costs (Part H); in relation to contracts by the office for people with developmental disabilities made under section 1115 of the federal social security act (Part I); to amend the mental hygiene law, the public health law, the general municipal law, the education law, the social services law, and the surrogate's court procedure act, in relation to the office for people with developmental disabilities and the creation of developmental disabilities regional offices and state operations offices (Part J); to amend chapter 723 of the laws of 1989 amending the mental hygiene law and other laws relating to comprehensive psychiatric emergency programs, in relation to extending the repeal of certain provisions thereof (Part K); to

permit the commissioners of the department of health, the office of mental health, the office of alcoholism and substance abuse services and the office for people with developmental disabilities the regulatory flexibility to more efficiently and effectively integrate health and behavioral health services (Part L); to permit the office of mental health and the state education department to enter into an agreement for purposes of providing education programming for patients residing in hospitals operated by the office of mental health who are between the ages of five and twenty-one; and providing for the repeal of such provisions upon expiration thereof (Part M); to amend the mental hygiene law and the public health law, in relation to the statewide comprehensive services plan for people with mental disabilities and in relation to the local planning process; and to repeal certain provisions of the mental hygiene law relating thereto (Part N); to amend the mental hygiene law, in relation to the closure and the reduction in size of certain facilities serving persons with mental illness (Part O); to amend the mental hygiene law, in relation to amending procedures under the sex offender management and treatment act, and to amend the penal law, in relation to providing criminal penalties for certain violations of orders of commitment and strict and intensive supervision and treatment (Part P); to amend the criminal procedure law, in relation to providing for outpatient capacity restoration of felony defendants, or restoration at psychiatric units of jails or article 28 hospitals (Part Q); and to amend chapter 111 of the laws of 2010 relating to the recovery of exempt income by the office of mental health for community residences and family-based treatment programs, in relation to the effectiveness thereof (Part R)

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

1 Section 1. This act enacts into law major components of legislation
2 which are necessary to implement the state fiscal plan for the 2012-2013
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through R. The effective date for each particular
5 provision contained within such Part is set forth in the last section of
6 such Part. Any provision in any section contained within a Part, includ-
7 ing the effective date of the Part, which makes a reference to a section
8 "of this act", when used in connection with that particular component,
9 shall be deemed to mean and refer to the corresponding section of the
10 Part in which it is found. Section three of this act sets forth the
11 general effective date of this act.

12 PART A

13 Section 1. Paragraph (a) of subdivision 2 of section 2544 of the
14 public health law, as added by chapter 428 of the laws of 1992, is
15 amended and a new paragraph (c) is added to read as follows:

16 (a) [The] Subject to the provisions of section twenty-five hundred
17 forty-five-a of this title, the parent may select an evaluator from the
18 list of approved evaluators as described in section twenty-five hundred
19 forty-two of this title to conduct the evaluation. The parent or evalu-
20 ator shall immediately notify the early intervention official of such
21 selection. The evaluator may begin the evaluation no sooner than four
22 working days after such notification, unless otherwise approved by the
23 initial service coordinator.

24 (c) If, in consultation with the evaluator, the service coordinator
25 identifies a child that is potentially eligible for programs or services
26 offered by or under the auspices of the office for people with develop-

1 mental disabilities, the service coordinator shall, with parent consent,
2 notify the office for people with developmental disabilities' regional
3 developmental disabilities services office of the potential eligibility
4 of such child for said programs or services.

5 § 2. Subdivision 1, the opening paragraph of subdivision 2 and subdivi-
6 vision 7 of section 2545 of the public health law, as added by chapter
7 428 of the laws of 1992, are amended to read as follows:

8 1. If the evaluator determines that the infant or toddler is an eligi-
9 ble child, the early intervention official shall convene a meeting, at a
10 time and place convenient to the parent, consisting of the parent, such
11 official, the evaluator, a representative from the child's insurer or
12 health maintenance organization, which shall include the medical assist-
13 ance program or the child health insurance program established in title
14 one-A of this article, or any other governmental third party payor, if
15 the child has coverage through an insurer or health maintenance organ-
16 ization and the representative is available to attend the meeting on the
17 date and time chosen by the early intervention official, the initial
18 service coordinator and any other persons who the parent or the initial
19 service coordinator, with the parent's consent, invite, provided that
20 such meeting shall be held no later than forty-five days from the date
21 that the early intervention official was first contacted regarding the
22 child, except under exceptional circumstances prescribed by the commis-
23 sioner. The early intervention official, at or prior to the time of
24 scheduling the meeting, shall inform the parent of the right to invite
25 any person to the meeting. If the representative from the child's
26 insurer or health maintenance organization is not available to attend
27 the meeting in person on the date and time chosen by the early inter-
28 vention official, arrangements may be made for the representative's

1 involvement in the meeting by participation in a telephone conference
2 call or by other means.

3 The early intervention official, a representative from the child's
4 insurer or health maintenance organization, which shall include the
5 medical assistance program or the child health insurance program estab-
6 lished in title one-A of this article, or any other governmental third
7 party payor, if the child has coverage through an insurer or health
8 maintenance organization and the representative is available to attend
9 the meeting on the date and time chosen by the early intervention offi-
10 cial, initial service coordinator, parent and evaluator shall develop an
11 IFSP for an eligible child whose parents request services. The IFSP
12 shall be in writing and shall include, but not be limited to:

13 7. The IFSP shall be reviewed at six month intervals and shall be
14 evaluated annually by the early intervention official, a representative
15 from the child's insurer or health maintenance organization, which shall
16 include the medical assistance program or the child health insurance
17 program established in title one-A of this article, or any other govern-
18 mental third party payor, if the child has coverage through an insurer
19 or health maintenance organization and the representative is available
20 to participate in the review or attend on the date and time chosen by
21 the early intervention official, the service coordinator, the parent and
22 providers of services to the eligible child. Upon request of a parent,
23 the plan may be reviewed by such persons at more frequent intervals. If
24 the representative from the child's insurer or health maintenance organ-
25 ization is not available to participate in the review or attend in
26 person on the date and time chosen by the early intervention official,
27 arrangements may be made for the representative's involvement by partic-
28 ipation in a telephone conference call or by other means.

1 § 2-a. Section 2545 of the public health law is amended by adding a
2 new subdivision 10 to read as follows:

3 10. The service coordinator shall ensure that the IFSP, including any
4 amendments thereto, is implemented in a timely manner but not later than
5 thirty days after the projected dates for initiation of the services as
6 set forth in the plan.

7 § 3. The public health law is amended by adding a new section 2545-a
8 to read as follows:

9 § 2545-a. Use of network providers. For children referred to the
10 early intervention program on or after January first, two thousand thir-
11 teen, if a child has coverage under an insurance policy, plan or
12 contract, including coverage available under the medical assistance
13 program or the child health insurance program established in title one-A
14 of this article or under any other governmental third party payor, and
15 the insurance policy, plan or contract provides coverage for evaluations
16 or services that may be rendered to the child under the early inter-
17 vention program, the service coordinator, or, in accordance with section
18 twenty-five hundred forty-four of this title, the parent, with respect
19 to evaluations, shall select a provider approved by the department and
20 within the insurer's or health maintenance organization's network, if
21 applicable, for the provision of such evaluation or services, provided
22 however that this subdivision shall not apply under the following condi-
23 tions:

24 1. there is no provider in the insurer's or health maintenance organ-
25 ization's network that is available or appropriate to receive the refer-
26 ral and to conduct the evaluation or to begin providing services in a
27 timely manner in accordance with the child's IFSP;

28 2. insurance or health plan benefits have been exhausted; or

1 3. the child has a demonstrated need, as determined by the insurer or
2 health maintenance organization, if applicable, for an evaluation or
3 service rendered by a provider who does not hold an agreement with the
4 child's insurer or health maintenance organization for the provision of
5 such evaluation or service.

6 § 4. Subdivision 2 of section 2547 of the public health law, as
7 amended by chapter 231 of the laws of 1993, is amended to read as
8 follows:

9 2. In addition to respite services provided pursuant to subdivision
10 one of this section and subject to the amounts appropriated therefor,
11 the state shall reimburse the municipality in accordance with the
12 percentage of state aid reimbursement for approved costs as set forth in
13 subdivision two of section twenty-five hundred fifty-seven of this
14 title, for [fifty percent of] the costs of respite services provided to
15 eligible children and their families with the approval of the early
16 intervention official.

17 § 5. Section 2548 of the public health law, as amended by section 20
18 of part H of chapter 686 of the laws of 2003, is amended to read as
19 follows:

20 § 2548. Transition plan. To the extent that a toddler with a disabili-
21 ty is thought to be eligible for services pursuant to section forty-four
22 hundred ten of the education law, the [early intervention official]
23 service coordinator shall notify in writing the committee on preschool
24 special education of the local school district in which an eligible
25 child resides of the potential transition of such child and, with
26 parental consent, arrange for a conference among the service coordina-
27 tor, the parent and the chairperson of the preschool committee on
28 special education or his or her designee at least ninety days before

1 such child would be eligible for services under section forty-four
2 hundred ten of the education law to review the child's program options
3 and to establish a transition plan, if appropriate. If a parent does not
4 consent to a conference with the service coordinator and the chairperson
5 of the preschool committee on special education or his or her designee
6 to determine whether the child should be referred for services under
7 section forty-four hundred ten of the education law, and the child is
8 not determined to be eligible by the committee on preschool special
9 education for such services prior to the child's third birthday, the
10 child's eligibility for early intervention program services shall end at
11 the child's third birthday.

12 § 6. Subdivision 2 of section 2550 of the public health law, as
13 amended by section 5 of part B3 of chapter 62 of the laws of 2003, is
14 amended to read as follows:

15 2. In meeting the requirements of subdivision one of this section, the
16 lead agency shall adopt and use proper methods of administering the
17 early intervention program, including:

18 (a) establishing standards for evaluators, service coordinators and
19 providers of early intervention services;

20 (b) approving, and periodically re-approving evaluators, service coor-
21 dinators and providers of early intervention services who meet depart-
22 ment standards; provided however that the department may require that
23 approved evaluators, service coordinators and providers of early inter-
24 vention services enter into agreements with the department in order to
25 conduct evaluations or render service coordination or early intervention
26 services in the early intervention program. Such agreements shall set
27 forth the terms and conditions of participation in the program. If the
28 department requires that such providers enter into agreements with the

1 department for participation in the program, "approval" or "approved" as
2 used in this title shall mean a provider who is approved by the depart-
3 ment in accordance with department regulations and has entered into an
4 agreement with the department for the provision of evaluations, service
5 coordination or early intervention services.

6 A less-than-arms-length relationship shall not exist between the
7 service coordinator, evaluator and the provider authorized to deliver
8 early intervention services to the child, unless approval of the lead
9 agency, in consultation with the early intervention official, is
10 obtained. Provided further that, unless authorized by the lead agency,
11 in consultation with the early intervention official, upon a finding
12 that it has been demonstrated that an approved provider is the only
13 appropriate provider available to render the services recommended for
14 such child, the service coordinator, the evaluator selected by the
15 parent and the provider recommended to deliver services to such child,
16 and any agency under which such service coordinator, evaluator or
17 provider is employed by or under contract with, shall not be the same
18 entity.

19 All approved evaluators and providers of early intervention services,
20 hereinafter collectively referred to as "provider" or "providers" for
21 purposes of this subparagraph, shall establish and maintain contracts or
22 agreements with a sufficient number of insurers or health maintenance
23 organizations, including the medical assistance program or the child
24 health insurance program established under title one-A of this article,
25 as determined necessary by the commissioner to meet insurer or health
26 maintenance organization network adequacy; provided, however, that the
27 department may, in its discretion, approve a provider who does not have
28 a contract or agreement with one or more insurers or health maintenance

1 organizations if the provider renders a service that meets a unique need
2 for such service under the early intervention program. Approved provid-
3 ers shall submit to the department, information and documentation of the
4 insurers and health maintenance organizations, with which the provider
5 holds an agreement or contract. A provider's approval with the depart-
6 ment to deliver evaluations or early intervention services shall termi-
7 nate if the provider fails to provide such information or documentation
8 acceptable to the department of its contracts or agreements with insur-
9 ers or health maintenance organizations as requested by the department;

10 (c) [compiling and disseminating to the municipalities lists of
11 approved evaluators, service coordinators and providers of early inter-
12 vention services;

13 (d)] monitoring of agencies, institutions and organizations under this
14 title and agencies, institutions and organizations providing early
15 intervention services which are under the jurisdiction of a state early
16 intervention service agency;

17 [(e)] (d) enforcing any obligations imposed on those agencies under
18 this title or Part H of the federal individuals with disabilities educa-
19 tion act and its regulations;

20 [(f)] (e) providing training and technical assistance to those agen-
21 cies, institutions and organizations, including initial and ongoing
22 training and technical assistance to municipalities to help enable them
23 to identify, locate and evaluate eligible children, develop IFSPs,
24 ensure the provision of appropriate early intervention services, promote
25 the development of new services, where there is a demonstrated need for
26 such services and afford procedural safeguards to infants and toddlers
27 and their families;

1 [(g)] (f) correcting deficiencies that are identified through monitor-
2 ing; and

3 [(h)] (g) in monitoring early intervention services, the commissioner
4 shall provide municipalities with the results of any review of early
5 intervention services undertaken and shall provide the municipalities
6 with the opportunity to comment thereon.

7 § 7. Subdivision 7 of section 2551 of the public health law is
8 REPEALED, and subdivisions 8, 9 and 10 are renumbered subdivisions 7, 8
9 and 9.

10 § 8. Section 2552 of the public health law, as added by chapter 428
11 of the laws of 1992, subdivisions 2 and 3 as amended by chapter 231 of
12 the laws of 1993, and subdivision 4 as added by section 6 of part B3 of
13 chapter 62 of the laws of 2003, is amended to read as follows:

14 § 2552. Responsibility of municipality. 1. Each municipality shall be
15 responsible for ensuring that the early intervention services contained
16 in an IFSP are provided to eligible children and their families who
17 reside in such municipality [and may contract with approved providers of
18 early intervention services for such purpose]. The service coordinator
19 shall report, in a manner and format as determined by the municipality,
20 on the delivery of services to an eligible child in accordance with the
21 eligible child's IFSP. A municipality may request that the parent select
22 a new service coordinator or require that the service coordinator select
23 a new provider of services if the municipality finds that the service
24 coordinator has not been performing his or her responsibilities as
25 required by this title or that services have not been provided in
26 accordance with the eligible child's IFSP.

27 2. [After consultation with early intervention officials, the commis-
28 sioner shall develop procedures to permit a municipality to contract or

1 otherwise make arrangements with other municipalities for an eligible
2 child and the child's family to receive services from such other munici-
3 palities.

4 3. The municipality shall monitor claims for service reimbursement
5 authorized by this title and shall verify such claims prior to payment.
6 The municipality shall inform the commissioner of discrepancies in bill-
7 ing and when payment is to be denied or withheld by the municipality.

8 4.] The early intervention official shall require an eligible child's
9 parent to furnish the parents' and eligible child's social security
10 numbers for the purpose of the department's and municipality's adminis-
11 tration of the program.

12 § 9. Subdivision 1 of section 2557 of the public health law, as
13 amended by section 4 of part C of chapter 1 of the laws of 2002, is
14 amended to read as follows:

15 1. The approved costs, other than those reimbursable in accordance
16 with section twenty-five hundred fifty-nine of this title, for [an
17 eligible] a child who receives an evaluation and early intervention
18 services pursuant to this title shall be a charge upon the municipality
19 wherein the eligible child resides or, where the services are covered by
20 the medical assistance program, upon the social services district of
21 fiscal responsibility with respect to those eligible children who are
22 also eligible for medical assistance. All approved costs shall be paid
23 in the first instance and at least quarterly by the appropriate govern-
24 ing body or officer of the municipality upon vouchers presented and
25 audited in the same manner as the case of other claims against the muni-
26 cipality. Notwithstanding the insurance law or regulations thereunder
27 relating to the permissible exclusion of payments for services under
28 governmental programs, no such exclusion shall apply with respect to

1 payments made pursuant to this title. Notwithstanding the insurance law
2 or any other law or agreement to the contrary, benefits under this title
3 shall be considered secondary to any [plan of insurance or state govern-
4 ment benefit program] insurance policy, plan or contract under which an
5 eligible child may have coverage, including coverage available under the
6 medical assistance program or the child health insurance program estab-
7 lished in title one-A of this article, or under any other governmental
8 third party payor. Nothing in this section shall increase or enhance
9 coverages provided for within an insurance contract subject to the
10 provisions of this title.

11 § 9-a. Subdivision 4 of section 2557 of the public health law is
12 REPEALED and subdivisions 2 and 5, subdivision 2 as added by chapter 428
13 of the laws of 1992 and subdivision 5 as added by section 7 of part B3
14 of chapter 62 of the laws of 2003, are amended to read as follows:

15 2. The department shall reimburse the approved costs paid by a munici-
16 pality for the purposes of this title, other than those reimbursable by
17 an insurer or health maintenance organization, or governmental third
18 party payor including the medical assistance program or [by third party
19 payors] the child health insurance program established in title one-A of
20 this article, in an amount of fifty percent of the amount expended in
21 accordance with the rules and regulations of the commissioner; provided,
22 however, that in the discretion of the department and with the approval
23 of the director of the division of the budget, the department may reim-
24 burse municipalities in an amount greater than fifty percent of the
25 amount expended. Such state reimbursement to the municipality shall not
26 be paid prior to April first of the year in which the approved costs are
27 paid by the municipality, provided, however that, subject to the

1 approval of the director of the budget, the department may pay such
2 state aid reimbursement to the municipality prior to such date.

3 5. [The department shall] (a) The commissioner, in his or her
4 discretion, is authorized to contract with [an independent organization]
5 one or more entities to act as the fiscal agent for the department and
6 municipalities with respect to fiscal management and payment of early
7 intervention claims. Municipalities shall grant sufficient authority to
8 the fiscal agent to act on their behalf. Municipalities, and individual
9 and agency providers as defined by the commissioner in regulation shall
10 utilize such fiscal agent for payment of early intervention claims as
11 determined by the department and shall provide such information and
12 documentation as required by the department and necessary for the fiscal
13 agent to carry out its duties.

14 (b) Notwithstanding any inconsistent provision of section one hundred
15 twelve or one hundred sixty-three of the state finance law, sections one
16 hundred forty-two and one hundred forty-three of the economic develop-
17 ment law, or any other contrary provision of law, the commissioner is
18 authorized to enter into a contract or contracts under paragraph (a) of
19 this subdivision without a competitive bid or request for proposal proc-
20 ess, provided, however, that:

21 (i) The department shall post on its website, for a period of no less
22 than thirty days:

23 (1) A description of the proposed services to be provided pursuant to
24 the contract or contracts;

25 (2) The criteria for selection of a contractor or contractors;

26 (3) The period of time during which a prospective contractor may seek
27 selection, which shall be no less than thirty days after such informa-
28 tion is first posted on the website; and

1 (4) The manner by which a prospective contractor may seek such
2 selection, which may include submission by electronic means;

3 (ii) All reasonable and responsive submissions that are received from
4 prospective contractors in a timely fashion shall be reviewed by the
5 commissioner; and

6 (iii) The commissioner shall select such contractor or contractors
7 that, in his or her discretion, are best suited to serve the purposes of
8 this section.

9 (c) Paragraph (b) of this subdivision shall apply only to the initial
10 contract or contracts necessary to obtain the services of a fiscal agent
11 for early intervention program fiscal management and payment of early
12 intervention claims and shall not apply to subsequent contracts needed
13 to maintain such services, as determined by the commissioner in his or
14 her discretion. [A municipality may elect to utilize the services of
15 such organization for early intervention program fiscal management and
16 claiming as determined by the commissioner or may select an independent
17 agent to act as the fiscal agent for such municipality or may act as its
18 own fiscal agent.]

19 § 10. Subdivision 4 of section 2558 of the public health law, as added
20 by chapter 428 of the laws of 1992, is amended to read as follows:

21 4. Local contribution. The municipality of residence shall be finan-
22 cially responsible for the local contribution in the amount of fifty
23 percent of the [approved costs] amount expended provided, however, that
24 in the discretion of the department and with the approval of the direc-
25 tor of the division of the budget, in accordance with subdivision two of
26 section twenty-five hundred fifty-seven of this title, the department
27 may require that municipalities be financially responsible for a local
28 contribution in an amount less than fifty percent of the amount

1 expended. The commissioner shall certify to the comptroller the amount
2 of the local contribution owed by each municipality to the state. The
3 comptroller shall deduct the amount of such local contribution first
4 from any moneys due the municipality pursuant to section twenty-five
5 hundred fifty-six of this title and then from any other moneys due or to
6 become due to the municipality.

7 § 11. Paragraphs (a), (c) and (d) of subdivision 3 of section 2559 of
8 the public health law, paragraph (a) as amended and paragraph (d) as
9 added by chapter 231 of the laws of 1993, subparagraphs (i) and (ii) of
10 paragraph (a) as added by chapter 406 of the laws of 2011, and paragraph
11 (c) as added by chapter 428 of the laws of 1992 are amended to read as
12 follows:

13 (a) Providers of evaluations and early intervention services [and],
14 including transportation services, hereinafter collectively referred to
15 in this subdivision as "provider" or "providers", shall in the first
16 instance and where applicable, seek payment from all [third party payors
17 including governmental agencies] insurers and health maintenance organ-
18 izations, including the medical assistance program and the child health
19 insurance program established in title one-A of this article and any
20 other governmental third party payors prior to claiming payment from a
21 given municipality for evaluations conducted under the program and for
22 services rendered to eligible children, provided that, [for the purpose
23 of seeking payment from the medical assistance program or from other
24 third party payors, the municipality shall be deemed the provider of
25 such early intervention services to the extent that the provider has
26 promptly furnished to the municipality adequate and complete information
27 necessary to support the municipality billing, and provided further
28 that] the obligation to seek payment shall not apply to a payment from

1 [a third party payor] an insurer who is not prohibited from applying
2 such payment, and will apply such payment, to an annual or lifetime
3 limit specified in the insured's policy.

4 (i) Parents shall provide [and] the municipality [shall obtain] and
5 service coordinator information on any [plan of insurance] insurance
6 policy, plan or contract under which an eligible child has coverage.

7 (ii) Parents shall provide the municipality and the service coordina-
8 tor with a written referral from a primary care provider as documenta-
9 tion, for eligible children, of the medical necessity of early inter-
10 vention services.

11 (iii) providers shall utilize the department's fiscal agent and data
12 system for claiming payment from insurers or health maintenance organ-
13 izations for evaluations and services rendered under the early inter-
14 vention program.

15 (iv) notwithstanding any inconsistent provision of law, rule or regu-
16 lation, payments made by any insurer or health maintenance organization
17 for evaluations and services provided under the early intervention
18 program shall be at rates established under an agreement negotiated
19 between the insurer or health maintenance organization, if applicable,
20 provided, however, that if the insurer or health maintenance organiza-
21 tion maintains a network of providers and a child has a demonstrated
22 need, as determined by the insurer or health maintenance organization,
23 if applicable, for an evaluation or service rendered by a provider who
24 is not within the insurer or health maintenance organization's network,
25 payment to such out of network provider shall be made at rates estab-
26 lished by the commissioner in accordance with regulation.

27 (v) payments made by any insurer or health maintenance program shall
28 be considered payments in full for such services and the provider shall

1 not seek additional payment from the municipality, child, or his or her
2 parents for any portion of the costs of said services. Nothing herein
3 shall prohibit an insurer or health maintenance organization from apply-
4 ing a copayment, coinsurance or deductible as set forth in the policy or
5 plan. Payments for copayments, coinsurance or deductibles shall be made
6 in accordance with paragraph (b) of this subdivision.

7 (vi) when payment under an insurance policy, plan or contract is not
8 available or has been exhausted, providers shall seek payment for
9 services in accordance with section twenty-five hundred fifty-seven of
10 this title; provided, however, that if the service provided is a covered
11 benefit under the policy, plan or contract and payment has been denied
12 on grounds other than that benefits have been exhausted, the provider
13 shall exhaust all appeals of said denial prior to claiming payment to
14 the municipality for the service in accordance with section twenty-five
15 hundred fifty-seven of this title. Providers shall not discontinue or
16 delay services to eligible children pending payment of the claim or
17 determinations of any appeal denials.

18 (c) Payments made for early intervention services under an insurance
19 policy or health benefit plan, including payments made by the medical
20 assistance program or the child health insurance program established
21 under title one-A of this article or other governmental third party
22 payor, which are provided as part of an IFSP pursuant to section twen-
23 ty-five hundred forty-five of this title shall not be applied by the
24 insurer or plan administrator against any maximum lifetime or annual
25 limits specified in the policy or health benefits plan, pursuant to
26 section eleven of the chapter of the laws of nineteen hundred ninety-two
27 which added this title.

1 [(d) A municipality, or its designee, shall be subrogated, to the
2 extent of the expenditures by such municipality for early intervention
3 services furnished to persons eligible for benefits under this title, to
4 any rights such person may have or be entitled to from third party
5 reimbursement. The right of subrogation does not attach to benefits paid
6 or provided under any health insurance policy or health benefits plan
7 prior to receipt of written notice of the exercise of subrogation rights
8 by the insurer or plan administrator providing such benefits.]

9 § 12. Subdivision 7 of section 2510 of the public health law, as
10 amended by section 21 of part B of chapter 109 of the laws of 2010, is
11 amended to read as follows:

12 7. "Covered health care services" means: the services of physicians,
13 optometrists, nurses, nurse practitioners, midwives and other related
14 professional personnel which are provided on an outpatient basis,
15 including routine well-child visits; diagnosis and treatment of illness
16 and injury; inpatient health care services; laboratory tests; diagnostic
17 x-rays; prescription and non-prescription drugs and durable medical
18 equipment; radiation therapy; chemotherapy; hemodialysis; emergency room
19 services; hospice services; emergency, preventive and routine dental
20 care, including medically necessary orthodontia but excluding cosmetic
21 surgery; emergency, preventive and routine vision care, including
22 eyeglasses; speech and hearing services; and, inpatient and outpatient
23 mental health, alcohol and substance abuse services as defined by the
24 commissioner in consultation with the superintendent. "Covered health
25 care services" shall also include early intervention services provided
26 pursuant to title two-A of this article up to the scope and level of
27 coverage for the same services provided pursuant to this subdivision, as
28 defined by the commissioner. "Covered health care services" shall not

1 include drugs, procedures and supplies for the treatment of erectile
2 dysfunction when provided to, or prescribed for use by, a person who is
3 required to register as a sex offender pursuant to article six-C of the
4 correction law, provided that any denial of coverage of such drugs,
5 procedures or supplies shall provide the patient with the means of
6 obtaining additional information concerning both the denial and the
7 means of challenging such denial.

8 § 13. Intentionally omitted.

9 § 14. Paragraph (b) of subdivision 5 of section 4403 of the public
10 health law is relettered paragraph (c), paragraph (c), as added by chap-
11 ter 705 of the laws of 1996, is amended and a new paragraph (b) is added
12 to read as follows:

13 (b) Upon the effective date of this paragraph and at the time of every
14 three year review by the commissioner as set forth in paragraph (a) of
15 this subdivision, and upon application for expansion of service area,
16 the health maintenance organization shall demonstrate that it maintains
17 an adequate network of providers who are approved to deliver evaluations
18 and early intervention program services in accordance with title II-A of
19 article twenty-five of this chapter, by showing to the satisfaction of
20 the commissioner that (i) there are a sufficient number of geograph-
21 ically accessible participating providers; and (ii) there are sufficient
22 providers in each area of specialty of practice to meet the needs of the
23 enrollment population.

24 [(c)] (d) Each organization shall report on an annual basis the number
25 of enrollees and the number of participating providers in each organiza-
26 tion. Each health maintenance organization shall make publicly avail-
27 able and update on a quarterly basis, the names of participating provid-
28 ers in the health maintenance organization's network who are approved to

1 deliver evaluations and early intervention program services in accord-
2 ance with title II-A of article twenty-five of this chapter.

3 § 15. Section 4406 of the public health law is amended by adding a new
4 subdivision 6 to read as follows:

5 6. (a) No subscriber contract or benefit package shall exclude cover-
6 age for otherwise covered services solely on the basis that the services
7 constitute early intervention program services under title II-A of arti-
8 cle twenty-five of this chapter.

9 (b) Where a subscriber contract or benefit package provides coverage
10 for a service that is provided under the early intervention program and
11 is otherwise covered under the subscriber contract or benefit package,
12 such coverage shall not be applied against any maximum annual or life-
13 time monetary limits set forth in such subscriber contract or benefit
14 package. Visit limitations and other terms and conditions of the
15 subscriber contract or benefit package will continue to apply to early
16 intervention services. However, any visits used for early intervention
17 program services shall not reduce the number of visits otherwise avail-
18 able under the subscriber contract or benefit package for such services
19 that are not provided under the early intervention program.

20 (c) The health maintenance organization shall provide the municipality
21 and service coordinator with information on the extent of benefits
22 available to an enrollee under such subscriber contract or benefit pack-
23 age within fifteen days of the health maintenance organization's receipt
24 of written request and notice authorizing such release.

25 (d) No health maintenance organization shall refuse to issue a
26 subscriber contract or benefit package or refuse to renew a subscriber
27 contract or benefit package solely because the applicant or enrollee is
28 receiving services under the early intervention program.

1 (e) Health maintenance organizations shall accept claims submitted for
2 payment under the contract from a provider through the department's
3 fiscal agent and data system for such claiming. Health maintenance
4 organizations shall, in a manner and format as required by the depart-
5 ment, provide the department with information on claims submitted for
6 evaluations and early intervention services provided to children under
7 the early intervention program and disposition of such claims.

8 (f) Where a subscriber contract or benefit package provides coverage
9 for an evaluation or service provided under the early intervention
10 program, reimbursement for such evaluation or service shall be at rates
11 negotiated by the health maintenance organization and provider provided,
12 however, that if a child has a demonstrated need, as determined by the
13 health maintenance organization, for an evaluation or service rendered
14 by a provider who does not hold an agreement with the child's health
15 maintenance organization for the provision of services to covered
16 persons, payment to such out of network provider shall be made at rates
17 established by the commissioner in accordance with regulation.

18 (g) Health maintenance organizations shall ensure that the terms and
19 conditions contained in subscriber contracts or benefit packages relat-
20 ing to provision of services to children under the early intervention
21 program complies with title II-A of article twenty-five of this chapter
22 and with standards set forth in Part C of the Individuals with Disabili-
23 ties Education Act, as amended by the Individuals with Disabilities
24 Education Improvement Act of 2004.

25 § 16. Intentionally omitted.

26 § 17. Subsections (c) and (e) of section 3235-a of the insurance law,
27 subsection (c) as amended and subsection (e) as added by chapter 406 of

1 the laws of 2011, are amended, and a new subsection (f) is added to read
2 as follows:

3 (c) [Any right of subrogation to benefits which a municipality is
4 entitled in accordance with paragraph (d) of subdivision three of
5 section twenty-five hundred fifty-nine of the public health law shall be
6 valid and enforceable to the extent benefits are available under any
7 accident and health insurance policy. The right of subrogation does not
8 attach to insurance benefits paid or provided under any accident and
9 health insurance policy prior to receipt by the insurer of written
10 notice from the municipality. Upon the insurer's receipt of written
11 request and notice from the municipality that such right of subrogation
12 has been granted to such municipality and that the insured has author-
13 ized the release of information to the municipality, the] The insurer
14 shall provide the municipality and service coordinator with information
15 on the extent of benefits available to the covered person under such
16 policy within fifteen days of the insurer's receipt of written request
17 and notice authorizing such release.

18 (e) [Written claim for early intervention program services shall be
19 submitted by the municipality as the approved provider within one
20 hundred fifty days from the date of service.] Where a policy of accident
21 and health insurance, including a contract issued pursuant to article
22 forty-three of this chapter, utilizes a network of providers, the insur-
23 er shall demonstrate to the superintendent that it maintains an adequate
24 network of providers who are approved to deliver evaluations and early
25 intervention program services in accordance with title II-A of article
26 twenty-five of the public health law by documenting that (i) there are a
27 sufficient number of geographically accessible participating providers;
28 and (ii) there are sufficient providers in each area of specialty of

1 practice to meet the needs of the enrollment population. Where a policy
2 of accident and health insurance, including a contract issued pursuant
3 to article forty-three of this chapter, provides coverage for an evalu-
4 ation or service provided under the early intervention program,
5 reimbursement for such evaluation or service shall be at rates negoti-
6 ated by the insurer and provider, if applicable, provided, however, that
7 if a child has a demonstrated need for an evaluation or service rendered
8 by a provider who does not hold an agreement with the child's insurer
9 for the provision of services to covered persons, payment to such
10 provider shall be made at rates established by the commissioner of
11 health in accordance with regulation.

12 (f) Nothing in this section shall be deemed to limit the superinten-
13 dent's authority to impose network adequacy requirements on insurers in
14 general.

15 § 18. Subdivision 18 of section 4403 of the education law is REPEALED.

16 § 19. Paragraph f of subdivision 3 and the opening paragraph of para-
17 graph a of subdivision 9 of section 4410 of the education law, as
18 amended by chapter 82 of the laws of 1995, are amended to read as
19 follows:

20 f. After notification by [an early intervention official] a service
21 coordinator, as defined in section twenty-five hundred forty-one of the
22 public health law, that a child receiving services pursuant to title
23 II-A of article twenty-five of the public health law potentially will
24 transition to receiving services under this section and that a confer-
25 ence is to be convened to review the child's program options and estab-
26 lish a transition plan, which conference must occur at least ninety days
27 before such child would be eligible for services under this section, the
28 chairperson of the committee on preschool special education of the local

1 school district or his or her designee in which such child resides shall
2 participate in the conference.

3 Providers of special services or programs shall apply to the commis-
4 sioner for program approval on a form prescribed by the commissioner;
5 such application shall include, but not be limited to, a listing of the
6 services to be provided, the population to be served, a plan for provid-
7 ing services in the least restrictive environment and a description of
8 its evaluation component, if any. [Providers of early intervention
9 services seeking approval pursuant to subdivision seven of section twen-
10 ty-five hundred fifty-one of the public health law shall apply to the
11 commissioner for such approval on a form prescribed by the commission-
12 er.] The commissioner shall approve programs in accordance with regu-
13 lations adopted for such purpose and shall periodically review such
14 programs at which time the commissioner shall provide the municipality
15 in which the program is located or for which the municipality bears
16 fiscal responsibility an opportunity for comment within thirty days of
17 the review. In collaboration with municipalities and representatives of
18 approved programs, the commissioner shall develop procedures for
19 conducting such reviews. Municipalities shall be allowed to participate
20 in such departmental review process. Such review shall be conducted by
21 individuals with appropriate experience as determined by the commission-
22 er and shall be conducted not more than once every three years.

23 § 20. Intentionally omitted.

24 § 21. Intentionally omitted.

25 § 22. Intentionally omitted.

26 § 23. This act shall take effect January 1, 2013; provided, however,
27 that:

1 1. the amendments to subdivision 7 of section 2510 of the public
2 health law made by section twelve of this act shall not affect the expi-
3 ration of such subdivision and shall be deemed to expire therewith;

4 2. the requirements contained in subparagraph (iv) of paragraph (a) of
5 subdivision 3 of section 2559 of the public health law, as added by
6 section eleven of this act, paragraph (f) of subdivision 6 of section
7 4406 of the public health law, as added by section fifteen of this act,
8 and subsection (e) of section 3235-a of the insurance law, as amended by
9 section seventeen of this act, as such sections pertain to requiring
10 that an insurer or health maintenance organization make payment to a
11 provider who is not within the insurer or health maintenance organiza-
12 tion's network at rates established by the commissioner of health in
13 accordance with regulation, if a child has a demonstrated need, as
14 determined by the insurer or health maintenance organization, if appli-
15 cable, for an evaluation or service rendered by a provider who is not
16 within the insurer or health maintenance organization's network, shall
17 apply only to policies, benefit packages and contracts issued, renewed,
18 modified, altered or amended on or after the effective date of such
19 sections of this act; and

20 3. sections two-a, four, five, seven, eight, nine-a, ten, eighteen and
21 nineteen of this act shall take effect April 1, 2013.

22

PART B

23 Section 1. Subdivisions 9, 10 and 11 of section 3555 of the public
24 authorities law, as added by chapter 5 of the laws of 1997, are amended
25 to read as follows:

1 9. to determine the conditions under which a physician may be extended
2 the privilege of practicing within a health facility under the jurisdic-
3 tion of the corporation, to promulgate internal policies for the conduct
4 of all persons, physicians and allied health practitioners within such
5 facility, and to appoint and grant privileges to qualified and competent
6 clinical practitioners; [and]

7 10. except as provided in this subdivision or as expressly limited by
8 any applicable state law or regulation, and in support of the powers
9 granted by subdivisions five and six of this section, to form and to
10 participate in the formation of one or more corporations, and to exer-
11 cise and perform such purposes, powers, duties, functions or activities
12 through one or more subsidiary corporations or other entities owned or
13 controlled wholly or in part by the corporation, which shall be formed
14 pursuant to the business corporation law, the limited liability company
15 law, the not-for-profit corporation law, or the partnership law; any
16 such subsidiary may be authorized to act as a general or limited partner
17 in a partnership or as a member of a limited liability company, and
18 enter into an arrangement calling for an initial and subsequent payment
19 or payments or contributions to capital by such subsidiary in consider-
20 ation of an interest in revenues or other contractual rights. An entity
21 shall be deemed a subsidiary corporation whenever and so long as (a)
22 more than half of any voting shares or other membership interest of such
23 subsidiary are owned or held by the corporation or (b) a majority of the
24 directors, trustees or members of such subsidiary are designees of the
25 corporation[.];

26 11. to accept funding from the state pursuant to paragraph (o) of
27 subdivision one of section twenty-eight hundred seven-v of the public
28 health law or pursuant to section twenty-eight hundred eighteen of the

1 public health law, provided, however, that as a condition for receipt of
2 such funds the corporation is required to take all necessary and appro-
3 priate steps and arrangements, including but not limited to, entering
4 into an arrangement for merger or other affiliation with one or more
5 health care, academic or other entities, located within the same
6 geographical region as the corporation, for the purpose of promoting the
7 continued financial viability of the corporation, protecting and promot-
8 ing the health of the patients served by its health facilities and, to
9 the extent possible, contributing to the economic revitalization of the
10 region by becoming operationally and fiscally independent of the depart-
11 ment of health by no later than March thirty-first, two thousand four-
12 teen, and provided further, however, that the commissioner of health
13 shall monitor such steps and arrangements, establish goals and bench-
14 marks for the achievement of such independence, intercede as deemed
15 necessary and appropriate and delay or preclude the corporation's
16 receipt of such funds in the event the commissioner of health determines
17 that such goals and benchmarks have not been met.

18 12. No subsidiary of the corporation shall own, operate, manage or
19 control the existing research, education, acute inpatient or outpatient
20 facilities and services now operated by the Roswell Park Cancer Insti-
21 tute.

22 § 2. This act shall take effect April 1, 2012.

23 PART C

24 Section 1. The public health law is amended by adding a new section
25 4148 to read as follows:

1 § 4148. Electronic death registration system. 1. Legislative findings.
2 The legislature finds that it is necessary to update and modernize the
3 state's system of filing and maintaining information and documents
4 related to the registration of death. An electronic death registration
5 system will promote accuracy and provide for more timely transmission of
6 documentation, promoting efficiency in the operations of the department,
7 which oversees the death registration filing process; local registrars,
8 which accept and file certificates of death and issue burial and funeral
9 permits; health care institutions and practitioners, coroners and
10 medical examiners, which prepare certificates of death; and licensed
11 funeral directors and undertakers, who require prompt access to certif-
12 icates of death to conduct burials and funerals in a timely fashion.
13 Licensed funeral directors and undertakers have expressed their interest
14 in partnering with the department to support the establishment of such
15 system through a contribution, tendered for each burial and funeral
16 permit issued to a licensed funeral director or undertaker, in the
17 amount of twenty dollars.

18 2. The department is hereby authorized to design, implement and main-
19 tain an electronic death registration system for collecting, storing,
20 recording, transmitting, amending, correcting and authenticating infor-
21 mation, as necessary and appropriate to complete a death registration,
22 and to generate such documents as determined by the department in
23 relation to a death occurring in this state. The contribution referenced
24 in subdivision one of this section shall be collected for each burial or
25 removal permit issued on or after the effective date of this section
26 from the licensed funeral director or undertaker to whom such permit is
27 issued, in the manner specified by the department.

1 3. Commencing on or after January first, two thousand fourteen, the
2 department may require that deaths occurring within this state must be
3 registered using the electronic death registration system established in
4 this section. Electronic death registration may be phased in, as deter-
5 mined by the commissioner, for deaths occurring in the state until the
6 electronic death registration system is fully implemented in the state.

7 4. Commencing on or after January first, two thousand fourteen, all
8 persons required to register a death under this article, and such others
9 as may be authorized by the commissioner, shall have access to the elec-
10 tronic death registration system for the purpose of entering information
11 required to execute, complete and file a certificate of death or to
12 retrieve such information or generate documentation from the electronic
13 death registration system. The confidentiality provisions in section
14 forty-one hundred forty-seven of this title shall apply to information
15 maintained in this system.

16 5. Notwithstanding any provision of law to the contrary, commencing on
17 or after January first, two thousand fourteen, any requirement of this
18 title for a signature of any person shall be deemed satisfied by the use
19 by such person of digital signature provided such person is authorized
20 in accordance with this section to use the electronic death registration
21 system.

22 § 2. Subdivision 1 of section 4100-a of the public health law, as
23 amended by chapter 644 of the laws of 1988, is amended and a new subdi-
24 vision 5 is added to read as follows:

25 1. The term "certified copy" means a photographic reproduction in the
26 form of a photocopy or a microfilm print of the original certificate or
27 electronically produced print of the original certificate, commencing on
28 or after January first, two thousand fourteen, and certified by the

1 commissioner, his designated representative, a local registrar [or his
2 deputy], deputy registrar or sub-registrar as a true copy thereof.

3 5. The term "electronic death registration system" means the data
4 system created and maintained by the department for collecting, storing,
5 recording, transmitting, amending, correcting and authenticating infor-
6 mation, as necessary and appropriate to complete a death registration,
7 and to generate such documents as determined by the department, includ-
8 ing permits or certificates, relating to a death occurring in this
9 state.

10 § 3. Subdivision 1 of section 4140 of the public health law is amended
11 to read as follows:

12 1. The death of each person who has died in this state shall be regis-
13 tered immediately and not later than seventy-two hours after death or
14 the finding of a dead human body, by filing with the registrar of the
15 district in which the death occurred or the body was found a certificate
16 of such death, [which certificate shall be upon the form] in a manner
17 and format as prescribed by the commissioner, which may include through
18 electronic means in accordance with section forty-one hundred forty-
19 eight of this title.

20 § 4. Section 4141-a of the public health law, as amended by chapter
21 153 of the laws of 2011, is amended to read as follows:

22 § 4141-a. Death certificate; duties of hospital administrator. When a
23 death occurs in a hospital, except in those cases where certificates are
24 issued by coroners or medical examiners, the person in charge of such
25 hospital or his or her designated representative shall promptly present
26 the certificate to the physician or nurse practitioner in attendance, or
27 a physician or nurse practitioner acting in his or her behalf, who shall
28 promptly certify to the facts of death, provide the medical information

1 required by the certificate, sign the medical certificate of death, and
2 thereupon return such certificate to such person, so that the seventy-
3 two hour registration time limit prescribed in section four thousand one
4 hundred forty of this title can be met; provided, however that commenc-
5 ing on or after January first, two thousand fourteen, information and
6 signatures required by this section shall be obtained and made in
7 accordance with section forty-one hundred forty-eight of this title.

8 § 5. Section 4142 of the public health law is amended by adding a new
9 subdivision (e) to read as follows:

10 (e) notwithstanding any contrary provisions of law as may be set forth
11 in this section, commencing on or after January first, two thousand
12 fourteen, information and signatures required by this subdivision shall
13 be obtained and made in accordance with section forty-one hundred
14 forty-eight of this title.

15 § 6. Paragraph (b) of subdivision 2 and subdivisions 3 and 5 of
16 section 4144 of the public health law, paragraph (b) of subdivision 2 as
17 amended by chapter 153 of the laws of 2011, are amended to read as
18 follows:

19 (b) Verbal permission to remove a body of a deceased person from the
20 county in which death occurred or the body was found to a non-adjacent
21 county within the state of New York, as provided in subdivision one of
22 this section, shall be issued by the said registrar of vital statistics,
23 upon request by telephone of a licensed funeral director or undertaker
24 who holds a certificate of death signed by the attending physician or
25 nurse practitioner, or for deaths occurring on or after January first,
26 two thousand fourteen, such certificate of death signed by the attending
27 physician or nurse practitioner is available electronically in accord-
28 ance with section forty-one hundred forty-eight of this title, showing

1 that the death resulted from natural causes and was not a result of
2 accidental, suicidal, homicidal or other external causes.

3 3. No registrar of vital statistics shall receive any fee for the
4 issuance of burial or removal permits under this chapter except as
5 referenced by section forty-one hundred forty-eight of this title and
6 other than the compensation provided in this article.

7 5. If the interment, or other disposition of the body of a deceased
8 person is to be made within the state, the wording of the burial or
9 removal permit may be limited to a statement by the registrar, and over
10 his signature, that a satisfactory certificate of death, having been
11 filed with him, as required by law, permission is granted to inter,
12 remove or otherwise dispose of the body, stating the name, age, sex,
13 cause of death, and other necessary details [upon the form prescribed by
14 the commissioner] in a manner and format as may be required by the
15 commissioner.

16 § 7. Subdivisions 1 and 4 of section 4161 of the public health law,
17 subdivision 1 as amended by chapter 589 of the laws of 1991 and subdivi-
18 sion 4 as amended by chapter 153 of the laws of 2011, are amended to
19 read as follows:

20 1. The certificate of fetal death and the report of fetal death shall
21 contain such information and be in such form as the commissioner may
22 prescribe; provided however that commencing on or after January first,
23 two thousand fourteen, information and signatures required by this
24 subdivision shall be obtained and made in accordance with section
25 forty-one hundred forty-eight of this article, except that unless
26 requested by the woman neither the certificate nor the report of fetal
27 death shall contain the name of the woman, her social security number or
28 any other information which would permit her to be identified except as

1 provided in this subdivision. The report shall state that a certificate
2 of fetal death was filed with the commissioner and the date of such
3 filing. The commissioner shall develop a unique, confidential identifier
4 to be used on the certificate of fetal death to be used in connection
5 with the exercise of the commissioner's authority to monitor the quality
6 of care provided by any individual or entity licensed to perform an
7 abortion in this state and to permit coordination of data concerning the
8 medical history of the woman for purposes of conducting surveillance
9 scientific studies and research pursuant to the provisions of paragraph
10 (j) of subdivision one of section two hundred six of this chapter.

11 4. When a fetal death occurs in a hospital, except in those cases
12 where certificates are issued by coroners or medical examiners, the
13 person in charge of such hospital or his or her designated represen-
14 tative shall promptly present the certificate to the physician or nurse
15 practitioner in attendance, or a physician or nurse practitioner acting
16 in his or her behalf, who shall promptly certify to the facts of birth
17 and of fetal death, provide the medical information required by the
18 certificate, sign the medical certificate of birth and death, and there-
19 upon return such certificate to such person, so that the seventy-two
20 hour registration time limit prescribed in section four thousand one
21 hundred sixty of this title can be met; provided, however that commenc-
22 ing on or after January first, two thousand fourteen, information and
23 signatures required by this subdivision shall be obtained and made in
24 accordance with section forty-one hundred forty-eight of this article.

25 § 8. Subdivision 3 of section 4171 of the public health law is amended
26 to read as follows:

27 3. All certificates, either of birth or death, shall be written legi-
28 bly, in durable black ink, [and no] provided however, that commencing on

1 or after January first, two thousand fourteen, death certificates shall
2 be completed in accordance with section forty-one hundred forty-eight of
3 this article. No certificate, whether filed in paper form or death
4 certificate filed electronically in accordance with section forty-one
5 hundred forty-eight of this article, shall be held to be complete and
6 correct that does not supply all of the items of information called for
7 therein, or satisfactorily account for their omission.

8 § 9. This act shall take effect immediately; provided, however, that
9 if chapter 153 of the laws of 2011 is not in effect on such date then
10 the amendments made to section 4141-a of the public health law, para-
11 graph (b) of subdivision 2 of section 4144 of the public health law and
12 subdivision 4 of section 4161 of the public health law by sections four,
13 six and seven of this act shall take effect on the same date and same
14 manner as chapter 153 of the laws of 2011, takes effect; provided
15 further that the commissioner of health is authorized to promulgate
16 regulations as necessary to implement the provisions of this act.

17 PART D

18 Section 1. The public health law is amended by adding a new section
19 2823 to read as follows:

20 § 2823. Supportive housing development reinvestment program. 1.
21 Notwithstanding sections one hundred twelve and one hundred sixty-three
22 of the state finance law or sections one hundred forty-two and one
23 hundred forty-three of the economic development law or any other contra-
24 ry provision of law, reinvestment funds for supportive housing for
25 vulnerable populations shall be allocated annually by the commissioner
26 based upon the following criteria:

1 (a) the efficiency and effectiveness of the use of funding for the
2 development of adequate and accessible housing to support vulnerable
3 persons in the community and to ensure access to supports necessary to
4 maximize expected outcomes; and

5 (b) other relevant factors relating to the maintenance of existing
6 supportive housing and the development of new supportive housing and
7 associated services.

8 2. Amounts provided pursuant to this section shall be used only to
9 fund housing development activities and other general programmatic
10 activities to help ensure a stable system of supportive housing for
11 vulnerable persons in the community.

12 3. The commissioner is authorized and empowered to make inspections
13 and examine records of any entity funded pursuant to subdivision two of
14 this section. Such examination shall include all medical, service and
15 financial records, receipts, disbursements, contracts, loans and other
16 moneys relating to the financial operation of the provider.

17 4. The amount of supportive housing development reinvestment funds for
18 the department shall be itemized in the annual budget in an amount
19 determined by the commissioner, subject to the approval of the director
20 of the budget. This amount shall include the amount of general fund
21 savings directly related to inpatient hospital and nursing home bed
22 decertification and/or facility closure. The methodologies used to
23 calculate the savings shall be developed by the commissioner and the
24 director of the budget. In no event shall the full annual value of
25 supportive housing development reinvestment programs attributable to
26 inpatient hospital and nursing home bed decertification and/or facility
27 closure exceed the twelve month value of the department of health gener-

1 al fund reductions resulting from such decertification and/or facility
2 closure.

3 5. The annual supportive housing development reinvestment appropri-
4 ation shall reflect a proportion of the amount of general fund savings
5 resulting from subdivision four of this section. Within any fiscal year
6 where appropriation increases are recommended for the supportive housing
7 development reinvestment program, insofar as projected bed decertif-
8 ication and/or facility closures do not occur as estimated, and general
9 fund savings do not result, then the reinvestment appropriations may be
10 reduced in the next year's annual budget itemization.

11 6. Amounts made available to the supportive housing development rein-
12 vestment program of the department shall be subject to annual appropri-
13 ations therefor.

14 7. No provision in this section shall create or be deemed to create
15 any right, interest or entitlement to services or funds that are subject
16 to this section, or to any other services or funds, whether to individ-
17 uals, localities, providers or others, individually or collectively.

18 8. All appropriations for supportive housing development shall be
19 adjusted in the following fiscal year to reflect the variance between
20 the initial and revised estimates of bed decertification and/or facility
21 closure.

22 9. The commissioner shall promulgate regulations, and may promulgate
23 emergency regulations, to effectuate the provisions of this section.

24 § 2. Paragraph (e) of subdivision 1 of section 461-1 of the social
25 services law, as added by chapter 165 of the laws of 1991, is amended to
26 read as follows:

27 (e) "Services" shall mean all services for which full payment to an
28 assisted living program is included in the capitated rate of payment,

1 which shall include personal care services, home care services and such
2 other services as the commissioner in conjunction with the commissioner
3 of health determine by regulation must be included in the capitated rate
4 of payment, and which the assisted living program shall provide, or
5 arrange for the provision of, through contracts with a social services
6 district, [a] long term home health care [program or a] programs, certi-
7 fied home health [agency, and] agencies, and/or other qualified provid-
8 ers.

9 § 3. Paragraphs (b) and (d) of subdivision 2 of section 461-1 of the
10 social services law, as added by chapter 165 of the laws of 1991 and
11 subparagraph (iii) of paragraph (d) as amended by chapter 569 of the
12 laws of 2000, are amended to read as follows:

13 (b) If an assisted living program itself is not a certified home
14 health agency or long term home health care program, the assisted living
15 program shall contract with [a] one or more certified home health [agen-
16 cy or] agencies and/or long term home health care [program] programs for
17 the provision of services pursuant to article thirty-six of the public
18 health law. [An assisted living program shall contract with no more than
19 one certified home health agency or long term home health care program,
20 provided, however, that the commissioner and the commissioner of health
21 may approve additional contracts for good cause.]

22 (d) Patient services and care. (i) An assisted living program[, or if
23 the assisted living program itself does not include a long term home
24 health care program or certified home health agency an assisted living
25 program and a long term home health care program or certified home
26 health agency,] shall conduct an initial assessment to determine whether
27 a person would otherwise require placement in a residential health care
28 facility if not for the availability of the assisted living program and

1 is appropriate for admission to an assisted living program. The assisted
2 living program shall forward such assessment of a medical assistance
3 applicant or recipient to the appropriate social services district.

4 (ii) No person shall be determined eligible for and admitted to an
5 assisted living program unless the assisted living program [and the long
6 term home health care program or the certified home health care agency
7 agree, based on the initial assessment,] finds that the person meets the
8 criteria provided in paragraph (d) of subdivision one of this section
9 and unless the appropriate social services district prior authorizes
10 payment for services.

11 (iii) Appropriate services shall be provided to an eligible person
12 only in accordance with a plan of care which is based upon an initial
13 assessment and periodic reassessments conducted by an assisted living
14 program[, or if the assisted living program itself does not include a
15 long term home health care program or certified home health agency an
16 assisted living program and a long term home health care program or
17 certified home health agency]. A reassessment shall be conducted as
18 frequently as is required to respond to changes in the resident's condi-
19 tion and ensure immediate access to necessary and appropriate services
20 by the resident, but in no event less frequently than once every six
21 months. No person shall be admitted to or retained in an assisted living
22 program unless [the assisted living program, and long term home health
23 care program or certified home health agency are in agreement that] the
24 person can be safely and adequately cared for with the provision of
25 services determined by such assessment or reassessment.

26 § 4. Paragraph (i) of subdivision 3 of section 461-1 of the social
27 services law is REPEALED.

28 § 5. Intentionally Omitted.

1 § 6. Subdivision 2 of section 365-a of the social services law is
2 amended by adding four new paragraphs (w), (x), (y) and (z) to read as
3 follows:

4 (w) podiatry services for individuals with a diagnosis of diabetes
5 mellitus; provided, however, that the provisions of this paragraph shall
6 not take effect unless all necessary approvals under federal law and
7 regulation have been obtained to receive federal financial participation
8 in the costs of health care services provided pursuant to this para-
9 graph.

10 (x) lactation counseling services for pregnant and postpartum women
11 when such services are ordered by a physician, registered physician
12 assistant, registered nurse practitioner, or licensed midwife and
13 provided by a certified lactation consultant, as determined by the
14 commissioner of health; provided, however, that the provisions of this
15 paragraph shall not take effect unless all necessary approvals under
16 federal law and regulation have been obtained to receive federal finan-
17 cial participation in the costs of health care services provided pursu-
18 ant to this paragraph. Nothing in this paragraph shall be construed to
19 modify any licensure, certification or scope of practice provision under
20 title eight of the education law.

21 (y) harm reduction counseling and services to reduce or minimize the
22 adverse health consequences associated with drug use, when ordered by a
23 physician, registered physician assistant, registered nurse practition-
24 er, or licensed midwife and provided by a qualified drug treatment
25 program or community-based organization, as determined by the commis-
26 sioner of health; provided, however, that the provisions of this para-
27 graph shall not take effect unless all necessary approvals under federal
28 law and regulation have been obtained to receive federal financial

1 participation in the costs of health care services provided pursuant to
2 this paragraph. Nothing in this paragraph shall be construed to modify
3 any licensure, certification or scope of practice provision under title
4 eight of the education law.

5 (z) hepatitis C wrap-around services to promote care coordination and
6 integration when ordered by a physician, registered physician assistant,
7 registered nurse practitioner, or licensed midwife, and provided by a
8 qualified professional, as determined by the commissioner of health.
9 Such services may include client outreach, identification and recruit-
10 ment, hepatitis C education and counseling, coordination of care and
11 adherence to treatment, assistance in obtaining appropriate entitlement
12 services, peer support and other supportive services; provided, however,
13 that the provisions of this paragraph shall not take effect unless all
14 necessary approvals under federal law and regulation have been obtained
15 to receive federal financial participation in the costs of health care
16 services provided pursuant to this paragraph. Nothing in this paragraph
17 shall be construed to modify any licensure, certification or scope of
18 practice provision under title eight of the education law.

19 § 7. Paragraph (g) of subdivision 2 of section 365-a of the social
20 services law, as amended by section 23 of part H of chapter 59 of the
21 laws of 2011, is amended to read as follows:

22 (g) sickroom supplies, eyeglasses, prosthetic appliances and dental
23 prosthetic appliances furnished in accordance with the regulations of
24 the department; provided further that: (i) the commissioner of health is
25 authorized to implement a preferred diabetic supply program wherein the
26 department of health will receive enhanced rebates from preferred
27 manufacturers of glucometers and test strips, and may subject non-pre-
28 ferred manufacturers' glucometers and test strips to prior authorization

1 under section two hundred seventy-three of the public health law; (ii)
2 enteral formula therapy and nutritional supplements are limited to
3 coverage only for nasogastric, jejunostomy, or gastrostomy tube feeding
4 or for treatment of an inborn metabolic disorder, or to address growth
5 and development problems in children, or, subject to standards estab-
6 lished by the commissioner, for persons with a diagnosis of HIV
7 infection, AIDS or HIV-related illness; (iii) prescription footwear and
8 inserts are limited to coverage only when used as an integral part of a
9 lower limb orthotic appliance, as part of a diabetic treatment plan, or
10 to address growth and development problems in children; and (iv)
11 compression and support stockings are limited to coverage only for preg-
12 nancy or treatment of venous stasis ulcers;

13 § 8. Intentionally Omitted.

14 § 9. Intentionally Omitted.

15 § 10. Paragraph (d) of subdivision 2 of section 3332 of the public
16 health law, as amended by chapter 178 of the laws of 2010, is amended
17 and a new paragraph (e) is added to read as follows:

18 (d) the date upon which such prescription was actually signed by the
19 prescribing practitioner[.]; and

20 (e) if the patient is a limited English proficient individual, as
21 defined in section three thousand three hundred ninety-eight-a of this
22 chapter, indication of such status and indication of the patient's
23 primary language.

24 § 11. Section 3333 of the public health law is amended by adding a
25 new subdivision 6 to read as follows:

26 6. If the pharmacist knows or has reason to know that the patient is a
27 limited English proficient individual, as defined in section three thou-
28 sand three hundred ninety-eight-a of this chapter, the pharmacist shall

1 provide for translation or other language services as required in
2 section three thousand three hundred ninety-eight-a of this chapter,
3 unless doing so would compromise the care of the patient.

4 § 12. Paragraphs (b) and (c) of subdivision 1 of section 3334 of the
5 public health law, as amended by chapter 178 of the laws of 2010, are
6 amended and a new paragraph (d) is added to read as follows:

7 (b) dispense the substance in conformity with the labeling require-
8 ments applicable to the type of prescription which would be required but
9 for the emergency; [and]

10 (c) make a good faith effort to verify the practitioner's identity, if
11 the practitioner is unknown to the pharmacist[.]; and

12 (d) if the pharmacist knows or has reason to know that the patient is
13 a limited English proficient individual, as defined in section three
14 thousand three hundred ninety-eight-a of this chapter, the pharmacist
15 shall provide for translation or other language services as required in
16 section three thousand three hundred ninety-eight-a of this chapter,
17 unless doing so would compromise the care of the patient.

18 § 13. Subdivision 1 of section 3337 of the public health law is
19 amended by adding a new paragraph (d) to read as follows:

20 (d) if the pharmacist knows or has reason to know that the patient is
21 a limited English proficient individual, as defined in section three
22 thousand three hundred ninety-eight-a of this chapter, the pharmacist
23 shall provide for translation or other language services as required in
24 section three thousand three hundred ninety-eight-a of this chapter,
25 unless doing so would compromise the care of the patient.

26 § 14. Subdivision 1 of section 3338 of the public health law, as
27 amended by section 12 of part A of chapter 58 of the laws of 2004, is
28 amended to read as follows:

1 1. Official New York state prescription forms shall be prepared and
2 issued by the department in the format, manner and detail as the commis-
3 sioner in consultation with the commissioner of education may, by regu-
4 lation, require, and, each form shall be serialized. Such forms shall be
5 furnished to practitioners authorized to write such prescriptions and to
6 institutional dispensers. Such prescription blanks shall not be trans-
7 ferable.

8 § 15. Subdivision b of section 6804 of the education law, as added by
9 chapter 987 of the laws of 1971, is amended to read as follows:

10 b. To regulate and control the sale, distribution, character and stan-
11 dard of drugs, poisons, cosmetics, devices and new drugs, including, but
12 not limited to, in conjunction with the commissioner of health, the
13 development of requirements related to the sale, distribution, and
14 dispensing of drugs and new drugs to address the special needs of
15 persons who are elderly, of limited vision or of limited English profi-
16 ciency,

17 § 16. Section 6810 of the education law is amended by adding three new
18 subdivisions 10, 11 and 12 to read as follows:

19 10. Covered pharmacies, as defined in section three thousand three
20 hundred ninety-eight-a of the public health law, must provide trans-
21 lation and interpretation services for patients having limited profi-
22 ciency in English, subject to regulations of the commissioner and the
23 provisions of section three thousand three hundred ninety-eight-a of the
24 public health law.

25 11. If the patient is limited English proficient, as defined in
26 section three thousand three hundred ninety-eight-a of the public health
27 law, indication of such status and indication of the patient's primary
28 language.

1 12. If the pharmacist knows or has reason to know that the patient is
2 of limited English proficiency, as defined in section three thousand
3 three hundred ninety-eight-a of the public health law, the pharmacist
4 shall provide for translation or other language services as required in
5 such section, unless doing so would compromise the care of the patient.

6 § 17. The public health law is amended by adding a new article 33-B to
7 read as follows:

8 ARTICLE 33-B

9 STANDARDS FOR PRESCRIPTION MEDICATIONS

10 Section 3398. Application.

11 3398-a. Interpretation requirements for prescription drugs.

12 § 3398. Application. This article applies to medications prescribed by
13 practitioners authorized to prescribe medications, including but not
14 limited to controlled substances, pursuant to title eight of the educa-
15 tion law; provided, however, that to the extent there is any conflict
16 between the provisions of this article and the provisions of article
17 thirty-three of this title with respect to prescriptions for controlled
18 substances, the provisions of article thirty-three of this title shall
19 control.

20 § 3398-a. Interpretation requirements for prescription drugs. 1. For
21 the purposes of this section, the following terms shall have the follow-
22 ing meanings:

23 (a) "Covered pharmacy" means any pharmacy that is part of a group of
24 five or more pharmacies owned by the same corporate entity, or which is
25 a mail order pharmacy. For purposes of this section, "corporate entity"
26 shall include related subsidiaries, affiliates, successors, or assignees
27 doing business as or operating under a common name or trading symbol;

1 (b) "Limited English proficient individual" or "LEP Individual" means
2 an individual who identifies as being, or is evidently, unable to speak,
3 read or write English at a level that permits such individual to under-
4 stand health related and pharmaceutical information communicated in
5 English;

6 (c) "Translate" shall mean the conversion of a written text from one
7 language into an equivalent written text in another language by an indi-
8 vidual competent to do so and utilizing all necessary pharmaceutical and
9 health-related terminology;

10 (d) "Competent oral interpretation" means oral communication in which
11 a person acting as an interpreter comprehends a spoken message and
12 re-expresses that message accurately in another language, utilizing all
13 necessary pharmaceutical and health-related terminology, so as to enable
14 an LEP individual to receive all necessary information in the LEP indi-
15 vidual's primary language;

16 (e) "Pharmacy primary languages" shall mean the top seven languages
17 spoken by LEP individuals in this state as determined biennially by the
18 state board of pharmacy based on data from the most recent American
19 community survey from the United States census bureau and other relevant
20 data sources;

21 (f) "Mail order pharmacy" shall mean a pharmacy that dispenses most of
22 its prescriptions through the United States Postal Service or other
23 delivery services.

24 2. (a) Every covered pharmacy shall provide free, competent oral and
25 written interpretation services, to each LEP individual filling a
26 prescription at or through such covered pharmacy, in the LEP individ-
27 ual's primary language for the purpose of counseling such individual
28 about his or her prescription medications and interpreting label infor-

1 mation, or when soliciting information necessary to maintain a patient
2 medication profile, unless the LEP individual is offered and refuses
3 such services;

4 (b) Every covered pharmacy shall provide free, competent oral inter-
5 pretation of prescription medication labels, warning labels and other
6 written material to each LEP individual filling a prescription at or
7 through such covered pharmacy unless the LEP individual is offered and
8 refuses such services, or the medication label warning labels and other
9 written materials have already been translated into the language spoken
10 by the LEP individual;

11 (c) The services required by this section may be provided by a staff
12 member of the covered pharmacy or a third-party contractor. Such
13 services must be provided on an immediate basis but need not be provided
14 in-person or face-to-face.

15 3. Every covered pharmacy shall conspicuously post, at or adjacent to
16 each counter over which prescription drugs are sold, and every mail
17 order pharmacy, shall include in the package in which prescription drugs
18 are delivered, a notification of the right to free language assistance
19 services for LEP individuals as provided for in subdivision two of this
20 section. Such notifications shall be provided in the pharmacy primary
21 languages. The size, style and placement of such notice shall be deter-
22 mined in accordance with rules promulgated by the commissioner.

23 4. Any person aggrieved by a failure to receive services required by
24 this section shall have a cause of action only against the covered phar-
25 macy in any court of competent jurisdiction for damages, including puni-
26 tive damages, and for injunctive relief and such other remedies as may
27 be appropriate.

1 5. This section shall preempt any contrary local law or ordinance,
2 except that this section shall not preempt or supersede local laws or
3 ordinances imposing additional or stricter requirements relating to
4 interpretation or translation services in pharmacies.

5 § 18. Section 6509 of the education law is amended by adding a new
6 subdivision 15 to read as follows:

7 (15) A violation of subdivision two or three of section thirty-three
8 hundred ninety-eight-a of the public health law, but only as to a phar-
9 macy and not as to an individual licensed pharmacist.

10 § 19. Subdivisions (f) and (g) of section 2522 of the public health
11 law, as amended by chapter 484 of the laws of 2009, are amended and a
12 new subdivision (h) is added to read as follows:

13 (f) follow-up of patient participation in prenatal care services;
14 [and]

15 (g) identification of regional perinatal health care system barriers
16 and limitations that lead to poor perinatal outcomes and development of
17 strategies to address such barriers and limitations[.]; and

18 (h) coordination of service delivery by community-based organizations
19 among health care providers and health plans using health information
20 technology and uniform screening criteria for perinatal risk.

21 § 20. Intentionally Omitted.

22 § 21. Intentionally Omitted.

23 § 22. Section 366 of the social services law is amended by adding a
24 new subdivision 15 to read as follows:

25 15. (a) The commissioner may contract with one or more entities to
26 engage in education, outreach services, and facilitated enrollment
27 activities for aged, blind, and disabled persons who may be eligible for
28 coverage under this title.

1 (b) Notwithstanding any inconsistent provision of sections one hundred
2 twelve and one hundred sixty-three of the state finance law, or sections
3 one hundred forty-two and one hundred forty-three of the economic devel-
4 opment law, or any other contrary provision of law, the commissioner is
5 authorized to enter into a contract or contracts under this subdivision
6 without a competitive bid or request for proposal process, provided,
7 however, that:

8 (i) The department shall post on its website, for a period of no less
9 than thirty days:

10 (1) A description of the proposed services to be provided pursuant to
11 the contract or contracts;

12 (2) The criteria for selection of a contractor or contractors;

13 (3) The period of time during which a prospective contractor may seek
14 selection, which shall be no less than thirty days after such informa-
15 tion is first posted on the website; and

16 (4) The manner by which a prospective contractor may seek such
17 selection, which may include submission by electronic means;

18 (ii) All reasonable and responsive submissions that are received from
19 prospective contractors in timely fashion shall be reviewed by the
20 commissioner; and

21 (iii) The commissioner shall select such contractor or contractors
22 that, in his or her discretion, are best suited to serve the purposes of
23 this subdivision.

24 § 23. The public health law is amended by adding a new article 9-B to
25 read as follows:

26 ARTICLE 9-B

27 PRIMARY CARE SERVICE CORPS PRACTITIONER LOAN REPAYMENT

28 PROGRAM

1 Section 923. Definitions.

2 924. Primary care service corps practitioner loan repayment
3 program.

4 § 923. Definitions. The following words or phrases as used in this
5 section shall have the following meanings:

6 1. "Underserved area" means an area or medically underserved popu-
7 lation designated by the commissioner as having a shortage of primary
8 care physicians, other primary care practitioners, dental practitioners
9 or mental health practitioners.

10 2. "Primary care service corps practitioner" means a physician assist-
11 ant, nurse practitioner, nurse midwife, general or pedodontic dentist,
12 dental hygienist, clinical psychologist, licensed clinical social work-
13 er, psychiatric nurse practitioner, licensed marriage and family thera-
14 pist, or a licensed mental health counselor, who is licensed, regis-
15 tered, or certified to practice in New York state and who provides
16 coordinated primary care services, including, but not limited to, oral
17 health and mental health services.

18 3. "Physician assistant" means a person who has been registered as
19 such pursuant to article one hundred thirty-one-B of the education law.

20 4. "Nurse practitioner" means a person who has been certified as such
21 pursuant to section sixty-nine hundred ten of the education law.

22 5. "Nurse midwife" means a person who has been licensed as such pursu-
23 ant to section sixty-nine hundred fifty-five of the education law.

24 6. "Psychologist" means a person who has been licensed as such pursu-
25 ant to section seventy-six hundred three of the education law.

26 7. "Licensed clinical social worker" means a person who has been
27 licensed as such pursuant to section seventy-seven hundred two of the
28 education law.

1 8. "Psychiatric nurse practitioner" means a nurse practitioner who, by
2 reason of training and experience, provides a full spectrum of psychiat-
3 ric care, assessing, diagnosing, and managing the prevention and treat-
4 ment of psychiatric disorders and mental health problems.

5 9. "Licensed marriage and family therapist" means a person who has
6 been licensed as such pursuant to section eighty-four hundred three of
7 the education law.

8 10. "Licensed mental health counselor" means a person who has been
9 licensed as such pursuant to section eighty-four hundred two of the
10 education law.

11 11. "General or pedodontic dentist" means a person who has been
12 licensed or otherwise authorized to practice dentistry pursuant to arti-
13 cle one hundred thirty-three of the education law excluding orthodon-
14 tists, endodontists and periodontists.

15 12. "Dental hygienist" means a person who is licensed to practice
16 dental hygiene pursuant to section sixty-six hundred nine of the educa-
17 tion law.

18 § 924. Primary care service corps practitioner loan repayment program.

19 1. The commissioner is authorized, within amounts available therefor, to
20 make loan repayment awards to eligible primary care service corps prac-
21 titioners who agree to practice full-time in an underserved area in New
22 York state, in amounts to be determined by the commissioner, but not to
23 exceed thirty-two thousand dollars per year for any year in which such
24 practitioners provide full-time eligible obligated service.

25 2. Loan repayment awards made to a primary care service corps practi-
26 tioner pursuant to subdivision one of this section shall not exceed the
27 total qualifying outstanding debt of the practitioner from student loans
28 to cover tuition and other related educational expenses, made by or

1 guaranteed by the federal or state government, or made by a lending or
2 educational institution approved under title IV of the federal higher
3 education act. Loan repayment awards shall be used solely to repay such
4 outstanding debt.

5 3. In the event that any commitment pursuant to the agreement refer-
6 enced in subdivision one of this section is not fulfilled, the recipient
7 shall be responsible for repayment in amounts which shall be calculated
8 in accordance with the formula set forth in subdivision (b) of section
9 two hundred fifty-four-o of title forty-two of the United States Code,
10 as amended.

11 4. The commissioner is authorized to apply any funds available for
12 purposes of subdivision one of this section for use as matching funds
13 for any available federal grants for the purpose of assisting states in
14 operating loan repayment programs.

15 5. The commissioner may postpone, change or waive the service obli-
16 gation and repayments amounts set forth in subdivisions one and three of
17 this section, respectively, in individual circumstances where there is
18 compelling need or hardship.

19 6. In order to be eligible to receive a loan repayment award under
20 this section, a primary care service corps practitioner must meet site
21 and service eligibility criteria as determined by the commissioner.

22 7. The commissioner shall promulgate regulations necessary to effectu-
23 ate the provisions and purposes of this article.

24 § 24. Paragraph (a) of subdivision 4 of section 2801-a of the public
25 health law, as amended by section 57 of part A of chapter 58 of the laws
26 of 2010, is amended to read as follows:

27 (a) Any change in the person who is the operator of a hospital shall
28 be approved by the public health and health planning council in accord-

1 ance with the provisions of subdivisions two and three of this section.
2 No change in the directors of a not-for-profit corporation that is the
3 operator of a hospital shall be effective unless, at least one hundred
4 twenty days prior to the intended effective date thereof, the corpo-
5 ration fully completes and files with the department notice on a form,
6 to be developed by the department, which shall disclose such information
7 as may reasonably be necessary for the department to determine whether
8 it should bar the change in directors. Notwithstanding any inconsistent
9 provision of this paragraph, any change by a natural person who is the
10 operator of a hospital seeking to transfer part of his or her interest
11 in such hospital to another person or persons so as to create a partner-
12 ship shall be approved in accordance with the provisions of paragraph
13 (b) of this subdivision.

14 § 25. Section 2806 of the public health law is amended by adding a new
15 subdivision 2-a to read as follows:

16 2-a. (a) The commissioner may temporarily suspend or limit an operat-
17 ing certificate of a not-for-profit corporation without a hearing upon:
18 (i) the commencement by the department of an action to revoke, suspend,
19 limit or annul the operating certificate pursuant to paragraph (a) of
20 subdivision one of this section due to repeated violations of this arti-
21 cle or rules and regulations promulgated thereunder; (ii) the indictment
22 on felony charges of any member of the corporation's board of directors
23 or (iii) notice from the attorney general of an action to remove any
24 member of the corporation's board of directors pursuant to paragraph (d)
25 of section seven hundred six of the not-for-profit corporation law. Such
26 suspension or limitation of the operating certificate shall remain
27 effective until the resolution of the criminal action that is the

1 subject of the indictment or until the resolution of the action of the
2 attorney general, as applicable.

3 (b) In the event one or more members of a board of directors of a
4 not-for-profit corporation are the subject of an action to limit an
5 operating certificate pursuant to paragraph (a) of subdivision one of
6 this section, have been indicted on felony charges, or are the subject
7 of an action for removal by the attorney general as described in para-
8 graph (a) of this subdivision, the commissioner may, in addition to his
9 or her other powers, limit the existing operating certificate of such
10 corporation so that it shall apply only to the remaining members of the
11 board of directors provided that: (i) every such person subject to an
12 action to limit the operating certificate pursuant to paragraph (a) of
13 subdivision one of this section, every such indicted person, or every
14 such person subject to an action for removal shall immediately and
15 completely cease and withdraw from participation, in any capacity, in
16 the management, governance or operation of the hospital; and (ii) the
17 commissioner has found that the remaining members of the board of direc-
18 tors are of such character, experience, competence and standing so as to
19 give reasonable assurance of their ability to conduct the affairs of the
20 corporation in its best interests and in the public interest. If the
21 conditions set forth in subparagraphs (i) and (ii) of this paragraph are
22 not met, or if the limitation of the operating certificate under this
23 paragraph results in a board of directors of less than three members,
24 the commissioner shall temporarily suspend the operating certificate
25 pursuant to paragraph (a) of this subdivision.

26 (c) Where the commissioner has found that the suspension or limitation
27 of a hospital operating certificate pursuant to this section would jeop-
28 ardize existing or continued access to necessary services within the

1 community, the commissioner may appoint temporary members of the board
2 of directors to operate and manage the hospital during the term of the
3 suspension.

4 § 26. Paragraphs (a) and (b) of subdivision 5 of section 2806 of the
5 public health law, paragraph (a) as amended by section 20 of part LL of
6 chapter 56 of the laws of 2010 and paragraph (b) as amended by chapter
7 607 of the laws of 1981, are amended to read as follows:

8 (a) Except as provided in paragraphs (b) and (d) of this subdivision,
9 anything contained in this section or in a certificate of relief from
10 disabilities or a certificate of good conduct issued pursuant to article
11 twenty-three of the correction law to the contrary notwithstanding, a
12 hospital operating certificate of a hospital under control of a control-
13 ling person as defined in paragraph (a) of subdivision twelve of section
14 twenty-eight hundred one-a of this article, or under control of any
15 other entity, shall be revoked upon a finding by the department that
16 such controlling person or any individual, member of a partnership,
17 member of a limited liability company, member of a board of directors,
18 or shareholder of a corporation to whom or to which an operating certif-
19 icate has been issued, has been convicted of a class A, B or C felony,
20 or a felony related in any way to any activity or program subject to the
21 regulations, supervision, or administration of the department or of the
22 office of temporary and disability assistance or in violation of the
23 public officers law in a court of competent jurisdiction in the state,
24 or of a crime outside the state which, if committed within the state,
25 would have been a class A, B or C felony or a felony related in any way
26 to any activity or program subject to the regulations, supervision, or
27 administration of the department or of the office of temporary and disa-
28 bility assistance or in violation of the public officers law.

1 (b) In the event one or more members of a partnership, member of a
2 limited liability company, member of a board of directors, or sharehold-
3 ers of a corporation shall have been convicted of a felony as described
4 in paragraph (a) of this subdivision, the commissioner shall, in addi-
5 tion to his other powers, limit the existing operating certificate of
6 such partnership or corporation so that it shall apply only to the
7 remaining partner, member of a limited liability company, member of a
8 board of directors, or shareholders, as the case may be, provided that
9 every such convicted person immediately and completely ceases and with-
10 draws from participation, in any capacity, in the management and opera-
11 tion of the hospital, and further provided that an application for
12 approval of change of ownership, change of board membership, or transfer
13 of stock is filed without delay in accordance with the pertinent
14 provisions of section twenty-eight hundred one-a of this [chapter] arti-
15 cle.

16 § 27. The public health law is amended by adding a new section 2806-a
17 to read as follows:

18 § 2806-a. Temporary operator. 1. For the purposes of this section:
19 (a) the term "adult care facility" shall mean an adult home or enriched
20 housing program licensed pursuant to article seven of the social
21 services law or an assisted living residence licensed pursuant to arti-
22 cle forty-six-B of this chapter; (b) the term "established operator"
23 shall mean the operator of an adult care facility, a general hospital or
24 a diagnostic and treatment center that has been established and issued
25 an operating certificate as such pursuant to this article; (c) the term
26 "facility" shall mean (i) a general hospital or a diagnostic and treat-
27 ment center that has been issued an operating certificate as such pursu-

1 ant to this article; or (ii) an adult care facility; and (d) the term
2 "temporary operator" shall mean any person or entity that:

3 (i) agrees to operate a facility on a temporary basis in the best
4 interests of its residents or patients and the community served by the
5 facility; and

6 (ii) has demonstrated that he or she has the character, competence and
7 financial ability to operate the facility in compliance with applicable
8 standards.

9 2. (a) When a statement of deficiencies has been issued by the depart-
10 ment and upon a determination by the commissioner that there exist
11 significant management failures, including but not limited to adminis-
12 trative, operational or clinical deficiencies or financial instability,
13 in a facility that (i) seriously endanger the life, health or safety of
14 residents or patients or (ii) jeopardize existing or continued access to
15 necessary services within the community, he or she shall appoint a
16 temporary operator to assume sole control over and sole responsibility
17 for the operations of that facility. The appointment of a temporary
18 operator shall be in addition to any other remedies provided by law.

19 (b) The established operator of a facility may at any time request the
20 commissioner to appoint a temporary operator. Upon receiving such a
21 request, the commissioner may, if he or she determines that such an
22 action is necessary to restore or maintain the provision of quality care
23 to the residents or patients, enter into an agreement with the estab-
24 lished operator for the appointment of a temporary operator to assume
25 sole control over and sole responsibility for the operations of that
26 facility.

27 3. A temporary operator appointed pursuant to this section shall use
28 his or her best efforts to correct or eliminate any deficiencies,

1 management failures or financial instability in the facility and to
2 promote the quality and accessibility of health care services in the
3 community served by the facility. Such correction or elimination of
4 deficiencies, management failures or financial instability shall not
5 include major alterations of the physical structure of the facility.
6 During the term of his or her appointment, the temporary operator shall
7 have the authority to direct the management of the facility in all
8 aspects of operation and shall be afforded full access to the accounts
9 and records of the facility. The temporary operator shall, during this
10 period, operate the facility in such a manner as to promote safety and
11 to promote the quality and accessibility of health care services or
12 residential care in the community served by the facility. The temporary
13 operator shall have the power to let contracts therefor or incur
14 expenses on behalf of the facility, provided that where individual items
15 of repairs, improvements or supplies exceed ten thousand dollars, the
16 temporary operator shall obtain price quotations from at least three
17 reputable sources. The temporary operator shall not be required to file
18 any bond. No security interest in any real or personal property compris-
19 ing the facility or contained within the facility, or in any fixture of
20 the facility, shall be impaired or diminished in priority by the tempo-
21 rary operator. Neither the temporary operator nor the department shall
22 engage in any activity that constitutes a confiscation of property with-
23 out the payment of fair compensation.

24 4. The temporary operator shall be entitled to a reasonable fee, as
25 determined by the commissioner, and necessary expenses incurred during
26 his or her performance as temporary operator, to be paid from the reven-
27 ue of the facility. The temporary operator shall collect incoming
28 payments from all sources and apply them first to the reasonable fee and

1 to costs incurred in the performance of his or her functions as tempo-
2 rary operator. The temporary operator shall be liable only in his or her
3 capacity as temporary operator for injury to person and property by
4 reason of conditions of the facility in a case where an established
5 operator would have been liable; he or she shall not have any liability
6 in his or her personal capacity, except for gross negligence and inten-
7 tional acts.

8 5. (a) The initial term of the appointment of the temporary operator
9 shall not exceed one hundred eighty days. After one hundred eighty days,
10 if the commissioner determines that termination of the temporary opera-
11 tor would cause significant deterioration of the quality of, or access
12 to, health care or residential care in the community or that reappoint-
13 ment is necessary to correct the deficiencies, management failure or
14 financial instability that required the appointment of the temporary
15 operator, the commissioner may authorize up to two additional ninety day
16 terms. Within fourteen days prior to the termination of each term of
17 the appointment of the temporary operator, the temporary operator shall
18 submit to the commissioner and to the established operator a report
19 describing the actions taken during the appointment to address such
20 deficiencies, management failures and/or financial instability. The
21 report shall reflect best efforts to produce a full and complete
22 accounting.

23 (b) Upon the completion of the two ninety day terms referenced in
24 paragraph (a) of this subdivision, if the commissioner determines that
25 termination of the temporary operator would cause significant deteri-
26 oration of the quality of, or access to, health care or residential care
27 in the community or that reappointment is necessary to continue the
28 correction of the deficiencies, management failure or financial insta-

1 bility that required the appointment of the temporary operator, the
2 commissioner may reappoint the temporary operator for additional ninety
3 day terms, provided that the commissioner shall provide for notice and
4 the opportunity for a hearing as set forth in subdivision six of this
5 section.

6 (c) The term of the initial appointment and of any subsequent reap-
7 pointment may be terminated prior to the expiration of the designated
8 term, if the established operator and the commissioner agree on a plan
9 of correction and the implementation of such plan.

10 6. The commissioner shall, upon making a determination to appoint a
11 temporary operator pursuant to paragraph (a) of subdivision two of this
12 section or reappoint a temporary operator for the first additional nine-
13 ty day term pursuant to paragraph (a) of subdivision five of this
14 section, cause the established operator of the facility to be notified
15 of the determination by registered or certified mail addressed to the
16 principal office of the established operator. If the commissioner deter-
17 mines that additional reappointments pursuant to paragraph (b) of subdivi-
18 vision five of this section are required, the commissioner shall again
19 cause the established operator of the facility to be notified of such
20 determination by registered or certified mail addressed to the principal
21 office of the established operator at the commencement of the first of
22 every two additional terms. Upon receipt of such notification at the
23 principal office of the established operator and before the expiration
24 of ten days thereafter, the established operator may request an adminis-
25 trative hearing on the determination to begin no later than sixty days
26 from the date of the appointment or reappointment of the temporary oper-
27 ator. Any such hearing shall be strictly limited to the issue of whether

1 the determination of the commissioner which resulted in the appointment
2 or reappointment is supported by substantial evidence.

3 7. No provision contained in this section shall be deemed to relieve
4 the established operator or any other person of any civil or criminal
5 liability incurred, or any duty imposed by law, by reason of acts or
6 omissions of the established operator or any other person prior to the
7 appointment of any temporary operator hereunder; nor shall anything
8 contained in this section be construed to suspend during the term of the
9 appointment of the temporary operator any obligation of the established
10 operator or any other person for the payment of taxes or other operating
11 and maintenance expenses of the facility nor of the established operator
12 or any other person for the payment of mortgages or liens.

13 § 28. Section 2 of chapter 584 of the laws of 2011, amending the
14 public authorities law, relating to the powers and duties of the dormi-
15 tory authority of the state of New York relative to the establishment of
16 subsidiaries for certain purposes, is amended to read as follows:

17 § 2. This act shall take effect immediately and shall expire and be
18 deemed repealed on July 1, [2012] 2015; provided however, that the expi-
19 ration of this act shall not impair or otherwise affect any of the
20 powers, duties, responsibilities, functions, rights or liabilities of
21 any subsidiary duly created pursuant to subdivision twenty-five of
22 section 1678 of the public authorities law prior to such expiration.

23 § 29. Subdivision 1 of section 2999-i of the public health law, as
24 added by section 52 of part H of chapter 59 of the laws of 2011, is
25 amended to read as follows:

26 1. (a) The commissioner of taxation and finance shall be the custodian
27 of the fund and the special account established pursuant to section
28 ninety-nine-t of the state finance law. All payments from the fund shall

1 be made by the commissioner of taxation and finance upon certificates
2 signed by the superintendent of financial services, or his or her desig-
3 nee, as hereinafter provided. The fund shall be separate and apart from
4 any other fund and from all other monies; provided, however, that
5 monies of the fund may be invested as set forth in paragraph (b) of this
6 subdivision. No monies from the fund shall be transferred to any other
7 fund, nor shall any such monies be applied to the making of any payment
8 for any purpose other than the purpose set forth in this title.

9 (b) Any monies of the fund not required for immediate use may, at the
10 discretion of the commissioner of financial services in consultation
11 with the commissioner of health and the director of the budget, be
12 invested by the commissioner of taxation and finance in obligations of
13 the United States or the state or obligations the principal and interest
14 of which are guaranteed by the United States or the state. The proceeds
15 of any such investment shall be retained by the fund as assets to be
16 used for the purposes of the fund.

17 § 30. Subdivision 9 of section 2803 of the public health law is
18 REPEALED.

19 § 31. Paragraph (b) of subdivision 1-a of section 2802 of the public
20 health law, as amended by chapter 174 of the laws of 2011, is amended to
21 read as follows:

22 (b) repair or maintenance, regardless of cost, including routine
23 purchases and the acquisition of minor equipment undertaken in the
24 course of a hospital's inventory control functions; provided that for
25 projects under this paragraph with a total cost of up to six million
26 dollars, no written notice shall be required;

27 § 32. Subdivision 1 of section 1 of chapter 119 of the laws of 1997
28 relating to authorizing the department of health to establish certain

1 payments to general hospitals, as amended by section 1 of part S2 of
2 chapter 62 of the laws of 2003, is amended to read as follows:

3 1. Notwithstanding any inconsistent provision of law or regulation,
4 effective for the period [April 1, 1997 through March 31, 1998] April 1,
5 2012 through December 31, 2012 and for annual periods beginning [April]
6 January 1 thereafter, the [department] Department of [health] Health is
7 authorized to pay voluntary non-profit general hospitals as defined in
8 subdivision 10 of section 2801 of the public health law additional
9 payments for inpatient hospital services as medical assistance payments
10 pursuant to title 11 of article 5 of the social services law and federal
11 law and regulations governing disproportionate share payments, based on
12 the [amount of state aid for which such general hospitals are eligible
13 pursuant to articles 25, 26 and 41 of the mental hygiene law and as
14 identified in subdivision 2 of this section] costs incurred in excess of
15 revenues by general hospitals in providing services in eligible programs
16 to uninsured patients and patients eligible for medical assistance.
17 Payment made pursuant to this section shall not exceed each such general
18 hospital's cost of providing services to uninsured patients and patients
19 eligible for medical assistance pursuant to title 11 of article 5 of the
20 social services law after taking into consideration all other medical
21 assistance received, including disproportionate share payments made to
22 such general hospital, and payments from or on behalf of such uninsured
23 patients, and shall also not exceed the total amount of state aid, iden-
24 tified by subdivision 2 of this section, available to such general
25 hospital by law. Payments made to such general hospitals pursuant to
26 this section shall be made in lieu of any state aid payments available
27 to such general hospital by law.

1 § 33. Subdivision 1 of section 241 of the elder law, as amended by
2 section 29 of part A of chapter 58 of the laws of 2008, is amended to
3 read as follows:

4 1. "Covered drug" shall mean a drug dispensed subject to a legally
5 authorized prescription pursuant to section sixty-eight hundred ten of
6 the education law, and insulin, an insulin syringe, or an insulin
7 needle. Such term shall not include: (a) any drug determined by the
8 commissioner of the federal food and drug administration to be ineffec-
9 tive or unsafe; (b) any drug dispensed in a package, or form of dosage
10 or administration, as to which the commissioner of health finally deter-
11 mines in accordance with the provisions of section two hundred fifty-two
12 of this title that a less expensive package, or form of dosage or admin-
13 istration, is available that is pharmaceutically equivalent and equiv-
14 alent in its therapeutic effect for the general health characteristics
15 of the eligible program participant population; (c) any device for the
16 aid or correction of vision; (d) any drug, including vitamins, which is
17 generally available without a physician's prescription; and (e) drugs
18 for the treatment of sexual or erectile dysfunction, unless such drugs
19 are used to treat a condition, other than sexual or erectile dysfunc-
20 tion, for which the drugs have been approved by the federal food and
21 drug administration; and (f) a brand name drug for which a multi-source
22 therapeutically and generically equivalent drug, as determined by the
23 federal food and drug administration, is available, unless previously
24 authorized by the elderly pharmaceutical insurance coverage program,
25 provided, however, that the [elderly pharmaceutical insurance coverage
26 panel] commissioner is authorized to exempt, for good cause shown, any
27 brand name drug from such restriction, and provided further that such
28 restriction shall not apply to any drug that is included on the

1 preferred drug list under section two hundred seventy-two of the public
2 health law or is in the clinical drug review program under section two
3 hundred seventy-four of the public health law to the extent that the
4 preferred drug program and the clinical drug review program are applied
5 to the elderly pharmaceutical insurance coverage program pursuant to
6 section two hundred seventy-five of the public health law, or to any
7 drug covered under a program participant's Medicare part D or other
8 primary insurance plan. Any of the drugs enumerated in the preceding
9 sentence shall be considered a covered drug or a prescription drug for
10 purposes of this article if it is added to the preferred drug list under
11 article two-A of the public health law. For the purpose of this title,
12 except as otherwise provided in this section, a covered drug shall be
13 dispensed in quantities no greater than a thirty day supply or one
14 hundred units, whichever is greater. In the case of a drug dispensed in
15 a form of administration other than a tablet or capsule, the maximum
16 allowed quantity shall be a thirty day supply; the [panel] commissioner
17 is authorized to approve exceptions to these limits for specific
18 products following consideration of recommendations from pharmaceutical
19 or medical experts regarding commonly packaged quantities, unusual forms
20 of administration, length of treatment or cost effectiveness. In the
21 case of a drug prescribed pursuant to section thirty-three hundred thir-
22 ty-two of the public health law to treat one of the conditions that have
23 been enumerated by the commissioner of health pursuant to regulation as
24 warranting the prescribing of greater than a thirty day supply, such
25 drug shall be dispensed in quantities not to exceed a three month
26 supply.

1 § 33-a. Subdivision 1 of section 241 of the elder law, as amended by
2 section 12 of part B of chapter 57 of the laws of 2006, is amended to
3 read as follows:

4 1. "Covered drug" shall mean a drug dispensed subject to a legally
5 authorized prescription pursuant to section sixty-eight hundred ten of
6 the education law, and insulin, an insulin syringe, or an insulin
7 needle. Such term shall not include: (a) any drug determined by the
8 commissioner of the federal food and drug administration to be ineffec-
9 tive or unsafe; (b) any drug dispensed in a package, or form of dosage
10 or administration, as to which the commissioner of health finally deter-
11 mines in accordance with the provisions of section two hundred fifty-two
12 of this title that a less expensive package, or form of dosage or admin-
13 istration, is available that is pharmaceutically equivalent and equiv-
14 alent in its therapeutic effect for the general health characteristics
15 of the eligible program participant population; (c) any device for the
16 aid or correction of vision, or any drug, including vitamins, which is
17 generally available without a physician's prescription; and (d) drugs
18 for the treatment of sexual or erectile dysfunction, unless such drugs
19 are used to treat a condition, other than sexual or erectile dysfunc-
20 tion, for which the drugs have been approved by the federal food and
21 drug administration. For the purpose of this title, except as otherwise
22 provided in this section, a covered drug shall be dispensed in quanti-
23 ties no greater than a thirty day supply or one hundred units, whichever
24 is greater. In the case of a drug dispensed in a form of administration
25 other than a tablet or capsule, the maximum allowed quantity shall be a
26 thirty day supply; the [panel] commissioner is authorized to approve
27 exceptions to these limits for specific products following consideration
28 of recommendations from pharmaceutical or medical experts regarding

1 commonly packaged quantities, unusual forms of administration, length of
2 treatment or cost effectiveness. In the case of a drug prescribed pursu-
3 ant to section thirty-three hundred thirty-two of the public health law
4 to treat one of the conditions that have been enumerated by the commis-
5 sioner of health pursuant to regulation as warranting the prescribing of
6 greater than a thirty day supply, such drug shall be dispensed in quan-
7 tities not to exceed a three month supply.

8 § 33-b. Paragraph (f) of subdivision 3 of section 242 of the elder
9 law, as amended by section 3-d of part A of chapter 59 of the laws of
10 2011, is amended to read as follows:

11 (f) As a condition of eligibility for benefits under this title, a
12 program participant is required to be enrolled in Medicare part D and to
13 maintain such enrollment. For unmarried participants with individual
14 annual income less than or equal to twenty-three thousand dollars and
15 married participants with joint annual income less than or equal to
16 twenty-nine thousand dollars, the elderly pharmaceutical insurance
17 coverage program shall pay for the portion of the part D monthly premium
18 that is the responsibility of the participant. Such payment shall be
19 limited to the low-income benchmark premium amount established by the
20 federal centers for Medicare and Medicaid services and any other amount
21 which such agency establishes under its de minimus premium policy,
22 except that such payments made on behalf of participants enrolled in a
23 Medicare advantage plan may exceed the low-income benchmark premium
24 amount if determined to be cost effective to the program.

25 § 33-c. Paragraph (b) of subdivision 2 of section 243 of the elder
26 law, as amended by section 3-g of part A of chapter 59 of the laws of
27 2011, is amended to read as follows:

1 (b) notifying [each eligible program participant in writing upon the
2 commencement of the annual coverage period of such participant's cost-
3 sharing responsibilities pursuant to section two hundred forty-seven of
4 this title. The contractor shall also notify] each eligible program
5 participant of any adjustment of the co-payment schedule by mail no less
6 than thirty days prior to the effective date of such adjustments and
7 shall inform such eligible program participants of the date such adjust-
8 ments shall take effect;

9 § 33-d. Section 245 of the elder law is REPEALED.

10 § 33-e. Subdivision 1 of section 247 of the elder law, as added by
11 section 3-j of part A of chapter 59 of the laws of 2011, is amended to
12 read as follows:

13 1. As a condition of eligibility for benefits under this title,
14 participants must [maintain Medicare part D coverage and pay monthly
15 premiums to their Medicare part D drug plan] be enrolled in Medicare
16 Part D and maintain such enrollment.

17 § 33-f. Subdivision 1 of section 249 of the elder law, as amended by
18 section 111 of part C of chapter 58 of the laws of 2009, is amended to
19 read as follows:

20 1. The state shall offer an opportunity to participate in this program
21 to all provider pharmacies as defined in section two hundred forty-one
22 of this title, provided, however, that the participation of pharmacies
23 registered in the state pursuant to section sixty-eight hundred eight-b
24 of the education law shall be limited to state assistance provided under
25 this title for prescription drugs covered by a program participant's
26 medicare [or other] drug plan.

27 § 33-g. Subdivisions 1 and 2 of section 253 of the elder law are
28 amended to read as follows:

1 1. In counties having a population of seventy-five thousand or less
2 that are in proximity to the state boundary and which are determined by
3 the [executive director] commissioner of health to be not adequately
4 served by provider pharmacies registered in New York, and in Fishers
5 Island in the town of Southold, Suffolk county, the [executive director]
6 commissioner may approve as provider pharmacies, pharmacies located in
7 New Jersey, Connecticut, Vermont, Pennsylvania or Massachusetts. Such
8 approvals shall be made after (a) consideration of the convenience and
9 necessity of New York residents in the rural areas served by such phar-
10 macies, (b) consideration of the quality of service of such pharmacies
11 and the standing of such pharmacies with the governmental board or agen-
12 cy of the state in which such pharmacy is located, (c) the [executive
13 director] commissioner shall give all licensed pharmacies within the
14 county notice of his or her intention to approve such out-of-state
15 provider pharmacies, and (d) the [executive director] commissioner has
16 held a public hearing at which he or she has determined factually that
17 the licensed pharmacies within such county are not adequately serving as
18 provider pharmacies.

19 2. The [executive director] commissioner of health shall investigate
20 and determine whether certification shall be granted within ninety days
21 of the filing of an application for certification by the governing body
22 of any city, town or village, within a county determined by the [execu-
23 tive director] commissioner to be not adequately served by provider
24 pharmacies registered in New York pursuant to subdivision one of this
25 section, claiming to be lacking adequate pharmaceutical service.

26 § 34. Subdivision 25 of section 2808 of the public health law, as
27 added by section 31 of part B of chapter 109 of the laws of 2010,
28 subparagraph (iii) of paragraph (b) as amended and subparagraph (iv) of

1 paragraph (b) as added by section 69 of part H of chapter 59 of the laws
2 of 2011, is amended to read as follows:

3 25. Reserved bed days. (a) For purposes of this subdivision, a
4 "reserved bed day" is a day for which a governmental agency pays a resi-
5 dential health care facility to reserve a bed for a person eligible for
6 medical assistance pursuant to title eleven of article five of the
7 social services law while he or she is temporarily hospitalized or on
8 leave of absence from the facility.

9 (b) Notwithstanding any other provisions of this section or any other
10 law or regulation to the contrary, for reserved bed days provided on
11 behalf of persons twenty-one years of age or older:

12 (i) payments for reserved bed days shall be made at ninety-five
13 percent of the Medicaid rate otherwise payable to the facility for
14 services provided on behalf of such person;

15 (ii) payment to a facility for reserved bed days provided on behalf of
16 such person for temporary hospitalizations may not exceed fourteen days
17 in any twelve month period;

18 (iii) payment to a facility for reserved bed days provided on behalf
19 of such person for non-hospitalization leaves of absence may not exceed
20 ten days in any twelve month period[]; and

21 (iv) payments for reserved bed days for temporary hospitalizations
22 shall only be made to a residential health care facility if at least
23 fifty percent of the facility's residents eligible to participate in a
24 Medicare managed care plan are enrolled in such a plan].

25 (c)(i) Notwithstanding any contrary provision of this subdivision or
26 any other law and subject to the availability of federal financial
27 participation, for rate periods on and after April first, two thousand
28 twelve, with regard to services provided to residential health care

1 facility residents twenty-one years of age and older, the commissioner
2 shall promulgate regulations, and may promulgate emergency regulations,
3 effective for periods on and after April first, two thousand twelve,
4 establishing reimbursement rates for reserved bed days, provided, howev-
5 er, that such regulations shall achieve an aggregate annualized
6 reduction in reimbursement for such reserved bed days of no less than
7 forty million dollars, as determined by the commissioner.

8 (ii) In the event the commissioner determines that federal financial
9 participation will not be available for rate adjustments made pursuant
10 to subparagraph (i) of this paragraph or regulations promulgated there-
11 under, then, for rate periods on and after April first, two thousand
12 twelve, Medicaid rates for inpatient services shall not include any
13 factor or payment amount for such reserved bed days with regard to resi-
14 dents twenty-one years of age and older.

15 (iii) In the event the provisions of subparagraph (ii) of this para-
16 graph are invoked and implemented by the commissioner, then the commis-
17 sioner shall promulgate regulations, and may promulgate emergency regu-
18 lations, effective for rate periods on or after April first, two
19 thousand twelve, providing upward revisions to Medicaid rates issued
20 pursuant to subdivision two-c of this section, provided, however, that
21 such upward revisions shall not in aggregate, as determined by the
22 commissioner, exceed, on an annual basis, an amount equal to current
23 annual Medicaid payments for reserved bed days, less forty million
24 dollars.

25 § 35. Paragraphs (l) and (m) of subdivision 1 of section 367-q of the
26 social services law, as added by section 22 of part C of chapter 59 of
27 the laws of 2011, are amended to read as follows:

1 (l) for the period April first, two thousand twelve through March
2 thirty-first, two thousand thirteen, up to twenty-eight million five
3 hundred thousand dollars; and

4 (m) for the period April first, two thousand thirteen through March
5 thirty-first, two thousand fourteen, up to twenty-eight million five
6 hundred thousand dollars.

7 § 35-a. Clause (K) of subparagraph (i) of paragraph (bb) of subdivi-
8 sion 1 of section 2807-v of the public health law, as amended by section
9 8 of part C of chapter 59 of the laws of 2011, is amended to read as
10 follows:

11 (K) up to one hundred thirty-six million dollars each state fiscal
12 year for the period April first, two thousand eleven through March thir-
13 ty-first, two thousand fourteen.

14 § 35-b. Subparagraph (xi) of paragraph (cc) of subdivision 1 of
15 section 2807-v of the public health law, as amended by section 8 of part
16 C of chapter 59 of the laws of 2011, is amended to read as follows:

17 (xi) up to eleven million two hundred thousand dollars each state
18 fiscal year for the period April first, two thousand eleven through
19 March thirty-first, two thousand fourteen.

20 § 35-c. Subparagraph (vii) of paragraph (ccc) of subdivision 1 of
21 section 2807-v of the public health law, as amended by section 8 of part
22 C of chapter 59 of the laws of 2011, is amended to read as follows:

23 (vii) up to fifty million dollars each state fiscal year for the peri-
24 od April first, two thousand eleven through March thirty-first, two
25 thousand fourteen.

26 § 36. Paragraph (g-1) of subdivision 2 of section 365-a of the social
27 services law, as amended by section 23 of part H of chapter 59 of the
28 laws of 2011, is amended to read as follows:

1 (g-1) drugs provided on an in-patient basis, those drugs contained on
2 the list established by regulation of the commissioner of health pursu-
3 ant to subdivision four of this section, and those drugs which may not
4 be dispensed without a prescription as required by section sixty-eight
5 hundred ten of the education law and which the commissioner of health
6 shall determine to be reimbursable based upon such factors as the avail-
7 ability of such drugs or alternatives at low cost if purchased by a
8 medicaid recipient, or the essential nature of such drugs as described
9 by such commissioner in regulations, provided, however, that such drugs,
10 exclusive of long-term maintenance drugs, shall be dispensed in quanti-
11 ties no greater than a thirty day supply or one hundred doses, whichever
12 is greater; provided further that the commissioner of health is author-
13 ized to require prior authorization for any refill of a prescription
14 when less than seventy-five percent of the previously dispensed amount
15 per fill should have been used were the product used as normally indi-
16 cated; provided further that the commissioner of health is authorized to
17 require prior authorization of prescriptions of opioid analgesics in
18 excess of four prescriptions in a thirty-day period in accordance with
19 section two hundred seventy-three of the public health law, except that
20 prior authorization may be denied if the department, after giving the
21 prescriber a reasonable opportunity to present a justification, deter-
22 mines that the additional prescription is not medically necessary;
23 medical assistance shall not include any drug provided on other than an
24 in-patient basis for which a recipient is charged or a claim is made in
25 the case of a prescription drug, in excess of the maximum reimbursable
26 amounts to be established by department regulations in accordance with
27 standards established by the secretary of the United States department
28 of health and human services, or, in the case of a drug not requiring a

1 prescription, in excess of the maximum reimbursable amount established
2 by the commissioner of health pursuant to paragraph (a) of subdivision
3 four of this section;

4 § 37. Subdivision 6 of section 368-d of the social services law, as
5 added by section 6 of part H of chapter 59 of the laws of 2011, is
6 amended to read as follows:

7 6. The commissioner shall evaluate the results of the study conducted
8 pursuant to subdivision four of this section to determine, after iden-
9 tification of actual direct and indirect costs incurred by public school
10 districts and state operated[~~/~~] and state supported schools for blind
11 and deaf students, whether it is advisable to claim federal reimburse-
12 ment for expenditures under this section as certified public expendi-
13 tures. In the event such claims are submitted, if federal reimbursement
14 received for certified public expenditures on behalf of medical assist-
15 ance recipients whose assistance and care are the responsibility of a
16 social services district [in a city with a population of over two
17 million,] results in a decrease in the state share of annual expendi-
18 tures pursuant to this section for such recipients, then to the extent
19 that the amount of any such decrease when combined with any decrease in
20 the state share of annual expenditures described in subdivision five of
21 section three hundred sixty-eight-e of this title exceeds fifty million
22 dollars in state fiscal year 2011-12, or exceeds one hundred million
23 dollars in state fiscal year 2012-13 or any fiscal year thereafter, the
24 excess amount shall be transferred to such [city] public school
25 districts and state operated and state supported schools for blind and
26 deaf students in amounts proportional to their percentage contribution
27 to the statewide savings. Any such excess amount transferred shall not
28 be considered a revenue received by such social services district in

1 determining the district's actual medical assistance expenditures for
2 purposes of paragraph (b) of section one of part C of chapter fifty-
3 eight of the laws of two thousand five.

4 § 38. Subdivision 5 of section 368-e of the social services law, as
5 added by section 7 of part H of chapter 59 of the laws of 2011, is
6 amended to read as follows:

7 5. The commissioner shall evaluate the results of the study conducted
8 pursuant to subdivision three of this section to determine, after iden-
9 tification of actual direct and indirect costs incurred by counties for
10 medical care, services, and supplies furnished to pre-school children
11 with handicapping conditions, whether it is advisable to claim federal
12 reimbursement for expenditures under this section as certified public
13 expenditures. In the event such claims are submitted, if federal
14 reimbursement received for certified public expenditures on behalf of
15 medical assistance recipients whose assistance and care are the respon-
16 sibility of a social services district [in a city with a population of
17 over two million], results in a decrease in the state share of annual
18 expenditures pursuant to this section for such recipients, then to the
19 extent that the amount of any such decrease when combined with any
20 decrease in the state share of annual expenditures described in subdivi-
21 sion six of section three hundred sixty-eight-d of this title exceeds
22 fifty million dollars in state fiscal year 2011-12, or exceeds one
23 hundred million dollars in state fiscal year 2012-13 or any fiscal year
24 thereafter, the excess amount shall be transferred to such [city] coun-
25 ties in amounts proportional to their percentage contribution to the
26 statewide savings. Any such excess amount transferred shall not be
27 considered a revenue received by such social services district in deter-
28 mining the district's actual medical assistance expenditures for

1 purposes of paragraph (b) of section one of part C of chapter fifty-
2 eight of the laws of two thousand five.

3 § 39. Subparagraph (i) of paragraph (a-1) of subdivision 4 of section
4 365-a of the social services law, as amended by section 46 of part C of
5 chapter 58 of the laws of 2009, is amended to read as follows:

6 (i) a brand name drug for which a multi-source therapeutically and
7 generically equivalent drug, as determined by the federal food and drug
8 administration, is available, unless previously authorized by the
9 department of health. The commissioner of health is authorized to
10 exempt, for good cause shown, any brand name drug from the restrictions
11 imposed by this subparagraph[. This subparagraph shall not apply to any
12 drug that is in a therapeutic class included on the preferred drug list
13 under section two hundred seventy-two of the public health law or is in
14 the clinical drug review program under section two hundred seventy-four
15 of the public health law];

16 § 40. Subdivision 8 of section 272 of the public health law, as
17 amended by section 5 of part B of chapter 109 of the laws of 2010, is
18 amended to read as follows:

19 8. The commissioner shall provide notice of any recommendations devel-
20 oped by the committee regarding the preferred drug program, at least
21 five days before any final determination by the commissioner, by making
22 such information available on the department's website. [Such public
23 notice shall include: a summary of the deliberations of the committee; a
24 summary of the positions of those making public comments at meetings of
25 the committee; the response of the committee to those comments, if any;
26 and the findings and recommendations of the committee.]

27 § 41. Paragraphs (e), (f) and (g) of subdivision 1 of section 367-a of
28 the social services law, paragraph (e) as added by chapter 433 of the

1 laws of 1997, paragraph (f) as added by section 1 of part E of chapter
2 58 of the laws of 2008, paragraph (g) as added by section 65-a of part H
3 of chapter 59 of the laws of 2011, are amended to read as follows:

4 (e) Amounts payable under this title for medical assistance in the
5 form of clinic services pursuant to article twenty-eight of the public
6 health law and article sixteen of the mental hygiene law provided to
7 eligible persons diagnosed with a developmental disability who are also
8 beneficiaries under part [b] B of title [xviii] XVIII of the federal
9 social security act [and who are also], or provided to persons diagnosed
10 with a developmental disability who are qualified medicare beneficiaries
11 under part B of title XVIII of such act shall not be less than the
12 approved medical assistance payment level less the amount payable under
13 part [b] B.

14 (f) Amounts payable under this title for medical assistance in the
15 form of outpatient mental health services under article thirty-one of
16 the mental hygiene law provided to eligible persons who are also benefi-
17 ciaries under part B of title XVIII of the federal social security act
18 or provided to qualified medicare beneficiaries under part B of title
19 XVIII of such act shall not be less than the approved medical assistance
20 payment level less the amount payable under part B.

21 (g) Notwithstanding any provision of this section to the contrary,
22 amounts payable under this title for medical assistance in the form of
23 hospital outpatient services or diagnostic and treatment center services
24 pursuant to article twenty-eight of the public health law provided to
25 eligible persons who are also beneficiaries under part B of title XVIII
26 of the federal social security act or provided to qualified medicare
27 beneficiaries under part B of title XVIII of such act shall not exceed

1 the approved medical assistance payment level less the amount payable
2 under part B.

3 § 42. Subdivision 6 of section 2818 of the public health law, as added
4 by section 25-a of part A of chapter 59 of the laws of 2011, is amended
5 to read as follows:

6 6. Notwithstanding any contrary provision of this section, sections
7 one hundred twelve and one hundred sixty-three of the state finance law,
8 or any other contrary provision of law, subject to available appropri-
9 ations, funds available for expenditure pursuant to this section may be
10 distributed by the commissioner without a competitive bid or request for
11 proposal process for grants to general hospitals, diagnostic and treat-
12 ment centers, and residential health care facilities for the purpose of
13 facilitating closures, mergers and restructuring of such facilities in
14 order to strengthen and protect continued access to essential health
15 care resources. Prior to an [awarded] award being granted to an eligible
16 applicant without a competitive bid or request for proposal process, the
17 commissioner shall notify the chair of the senate finance committee, the
18 chair of the assembly ways and means committee and the director of the
19 division of budget of the intent to grant such an award. Such notice
20 shall include information regarding how the eligible applicant meets
21 criteria established pursuant to this section.

22 § 43. Paragraph (a) of subdivision 8-a of section 2807-j of the public
23 health law, as amended by section 16 of part D of chapter 57 of the laws
24 of 2006, is amended to read as follows:

25 (a) Payments and reports submitted or required to be submitted to the
26 commissioner or to the commissioner's designee pursuant to this section
27 and section twenty-eight hundred seven-s of this article by designated
28 providers of services and by third-party payors which have elected to

1 make payments directly to the commissioner or to the commissioner's
2 designee in accordance with subdivision five-a of this section, shall be
3 subject to audit by the commissioner for a period of six years following
4 the close of the calendar year in which such payments and reports are
5 due, after which such payments shall be deemed final and not subject to
6 further adjustment or reconciliation, including through offset adjust-
7 ments or reconciliations made by designated providers of services or by
8 third-party payors with regard to subsequent payments, provided, howev-
9 er, that nothing herein shall be construed as precluding the commission-
10 er from pursuing collection of any such payments which are identified as
11 delinquent within such six year period, or which are identified as
12 delinquent as a result of an audit commenced within such six year peri-
13 od, or from conducting an audit of any adjustment or reconciliation made
14 by a designated provider of services or by a third party payor which has
15 elected to make such payments directly to the commissioner or the
16 commissioner's designee, or from conducting an audit of payments made
17 prior to such six year period which are found to be commingled with
18 payments which are otherwise subject to timely audit pursuant to this
19 section.

20 § 44. Paragraph (a) of subdivision 10 of section 2807-t of the public
21 health law, as amended by section 17 of part D of chapter 57 of the laws
22 of 2006, is amended to read as follows:

23 (a) Payments and reports submitted or required to be submitted to the
24 commissioner or to the commissioner's designee pursuant to this section
25 by specified third-party payors shall be subject to audit by the commis-
26 sioner for a period of six years following the close of the calendar
27 year in which such payments and reports are due, after which such
28 payments shall be deemed final and not subject to further adjustment or

1 reconciliation, including through offset adjustments or reconciliations
2 made by such specified third-party payors with regard to subsequent
3 payments, provided, however, that nothing herein shall be construed as
4 precluding the commissioner from pursuing collection of any such
5 payments which are identified as delinquent within such six year period,
6 or which are identified as delinquent as a result of an audit commenced
7 within such six year period, or from conducting an audit of any adjust-
8 ments and reconciliation made by a specified third party payor within
9 such six year period, or from conducting an audit of payments made prior
10 to such six year period which are found to be commingled with payments
11 which are otherwise subject to timely audit pursuant to this section.

12 § 45. Subdivision 7 of section 2807-d of the public health law is
13 amended by adding a new paragraph (f) to read as follows:

14 (f) Payments and reports submitted or required to be submitted to the
15 commissioner or to the commissioner's designee pursuant to this section
16 shall be subject to audit by the commissioner for a period of six years
17 following the close of the calendar year in which such payments and
18 reports are due, after which such payments shall be deemed final and not
19 subject to further adjustment or reconciliation, including through
20 offset adjustments or reconciliations made to subsequent payments made
21 pursuant to this section, provided, however, that nothing herein shall
22 be construed as precluding the commissioner from pursuing collection of
23 any such payments which are identified as delinquent within such six
24 year period, or which are identified as delinquent as a result of an
25 audit commenced within such six year period, or from conducting an audit
26 of any adjustment or reconciliation made by a hospital.

1 § 46. Paragraph (f) of subdivision 18 of section 2807-c of the public
2 health law, as amended by section 15 of part D of chapter 57 of the laws
3 of 2006, is amended to read as follows:

4 (f) Payments of assessments and allowances required to be submitted by
5 general hospitals pursuant to this subdivision and subdivisions fourteen
6 and fourteen-b of this section and paragraph (a) of subdivision two of
7 section twenty-eight hundred seven-d of this article shall be subject to
8 audit by the commissioner for a period of six years following the close
9 of the calendar year in which such payments are due, after which such
10 payments shall be deemed final and not subject to further adjustment or
11 reconciliation, including through offset adjustments or reconciliations
12 made by general hospitals with regard to subsequent payments, provided,
13 however, that nothing herein shall be construed as precluding the
14 commissioner from pursuing collection of any such assessments and allow-
15 ances which are identified as delinquent within such six year period, or
16 which are identified as delinquent as a result of an audit commenced
17 within such six year audit period, or from conducting an audit of any
18 adjustment or reconciliation made by a general hospital within such six
19 year period, or from conducting an audit of payments made prior to such
20 six year period which are found to be commingled with payments which are
21 otherwise subject to timely audit pursuant to this section. General
22 hospitals which, in the course of such an audit, fail to produce data or
23 documentation requested in furtherance of such an audit, within thirty
24 days of such request may be assessed a civil penalty of up to ten thou-
25 sand dollars for each such failure, provided, however, that such civil
26 penalty shall not be imposed if the hospital demonstrates good cause for
27 such failure. The imposition of such civil penalties shall be subject
28 to the provisions of section twelve-a of this chapter.

1 § 47. Paragraph (e) of subdivision 2-a of section 2807 of the public
2 health law is amended by adding a new subparagraph (iii) to read as
3 follows:

4 (iii) Regulations issued pursuant to this paragraph may incorporate
5 quality related measures limiting or excluding reimbursement related to
6 potentially preventable conditions and complications.

7 § 48. Paragraph (c) of subdivision 7 of section 2807-d of the public
8 health law, as added by chapter 938 of the laws of 1990, is amended to
9 read as follows:

10 (c) The reports shall be in such form as may be prescribed by the
11 commissioner to accurately disclose information required to implement
12 this section, provided, however, that for periods on and after July
13 first, two thousand twelve, such reports and any associated certif-
14 ications shall be submitted electronically in a form as may be required
15 by the commissioner.

16 § 48-a. Subparagraph (i) of paragraph (a) of subdivision 7 of section
17 2807-j of the public health law, as amended by section 36 of part B of
18 chapter 58 of the laws of 2008, is amended to read as follows;

19 (i) Every designated provider of services shall submit reports of net
20 patient service revenues received for or on account of patient services
21 for each month which shall be in such form as may be prescribed by the
22 commissioner to accurately disclose information required to implement
23 this section. For periods on and after January first, two thousand five,
24 reports by designated providers of services shall be submitted electron-
25 ically in a form as may be required by the commissioner; provided,
26 however, any designated provider of services is not prohibited from
27 submitting reports electronically on a voluntary basis prior to such
28 date, and provided further, however, that all such electronic

1 submissions submitted on and after July first, two thousand twelve shall
2 be verified with an electronic signature as prescribed by the commis-
3 sioner.

4 § 48-b. Subparagraph (ii) of paragraph (b) of subdivision 7 of section
5 2807-j of the public health law, as amended by section 25 of part A3 of
6 chapter 62 of the laws of 2003, is amended to read as follows:

7 (ii) For periods on and after July first, two thousand four, reports
8 submitted on a monthly basis by third-party payors in accordance with
9 subparagraph (i) of this paragraph and reports submitted on a monthly or
10 annual basis by payors acting in an administrative services capacity on
11 behalf of electing third-party payors in accordance with subparagraph
12 (i) of this paragraph shall be made electronically in a form as may be
13 required by the commissioner; provided, however, any third-party payor,
14 except payors acting in an administrative services capacity on behalf of
15 electing third-party payors, which, on or after January first, two thou-
16 sand four, elects to make payments directly to the commissioner or the
17 commissioner's designee pursuant to subdivision five of this section,
18 shall be subject to this subparagraph only after one full year of pool
19 payment experience which results in reports being submitted on a monthly
20 basis, and provided further, however, that all such electronic
21 submissions submitted on and after July first, two thousand twelve shall
22 be verified with an electronic signature as prescribed by the commis-
23 sioner. This subparagraph shall not be interpreted to prohibit any
24 third-party payor from submitting reports electronically on a voluntary
25 basis.

26 § 48-c. Subparagraph (ii) of paragraph (b) of subdivision 20 of
27 section 2807-c of the public health law, as added by section 26 of part
28 A3 of chapter 62 of the laws of 2003, is amended to read as follows:

1 (ii) For periods on and after January first, two thousand five,
2 reports submitted by general hospitals to implement the assessment set
3 forth in subdivision eighteen of this section shall be submitted elec-
4 tronically in a form as may be required by the commissioner; provided,
5 however, general hospitals are not prohibited from submitting reports
6 electronically on a voluntary basis prior to such date, and provided
7 further, however, that all such electronic submissions submitted on and
8 after July first, two thousand twelve shall be verified with an elec-
9 tronic signature as prescribed by the commissioner.

10 § 49. Subdivision 8 of section 3605 of the public health law, as
11 added by chapter 959 of the laws of 1984, is amended to read as follows:

12 8. Agencies licensed pursuant to this section but not certified pursu-
13 ant to section three thousand six hundred eight of this article, shall
14 not be qualified to participate as a home health agency under the
15 provisions of title XVIII or XIX of the federal Social Security Act
16 provided, however, an agency which has a contract with a state agency or
17 its locally designated office or, as specified by the commissioner, with
18 a managed care organization participating in the managed care program
19 established pursuant to section three hundred sixty-four-j of the social
20 services law or with a managed long term care plan established pursuant
21 to section forty-four hundred three-f of this chapter, may receive
22 reimbursement under title XIX of the federal Social Security Act.

23 § 50. Subdivision 6 of section 365-f of the social services law is
24 renumbered subdivision 7 and a new subdivision 6 is added to read as
25 follows:

26 6. Notwithstanding any inconsistent provision of this section or any
27 other contrary provision of law, managed care programs established
28 pursuant to section three hundred sixty-four-j of this title and managed

1 long term care plans and other care coordination models established
2 pursuant to section four thousand four hundred three-f of the public
3 health law shall offer consumer directed personal assistance programs to
4 enrollees.

5 § 51. Subparagraph (ii) of paragraph (e) of subdivision 4 of section
6 364-j of the social services law, as amended by section 14 of part C of
7 chapter 58 of the laws of 2004, is amended to read as follows:

8 (ii) In any social services district which has implemented a mandatory
9 managed care program pursuant to this section, the requirements of this
10 subparagraph shall apply to the extent consistent with federal law and
11 regulations. The department of health, may contract with one or more
12 independent organizations to provide enrollment counseling and enroll-
13 ment services, for participants required to enroll in managed care
14 programs, for each social services district [requesting the services of
15 an enrollment broker] which has implemented a mandatory managed care
16 program. To select such organizations, the department of health shall
17 issue a request for proposals (RFP), shall evaluate proposals submitted
18 in response to such RFP and, pursuant to such RFP, shall award a
19 contract to one or more qualified and responsive organizations. Such
20 organizations shall not be owned, operated, or controlled by any govern-
21 mental agency, managed care provider, comprehensive HIV special needs
22 plan, mental health special needs plan, or medical services provider.

23 § 52. Paragraph (b) of subdivision 1 of section 4403-f of the public
24 health law is REPEALED and paragraphs (c) and (d), paragraph (c) as
25 relettered by section 7 of part C of chapter 58 of the laws of 2007, are
26 relettered paragraphs (b) and (c).

1 § 53. The opening paragraph of subdivision 2 of section 4403-f of the
2 public health law, as amended by section 8 of part C of chapter 58 of
3 the laws of 2007, is amended to read as follows:

4 An [eligible] applicant shall submit an application for a certificate
5 of authority to operate a managed long term care plan upon forms
6 prescribed by the commissioner. Such [eligible] applicant shall submit
7 information and documentation to the commissioner which shall include,
8 but not be limited to:

9 § 54. Paragraph (b) of subdivision 4 of section 4403-f of the public
10 health law, as added by section 5 of part C of chapter 58 of the laws of
11 2010, is amended to read as follows:

12 (b) Standards established pursuant to this subdivision shall be
13 adequate to protect the interests of enrollees in managed long term care
14 plans. The commissioner shall be satisfied that the [eligible] appli-
15 cant is financially sound, and has made adequate provisions to pay for
16 services.

17 § 55. Paragraph (c) of subdivision 6 of section 4403-f of the public
18 health law, as amended by section 41-b of part H of chapter 59 of the
19 laws of 2011, is amended to read as follows:

20 (c) For the period beginning April first, two thousand twelve and
21 ending March thirty-first, two thousand fifteen, the majority leader of
22 the senate and the speaker of the assembly may each recommend to the
23 commissioner, in writing, up to four [eligible] applicants to convert to
24 be approved managed long term care plans. An applicant shall only be
25 approved and issued a certificate of authority if the commissioner
26 determines that the applicant meets the requirements of subdivision
27 three of this section. The majority leader of the senate or the speaker

1 of the assembly may assign their authority to recommend one or more
2 applicants under this section to the commissioner.

3 § 56. Paragraph (a) of subdivision 3 of section 366 of the social
4 services law, as amended by chapter 110 of the laws of 1971, is amended
5 to read as follows:

6 (a) Medical assistance shall be furnished to applicants in cases
7 where, although such applicant has a responsible relative with suffi-
8 cient income and resources to provide medical assistance as determined
9 by the regulations of the department, the income and resources of the
10 responsible relative are not available to such applicant because of the
11 absence of such relative [or] and the refusal or failure of such absent
12 relative to provide the necessary care and assistance. In such cases,
13 however, the furnishing of such assistance shall create an implied
14 contract with such relative, and the cost thereof may be recovered from
15 such relative in accordance with title six of article three of this
16 chapter and other applicable provisions of law.

17 § 57. Subdivision 1 of section 92 of part H of chapter 59 of the laws
18 of 2011, amending the public health law and other laws relating to known
19 and projected department of health state funds Medicaid expenditures, is
20 amended to read as follows:

21 1. For state fiscal years 2011-12 [and 2012-13] through 2013-14, the
22 director of the budget, in consultation with the commissioner of health
23 referenced as "commissioner" for purposes of this section, shall assess
24 on a monthly basis, as reflected in monthly reports pursuant to subdivi-
25 sion five of this section known and projected department of health state
26 funds medicaid expenditures by category of service and by geographic
27 regions, as defined by the commissioner, and if the director of the
28 budget determines that such expenditures are expected to cause medicaid

1 disbursements for such period to exceed the projected department of
2 health medicaid state funds disbursements in the enacted budget finan-
3 cial plan pursuant to subdivision 3 of section 23 of the state finance
4 law, the commissioner of health, in consultation with the director of
5 the budget, shall develop a medicaid savings allocation plan to limit
6 such spending to the aggregate limit level specified in the enacted
7 budget financial plan, provided, however, such projections may be
8 adjusted by the director of the budget to account for any changes in the
9 New York state federal medical assistance percentage amount established
10 pursuant to the federal social security act, changes in provider reven-
11 ues, reductions to local social services district medical assistance
12 administration, and beginning April 1, 2012 the operational costs of the
13 New York state medical indemnity fund.

14 § 58. Paragraph (b) of section 90 of part H of chapter 59 of the laws
15 of 2011, amending the public health law and other laws relating to types
16 of appropriations exempt from certain reductions, is amended to read as
17 follows:

18 (b) The following types of appropriations shall be exempt from
19 reductions pursuant to this section:

20 (i) any reductions that would violate federal law including, but not
21 limited to, payments required pursuant to the federal Medicare program;

22 (ii) any reductions related to payments pursuant to article 32, arti-
23 cle 31 and article 16 of the mental hygiene law;

24 (iii) payments the state is obligated to make pursuant to court orders
25 or judgments;

26 (iv) payments for which the non-federal share does not reflect any
27 state funding; [and]

1 (v) at the discretion of the commissioner of health and the director
2 of the budget, payments with regard to which it is determined by the
3 commissioner of health and the director of the budget that application
4 of reductions pursuant to this section would result, by operation of
5 federal law, in a lower federal medical assistance percentage applicable
6 to such payments; and

7 (vi) payments made with regard to the early intervention program
8 pursuant to section 2540 of the public health law.

9 § 59. Subparagraph (ii) of paragraph (a) of subdivision 5 of section
10 2807-j of the public health law, as amended by section 23 of part A-3 of
11 chapter 62 of the laws of 2003, is amended to read as follows:

12 (ii) An election shall remain in effect unless revoked in writing by a
13 specified third-party payor, which revocation shall be effective on the
14 first day of the next [calendar year quarter] month, provided that such
15 payor has provided notice of its intention to so revoke at least [thir-
16 ty] twenty days prior to the beginning of such [calendar quarter] month.

17 § 60. Paragraph (b) of subdivision 5-a of section 2807-m of the public
18 health law is amended by adding a new clause (H) to read as follows:

19 (H) Notwithstanding any inconsistent provision of this subdivision,
20 for periods on and after April first, two thousand thirteen, ECRIP grant
21 awards shall be made in accordance with rules and regulations promulgat-
22 ed by the commissioner.

23 § 61. Section 1 of part C of chapter 58 of the laws of 2005, relating
24 to authorizing reimbursements for expenditures made by or on behalf of
25 social services districts for medical assistance for needy persons and
26 the administration thereof, is amended by adding a new subdivision (h)
27 to read as follows:

1 (h) Notwithstanding the provisions of section 368-a of the social
2 services law or any other contrary provision of law, no reimbursement
3 shall be made for social services districts' claims submitted on and
4 after July 1, 2006, for district expenditures incurred prior to January
5 1, 2006, including, but not limited to, expenditures for services
6 provided to individuals who were eligible for medical assistance pursu-
7 ant to section three hundred sixty-six of the social services law as a
8 result of a mental disability, formerly referred to as human services
9 overburden aid to counties.

10 § 62. Notwithstanding any inconsistent provision of law, rule or
11 regulation, for purposes of implementing the provisions of the public
12 health law and the social services law, references to titles XIX and XXI
13 of the federal social security act in the public health law and the
14 social services law shall be deemed to include and also to mean any
15 successor titles thereto under the federal social security act.

16 § 63. Notwithstanding any inconsistent provision of law, rule or regu-
17 lation, the effectiveness of the provisions of sections 2807 and 3614 of
18 the public health law, section 18 of chapter 2 of the laws of 1988, and
19 18 NYCRR 505.14(h), as they relate to time frames for notice, approval
20 or certification of rates of payment, are hereby suspended and without
21 force or effect for purposes of implementing the provisions of this act.

22 § 64. Severability clause. If any clause, sentence, paragraph, subdi-
23 vision, section or part of this act shall be adjudged by any court of
24 competent jurisdiction to be invalid, such judgment shall not affect,
25 impair or invalidate the remainder thereof, but shall be confined in its
26 operation to the clause, sentence, paragraph, subdivision, section or
27 part thereof directly involved in the controversy in which such judgment
28 shall have been rendered. It is hereby declared to be the intent of the

1 legislature that this act would have been enacted even if such invalid
2 provisions had not been included herein.

3 § 65. This act shall take effect immediately, and shall be deemed to
4 have been in full force and effect on and after April 1, 2012, provided,
5 however, that:

6 (a) the commissioner of health may promulgate emergency regulations
7 necessary to effectuate the provisions of sections two, three and four
8 of this act; and

9 (a-1) provided, further, that the amendments to section 1 of chapter
10 119 of the laws of 1997 made by section thirty-two of this act, relating
11 to authorizing the department of health to establish certain payments to
12 general hospitals, shall be subject to the expiration of such chapter
13 and shall be deemed expired therewith;

14 (a-2) provided, further, that the amendments to subdivision 1 of
15 section 241 of the elder law made by section thirty-three of this act
16 shall be subject to the expiration and reversion of such subdivision
17 pursuant to section 79 of part C of chapter 58 of the laws of 2005, as
18 amended, when upon such date the provisions of section thirty-three-a of
19 this act shall take effect;

20 (b) the amendments to paragraph (a-1) of subdivision 4 of section
21 365-a of the social services law made by section thirty-nine of this act
22 shall not affect the expiration and reversion of such paragraph and
23 shall be deemed to expire therewith;

24 (c) provided, further, that the amendments to section 272 of the
25 public health law made by section forty of this act shall not affect the
26 repeal of such section and shall be deemed repealed therewith;

27 (d) provided, further, that the amendments to section 2807-j of the
28 public health law made by sections forty-three, forty-eight-a, forty-

1 eight-b and fifty-nine of this act shall not affect the expiration of
2 such section and shall be deemed to expire therewith;

3 (e) provided, further, that the amendments to section 2807-t of the
4 public health law made by section forty-four of this act shall not
5 affect the expiration of such section and shall be deemed to expire
6 therewith;

7 (f) provided, further, that the amendments to section 4403-f of the
8 public health law, made by sections fifty-two, fifty-three, fifty-four
9 and fifty-five of this act shall not affect the repeal of such section
10 and shall be deemed to repeal therewith;

11 (g) provided, further, that the amendments to subparagraph (ii) of
12 paragraph (e) of subdivision 4 of section 364-j of the social services
13 law made by section fifty-one of this act shall not affect the repeal of
14 such section and shall be deemed repealed therewith;

15 (h) provided, further, that sections ten, eleven, twelve, thirteen,
16 fourteen, fifteen, sixteen, seventeen and eighteen of this act shall
17 take effect April 1, 2013;

18 (i) provided, further, that any rules or regulations necessary to
19 implement the provisions of this act may be promulgated and any proce-
20 dures, forms, or instructions necessary for such implementation may be
21 adopted and issued on or after the date this act shall have become a
22 law;

23 (j) provided, further, that this act shall not be construed to alter,
24 change, affect, impair or defeat any rights, obligations, duties or
25 interests accrued, incurred or conferred prior to the effective date of
26 this act;

1 (k) provided, further, that the commissioner of health and the super-
2 intendent of financial services and any appropriate council may take any
3 steps necessary to implement this act prior to its effective date;

4 (k-1) provided, further, that the amendments to section 2802 of the
5 public health law made by section thirty-one of this act shall take
6 effect on the same date and in the same manner as section 1 of chapter
7 174 of the laws of 2011 takes effect, whichever is later;

8 (l) provided, further, that notwithstanding any inconsistent provision
9 of the state administrative procedure act or any other provision of law,
10 rule or regulation, the commissioner of health and the superintendent of
11 financial services and any appropriate council is authorized to adopt or
12 amend or promulgate on an emergency basis any regulation he or she or
13 such council determines necessary to implement any provision of this act
14 on its effective date; and

15 (m) provided, further, that the provisions of this act shall become
16 effective notwithstanding the failure of the commissioner of health or
17 the superintendent of financial services or any council to adopt or
18 amend or promulgate regulations implementing this act.

19 PART E

20 Section 1. This act shall be known and may be cited as the "New York
21 Health Benefit Exchange Act".

22 § 2. The public authorities law is amended by adding a new article
23 10-E to read as follows:

24 ARTICLE 10-E

25 NEW YORK HEALTH BENEFIT EXCHANGE

26 Section 3980. Statement of policy and purposes.

- 1 3981. Definitions.
- 2 3982. Establishment of the New York health benefit exchange.
- 3 3983. General powers of the exchange.
- 4 3984. Functions of the exchange.
- 5 3985. Special functions of the exchange related to health plan
6 certification and qualified health plan oversight.
- 7 3986. Regional advisory committees.
- 8 3987. Funding of the exchange.
- 9 3988. Studies and recommendations.
- 10 3989. Tax exemption and tax contract by the state.
- 11 3990. Officers and employees.
- 12 3991. Limitation of liability; indemnification.
- 13 3992. Contingency for federal funding.
- 14 3993. Construction.
- 15 § 3980. Statement of policy and purposes. The purpose of this article
16 is to establish an American health benefit exchange in New York, in
17 conformance with the federal patient protection and affordable care act,
18 Public Law 111-148, as amended by the health care and education recon-
19 ciliation act of 2010, Public Law 111-152. The exchange shall facili-
20 tate enrollment in health coverage, the purchase and sale of qualified
21 health plans in the individual market in this state, and enroll individ-
22 uals in health coverage for which they are eligible in accordance with
23 federal law. The exchange also shall incorporate a small business health
24 options program ("SHOP") to assist qualified employers in facilitating
25 the enrollment of their employees in qualified health plans offered in
26 the group market. It is the intent of the legislature, through the
27 establishment of the exchange, to promote quality and affordable health
28 coverage and care, reduce the number of uninsured persons, provide a

1 transparent marketplace, educate consumers and assist individuals with
2 access to coverage, premium assistance tax credits and cost-sharing
3 reductions.

4 § 3981. Definitions. For purposes of this article, the following defi-
5 nitions shall apply:

6 1. "Board" or "board of directors" means the board of directors of the
7 exchange.

8 2. "Regional advisory committees" means the New York health benefit
9 exchange regional advisory committees established pursuant to this arti-
10 cle.

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

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

14 5. "Federal act" means the patient protection and affordable care act,
15 public law 111-148, as amended by the health care and education recon-
16 ciliation act of 2010, public law 111-152, and any regulations or guid-
17 ance issued thereunder.

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

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

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

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

27 (d) workers' compensation or similar insurance;

28 (e) automobile no-fault insurance;

1 (f) credit insurance;

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

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

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

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

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

21 7. "Insurer" means an insurance company subject to article thirty-two
22 or forty-three of the insurance law, or a health maintenance organiza-
23 tion certified pursuant to article forty-four of the public health law
24 that contracts or offers to contract to provide, deliver, arrange, pay
25 or reimburse any of the costs of health care services.

26 8. "Qualified dental plan" means a limited scope dental plan that is
27 issued by an insurer and certified in accordance with section thirty-
28 nine hundred eighty-five of this article.

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

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

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

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

11 (b) resides in this state;

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

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

17 12. "Secretary" means the secretary of the United States department of
18 health and human services.

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

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

1 ness days during the preceding calendar year. For purposes of the defi-
2 inition of small employer:

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

6 (b) an employer and any predecessor employer shall be treated as a
7 single employer;

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

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

15 (e) if a qualified employer that makes enrollment in qualified health
16 plans available to its employees through the exchange ceases to be a
17 small employer by reason of an increase in the number of its employees,
18 then the employer shall continue to be treated as a qualified employer
19 for purposes of this article for the period beginning with the increase
20 and ending with the first day on which the employer does not make such
21 enrollment available to its employees; and

22 (f) notwithstanding paragraphs (a) through (e) of this subdivision, an
23 employer also shall be considered a small employer if the coverage it
24 offers would be considered small group coverage under the insurance law
25 and regulations promulgated thereunder provided that it is not otherwise
26 prohibited under the federal act.

27 15. "Small group market" means the health insurance market under which
28 individuals receive health insurance coverage on behalf of themselves

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

3 16. "Superintendent" means the superintendent of financial services.

4 § 3982. Establishment of the New York health benefit exchange. 1.

5 There is hereby created a public benefit corporation to be known as the
6 New York health benefit exchange. Such corporation shall be a body
7 corporate and politic.

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

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

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

23 (i) Individual health care coverage;

24 (ii) Small employer health care coverage;

25 (iii) Health benefits administration;

26 (iv) Health care finance;

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

28 (vi) Purchasing health plan coverage.

1 (c) Recommendations and appointments shall take into consideration the
2 expertise of other directors recommended and appointed pursuant to this
3 subdivision, so that the board composition reflects a diversity of expe-
4 rience and complies with any regulations issued by the secretary pursu-
5 ant to the federal act.

6 (d) Recommendations by the temporary president of the senate and the
7 speaker of the assembly shall be made within thirty days of the effec-
8 tive date of this article, within sixty days of the occurrence of a
9 vacancy or within sixty days prior to the expiration of a term.

10 4. The governor shall appoint a chair of the board from among the
11 directors who shall be subject to the advice and consent of the senate.
12 Any director appointed by the governor as chair of the board may serve
13 as acting chair until such time as a vote for confirmation is taken by
14 the senate. No director appointed as chair shall serve as chair, or
15 continue to serve as acting chair, if the senate has voted not to
16 confirm such director as chair.

17 5. (a) The terms of the directors, other than the ex officio direc-
18 tors, shall be three years, provided, however, that the initial terms of
19 one of the directors appointed upon recommendation of the temporary
20 president of the senate, one of the directors appointed upon recommenda-
21 tion of the speaker of the assembly, and one of the directors appointed
22 by the governor without recommendation shall be for two years.

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

26 6. The directors shall not receive any compensation for their services
27 as directors.

1 7. (a) Each director shall have the responsibility and duty to meet
2 the requirements of this article, the federal act, and all applicable
3 state and federal laws and regulations to serve the public interest of
4 the individuals and small businesses seeking health care coverage
5 through the exchange, consistent with section twenty-eight hundred twen-
6 ty-four of this chapter.

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

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

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

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

21 § 3983. General powers of the exchange. The exchange shall have the
22 following powers to be used in furtherance of its corporate purposes:

23 1. to sue and be sued and to participate in actions and proceedings,
24 whether judicial, administrative, arbitratative or otherwise;

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

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

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

8 5. to make contracts, give guarantees and incur liabilities, and
9 borrow money; provided, however, that the exchange shall not issue
10 bonds;

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

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

15 8. to make and alter rules and regulations as necessary to implement
16 the provisions of this article, subject to the provisions of the state
17 administrative procedure act;

18 9. to hire employees, consistent with section thirty-nine hundred
19 ninety of this article;

20 10. to designate the depositories of its money;

21 11. to establish its fiscal year;

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

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

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

1 § 3984. Functions of the exchange. The exchange shall:

2 1. (a) make available qualified health plans to qualified individuals
3 and qualified employers beginning on or before January first, two thou-
4 sand fourteen, provided that coverage under such qualified plans shall
5 not become effective prior to such date and shall not make available any
6 health plan that is not a qualified health plan;

7 (b) make available qualified dental plans to qualified individuals and
8 qualified employers beginning on or before January first, two thousand
9 fourteen, provided that coverage under such qualified dental plans shall
10 not become effective prior to such date, either separately or in
11 conjunction with a qualified health plan, if such plan provides pedia-
12 tric dental benefits meeting the requirements of section 1302(b)(1)(J)
13 of the federal act;

14 2. assign a rating to each qualified health plan offered through the
15 exchange in accordance with the criteria developed by the secretary
16 pursuant to section 1311(c)(3) of the federal act, and determine each
17 qualified health plan's level of coverage in accordance with regulations
18 issued by the secretary pursuant to section 1302(d)(2)(A) of the federal
19 act;

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

23 4. provide for enrollment periods pursuant to the federal act or the
24 insurance law, whichever is in the best interest of qualified individ-
25 uals and qualified employers, after the initial enrollment period has
26 been established as required in the federal act; provided, however, that
27 if enrollment periods pursuant to the insurance law conflict with rules

1 adopted by the secretary, then enrollment periods pursuant to the feder-
2 al act shall apply;

3 5. implement procedures for the certification, recertification and
4 decertification of health plans as qualified health plans, consistent
5 with guidelines developed by the secretary pursuant to section 1311(c)
6 of the federal act and section thirty-nine hundred eighty-five of this
7 article;

8 6. require qualified health plans to offer those benefits determined
9 by the secretary to be essential health benefits pursuant to section
10 1302(b) of the federal act (except as provided in paragraph (b) of
11 subdivision one of section three thousand nine hundred eighty-five of
12 this article) and such additional benefits as may be required pursuant
13 to the insurance law, provided that the state has assumed the cost of
14 such additional benefits as required under section 1311(d)(3)(B) of the
15 federal act;

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

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

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

23 10. establish and make available by electronic means a calculator to
24 determine the actual cost of coverage after the application of any
25 premium tax credit under section 36B of the Internal Revenue Code of
26 1986 and any cost-sharing reduction under section 1402 of the federal
27 act;

1 11. establish a program under which the exchange awards grants to
2 entities to serve as navigators, in accordance with section 1311(i) of
3 the federal act and regulations adopted thereunder;

4 12. in accordance with section 1413 of the federal act, inform indi-
5 viduals of eligibility requirements for the medicaid program under title
6 XIX of the social security act, the children's health insurance program
7 (CHIP) under title XXI of the social security act or any applicable
8 state or local public health insurance program and if, through screening
9 of the application by the exchange, the exchange determines that such
10 individuals are eligible for any such program, enroll such individuals
11 in such program;

12 13. pursuant to section 1411 of the federal act, grant a certification
13 attesting that, for purposes of the individual responsibility penalty
14 under section 5000A of the Internal Revenue Code of 1986, an individual
15 is exempt from the individual responsibility requirement or from the
16 penalty imposed by that section because:

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

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

21 14. transmit to the secretary of the United States department of the
22 treasury:

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

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

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

3 (i) the employer did not provide minimum essential coverage as deter-
4 mined by the secretary pursuant to section 1311(d) of the federal act;
5 or

6 (ii) the employer provided the minimum essential coverage as deter-
7 mined by the secretary pursuant to section 1311(d) of the federal act,
8 but it was determined under section 36B(c)(2)(C) of the Internal Revenue
9 Code of 1986 to either be unaffordable to the employee or to not provide
10 the required minimum actuarial value; and

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

12 (i) each individual who notifies the exchange pursuant to section
13 1411(b)(4) of the federal act that he or she has changed employers; and

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

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

20 16. operate a small business health options program ("SHOP") pursuant
21 to section 1311 of the federal act through which qualified employers
22 access coverage for their employees, and may:

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

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

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

8 (b) local departments of social services to coordinate enrollment in
9 other social services programs, as appropriate, provided such agreements
10 include adequate protections with respect to the confidentiality of any
11 information to be shared and comply with all state and federal laws and
12 regulations;

13 18. perform duties required by the secretary or the secretary of the
14 United States department of the treasury related to determining eligi-
15 bility for premium tax credits, reduced cost-sharing, or individual
16 responsibility requirement exemptions;

17 19. meet financial integrity requirements under section 1313 of the
18 federal act and this chapter, including:

19 (a) keeping an accurate accounting of all activities, receipts, and
20 expenditures and annually submitting to the secretary a report concern-
21 ing such accountings, with a copy of such report provided to the gover-
22 nor, the temporary president of the senate and the speaker of the assem-
23 bly; and

24 (b) fully cooperating with any investigation conducted by the secre-
25 tary pursuant to the secretary's authority under section 1313 of the
26 federal act and allowing the secretary, in coordination with the inspec-
27 tor general of the United States department of health and human
28 services, to:

1 (i) investigate the affairs of the exchange;

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

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

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

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

9 (i) health care consumers who are enrollees in health plans;

10 (ii) individuals and entities with experience in facilitating enroll-
11 ment in health plans;

12 (iii) representatives of small businesses and self-employed individ-
13 uals;

14 (iv) state medicaid offices, including local departments of social
15 services;

16 (v) advocates for enrolling hard to reach populations;

17 (vi) health care providers; and

18 (vii) insurers;

19 21. submit information provided by exchange applicants for verifica-
20 tion as required by section 1411(c) of the federal act;

21 22. establish rules and regulations, pursuant to subdivision eight of
22 section thirty-nine hundred eighty-three of this article, that do not
23 conflict with or prevent the application of regulations promulgated by
24 the secretary; and

25 23. determine eligibility, provide notices, and provide opportunities
26 for appeal and redetermination in accordance with the requirements of
27 sections 1411 and 1413 of the federal act.

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

4 (a) the insurer offering the health plan:

5 (i) is licensed or certified by the superintendent or commissioner and
6 meets the requirements of section 1301(a)(1)(C)(i) of the federal act
7 and any guidance issued thereunder;

8 (ii) offers at least one qualified health plan in each of the silver
9 and gold levels;

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

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

16 (v) complies with the regulations developed by the secretary under
17 section 1311(c) of the federal act and such other requirements as the
18 exchange may establish;

19 (b) the health plan: (i) provides the essential health benefits pack-
20 age described in section 1302(a) of the federal act and includes such
21 additional benefits as may be required pursuant to the insurance law,
22 provided that the state has assumed the cost of such additional benefits
23 as required under section 1311(d)(3)(B) of the federal act, except that
24 the health plan shall not be required to provide essential benefits that
25 duplicate the minimum benefits of qualified dental plans if:

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

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

6 (ii) provides at least a bronze level of coverage as defined in
7 section 1302(d) of the federal act, unless the plan is certified as a
8 qualified catastrophic plan, as defined in section 1302(e) of the feder-
9 al act, and shall only be offered to individuals eligible for
10 catastrophic coverage;

11 (iii) has cost-sharing requirements, including deductibles, which do
12 not exceed the limits established under section 1302(c) of the federal
13 act and any requirements of the exchange;

14 (iv) complies with regulations promulgated by the secretary pursuant
15 to section 1311(c) of the federal act, which include minimum standards
16 in the areas of marketing practices, network adequacy, essential commu-
17 nity providers in underserved areas, accreditation, quality improvement,
18 uniform enrollment forms and descriptions of coverage and information on
19 quality measures for health benefit plan performance;

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

24 (c) the exchange determines that making the health plan available
25 through the exchange is in the interest of qualified individuals and
26 qualified employers in this state.

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

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

1 (b) through the imposition of premium price controls by the exchange;
2 or
3 (c) on the basis that the health plan provides treatments necessary to
4 prevent patients' deaths in circumstances the exchange determines are
5 inappropriate or too costly.

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

8 (a) submit a justification for any premium increase to the exchange
9 prior to implementation of such increase. The insurer shall prominently
10 post the information on its internet website; provided, however, that if
11 information submitted to the superintendent as a justification for a
12 premium rate adjustment pursuant to the insurance law, or information
13 posted to an insurer's internet website, otherwise meets federal
14 requirements, then submission of a copy of the same justification to the
15 exchange or use of the same posting shall be deemed sufficient to meet
16 the requirements of this section. The exchange shall take this informa-
17 tion, and the information and the recommendations provided to the
18 exchange by the superintendent under section 1003 of the federal act
19 (relating to patterns or practices of excessive or unjustified premium
20 increases), into consideration when determining whether to allow the
21 insurer to make health plans available through the exchange. Such rate
22 increases shall be subject to the prior approval of the superintendent
23 pursuant to the insurance law;

24 (b)(i) make available to the public and submit to the exchange, the
25 secretary and the superintendent, accurate and timely disclosure of:

26 (A) claims payment policies and practices;
27 (B) periodic financial disclosures;
28 (C) data on enrollment and disenrollment;

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

2 (E) data on rating practices;

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

5 (G) information on enrollee and participant rights under title I of
6 the federal act; and

7 (H) other information as determined appropriate by the secretary;

8 (ii) the information shall be provided in plain language, as that term
9 is defined in section 1311(e)(3)(B) of the federal act, and in guidance
10 jointly issued thereunder by the secretary and the federal secretary of
11 labor; and

12 (c) provide to individuals, in a timely manner upon the request of the
13 individual, the amount of cost-sharing, including deductibles, copay-
14 ments, and coinsurance, under the individual's health plan or coverage
15 that the individual would be responsible for paying with respect to the
16 furnishing of a specific item or service by a participating provider. At
17 a minimum, this information shall be made available to the individual
18 through an internet website and through other means for individuals
19 without access to the internet; provided, however, that to the extent
20 that requirements under the insurance law or the public health law meet
21 the standards of the federal act, an insurer's compliance with such
22 state requirements shall be sufficient to meet the requirements of this
23 section.

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

1 (b) The qualified dental plan shall be limited to dental and oral
2 health benefits, without substantially duplicating the benefits typical-
3 ly offered by health benefit plans without dental coverage, and shall
4 include, at a minimum, the essential pediatric dental benefits
5 prescribed by the secretary pursuant to section 1302(b)(1)(J) of the
6 federal act, and such other dental benefits as the exchange or secretary
7 may specify in regulations.

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

13 § 3986. Regional advisory committees. 1. There are hereby created the
14 New York health benefit exchange regional advisory committees ("advisory
15 committees"). One regional advisory committee shall be established with-
16 in each of five regions, to be known as the "New York City region,"
17 "metropolitan suburban region," "northern region," "central region" and
18 "western region." The board shall determine the counties that make up
19 such regions.

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

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

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

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

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

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

11 (i) health plan consumer advocates;

12 (ii) small business consumer representatives;

13 (iii) health care provider representatives;

14 (iv) representatives of the health insurance industry;

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

17 (i) licensed insurance producers; and

18 (ii) representatives of labor organizations.

19 7. The board shall select the chair of each regional advisory commit-
20 tee from among the members of such committee. The board shall adopt
21 rules for the governance of the regional advisory committees and each
22 regional advisory committee shall meet at least once each quarter and at
23 such other times as determined by the board to be necessary.

24 8. Members of the regional advisory committees shall serve without
25 compensation.

26 9. The regional advisory committees shall make findings and recommen-
27 dations regarding regional variations in the operation of the exchange,
28 which shall be submitted to the board of directors, posted on the

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

5 § 3987. Funding of the exchange. 1. The exchange shall be financially
6 self-sufficient by January first, two thousand fifteen.

7 2. The exchange shall conduct or cause to be conducted a study of, and
8 shall report its recommendations upon, the options to generate funding
9 for the ongoing operation of the exchange, as provided for in subdivi-
10 sion eight of section thirty-nine hundred eighty-eight of this article
11 and subject to the provisions of subdivisions fourteen and fifteen of
12 such section.

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

17 4. The exchange shall not utilize any funds intended for the adminis-
18 trative and operational expenses of the exchange for staff retreats,
19 promotional giveaways, excessive executive compensation, or promotion of
20 federal or state legislative and regulatory modifications pursuant to
21 section 1411(c) of the federal act.

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

1 6. No funds of the exchange shall be transferred to the general fund
2 or any special revenue fund or shall be used for any purpose other than
3 the purposes set forth in this article. No funds shall be transferred
4 from the general fund or any special revenue fund to the exchange with-
5 out an appropriation.

6 7. The accounts of the exchange shall be subject to supervision of the
7 comptroller and such accounts shall include receipts, expenditures,
8 contracts and other matters which pertain to the fiscal soundness of the
9 exchange.

10 8. Notwithstanding any law to the contrary, and in accordance with
11 section four of the state finance law, upon request of the director of
12 the budget, in consultation with the commissioner, the superintendent
13 and the chair of the board, the comptroller is hereby authorized and
14 directed to suballocate or transfer special revenue federal funds appro-
15 priated to the department of health for planning and implementing vari-
16 ous healthcare and insurance reform initiatives authorized by federal
17 legislation, including, but not limited to, the Patient Protection and
18 Affordable Care Act (P.L. 111-148) and the Health Care and Education
19 Reconciliation Act of 2010 (P.L. 111-152) to the New York state health
20 benefit exchange. Moneys suballocated or transferred pursuant to this
21 section shall be paid out of the fund upon audit and warrant of the
22 state comptroller on vouchers certified or approved by the exchange.

23 § 3988. Studies and recommendations. 1. (a) The exchange shall
24 conduct or cause to be conducted a study of, and shall make recommenda-
25 tions upon, the essential health benefits identified by the secretary
26 pursuant to section 1302(b) of the federal act and of the benefits
27 required under the insurance law or regulations promulgated thereunder
28 that are not determined by the secretary to be essential health bene-

1 fits. Such study and recommendations shall address matters including but
2 not limited to:

3 (i) whether the essential health benefits required to be included in
4 policies and contracts sold through the exchange should be sold to simi-
5 larly situated individuals and groups purchasing coverage outside of the
6 exchange;

7 (ii) whether any benefits required under the insurance law or regu-
8 lations promulgated thereunder that are not identified as essential
9 health benefits by the secretary should no longer be required in poli-
10 cies or contracts sold either through the exchange or to similarly situ-
11 ated individuals and groups outside of the exchange;

12 (iii) the costs of extending any benefits required under the insurance
13 law or regulations promulgated thereunder to policies and contracts sold
14 through the exchange; and

15 (iv) mechanisms to finance any costs pursuant to section
16 1311(d)(3)(B)(ii) of the federal act of extending any benefits required
17 under the insurance law or regulations promulgated thereunder to poli-
18 cies and contracts sold through the exchange.

19 (b) In making its recommendations, the exchange shall consider the
20 individual and small group markets outside of the exchange and consider
21 approaches to prevent marketplace disruption, remain consistent with the
22 exchange and avoid anti-selection.

23 (c) The exchange shall submit its recommendations to the governor, the
24 temporary president of the senate and the speaker of the assembly on or
25 before August first, two thousand twelve.

26 2. (a) The exchange shall conduct or cause to be conducted a study of,
27 and shall make recommendations upon: (i) whether insurers participating
28 in the exchange should be required to offer all health plans sold in the

1 exchange to individuals or small groups purchasing coverage outside of
2 the exchange;

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

5 (iii) whether the benefits in the individual and small group markets
6 should be standardized inside the exchange or inside and outside the
7 exchange;

8 (iv) how to develop and implement the transitional reinsurance program
9 for the individual market and any other risk adjustment mechanisms
10 developed in accordance with sections 1341, 1342 and 1343 of the federal
11 act;

12 (v) whether to merge the individual and small group health insurance
13 markets for rating purposes including an analysis of the impact such
14 merger would have on premiums;

15 (vi) whether to increase the size of small employers from an average
16 of at least one but not more than fifty employees to an average of at
17 least one but not more than one hundred employees prior to January
18 first, two thousand sixteen;

19 (vii) how to account for sole proprietors in defining "small employ-
20 ers"; and

21 (viii) whether to revise the definition of "small employer" outside
22 the exchange to be consistent with the definition as it applies within
23 the exchange.

24 (b) The exchange shall submit its recommendations to the governor, the
25 temporary president of the senate and the speaker of the assembly on or
26 before August first, two thousand twelve.

27 3. (a) The exchange shall conduct or cause to be conducted a study of,
28 and shall make recommendations upon, whether the state should establish

1 a basic health plan program identified by the secretary pursuant to
2 section 1331 of the federal act.

3 (b) The exchange shall submit its recommendations to the governor, the
4 temporary president of the senate and the speaker of the assembly on or
5 before August first, two thousand twelve.

6 4. (a) The exchange shall conduct or cause to be conducted a study of,
7 and shall make recommendations upon, the advantages and disadvantages of
8 the exchange serving as an active purchaser, a selective contractor, or
9 clearinghouse of insurance.

10 (b) The exchange shall submit its recommendations to the governor, the
11 temporary president of the senate and the speaker of the assembly on or
12 before August first, two thousand twelve.

13 5. (a) The exchange shall conduct or cause to be conducted a study of,
14 and shall make recommendations upon, (i) the anticipated annual operat-
15 ing expenses of the exchange, including but not limited to the develop-
16 ment of any multi-year financial models; and (ii) the options to gener-
17 ate funding for the ongoing operation and self-sufficiency of the
18 exchange including but not limited to assessments upon insurers and
19 providers.

20 (b) The exchange shall submit its recommendations to the governor, the
21 temporary president of the senate and the speaker of the assembly on or
22 before August first, two thousand twelve.

23 6. (a) The exchange shall conduct or cause to be conducted a study of,
24 and shall make recommendations upon, the benchmark benefits identified
25 by the secretary and of the benefits required under the public health
26 law or the social services law or regulations promulgated thereunder
27 that are not determined by the secretary to be benchmark benefits. Such

1 study and recommendations shall address matters including but not limit-
2 ed to:

3 (i) whether any benefits required under the public health law or the
4 social services law or regulations promulgated thereunder that are not
5 identified as benchmark benefits by the secretary should continue to be
6 required as covered benefits available to newly medicaid-eligible indi-
7 viduals inside the exchange;

8 (ii) the costs of extending any benefits required under the public
9 health law or the social services law or regulations promulgated there-
10 under as covered benefits available to newly medicaid-eligible individ-
11 uals through the exchange; and

12 (iii) mechanisms to finance any costs pursuant to the federal act of
13 extending any benefits required under the public health law or the
14 social services law or regulations promulgated thereunder to policies
15 and contracts sold through the exchange.

16 (b) The exchange shall submit its recommendations to the governor, the
17 temporary president of the senate and the speaker of the assembly on or
18 before August first, two thousand twelve.

19 7. (a) The exchange shall make recommendations upon the impact of the
20 establishment and operation of the exchange on the healthy New York
21 program established pursuant to section forty-three hundred twenty-six
22 of the insurance law and the family health plus employer partnership
23 program established pursuant to section three hundred sixty-nine-ff of
24 the social services law.

25 (b) The exchange shall submit its recommendations to the governor, the
26 temporary president of the senate and the speaker of the assembly on or
27 before August first, two thousand twelve.

1 8. (a) The exchange shall conduct or cause to be conducted a study of,
2 and shall make recommendations upon, procedures under which licensed
3 health insurance producers, chambers of commerce and business associ-
4 ations may enroll individuals and employers in any qualified health plan
5 in the individual or small group market as soon as the plan is offered
6 through the exchange; and to assist individuals in applying for premium
7 tax credits and cost-sharing reductions for plans sold through the
8 exchange; and

9 (b) The exchange shall submit its recommendations to the governor, the
10 temporary president of the senate and speaker of the assembly on or
11 before August first, two thousand twelve.

12 9. (a) The exchange shall conduct or cause to be conducted a study of,
13 and shall make recommendations upon, the criteria for eligibility to
14 serve as a navigator for purposes of section 1311(i) of the federal act,
15 any guidance issued thereunder and subdivision fourteen of section thir-
16 ty-nine hundred eighty-four of this article.

17 (b) The exchange shall submit its recommendations to the governor, the
18 temporary president of the senate and the speaker of the assembly on or
19 before August first, two thousand twelve.

20 10. (a) The exchange shall conduct or cause to be conducted a study
21 of, and shall make recommendations upon, the role of the exchange in
22 decreasing health disparities in health care services and performance,
23 including but not limited to disparities on the basis of race or ethnic-
24 ity, in accordance with section forty-three hundred two of the federal
25 act.

26 (b) The exchange shall submit its recommendations to the governor, the
27 temporary president of the senate and the speaker of the assembly on or
28 before August first, two thousand twelve.

1 11. (a) The exchange shall make recommendations upon whether and to
2 what extent health savings accounts should be offered through the
3 exchange.

4 (b) The exchange shall submit its recommendations to the governor, the
5 temporary president of the senate and the speaker of the assembly on or
6 before August first, two thousand twelve.

7 12. (a) The exchange shall conduct or cause to be conducted a study
8 of, and shall make recommendations upon, whether to allow large employ-
9 ers to participate in the exchange beginning January first, two thousand
10 seventeen, and shall take into account any excess of premium growth
11 outside of the exchange as compared to the rate of such growth inside
12 the exchange.

13 (b) The exchange shall submit its recommendations to the governor, the
14 temporary president of the senate and the speaker of the assembly on or
15 before December first, two thousand fifteen.

16 13. The exchange shall conduct or cause to be conducted a study of,
17 and shall make recommendations upon, the integration of public health
18 insurance programs, including medicaid, child health plus, and family
19 health plus within the exchange, which may include such reports as are
20 periodically submitted to the secretary, on or before August first, two
21 thousand twelve.

22 14. Notwithstanding any provision of subdivisions one through thirteen
23 of this section, if the exchange determines that any recommendations
24 required under any such subdivision cannot be submitted by the specified
25 date because federal guidance or regulations necessary to complete such
26 recommendations has not been issued, the exchange may establish a new
27 and reasonable date for such completion and submission.

1 15. (a) Any of the studies required under this section may be combined
2 with other studies required under this section or otherwise undertaken
3 by the exchange to the extent feasible and timely.

4 (b) In lieu of conducting or causing to be conducted any of the
5 studies required under this section, the exchange may rely upon any
6 other study or studies, in whole or in part, completed prior to the date
7 on which the exchange submits its recommendations, if the exchange
8 determines that such study or studies are sufficiently reliable.

9 16. The exchange shall have no authority, whether express or implied,
10 to implement any recommendation on the issues set forth in subdivisions
11 one through twelve of this section without further statutory authority;
12 provided, however, that nothing in this subdivision shall be deemed to
13 alter any powers expressly granted elsewhere in this article.

14 § 3989. Tax exemption and tax contract by the state. 1. It is hereby
15 determined that the creation of the exchange and the fulfillment of its
16 corporate purposes is in all respects for the benefit of the people of
17 this state and is a public purpose. Accordingly, the exchange shall be
18 regarded as performing an essential governmental function in the exer-
19 cise of the powers conferred upon it by this article, and the exchange
20 shall not be required to pay any fees, taxes, special ad valorem levies
21 or assessments of any kind, whether state or local, including but not
22 limited to fees, taxes, special ad valorem levies or assessments on real
23 property, franchise taxes, sales taxes, transfer taxes, mortgage taxes
24 or other taxes, upon or with respect to any property owned by it or
25 under its jurisdiction, control or supervision, or upon the uses there-
26 of, or upon or with respect to its activities or operations in further-
27 ance of the powers conferred upon it by this article, or upon or with

1 respect to any fares, tolls, rentals, rates, charges, fees, revenues or
2 other income received by the exchange.

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

7 § 3990. Officers and employees. 1. The board shall have the power to
8 appoint employees to serve as senior managerial staff of the exchange as
9 necessary, who shall be designated to be in the exempt class of civil
10 service. The board shall also have the power to fix the salaries of such
11 employees.

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

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

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

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

11 6. A transferred employee shall remain in the same collective bargain-
12 ing unit as was the case prior to his or her transfer; successor employ-
13 ees to the positions held by such transferred employees shall, consist-
14 ent with the provisions of article fourteen of the civil service law, be
15 included in the same unit as their predecessors. Employees serving in
16 positions in newly created titles shall be assigned to the same collec-
17 tive bargaining unit as they would have been assigned to were such
18 titles created prior to the establishment of the exchange. Nothing
19 contained in this article shall be construed (a) to diminish the rights
20 of employees pursuant to a collective bargaining agreement or (b) to
21 affect existing law with respect to an application to the public employ-
22 ment relations board seeking a designation by the board that certain
23 persons are managerial or confidential.

24 § 3991. Limitation of liability; indemnification. The provisions of
25 sections seventeen and nineteen of the public officers law shall be
26 applicable to exchange employees, as such term is defined in sections
27 seventeen and nineteen of the public officers law; provided, however,
28 that nothing contained within this section shall be deemed to permit the

1 exchange to extend the provisions of sections seventeen and nineteen of
2 the public officers law upon any independent contractor.

3 § 3992. Contingency for federal funding. The implementation of the
4 provisions of this article shall be contingent, as determined by the
5 director of the budget, on the availability of sufficient federal finan-
6 cial support for the planning and implementation of health care and
7 insurance reform initiatives authorized by federal legislation to estab-
8 lish and implement the health benefit exchange.

9 § 3993. Construction. Nothing in this article, and no action taken by
10 the exchange pursuant hereto, shall be construed to:

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

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

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

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

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

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

1 § 5. If any provision or application of this act shall be held to be
2 invalid, or to violate or be inconsistent with any applicable federal
3 law or regulation, that shall not affect other provisions or applica-
4 tions of this act which can be given effect without that provision or
5 application; and to that end, the provisions and applications of this
6 act are severable; provided, however, that nothing in this section shall
7 be deemed to invalidate the provisions of section 3992 of the public
8 authorities law, as added by section two of this act.

9 § 6. If the federal act is held to be unconstitutional by the supreme
10 court of the United States or repealed by the United States Congress,
11 the legislature shall convene within 180 days of such decision or
12 congressional act to consider appropriate legislative options.

13 § 7. This act shall take effect immediately; provided, however, that
14 until such time as the members of the board of directors of the New York
15 health benefit exchange are initially appointed pursuant to section 3982
16 of the public authorities law, as added by section two of this act, and
17 the first meeting of such board is convened, nothing in this act shall
18 be deemed to prevent the commissioner of health or the superintendent of
19 financial services from applying for, accepting the award of, and spend-
20 ing any available grant money pertaining to the establishment or opera-
21 tion of such exchange for purposes consistent with this act or, at any
22 time, from accepting or spending grant money awarded prior to the enact-
23 ment of this act.

24

PART F

25 Section 1. Section 1 of part C of chapter 58 of the laws of 2005,
26 authorizing reimbursements for expenditures made by or on behalf of

1 social services districts for medical assistance for needy persons and
2 the administration thereof, is amended by adding a new subdivision (c-1)
3 to read as follows:

4 (c-1) Notwithstanding any provisions of subdivision (c) of this
5 section to the contrary, effective April 1, 2013, for the period January
6 1, 2013 through December 31, 2013 and for each calendar year thereafter,
7 the medical assistance expenditure amount for the social services
8 district for such period shall be equal to the previous calendar year's
9 medical assistance expenditure amount, except that:

10 (1) for the period January 1, 2013 through December 31, 2013, the
11 previous calendar year medical assistance expenditure amount will be
12 increased by 2%;

13 (2) for the period January 1, 2014 through December 31, 2014, the
14 previous calendar year medical assistance expenditure amount will be
15 increased by 1%.

16 § 2. Paragraph (iii) of subdivision (g) of section 1 of part C of
17 chapter 58 of the laws of 2005, authorizing reimbursements for expendi-
18 tures made by or on behalf of social services districts for medical
19 assistance for needy persons and the administration thereof, as amended
20 by section 59 of part A of chapter 57 of the laws of 2006, is amended to
21 read as follows:

22 (iii) During each state fiscal year subject to the provisions of this
23 section and prior to state fiscal year 2015-16, the commissioner shall
24 maintain an accounting, for each social services district, of the net
25 amounts that would have been expended by, or on behalf of, such district
26 had the social services district medical assistance shares provisions in
27 effect on January 1, 2005 been applied to such district. For purposes
28 of this paragraph, fifty percent of the payments made by New York State

1 to the secretary of the federal department of health and human services
2 pursuant to section 1935(c) of the social security act shall be deemed
3 to be payments made on behalf of social services districts; such fifty
4 percent share shall be apportioned to each district in the same ratio as
5 the number of "full-benefit dual eligible individuals," as that term is
6 defined in section 1935(c)(6) of such act, for whom such district has
7 fiscal responsibility pursuant to section 365 of the social services
8 law, relates to the total of such individuals for whom districts have
9 fiscal responsibility. As soon as practicable after the conclusion of
10 each such fiscal year, but in no event later than six months after the
11 conclusion of each such fiscal year, the commissioner shall reconcile
12 such net amounts with such fiscal year's social services district
13 expenditure cap amount. Such reconciliation shall be based on actual
14 expenditures made by or on behalf of social services districts, and
15 revenues received by social services districts, during such fiscal year
16 and shall be made without regard to expenditures made, and revenues
17 received, outside such fiscal year that are related to services provided
18 during, or prior to, such fiscal year. The commissioner shall pay to
19 each social services district the amount, if any, by which such
20 district's expenditure cap amount exceeds such net amount.

21 § 3. Paragraph (i) of subdivision (b) of section 2 of part C of chap-
22 ter 58 of the laws of 2005, authorizing reimbursements for expenditures
23 made by or on behalf of social services districts for medical assistance
24 for needy persons and the administration thereof, is amended to read as
25 follows:

26 (i) A social services district shall exercise the option described in
27 this section through the adoption of a resolution by its local legisla-
28 tive body, in the form set forth in subparagraph (ii) of this paragraph,

1 to elect the medical assistance reimbursement methodology set forth in
2 paragraph (a) of this section and to elect the tax intercept methodology
3 set forth in subdivision (f) of section 1261 of the tax law or subdivi-
4 sion (g) of section 1261 and subdivision (h) of section 1313 of the tax
5 law, as applicable. A social services district, acting through its local
6 legislative body, is hereby authorized to adopt such a resolution. Such
7 a resolution shall be effective only if it is adopted exactly as set
8 forth in subparagraph (ii) of this paragraph no later than September 30,
9 2007, and a certified copy of such resolution is mailed to the commis-
10 sioner of health by certified mail by such date. The commissioner of
11 health shall, no later than October 31, 2007, certify to the commission-
12 er of taxation and finance a list of those social services districts
13 which have elected the option described in this section. A social
14 services district [shall have no authority] may be allowed to rescind
15 the exercise of the option described in this section no later than Janu-
16 ary 1, 2013, with the approval of and subject to conditions specified by
17 the commissioner of health and the commissioner of taxation and finance.

18 § 4. Part C of chapter 58 of the laws of 2005, authorizing reimburse-
19 ments for expenditures made by or on behalf of social services districts
20 for medical assistance for needy persons and the administration thereof,
21 is amended by adding a new section 4-a to read as follows:

22 § 4-a. (a) For state fiscal year 2012-13, and for each state fiscal
23 year thereafter, a social services district will be reimbursed by the
24 state for the full non-federal share of expenditures by the district for
25 the administration of the medical assistance program, not to exceed the
26 administrative cap amount determined in accordance with subdivision (b)
27 of this section. Any portion of the non-federal share of such expendi-
28 tures in excess of the administrative cap amount shall be the responsi-

1 bility of the social services district and shall be in addition to the
2 medical assistance expenditure amount calculated in accordance with
3 subdivisions (b), (c), (c-1), and (d) of section one of this act. Begin-
4 ning in state fiscal year 2013-14, no reimbursement will be made for
5 administrative expenditures in excess of such cap.

6 (b) The administrative cap amount for a social services district shall
7 be equal to a percentage of the amount included in the state fiscal year
8 2011-12 enacted budget for the non-federal share of medical assistance
9 administrative costs pursuant to this section. Each social services
10 district's percentage shall be equal to the percentage of medical
11 assistance administrative costs claimed by such district in the 2011
12 calendar year in relation to all other social services districts.

13 (c) Notwithstanding the provisions of subdivision (b) of this section,
14 the commissioner of health may, at his or her sole discretion, reduce a
15 social services district's administrative cap amount to account for a
16 reduction in the scope or volume of the district's administrative
17 responsibilities, including but not limited to such a reduction result-
18 ing from the process of converting the medical assistance program to a
19 department-administered program pursuant to section 365-n of the social
20 services law.

21 § 5. Section 91 of part H of chapter 59 of the laws of 2011 amending
22 the public health law and other laws relating to general hospital
23 reimbursement for annual rates is amended to read as follows:

24 § 91. 1. Notwithstanding any inconsistent provision of state law, rule
25 or regulation to the contrary, subject to federal approval, the year to
26 year rate of growth of department of health state funds Medicaid spend-
27 ing shall not exceed the ten year rolling average of the medical compo-
28 nent of the consumer price index as published by the United States

1 department of labor, bureau of labor statistics, for the preceding ten
2 years.

3 2. Except as provided in subdivision three of this section, for state
4 fiscal year 2013-14 and for each fiscal year thereafter, the spending
5 limit calculated pursuant to subdivision one of this section shall be
6 increased by an amount equal to the difference between the total social
7 services district medical assistance expenditure amounts calculated for
8 such period in conformance with subdivisions (b), (c), (c-1), and (d) of
9 section 1 of part C of chapter 58 of the laws of 2005 and the total
10 social services district medical expenditure amounts that would have
11 resulted if the provisions of subdivision (c-1) of such section had not
12 been applied.

13 3. With respect to a social services district that rescinds the exer-
14 cise of the option provided in paragraph (i) of subdivision (b) of
15 section 2 of part C of chapter 58 of the laws of 2005, for state fiscal
16 year 2013-14 and for each fiscal year thereafter, the spending limit
17 calculated pursuant to subdivision one of this section shall be reduced
18 by the amount of the medical assistance expenditure amount calculated
19 for such district for such period.

20 § 6. The social services law is amended by adding a new section 365-n
21 to read as follows:

22 § 365-n. Department assumption of program administration. 1. Legisla-
23 tive intent. (a) The legislature finds that to ensure the medical
24 assistance program continues to function in an efficient manner to make
25 high quality medical care, services, and supplies available to eligible
26 persons, and to achieve timely compliance with the requirements of the
27 Patient Protection and Affordable Care Act related to the expansion of
28 the medical assistance program and the creation of a health care

1 exchange, it is necessary to convert the program of medical assistance
2 from one primarily administered by social services districts, under the
3 supervision of the department of health ("department"), to one adminis-
4 tered by the department, with such assistance from social services
5 districts as the commissioner of health ("commissioner") may determine
6 necessary, and that such conversion should be completed by April first,
7 two thousand eighteen. Recognizing the complexity and difficulty of
8 completing this conversion within such time frame, it is the intent of
9 the legislature to grant the commissioner broad authority and flexibili-
10 ty to take actions necessary to achieve this goal, as determined by the
11 commissioner, and to have the provisions of this section construed in
12 light of the authority and flexibility so granted. The administration of
13 the program by the department may be accomplished through the use of
14 department staff, contracted entities, or some combination thereof, as
15 determined advisable by the commissioner to achieve the goals of this
16 section, subject to the limitations prescribed herein. The commissioner
17 will consult with social services districts in formulating the optimal
18 plan for implementing this conversion.

19 (b) The legislature further finds that the continued, uninterrupted,
20 adequate and efficient operation of functions related to medical assist-
21 ance eligibility and covered benefits is necessary for the general
22 welfare of the people of the state; that such operation involves and
23 requires personnel with training, practical experience and knowledge in
24 medical assistance eligibility and covered benefits; and that requiring
25 competitive examination for appointment of persons currently performing
26 such functions in counties in the state to positions in the classified
27 service of the state upon the assumption of such functions by the

1 department would irreparably disrupt, delay and impede operations and
2 interrupt the continuance and performance of important services.

3 2. Notwithstanding the provisions of title two of article three of
4 this chapter or of section three hundred sixty-five of this title or of
5 any other law to the contrary, the commissioner is authorized to take
6 any and all actions necessary to transfer responsibility for the admin-
7 istration of the medical assistance program from social services
8 districts to the department.

9 3. For purposes of this section, administration of the medical assist-
10 ance program includes processing applications for benefits and services
11 available under this title and title eleven-D of this article, making
12 determinations of initial and ongoing eligibility for such benefits and
13 services and making coverage determinations with respect to benefits and
14 services requiring prior authorization, notifying applicants and recipi-
15 ents of these determinations and of their rights and responsibilities,
16 authorizing benefits and services for persons found eligible, exercising
17 subrogation rights with respect to amounts received from insurance
18 carriers or other liable third parties, imposing liens and pursuing
19 recoveries, and any other tasks and functions identified by the commis-
20 sioner.

21 4. Notwithstanding the provisions of the civil service law or any
22 provisions to the contrary contained in any general, special, or local
23 laws, all lawful appointees of a county performing functions related to
24 medical assistance eligibility and covered benefits as of the effective
25 date of this section will be eligible to transfer to appropriate posi-
26 tions in the department of health classified to perform such functions
27 without further examination or qualification and, upon such transfer,
28 will have all the rights and privileges of the jurisdictional classi-

1 fication to which such positions may be allocated in the classified
2 service of the state.

3 5. Subject to the provisions of subdivisions six and seven of this
4 section, the commissioner may contract with one or more entities,
5 including units of local government, for the purpose of exercising his
6 or her authority under this section. Such entities may be contracted to
7 perform all or a portion of the functions described in subdivision three
8 of this section, and may perform such functions with respect to the
9 entire state or with respect to a specific region or regions, as deter-
10 mined by the commissioner. In no event, however, shall the department,
11 by means of such a contract, delegate its authority to exercise adminis-
12 trative discretion in the administration or supervision of the state
13 plan for medical assistance submitted pursuant to section three hundred
14 sixty-three-a of this title, or to issue policies, rules, and regu-
15 lations on program matters, nor may any contracted entity be given the
16 authority to change or disapprove any administrative decision of the
17 department, or otherwise substitute the entity's judgment for that of
18 the department with respect to the application of policies, rules, and
19 regulations issued by the department.

20 6. Notwithstanding any inconsistent provision of sections one hundred
21 twelve and one hundred sixty-three of the state finance law, or sections
22 one hundred forty-two and one hundred forty-three of the economic devel-
23 opment law, or any other contrary provision of law, the commissioner is
24 authorized to amend the terms of existing contracts, including a
25 contract entered into pursuant to subdivision twenty-four of section two
26 hundred six of the public health law, as added by section thirty-nine of
27 part C of chapter fifty-eight of the laws of two thousand eight, without
28 a competitive bid or request for proposal process, upon a determination

1 that the existing contractor is qualified to provide assistance with one
2 or more functions related to the administration of the medical assist-
3 ance program or to achieving the goals of this section.

4 7. Notwithstanding any inconsistent provision of sections one hundred
5 twelve and one hundred sixty-three of the state finance law, or sections
6 one hundred forty-two and one hundred forty-three of the economic devel-
7 opment law, or any other contrary provision of law, the commissioner is
8 authorized to enter into a contract or contracts under this subdivision
9 without a competitive bid or request for proposal process, provided,
10 however, that with respect to a contract with an entity other than a
11 local unit of government:

12 (a) The department shall post on its website, for a period of no less
13 than thirty days:

14 (i) A description of the proposed services to be provided pursuant to
15 the contract or contracts;

16 (ii) The criteria for selection of a contractor or contractors;

17 (iii) The period of time during which a prospective contractor may
18 seek selection, which shall be no less than thirty days after such
19 information is first posted on the website; and

20 (iv) The manner by which a prospective contractor may seek such
21 selection, which may include submission by electronic means;

22 (b) All reasonable and responsive submissions that are received from
23 prospective contractors in timely fashion shall be reviewed by the
24 commissioner; and

25 (c) The commissioner shall select such contractor or contractors that,
26 in his or her discretion, are best suited to serve the purposes of this
27 section.

1 8. The commissioner shall promulgate such regulations as may be neces-
2 sary to carry out the provisions of this section, which regulations may
3 be promulgated on an emergency basis. In addition, the commissioner
4 shall make any amendments to the state plan for medical assistance, or
5 develop and submit an application for any waiver or approval under the
6 federal social security act, that may be necessary to carry out the
7 provisions of this section.

8 § 7. Subdivision 7 of section 369 of the social services law, as added
9 by section 71-a of part C of chapter 58 of the laws of 2008, is amended
10 to read as follows:

11 7. Notwithstanding any provision of law to the contrary, the depart-
12 ment [may commence] shall, when it determines necessary program features
13 are in place, assume sole responsibility for commencing actions or
14 proceedings in accordance with the provisions of this section, sections
15 one hundred one, one hundred four, one hundred four-b, paragraph (a) of
16 subdivision three of section three hundred sixty-six, subparagraph one
17 of paragraph (h) of subdivision four of section three hundred sixty-six,
18 and paragraph (b) of subdivision two of section three hundred sixty-sev-
19 en-a of this chapter, to recover the cost of medical assistance
20 furnished pursuant to this title and title eleven-D of this article. The
21 department is authorized to contract with an entity that shall conduct
22 activities on behalf of the department pursuant to this subdivision.
23 Prior to assuming such responsibility from a social services district,
24 the department of health shall, in consultation with the district,
25 define the scope of the services the district will be required to
26 perform on behalf of the department of health pursuant to this subdivi-
27 sion.

1 § 8. Notwithstanding any inconsistent provision of law, rule or regu-
2 lation, for purposes of implementing the provisions of the public health
3 law and the social services law, references to titles XIX and XXI of the
4 federal social security act in the public health law and the social
5 services law shall be deemed to include and also to mean any successor
6 titles thereto under the federal social security act.

7 § 9. Notwithstanding any inconsistent provision of law, rule or regu-
8 lation, the effectiveness of the provisions of sections 2807 and 3614 of
9 the public health law, section 18 of chapter 2 of the laws of 1988, and
10 18 NYCRR 505.14(h), as they relate to time frames for notice, approval
11 or certification of rates of payment, are hereby suspended and without
12 force or effect for purposes of implementing the provisions of this act.

13 § 10. Severability clause. If any clause, sentence, paragraph, subdi-
14 vision, section or part of this act shall be adjudged by any court of
15 competent jurisdiction to be invalid, such judgment shall not affect,
16 impair or invalidate the remainder thereof, but shall be confined in its
17 operation to the clause, sentence, paragraph, subdivision, section or
18 part thereof directly involved in the controversy in which such judgment
19 shall have been rendered. It is hereby declared to be the intent of the
20 legislature that this act would have been enacted even if such invalid
21 provisions had not been included herein.

22 § 11. This act shall take effect immediately and shall be deemed to
23 have been in full force and effect on and after April 1, 2012, provided
24 that:

25 1. section one of this act shall take effect April 1, 2013;

26 2. any rules or regulations necessary to implement the provisions of
27 this act may be promulgated and any procedures, forms, or instructions

1 necessary for such implementation may be adopted and issued on or after
2 the date this act shall have become a law;

3 3. this act shall not be construed to alter, change, affect, impair or
4 defeat any rights, obligations, duties or interests accrued, incurred or
5 conferred prior to the effective date of this act;

6 4. the commissioner of health and the superintendent of insurance and
7 any appropriate council may take any steps necessary to implement this
8 act prior to its effective date;

9 5. notwithstanding any inconsistent provision of the state administra-
10 tive procedure act or any other provision of law, rule or regulation,
11 the commissioner of health and the superintendent of insurance and any
12 appropriate council is authorized to adopt or amend or promulgate on an
13 emergency basis any regulation he or she or such council determines
14 necessary to implement any provision of this act on its effective date;

15 6. the amendment to section 91 of part H of chapter 59 of the laws of
16 2011, amending the public health law and other laws relating to general
17 hospital reimbursement for annual rates, made by section five of this
18 act shall take effect on the same date and in the same manner as such
19 section takes effect;

20 7. the provisions of this act shall become effective notwithstanding
21 the failure of the commissioner of health or the superintendent of
22 insurance or any council to adopt or amend or promulgate regulations
23 implementing this act.

1 Section 1. Subdivision 1 of section 79 of part C of chapter 58 of the
2 laws of 2005 relating to the preferred drug program is amended and a new
3 subdivision 1-a is added to read as follows:

4 1. sections ten [through], eleven, twelve and fifteen of this act
5 shall expire and be deemed repealed on and after June 15, [2012] 2019;

6 1-a. section fourteen of this act shall expire and be deemed repealed
7 on and after June 15, 2012;

8 § 2. Subparagraph (v) of paragraph (b) of subdivision 35 of section
9 2807-c of the public health law, as amended by section 35-a of part H of
10 chapter 59 of the laws of 2011, is amended to read as follows:

11 (v) such regulations shall incorporate quality related measures,
12 including, but not limited to, potentially preventable re-admissions
13 (PPRs) and provide for rate adjustments or payment disallowances related
14 to PPRs and other potentially preventable negative outcomes (PPNOs),
15 which shall be calculated in accordance with methodologies as determined
16 by the commissioner, provided, however, that such methodologies shall be
17 based on a comparison of the actual and risk adjusted expected number of
18 PPRs and other PPNOs in a given hospital and with benchmarks established
19 by the commissioner and provided further that such rate adjustments or
20 payment disallowances shall result in an aggregate reduction in Medicaid
21 payments of no less than thirty-five million dollars for the period July
22 first, two thousand ten through March thirty-first, two thousand eleven
23 and no less than fifty-one million dollars for [the period] annual peri-
24 ods beginning April first, two thousand eleven through March thirty-
25 first, two thousand [twelve] thirteen, provided further that such aggre-
26 gate reductions shall be offset by Medicaid payment reductions occurring
27 as a result of decreased PPRs during the period July first, two thousand
28 ten through March thirty-first, two thousand eleven and the period April

1 first, two thousand eleven through March thirty-first, two thousand
2 [twelve] thirteen and as a result of decreased PPNOs during the period
3 April first, two thousand eleven through March thirty-first, two thou-
4 sand [twelve] thirteen; and provided further that for the period July
5 first, two thousand ten through March thirty-first, two thousand
6 [twelve] thirteen, such rate adjustments or payment disallowances shall
7 not apply to behavioral health PPRs; or to readmissions that occur on or
8 after fifteen days following an initial admission. By no later than July
9 first, two thousand eleven the commissioner shall enter into consulta-
10 tions with representatives of the health care facilities subject to this
11 section regarding potential prospective revisions to applicable method-
12 ologies and benchmarks set forth in regulations issued pursuant to this
13 subparagraph;

14 § 3. This act shall take effect immediately and shall be deemed to
15 have been in full force and effect on and after April 1, 2012.

16 PART H

17 Section 1. Section 4 of part C of chapter 57 of the laws of 2006,
18 relating to establishing a cost of living adjustment for designated
19 human services programs, as amended by section 2 of part F of chapter 59
20 of the laws of 2011, is amended to read as follows:

21 § 4. This act shall take effect immediately and shall be deemed to
22 have been in full force and effect on and after April 1, 2006; provided
23 section one of this act shall expire and be deemed repealed April 1,
24 [2015] 2012; provided, further, that sections two and three of this act
25 shall expire and be deemed repealed December 31, 2009.

1 § 2. Notwithstanding any other provision of law to the contrary,
2 effective April 1, 2013 and annually thereafter, state agencies includ-
3 ing, but not limited to, the office for people with developmental disa-
4 bilities, office of mental health, office of alcoholism and substance
5 abuse services, office of children and family services, office of tempo-
6 rary and disability assistance, department of health, office for the
7 aging, division of criminal justice services, office of victim services,
8 and state education department that operate, license, certify, or fund
9 providers of services shall develop and calculate annual adjustments to
10 established payments to providers of such services, based on factors to
11 be determined by the commissioner of the agency. Such adjustments shall
12 be based on performance metrics to be developed by the commissioners of
13 such agencies which shall include, but not be limited to the following
14 to the extent practicable: the actual costs of providing such services,
15 the percentages of administrative costs, the determination and levels of
16 executive compensation, and such other criteria as such commissioners
17 may determine. Such annual adjustments shall be subject to any necessary
18 federal approvals and restrictions. The amount of any annual adjustment
19 and the metrics used to determine such adjustment shall be subject to
20 the review and approval of the director of the budget.

21 § 3. Notwithstanding any other provision of law to the contrary,
22 commencing on April 1, 2012, the commissioner or director of each state
23 agency subject to section two of this act shall have the authority,
24 subject to approval by the director of the budget, to promulgate regu-
25 lations or to address by other means the extent and nature of a provid-
26 er's administrative costs and executive compensation which shall be
27 eligible to be reimbursed with state financial assistance or state-au-
28 thorized payments for operating expenses. Each agency shall require that

1 providers of services that receive reimbursements directly or indirectly
2 from such agency must comply with the following restrictions:

3 (a) No less than seventy-five percent of the state financial assist-
4 ance or state-authorized payments for operating expenses shall be
5 directed to provide direct care or services rather than to support the
6 costs of administration, as these terms are defined by the applicable
7 state agency in implementing these requirements. This percentage shall
8 increase by five percent each year until it shall, no later than April
9 1, 2015, remain at no less than eighty-five percent thereafter.

10 (b) To the extent practicable, reimbursement shall not be provided for
11 compensation paid or given to any executive by such provider in an
12 amount greater than \$199,000 per annum; provided, however, that the
13 commissioner of each state agency shall have discretion to adjust this
14 figure annually based on appropriate factors subject to the approval of
15 the director of the budget, but in no event shall such figure exceed
16 Level I of the federal government's Rates of Basic Pay for the Executive
17 Schedule promulgated by the United States Office of Personnel Manage-
18 ment. The applicable state agency shall define these terms as necessary
19 in implementing these requirements.

20 A provider's failure to comply with the requirements established by
21 the applicable state agency may, in the sole discretion of the commis-
22 sioner of each state agency, form the basis for termination or non-rene-
23 wal of the agency's contract with or continued support of the provider.
24 Upon a showing of good cause, a provider may be granted a waiver from
25 compliance with these requirements in whole or in part subject to the
26 approval of the applicable state agency and the director of the budget.

27 § 4. This act shall take effect immediately and shall be deemed to
28 have been in full force and effect on and after April 1, 2012.

1

PART I

2 Section 1. Notwithstanding any inconsistent provision of sections one
3 hundred twelve and one hundred sixty-three of the state finance law, or
4 section one hundred forty-two of the economic development law, or any
5 other law to the contrary, the commissioner of developmental disabili-
6 ties, pursuant to a pilot program established in accordance with an
7 application made under section 1115 of the federal social security act,
8 42 U.S.C. 1315, is authorized to enter into a contract or contracts
9 without a competitive bid or request for proposal process, with the
10 approval of the director of the budget, provided, however, that:

11 (a) the office for people with developmental disabilities shall post
12 on its website, for a period of not less than thirty days, a pilot
13 application, and the following information:

14 (i) a description of the proposed services to be provided pursuant to
15 the pilot program;

16 (ii) the procedure for application to participate in the pilot program
17 and criteria for selection of an applicant to participate in the pilot
18 program;

19 (iii) the period of time during which an applicant may seek selection,
20 which shall be no less than thirty days after such information is first
21 posted on the website; and

22 (iv) the manner by which an applicant may seek such selection, which
23 may include submission by electronic means;

24 (b) all reasonable and responsive submissions that are received from
25 applicants in a timely fashion shall be reviewed by the commissioner;

26 and

1 (c) the commissioner of developmental disabilities shall select such
2 applicant or applicants that, in the commissioner's discretion, have
3 demonstrated the ability to effectively, efficiently, and economically
4 provide services pursuant to the pilot program; have the requisite
5 expertise and financial resources; have demonstrated that their direc-
6 tors, sponsors, members, managers, partners or operators have the requi-
7 site character, competence and standing in the community, and are best
8 suited to serve the purposes of this section.

9 § 2. This act shall take effect immediately.

10 PART J

11 Section 1. Section 13.17 of the mental hygiene law, as added by chap-
12 ter 978 of the laws of 1977, the section heading as amended by chapter
13 168 of the laws of 2010, subdivisions (b) and (d) as amended by chapter
14 37 of the laws of 2011, and subdivision (c) as amended by chapter 538 of
15 the laws of 1987, is amended to read as follows:

16 § 13.17 Programs, services, and operations [of facilities] in the office
17 for people with developmental disabilities.

18 (a) The commissioner shall establish policy and procedures for the
19 organization, administration, and [operation of the facilities] service
20 delivery system under his or her jurisdiction[. He] and shall make
21 provision for the effective rendition of supports and services to
22 [patients by such facilities or office personnel] individuals with
23 developmental disabilities.

24 (b) [There shall be in the office the developmental disabilities
25 services offices named below serving the areas either currently or
26 previously served by a school, for the care and treatment of persons

1 with developmental disabilities and for research and teaching in the
2 science and skills required for the care and treatment of such persons
3 with developmental disabilities:

4 Bernard M. Fineson Developmental Disabilities Services Office
5 Brooklyn Developmental Disabilities Services Office
6 Broome Developmental Disabilities Services Office
7 Capital District Developmental Disabilities Services Office
8 Central New York Developmental Disabilities Services Office
9 Finger Lakes Developmental Disabilities Services Office
10 Institute for Basic Research in Developmental Disabilities
11 Hudson Valley Developmental Disabilities Services Office
12 Metro New York Developmental Disabilities Services Office
13 Long Island Developmental Disabilities Services Office
14 Sunmount Developmental Disabilities Services Office
15 Taconic Developmental Disabilities Services Office
16 Western New York Developmental Disabilities Services Office
17 Staten Island Developmental Disabilities Services Office
18 The New York State Institute for Basic Research in Developmental Disa-
19 bilities is designated as an institute for the conduct of medical
20 research and other scientific investigation directed towards furthering
21 knowledge of the etiology, diagnosis, treatment and prevention of devel-
22 opmental disabilities.

23 (c) The commissioner shall establish [the areas which each facility
24 or], at his or her discretion, developmental disabilities [services
25 office under his jurisdiction shall serve and the categories of clients
26 which shall be served thereby] regional offices and shall establish
27 state operations offices that provide for the direct delivery of

1 supports and services by the office for people with developmental disa-
2 bilities.

3 [(d)] (c) The commissioner may [permit] authorize other offices of the
4 department and any public or private non-profit organization or poli-
5 tical subdivision of the state to [operate programs for persons] deliver
6 supports and services to individuals with developmental disabilities[,
7 not inconsistent with the programs and objectives of the office in any
8 facility under his jurisdiction. The commissioner may permit any facili-
9 ty under his jurisdiction to operate programs for persons with mental
10 disabilities, not inconsistent with programs and objectives of the
11 department, under contracts or agreements with other offices within the
12 department].

13 § 2. Section 13.19 of the mental hygiene law, as added by chapter 978
14 of the laws of 1977, subdivisions (a) and (d) as amended by chapter 168
15 of the laws of 2010, and subdivision (e) as added by chapter 307 of the
16 laws of 1979, is amended to read as follows:

17 § 13.19 Personnel of the office; regulations.

18 (a) The commissioner may, within the amounts appropriated therefor,
19 appoint and remove in accordance with law and applicable rules of the
20 state civil service commission, such officers and employees of the
21 office for people with developmental disabilities [and school and facil-
22 ity officers and employees who are designated managerial or confidential
23 pursuant to article fourteen of the civil service law] as are necessary
24 for efficient administration. The commissioner shall, in exercising his
25 or her appointing authority, take, consistent with article
26 twenty-three-A of the correction law, all reasonable and necessary steps
27 to ensure that any such person so appointed has not previously engaged

1 in any act in violation of any law which could compromise the health and
2 safety of individuals with developmental disabilities.

3 (b) [The director of a hospital or institute in the office shall have
4 professional qualifications and experience to be prescribed by the
5 commissioner.

6 (c)] Notwithstanding the provisions of any other law, the [positions]
7 position of [psychiatrist III and] deputy director in [any] an office
8 facility may be filled by new hire or by promotion open to employees [of
9 all such facilities] who possess the minimum qualifications for the
10 [respective positions. Promotion lists which are established for those
11 positions shall be general eligible promotion lists from which names are
12 certified in the order of final earned ratings and from which certif-
13 ication shall not be subdivided by the facility or department in which
14 such persons are employed. Nothing in this subdivision shall prevent the
15 use of open competitive examinations] position.

16 [(d)] (c) The use of volunteers [at facilities] in the office for
17 people with developmental disabilities shall be encouraged. The commis-
18 sioner may establish regulations governing such volunteer services.

19 [(e)] (d) Where, and to the extent that, an agreement between the
20 state and an employee organization entered into pursuant to article
21 fourteen of the civil service law so provides, the commissioner is
22 authorized to implement the provisions of such agreement relating to
23 discipline consistent with the terms thereof.

24 § 3. Section 13.21 of the mental hygiene law, as added by chapter 978
25 of the laws of 1977, the section heading and subdivisions (a) and (c) as
26 amended by chapter 168 of the laws of 2010, subdivision (b) as amended
27 by chapter 558 of the laws of 2011, subdivision (d) as added by chapter
28 355 of the laws of 1987 and subdivision (e) as added by chapter 492 of

1 the laws of 1978 and as relettered by chapter 355 of the laws of 1987,
2 is amended to read as follows:

3 § 13.21 Directors of [schools] state operations offices and develop-
4 mental disabilities regional offices in the office for people
5 with developmental disabilities.

6 (a) The [director] directors of [a school] both the state operations
7 offices and developmental disabilities regional offices in the office
8 for people with developmental disabilities shall be appointed by the
9 commissioner [and shall be its chief executive officer. The director of
10 a school shall be the director of the developmental disabilities
11 services office serving the areas designated by the commissioner in
12 regulation, and in such context, the term facility shall also refer to
13 such developmental disabilities services office]. Each such director
14 shall be in the non-competitive class and designated as confidential as
15 defined by subdivision two-a of section forty-two of the civil service
16 law and shall serve at the pleasure of the commissioner. [Except for
17 school and facility officers and employees for which subdivision (a) of
18 section 13.19 of this article makes the commissioner the appointing and
19 removing authority, the director of a school shall have the power, with-
20 in amounts appropriated therefor, to appoint and remove in accordance
21 with law and applicable rules of the state civil service commission such
22 officers and employees of the facility of which he or she is director as
23 are necessary for its efficient administration. He or she shall in exer-
24 cising his or her appointing authority take, consistent with article
25 twenty-three-A of the correction law, all reasonable and necessary steps
26 to insure that any such person so appointed has not previously engaged
27 in any act in violation of any law which could compromise the health and
28 safety of patients in the facility of which he or she is director.] He

1 or she shall manage the [facility, and administer its personnel system,]
2 state operations office or developmental disabilities regional office
3 subject to applicable law, the regulations of the commissioner, and the
4 rules of the state civil service commission. [Before the commissioner
5 shall issue any such regulation or any amendment or revision thereof, he
6 or she shall consult with the directors of schools in the office regard-
7 ing its suitability.] The [director] directors of the developmental
8 disabilities regional offices and state operations offices shall main-
9 tain effective [supervision] oversight of all parts of [the facility and
10 over all persons employed therein or coming thereon and] their respec-
11 tive offices. The directors of state operations offices shall generally
12 [direct] provide for the [care and treatment of patients. Directors
13 presently serving at facilities of the office shall continue to serve
14 under the terms of their original appointment] administration of
15 supports and services to individuals with developmental disabilities in
16 state operated programs. Directors of regional offices shall generally
17 oversee the administration of supports and services to individuals with
18 developmental disabilities in settings outside the state operated
19 programs.

20 (b) Such [director] directors shall have the responsibility of seeing
21 that there is humane treatment of [the patients at his facility and
22 shall investigate every case of alleged patient abuse or mistreatment]
23 individuals with developmental disabilities receiving services in
24 settings operated, licensed, certified, funded or approved by this
25 office. [The] A director of state operations shall notify immediately,
26 and in any event within three working days the board of visitors of the
27 facility and the mental hygiene legal service located in the same judi-
28 cial department as [the hospital, school or institution] the state oper-

1 ations office of every complaint of patient abuse or mistreatment and
2 shall inform the board and the mental hygiene legal service of the
3 results of his or her investigation. If it appears that a crime may have
4 been committed, the state operations director shall give notice thereof
5 to the district attorney or other appropriate law enforcement official
6 as soon as possible, and in any event within three working days unless
7 it appears that the crime includes an employee, intern, volunteer,
8 consultant, contractor, or visitor and the alleged conduct caused phys-
9 ical injury or the patient was subject to unauthorized sexual contact,
10 or if it appears the crime is endangering the welfare of an incompetent
11 or physically disabled person pursuant to section 260.25 of the penal
12 law, or if the crime was any felony under state or federal law, then the
13 district attorney or other appropriate law enforcement official must be
14 contacted immediately, and in any event no later than twenty-four hours.

15 (c) In any investigation into the treatment and care of [patients]
16 individuals with developmental disabilities or the conduct, performance,
17 or neglect of duty of officers or employees, the [director of a school
18 in the office for people with developmental disabilities] commissioner
19 or his or her designee shall be authorized to subpoena witnesses, compel
20 their attendance, administer oaths to witnesses, examine witnesses under
21 oath, and require the production of any books or papers deemed relevant
22 to the inquiry or investigation. A subpoena issued under this section
23 shall be regulated by the civil practice law and rules.

24 (d) [Such] The director of a [school] state operations office shall be
25 responsible for the provision of state operated community developmental
26 disabilities services, in those areas that the commissioner may assign.
27 Such responsibility shall, consistent with article forty-one of this
28 chapter, include the operation of state operated facilities[,] and the

1 development of needed facilities[, and the provision of assistance to
2 service providers in such areas and any necessarily related activities.
3 All powers and duties as set forth in this section shall apply to such
4 responsibilities]. Regional directors shall be responsible for the
5 provision of community developmental disabilities services to individ-
6 uals in settings other than state operated programs. The regional direc-
7 tor's responsibility shall, consistent with article forty-one of this
8 chapter, include the oversight of facilities and programs other than
9 those operated by the state.

10 (e) Each [facility] state operations director of the office shall,
11 upon notice from the commissioner or upon knowledge that programs of
12 such facility may be contracted or terminated, implement procedures to
13 ensure timely notification to affected employees. Such procedures shall
14 include, but not be limited to:

15 (1) dissemination and posting of all decisions, policies and proce-
16 dures with respect to all aspects of such actions and their impact on
17 facility staff; and

18 (2) compliance with all requirements and protection of employee rights
19 pursuant to collective bargaining agreements with the designated legal
20 representative of the employees and the civil service law.

21 § 4. Section 13.33 of the mental hygiene law, as added by chapter 978
22 of the laws of 1977, subdivision (a) as amended by chapter 37 of the
23 laws of 2011, subdivision (d) as amended by chapter 686 of the laws of
24 1995, subdivisions (f) and (h) as amended by chapter 175 of the laws of
25 1986, subdivision (i) as amended by chapter 14 of the laws of 1990,
26 paragraph 1 of subdivision (i) as amended by chapter 75 of the laws of
27 1992, paragraph 2 of subdivision (i) and subdivision (m) as amended by
28 chapter 168 of the laws of 2010, subdivision (j) as amended by chapter

1 264 of the laws of 1980 and subdivisions (j) and (k) as relettered by
2 chapter 84 of the laws of 1980, subdivision (l) as amended by chapter
3 406 of the laws of 1994, and subdivision (n) as amended by chapter 662
4 of the laws of 1995, is amended to read as follows:

5 § 13.33 Boards of visitors.

6 (a) Each [developmental disabilities services] state operations office
7 under the jurisdiction of the commissioner shall have a minimum of one
8 board of visitors consisting of at least seven but not more than four-
9 teen members[; provided, however, that the Central New York develop-
10 mental disabilities services office shall have a board of visitors
11 consisting of at least ten, but not more than seventeen members; and
12 that the Finger Lakes developmental disabilities services office shall
13 have a board of visitors consisting of at least fourteen, but not more
14 than twenty-one members. When a school is replaced by a developmental
15 disabilities services office, the members of that school's board of
16 visitors shall continue to serve their terms as the board of visitors
17 for the new developmental disabilities services office]. Members
18 appointed or reappointed after the effective date of this chapter shall
19 be appointed by the governor, by and with the advice and consent of the
20 senate. Members shall be appointed for four year terms to expire on the
21 thirty-first day of December of the fourth year of the term of office
22 provided however, when more than three terms expire in any one year,
23 members may be appointed for terms of fewer years as designated by the
24 governor so that no more than three members' terms expire in any one
25 year. All terms of office shall expire on the thirty-first day of Decem-
26 ber of the designated year. A member whose term has expired shall,
27 however, remain in office until such member's successor has been
28 appointed and has taken office, or until such member shall have resigned

1 or have been removed from office in the manner hereinafter provided.
2 Should any member resign or be removed from office, the governor shall
3 promptly submit, for senate consent, a successor candidate to fill the
4 remaining term of the vacated office. A visitor may be removed by the
5 governor for cause after notice and an opportunity for a hearing on the
6 charges. In making appointments to boards of visitors, the governor
7 shall endeavor to ensure that the membership of each such board shall
8 adequately reflect the composition of the community or communities
9 served by the [facility] state operations office, that the membership of
10 each such board includes at least three individuals who are parents or
11 relatives of patients or of former patients and that the remainder
12 includes only those persons, including former patients, who shall have
13 expressed an active interest in, or shall have obtained professional
14 knowledge in the care of persons with developmental disabilities or in
15 developmental disability endeavors generally.

16 (b) No elected state officer or member of the legislature may serve as
17 a visitor.

18 (c) If the [facility] state operations office serves an area, as
19 established by the regulations of the commissioner, the visitors shall
20 reside at the time of appointment or reappointment in such area. [If no
21 specific area is designated, the visitors shall reside at the time of
22 appointment or reappointment in the developmental disabilities area,
23 established by the commissioner, in which the facility is located.]

24 (d) Each board shall, at the first meeting of each calendar year elect
25 one member to serve as president of the board and one member to serve as
26 secretary; provided however, that no member may serve for more than two
27 consecutive years as president.

1 (e) Visitors shall not receive compensation but shall be reimbursed
2 for their actual expenses in connection with their service as visitors.

3 (f) (1) Each board of visitors shall hold six bi-monthly regular meet-
4 ings annually, but a greater number of regular meetings may be scheduled
5 by the board. Each board of visitors shall establish in their by-laws or
6 otherwise, in writing, whether these six meetings shall be held during
7 months represented by odd numbers or months represented by even numbers.
8 The president of the board shall notify the chairman of the commission
9 on quality of care [for the mentally disabled] and advocacy for persons
10 with disabilities and the [facility] state operations director of the
11 determination made concerning the designated months for the six
12 bi-monthly regular meetings. The president of the board, the commission-
13 er, the director, or the members as determined by the rules of the board
14 may call special meetings. The board may require the director to submit
15 a report at each meeting. Each board shall keep a record of its
16 proceedings and activities. A member of a board of visitors who has
17 failed to attend three consecutive bi-monthly regular meetings shall be
18 considered to have vacated his office unless otherwise ordered by the
19 governor. The board shall cause notice of any of its public meetings to
20 be sent to the mental hygiene legal service located in the same judicial
21 department as the school. The mental hygiene legal service may send a
22 representative to any such public meeting, and may request the board to
23 review patient complaints or investigate alleged incidents of abuse or
24 mistreatment. The board shall notify the appropriate representative of
25 the mental hygiene legal service of the board's actions and findings in
26 relation to any such request.

27 (2) The president of the board of visitors shall notify a member by
28 certified or registered mail return receipt requested when such member

1 of the board has failed to attend any two consecutive bi-monthly regular
2 meetings. This notice shall be sent within ten days following the second
3 meeting and shall include the dates of the two meetings which were
4 missed, the date of the next bi-monthly regular meeting, and a statement
5 concerning the consequences of failure to attend the next meeting.

6 (3) Within three days after the third consecutive absence at a
7 bi-monthly regular meeting by a member, the president of the board of
8 visitors shall notify, in writing, the governor, the commissioner, the
9 chairman of the commission on quality of care [for the mentally disa-
10 bled] and advocacy for persons with disabilities and the [facility]
11 state operations director of such absences. The president of the board
12 of visitors shall send a copy of this notice by registered or certified
13 mail return receipt requested to the member to whom it pertains. The
14 member may petition the governor to excuse his absences. If the governor
15 does not excuse the absences within forty-five days of the date of the
16 third consecutive meeting absence, the office of the member shall be
17 deemed vacated.

18 (g) Upon the request of the commissioner or the director, or upon the
19 board's initiative, the board shall consult, advise, and work with the
20 director with respect to community relations, conditions at the state
21 operations facility, preliminary plans for construction and alterations,
22 and programs and activities of the state operated facility.

23 (h) Each board or any member of the board may visit and inspect [the]
24 a state operated facility which is in the catchment area of the state
25 operations region in which such member or members serve at any time
26 without prior notice and may report on conditions to the governor, to
27 the commissioner and to the chairman of the state commission on quality
28 of care [for the mentally disabled] and advocacy for persons with disa-

1 bilities. In addition, each board shall ensure that a member or commit-
2 tee of members shall inspect [the] such facility once every three months
3 without prior notice. A report on conditions may be submitted to the
4 governor, to the commissioner or to the chairman of the state commission
5 on quality of care [for the mentally disabled] and advocacy for persons
6 with disabilities. Each board member shall visit and inspect [the] any
7 such facility at least twice during each calendar year. Within thirty
8 days after the conclusion of each calendar year, the president of the
9 board of visitors shall notify the governor, the commissioner, the
10 chairman of the commission on quality of care [for the mentally disa-
11 bled] and advocacy for persons with disabilities, and the [facility]
12 state operations director, if any member of the board has failed to
13 visit and inspect [the] any such facility at least twice during that
14 year. The president of the board of visitors shall send a copy of this
15 notice by certified or registered mail return receipt requested to the
16 member to whom it pertains. A member of a board of visitors who has
17 failed to visit and inspect [the] a facility at least twice a year shall
18 be considered to have vacated his or her office unless otherwise ordered
19 by the governor within forty-five days after the end of the calendar
20 year. The board shall have the power to investigate all charges against
21 the state operations director and all cases of alleged patient abuse or
22 mistreatment made against any employee and shall have the power to
23 interview patients and employees of the [facility] facilities in pursuit
24 of such investigations. In conducting such an investigation, the board
25 shall have the power, in accordance with the civil practice law and
26 rules, to subpoena witnesses, compel their testimony, administer oaths
27 to witnesses, examine witnesses under oath, and require the production
28 of any books or papers deemed relevant to the investigation. A board or

1 a member may include in the report or separately at any time any matter
2 pertaining to the management and affairs of [the facility] such facili-
3 ties and may make recommendations to the governor, to the commissioner
4 and to the chairman of the state commission on quality of care [for the
5 mentally disabled] and advocacy for persons with disabilities. Each
6 board member shall enter in a book, kept at each such facility for that
7 purpose, the date of each visit.

8 (i) (1) Any member or members of the board may visit and inspect a
9 family care home, which is within the catchment area of the [school on
10 the board of] state operations region in which such member or members
11 serve. Such member or members shall be granted access to such facility
12 and to all books, records and data pertaining to such facility deemed
13 necessary for carrying out the purposes of such visit. Information,
14 books, records or data which are confidential as provided by law shall
15 be kept confidential and any limitations on the release thereof imposed
16 by law upon the party furnishing the information, books, records or data
17 shall apply to such member or members of the board. After any such
18 visits or inspections, a report containing findings and recommendations
19 may be submitted to the governor, to the commissioner or to the state
20 commission on quality of care [for the mentally disabled] and advocacy
21 for persons with disabilities.

22 (2) Any member or members of the board may visit and inspect a commu-
23 nity residence operated by the office for people with developmental
24 disabilities, which is within the catchment area of the [school on the
25 board of] state operations region in which such member or members serve.
26 Such member or members shall be granted access to such facility and to
27 all books, records and data pertaining to such facility deemed necessary
28 for carrying out the purposes of such visit and inspection. Information,

1 books, records or data which are confidential as provided by law shall
2 be kept confidential and any limitations on the release thereof imposed
3 by law upon the party furnishing the information, books, records or data
4 shall apply to such member or members of the board. After any such
5 visits or inspection, a report containing findings and recommendations
6 shall be submitted promptly to the commissioner and to the chairman of
7 the state commission on quality of care and advocacy for persons with
8 disabilities.

9 (j) Once each year, each board shall make an independent assessment of
10 conditions at [the facility] such facilities and shall submit a report
11 on the assessment and recommendations to the governor, to the commis-
12 sioner and to the chairman of the state commission on quality of care
13 [for the mentally disabled] and advocacy for persons with disabilities.

14 (k) The commissioner shall notify the board of visitors of a [school]
15 facility under his or her jurisdiction of the proposed appointment of a
16 state operations director [to such facility] or the proposed transfer of
17 a state operations director [from such facility], with a request that
18 the board report an expression of its opinion of the appointment or
19 transfer and, if it objects thereto, the reasons for such objection.

20 (l) The commissioner shall appoint representatives of the office
21 [department] to serve as liaison between the office and the boards of
22 visitors. At least once each year the commissioner shall meet with the
23 boards collectively. The commissioner, or his or her designee, shall
24 meet quarterly with representatives of boards of visitors.

25 (m) Members of the boards of visitors shall be considered officers of
26 the office for people with developmental disabilities for the purposes
27 of sections seventy-three, to the extent provided therein, and seventy-

1 four of the public officers law relating to business or professional
2 activities by state officers and employees and the code of ethics.

3 (n) Each member shall attend, within one year of the initial appoint-
4 ment or any subsequent reappointment, an orientation training program
5 provided by the commission on quality of care [for the mentally disa-
6 bled] and advocacy for persons with disabilities for members of boards
7 of visitors. The chairman of the commission on quality of care [for the
8 mentally disabled] and advocacy for persons with disabilities shall
9 notify the governor and the appointed member of any such member's fail-
10 ure to attend such a training program. A member who has failed to attend
11 such a training program scheduled for such member shall be considered to
12 have vacated his office unless otherwise ordered by the governor within
13 forty-five days after the notice.

14 § 5. Paragraph (c) of subdivision 3 of section 2963 of the public
15 health law, as added by chapter 818 of the laws of 1987, is amended to
16 read as follows:

17 (c) If the attending physician determines that a patient lacks capaci-
18 ty because of a developmental disability, the concurring determination
19 required by paragraph (a) of this subdivision shall be provided by a
20 physician or psychologist employed by [a school named in section 13.17
21 of the mental hygiene law] the office for people with developmental
22 disabilities, or who has been employed for a minimum of two years to
23 render care and service in a facility operated or licensed by the office
24 [of mental retardation and] for people with developmental disabilities,
25 or who has been approved by the commissioner of [mental retardation and]
26 developmental disabilities in accordance with regulations promulgated by
27 such commissioner. Such regulations shall require that a physician or

1 psychologist possess specialized training or three years experience in
2 treating developmental disabilities.

3 § 6. Paragraph (c) of subdivision 2 of section 2981 of the public
4 health law, as added by chapter 752 of the laws of 1990, is amended to
5 read as follows:

6 (c) For persons who reside in a mental hygiene facility operated or
7 licensed by the office [of mental retardation and] for people with
8 developmental disabilities, at least one witness shall be an individual
9 who is not affiliated with the facility and at least one witness shall
10 be a physician or clinical psychologist who either is employed by [a
11 school named in section 13.17 of the mental hygiene law] the office for
12 people with developmental disabilities or who has been employed for a
13 minimum of two years to render care and service in a facility operated
14 or licensed by the office [of mental retardation and] for people with
15 developmental disabilities, or who has been approved by the commissioner
16 of [mental retardation and] developmental disabilities in accordance
17 with regulations approved by the commissioner. Such regulations shall
18 require that a physician or clinical psychologist possess specialized
19 training or three years experience in treating developmental disabili-
20 ties.

21 § 7. Paragraph (c) of subdivision 1 of section 2983 of the public
22 health law, as added by chapter 752 of the laws of 1990, is amended to
23 read as follows:

24 (c) If the attending physician determines that a patient lacks capaci-
25 ty because of a developmental disability, the attending physician who
26 makes the determination must be, or must consult, for the purpose of
27 confirming the determination, with a physician or clinical psychologist
28 who either is employed by [a school named in section 13.17 of the mental

1 hygiene law] the office for people with developmental disabilities, or
2 who has been employed for a minimum of two years to render care and
3 service in a facility operated or licensed by the office [of mental
4 retardation and] for people with developmental disabilities, or who has
5 been approved by the commissioner of [mental retardation and] develop-
6 mental disabilities in accordance with regulations promulgated by such
7 commissioner. Such regulations shall require that a physician or clin-
8 ical psychologist possess specialized training or three years experience
9 in treating developmental disabilities. A record of such consultation
10 shall be included in the patient's medical record.

11 § 8. Subparagraph ii of paragraph c of subdivision 3 of section 2994-c
12 of the public health law, as added by chapter 8 of the laws of 2010, is
13 amended to read as follows:

14 (ii) If the attending physician makes an initial determination that a
15 patient lacks decision-making capacity because of mental retardation or
16 a developmental disability, either such physician must have the follow-
17 ing qualifications, or another professional with the following quali-
18 fications must independently determine whether the patient lacks deci-
19 sion-making capacity: a physician or clinical psychologist who either is
20 employed by [a school named in section 13.17 of the mental hygiene law,
21 or who has been employed for a minimum of two years to render care and
22 service in a facility operated or licensed by] the office [of mental
23 retardation and] for people with developmental disabilities, or who has
24 been approved by the commissioner of [mental retardation and] develop-
25 mental disabilities in accordance with regulations promulgated by such
26 commissioner. Such regulations shall require that a physician or clin-
27 ical psychologist possess specialized training or three years experience

1 in treating developmental disabilities. A record of such consultation
2 shall be included in the patient's medical record.

3 § 9. Subdivision 10 of section 2994-aa of the public health law, as
4 added by chapter 8 of the laws of 2010, is amended to read as follows:

5 10. "Hospital" means a general hospital as defined in subdivision ten
6 of section twenty-eight hundred one of this chapter and a residential
7 health care facility as defined in subdivision three of section twenty-
8 eight hundred one of this chapter or a hospital as defined in subdivi-
9 sion ten of section 1.03 of the mental hygiene law [or a school named in
10 section 13.17 of the mental hygiene law].

11 § 10. Subdivision 6 of section 2994-dd of the public health law, as
12 added by chapter 8 of the laws of 2010, is amended to read as follows:

13 6. The commissioner may authorize the use of one or more alternative
14 forms for issuing a nonhospital order not to resuscitate (in place of
15 the standard form prescribed by the commissioner under subdivision two
16 of this section). Such alternative form or forms may also be used to
17 issue a non-hospital do not intubate order. Any such alternative forms
18 intended for use for persons with [mental retardation or] developmental
19 disabilities or persons with mental illness who are incapable of making
20 their own health care decisions or who have a guardian of the person
21 appointed pursuant to article eighty-one of the mental hygiene law or
22 article seventeen-A of the surrogate's court procedure act must also be
23 approved by the commissioner of [mental retardation and] developmental
24 disabilities or the commissioner of mental health, as appropriate. An
25 alternative form under this subdivision shall otherwise conform with
26 applicable federal and state law. This subdivision does not limit,
27 restrict or impair the use of an alternative form for issuing an order
28 not to resuscitate in a general hospital or residential health care

1 facility under article twenty-eight of this chapter or a hospital under
2 subdivision ten of section 1.03 of the mental hygiene law [or a school
3 under section 13.17 of the mental hygiene law].

4 § 11. Subparagraph (B) of paragraph (vi) of subdivision (c) of section
5 958 of the general municipal law, as amended by chapter 708 of the laws
6 of 1993, is amended to read as follows:

7 (B) a state-operated hospital or facility listed in [sections] section
8 7.17 [or 13.17] of the mental hygiene law or a facility operated by the
9 office for people with developmental disabilities, which has been desig-
10 nated by either the commissioner of mental health or the commissioner of
11 [mental retardation and] developmental disabilities for contraction or
12 discontinuance. Provided however, that not more than one-third of the
13 zones designated pursuant to paragraph (iii) or (iv) of subdivision (b)
14 of section nine hundred sixty of this article, shall be based on appli-
15 cations filed pursuant to this paragraph [(vi) of this subdivision].

16 § 12. Paragraph (b) of subdivision 4 of section 6810 of the education
17 law, as added by chapter 519 of the laws of 2002, is amended to read as
18 follows:

19 (b) Oral prescriptions for patients in general hospitals, nursing
20 homes, residential health care facilities as defined in section twenty-
21 eight hundred one of the public health law, hospitals as defined in
22 subdivision ten of section 1.03 of the mental hygiene law, or [develop-
23 mental centers or developmental disabilities services offices listed in
24 subdivision (b) of section 13.17 of the mental hygiene law] facilities
25 operated by the office for people with developmental disabilities, may
26 be communicated to a pharmacist serving as a vendor of pharmaceutical
27 services based upon a contractual arrangement by an agent designated by
28 and under the direction of the prescriber or the institution. Such agent

1 shall be a health care practitioner currently licensed and registered
2 under this title.

3 § 13. Paragraph (b) of subdivision 7 of section 6810 of the education
4 law, as amended by chapter 519 of the laws of 2002, is amended to read
5 as follows:

6 (b) With respect to drugs other than controlled substances, the
7 provisions of this subdivision shall not apply to pharmacists employed
8 by or providing services under contract to general hospitals, nursing
9 homes, residential health care facilities as defined in section twenty-
10 eight hundred one of the public health law, hospitals as defined in
11 subdivision ten of section 1.03 of the mental hygiene law, or [develop-
12 mental centers or developmental disabilities services offices listed in
13 subdivision (b) of section 13.17 of the mental hygiene law] facilities
14 operated by the office for people with developmental disabilities, who
15 dispense drugs in the course of said employment or in the course of
16 providing such services under contract. With respect to such pharma-
17 cists, each prescription shall be transcribed on a patient specific
18 prescription form.

19 § 14. Paragraph 1 of subdivision (b) of section 5.05 of the mental
20 hygiene law, as amended by chapter 168 of the laws of 2010, is amended
21 to read as follows:

22 (1) The commissioners of the office of mental health, the office for
23 people with developmental disabilities and the office of alcoholism and
24 substance abuse services shall constitute an inter-office coordinating
25 council which, consistent with the autonomy of each office for matters
26 within its jurisdiction, shall ensure that the state policy for the
27 prevention, care, treatment and rehabilitation of individuals with
28 mental illness and developmental disabilities, alcoholism, alcohol

1 abuse, substance abuse, substance dependence, and chemical dependence is
2 planned, developed and implemented comprehensively; that gaps in
3 services to individuals with multiple disabilities are eliminated and
4 that no person is denied treatment and services because he or she has
5 more than one disability; that procedures for the regulation of programs
6 which offer care and treatment for more than one class of persons with
7 mental disabilities be coordinated between the offices having jurisdic-
8 tion over such programs; and that research projects of the institutes,
9 as identified in section 7.17 [or 13.17] of this chapter or as operated
10 by the office for people with developmental disabilities, are coordi-
11 nated to maximize the success and cost effectiveness of such projects
12 and to eliminate wasteful duplication.

13 § 15. Subdivision (b) of section 13.11 of the mental hygiene law, as
14 added by chapter 978 of the laws of 1977, is amended to read as follows:

15 (b) The commissioner shall control the organization of the office and
16 may continue, establish, discontinue, expand, and contract facilities
17 under his or her jurisdiction. [The facilities set forth in section
18 13.17 may not be discontinued by the commissioner.] Units and facilities
19 shall have such functions, duties, and responsibilities as may be
20 assigned to them by the commissioner.

21 § 16. Subdivisions 1 and 2 of section 13.34 of the mental hygiene law,
22 as amended by chapter 542 of the laws of 2011, are amended to read as
23 follows:

24 1. There shall be at each developmental center facility [listed in
25 section 13.17 of this article], an ombudsman who shall be an employee of
26 the commission on quality of care and advocacy for persons with disabil-
27 ities under article forty-five of this chapter and who shall be respon-
28 sible for receiving and responding to any complaints regarding individ-

1 ual clients residing in such facility. The ombudsman shall have the
2 following powers and duties:

3 i. to advise and consult with parents, guardians, correspondents and
4 other interested persons with respect to any complaints, or issues
5 related to the conditions of clients' residents;

6 ii. to review and attempt to remedy specific complaints with responsi-
7 ble and appropriate staff;

8 iii. where it appears that care has not been rendered as required by
9 applicable standards to refer the complaint to the appropriate agency or
10 body for its attention;

11 iv. to receive and keep confidential any complaint, information or
12 inquiry from any source. The records of the ombudsman shall be confiden-
13 tial, and shall not be available to the public;

14 v. to advise and consult with the board of visitors of the develop-
15 mental center served by the ombudsman with respect to any complaints or
16 issues relating to conditions of client's residence and to regularly
17 attend the meetings of such board; and

18 vi. to meet with the commissioner, or a representative of the commis-
19 sioner, on a quarterly basis regarding systemic issues in the ombuds-
20 man's jurisdiction.

21 2. The president of the board of visitors of each [developmental
22 center facility listed in section 13.17 of this article] region in the
23 catchment area of the state operations region in which such member
24 serves, shall, in consultation with the members of such board, recommend
25 three persons to serve as ombudsman at the facility. In making such
26 recommendation, the president shall also consider the expressed opinion
27 of parents, guardians and correspondents of clients residing at such
28 facility. The persons so recommended as ombudsman shall have expressed

1 an active interest or shall have had professional knowledge in advocat-
2 ing for persons who are mentally disabled. The commission on quality of
3 care and advocacy for persons with disabilities shall select one of the
4 recommended persons as ombudsman. The ombudsman may only be removed from
5 office for just cause. An individual appointed as ombudsman shall be an
6 exempt class employee as defined by section forty-one of the civil
7 service law and may be removed by the commissioner upon the recommenda-
8 tion of the president of the board of visitors, for cause after notice
9 and opportunity for a hearing on the charges.

10 § 17. Subdivision 1 of section 157 of the social services law, as
11 amended by section 43 of part B of chapter 436 of the laws of 1997, is
12 amended to read as follows:

13 1. Safety net assistance means allowances pursuant to section one
14 hundred thirty-one-a of this article for all support, maintenance and
15 need, and costs of suitable training in a trade to enable a person to
16 become self-supporting, furnished eligible needy persons in accordance
17 with applicable provisions of law, by a municipal corporation, or a town
18 where safety net assistance is a town charge, to persons or their depen-
19 dents in their abode or habitation whenever possible and includes such
20 relief granted to veterans under existing laws but does not include
21 hospital or institutional care, except as otherwise provided in this
22 subdivision, or family assistance or medical assistance for needy
23 persons granted under titles ten and eleven of this article, respective-
24 ly, or aid to persons receiving federal supplemental security income
25 payments and/or additional state payments. Safety net assistance may
26 also be provided in a family home or boarding home, operated in compli-
27 ance with the regulations of the department, and on and after January
28 first, nineteen hundred seventy-four, in facilities in which a person is

1 receiving family care or residential care, as those terms are used in
2 title six of [article five of] this [chapter] article, and to persons
3 receiving care in a facility supervised by the office of alcoholism and
4 substance abuse services or in a residential facility for the mentally
5 disabled approved, licensed or operated by the office of mental health
6 or the office [of mental retardation and] for people with developmental
7 disabilities, other than those facilities defined in [sections] section
8 7.17 [and 13.17] of the mental hygiene law, in a developmental center
9 facility operated by the office for people with developmental disabili-
10 ties or residential care centers for adults operated by the office of
11 mental health, when such type of care is deemed necessary. Payments to
12 such homes and facilities for care and maintenance provided by them
13 shall be at rates established pursuant to law and regulations of the
14 department. The department, however, shall not establish rates of
15 payment to such homes or facilities without approval of the director of
16 the budget.

17 § 18. Subparagraph (i) of paragraph (a) and clause A of subparagraph
18 (i) of paragraph (e) of subdivision 4 of section 1750-b of the surro-
19 gate's court procedure act, as added by chapter 500 of the laws of 2002,
20 are amended to read as follows:

21 (i) be employed by [a developmental disabilities services office named
22 in section 13.17 of the mental hygiene law] the office for people with
23 developmental disabilities, or

24 A. be employed by [a developmental disabilities services office named
25 in section 13.17 of the mental hygiene law] the office for people with
26 developmental disabilities, or

27 § 19. (a) Wherever the terms "directors of office facilities" or
28 "directors of schools" or "director of facilities" appear in the mental

1 hygiene law in reference to a facility operated by the office for people
2 with developmental disabilities, such terms are hereby changed to
3 "directors of state operations offices".

4 (b) Wherever the term "developmental disabilities services offices"
5 appears in the mental hygiene law, such term is hereby changed to "state
6 operations office".

7 (c) The legislative bill drafting commission is hereby directed to
8 effectuate this provision, and shall be guided by a memorandum of
9 instruction setting forth the specific provisions of law to be amended.
10 Such memorandum shall be transmitted to the legislative bill drafting
11 commission within sixty days of enactment of this provision. Such memo-
12 randum shall be issued jointly by the governor, the temporary president
13 of the senate and the speaker of the assembly, or by the delegate of
14 each.

15 § 20. This act shall take effect immediately.

16 PART K

17 Section 1. Sections 19 and 21 of chapter 723 of the laws of 1989
18 amending the mental hygiene law and other laws relating to comprehensive
19 psychiatric emergency programs, as amended by section 1 of part F of
20 chapter 58 of the laws of 2008, are amended to read as follows:

21 § 19. Notwithstanding any other provision of law, the commissioner of
22 mental health shall, until July 1, [2012] 2016, be solely authorized, in
23 his or her discretion, to designate those general hospitals, local
24 governmental units and voluntary agencies which may apply and be consid-
25 ered for the approval and issuance of an operating certificate pursuant

1 to article 31 of the mental hygiene law for the operation of a compre-
2 hensive psychiatric emergency program.

3 § 21. This act shall take effect immediately, and sections one, two
4 and four through twenty of this act shall remain in full force and
5 effect, until July 1, [2012] 2016, at which time the amendments and
6 additions made by such sections of this act shall be deemed to be
7 repealed, and any provision of law amended by any of such sections of
8 this act shall revert to its text as it existed prior to the effective
9 date of this act.

10 § 2. This act shall take effect immediately and shall be deemed to
11 have been in full force and effect on and after April 1, 2012.

12 PART L

13 Section 1. Legislative findings. It is the finding of the legislature
14 that the integration and coordination of physical and behavioral health
15 services results in an improvement in the quality of services being
16 provided to recipients, with a resultant improvement in outcomes and
17 reduction in the costs of care. It is the further finding of the legis-
18 lature that the reduction or elimination of redundant or unnecessary
19 licensing and oversight requirements and procedures will facilitate the
20 provision of integrated and coordinated care and result in a more effi-
21 cient use of governmental resources.

22 § 2. (a) Notwithstanding any law, rule or regulation to the contrary,
23 the commissioners of the department of health, the office of mental
24 health, the office of alcoholism and substance abuse services, and/or
25 the office for people with developmental disabilities are jointly
26 authorized to establish operating, reporting and construction require-

1 ments, as well as joint survey requirements and procedures for entities
2 that:

3 (1) can demonstrate experience and competence in the delivery of
4 health, mental health, alcohol and substance abuse services and/or
5 services to persons with developmental disabilities and the capacity to
6 offer the integrated delivery of such services at locations as may be
7 approved by two or more of the respective commissioners; and

8 (2) meet the standards that may be established by the respective
9 commissioners for the provision of such services; provided, however,
10 that an entity meeting the standards established pursuant to this
11 section shall not be required to be an integrated service provider
12 pursuant to subdivision 7 of section 365-1 of the social services law.

13 (b) In establishing one or more sets of joint requirements or proce-
14 dures for entities described in this section, the commissioners of the
15 department of health, the office of mental health, the office of alco-
16 holism and substance abuse services, and/or the office for people with
17 developmental disabilities are authorized to waive any regulatory
18 requirements, or to determine that compliance with another commission-
19 er's regulatory requirements shall be deemed to meet the regulatory
20 requirements of his or her agency, as may be necessary or desirable to
21 avoid duplication of requirements and/or to permit the integrated deliv-
22 ery of health and behavioral health services in an efficient and effec-
23 tive manner.

24 (c) The authority granted the commissioners in this section is
25 intended to complement and supplement the authority granted to such
26 commissioners pursuant to subdivision 7 of section 365-1 of the social
27 services law.

1 § 3. This act shall take effect immediately and shall be deemed to
2 have been in full force and effect on and after April 1, 2012.

3 PART M

4 Section 1. Legislative findings. It is the finding of the legislature
5 that patients hospitalized in facilities operated by the office of
6 mental health who are between the ages of five and twenty-one are enti-
7 tled to receive an education comparable to that which they would other-
8 wise be entitled to receive in their local school districts pursuant to
9 the education law and the regulations of the commissioner of education.

10 § 2. (a) Notwithstanding any other provision of law to the contrary,
11 the office of mental health shall be authorized to enter into an agree-
12 ment with the state education department for the purposes of providing
13 education programming and services for patients residing in hospitals
14 operated by the office of mental health who are between the ages of five
15 and twenty-one, that is comparable to that which they would otherwise be
16 entitled to receive in their local school districts pursuant to the
17 education law and the regulations of the commissioner. The commissioner
18 of education shall be authorized to require local school districts,
19 including the school district located in a city with a million persons
20 or more, and/or boards of cooperative educational services to provide
21 such comparable educational programming and services, provided, however,
22 the commissioner of mental health shall be authorized to contract
23 directly with local school districts, including the school district
24 located in a city with a million persons or more, and/or boards of coop-
25 erative educational services to provide such comparable educational
26 programming and services. Such comparable education programming and

1 services for such children shall be authorized to be provided, in the
2 2012-2013 and 2013-2014 and 2014-2015 school years within a city with a
3 population of a million persons or more, and in the 2013-2014 and 2014-
4 2015 school year in the rest of the state, in accordance with implemen-
5 tation standards issued by the commissioner of education, and in accord-
6 ance with a plan for educational services jointly approved by the
7 commissioners of education and mental health.

8 (b) The commissioner of education, or pursuant to contract the commis-
9 sioner of mental health, shall reimburse districts and boards of cooper-
10 ative educational services for unreimbursed, approved expenses for the
11 cost of such programming and services for such children pursuant to this
12 section, as may be determined through a reimbursement methodology devel-
13 oped by the commissioner of education and approved by the director of
14 the budget.

15 (c) The commissioner of mental health, with the approval of the direc-
16 tor of the budget, shall be authorized to transfer funding to the
17 commissioner of education for the provision of educational programming
18 and services to patients residing in hospitals operated by the office of
19 mental health who are between the ages of five and twenty-one.

20 § 3. The commissioners of education and mental health shall jointly
21 submit to the governor and to the temporary president of the senate and
22 the speaker of the assembly a report by February 1, 2015, which shall
23 state whether additional actions should be taken to ensure that children
24 who are patients residing in hospitals operated by the office of mental
25 health receive education programming and services that are comparable to
26 that which they would otherwise be entitled to receive in their local
27 school districts pursuant to education law and the regulations of the

1 commissioner. Such commissioners shall also recommend whether this act
2 should be amended and whether it should be made permanent.

3 § 4. This act shall take effect July 1, 2012 and shall expire June 30,
4 2015 when upon such date the provisions of this act shall be deemed
5 repealed.

6 PART N

7 Section 1. Section 1.03 of the mental hygiene law is amended by adding
8 two new subdivisions 56 and 57 to read as follows:

9 56. "Substance use disorder" means the misuse, dependence, or
10 addiction to alcohol and/or legal or illegal drugs leading to effects
11 that are detrimental to the individual's physical and mental health, or
12 the welfare of others and shall include alcoholism, alcohol abuse,
13 substance abuse, substance dependence, chemical abuse, and/or chemical
14 dependence.

15 57. "Substance use disorder services" shall mean and include examina-
16 tion, evaluation, diagnosis, care, treatment, rehabilitation, or train-
17 ing of persons with substance use disorders and their families or
18 significant others.

19 § 2. The mental hygiene law is amended by adding a new section 5.06 to
20 read as follows:

21 § 5.06 Behavioral health services advisory council.

22 (a) There is hereby created within the department a behavioral health
23 services advisory council, the purpose of which shall be to advise the
24 offices of mental health and alcoholism and substance abuse services on
25 matters relating to the provision of behavioral health services; issues
26 of joint concern to the offices, including the integration of various

1 behavioral health services and the integration of behavioral health
2 services with health services; and issues related to the delivery of
3 behavioral health services that are responsive to local, state and
4 federal concerns. The council shall consist of the commissioner of
5 mental health and the commissioner of alcoholism and substance abuse
6 services who shall not have the right to vote, the chair of the confer-
7 ence of local mental hygiene directors or his or her designee, and twen-
8 ty-eight members appointed by the governor. Members shall be appointed
9 only if they have professional knowledge in the care of persons receiv-
10 ing behavioral health services, or an active interest in the behavioral
11 health services system.

12 (b) The governor shall designate one of the members of the council as
13 chair. At least one-half of the members of the council shall not be
14 providers of behavioral health services. Membership shall reflect a
15 balanced representation of persons with interests in mental health and
16 substance use disorder services and shall include:

17 (1) at least five current or former consumers of behavioral health
18 services;

19 (2) at least three individuals who are parents or relatives of current
20 or former consumers of behavioral health services;

21 (3) at least three members who are not providers of behavioral health
22 services and who represent non-governmental organizations, such as not-
23 for-profit entities representing health or behavioral health care
24 employees, or other organizations concerned with the provision of behav-
25 ioral health services;

26 (4) at least five representatives of providers of services to persons
27 with mental illness and at least five representatives of providers of

1 services to persons with substance use disorders, at least two of whom
2 shall be physicians;

3 (5) one member appointed on the recommendation of the director of the
4 division of veterans' affairs;

5 (6) one member appointed on the recommendation of the adjutant general
6 of the division of military and naval affairs;

7 (7) at least three representatives of local governments or other state
8 and local agencies concerned with the provision of behavioral health
9 services; and

10 (8) at least two members who are also members of the public health and
11 health planning council pursuant to section two hundred twenty of the
12 public health law.

13 (c) Members shall be appointed for terms of three years provided,
14 however, that of the members first appointed, one-third shall be
15 appointed for one year terms and one-third shall be appointed for two
16 year terms. Vacancies shall be filled in the same manner as original
17 appointments for the remainder of any unexpired term. No person shall be
18 an appointed member of the council for more than six years in any period
19 of twelve consecutive years.

20 (d) The council shall meet at least four times in each full calendar
21 year. The council shall meet at the request of its chair or either
22 commissioner.

23 (e) The council shall establish such committees as it deems necessary
24 to address the service needs of special populations and to address
25 particular subjects of importance in the development and management of
26 behavioral health services.

1 (f) The council may consider any matter relating to the improvement of
2 behavioral health services in the state and shall advise the commission-
3 ers on any such matter, including, but not limited to:

4 (1) care and services to persons with behavioral health disorders,
5 including special and underserved populations as determined by the
6 commissioner;

7 (2) financing behavioral health services;

8 (3) integration of behavioral health services with health services;

9 (4) care and services for persons with co-occurring disorders or
10 multiple disabilities;

11 (5) prevention of behavioral health disorders; and

12 (6) improvement of care in state operated or community based programs,
13 recruitment, education and training of qualified direct care personnel,
14 and protection of the interests of employees affected by adjustments in
15 the behavioral health service system.

16 (g) The council shall, in cooperation with the commissioners, estab-
17 lish statewide goals and objectives for services to persons with behav-
18 ioral health disorders, pursuant to section 5.07 of this article.

19 (h) (1) The council shall review the portion of the statewide plan to
20 be developed and updated annually by the commissioners pursuant to
21 section 5.07 of this article and report its recommendations thereon to
22 the commissioners.

23 (2) The council shall review any mental health or substance use compo-
24 nent of statewide health plans developed in accordance with any applica-
25 ble federal law and shall report its recommendations thereon to the
26 commissioners.

27 (i) The council shall review applications filed in accordance with:

1 (1) section 31.22 of this chapter for approval of incorporation or
2 establishment of a facility, and section 31.23 of this chapter for
3 approval of the construction of a facility for which approval from the
4 commissioner of mental health is required; and

5 (2) section 32.29 or 32.31 of this chapter for approval of incorpo-
6 ration or establishment or construction of a facility for which approval
7 to operate is required from the commissioner of alcoholism and substance
8 abuse services pursuant to article thirty-two of this chapter, and as
9 otherwise requested by such commissioner;

10 (j) At least sixty days prior to the commissioners' final approval of
11 rules and regulations under their respective jurisdiction, other than
12 emergency rules and regulations and regulations promulgated pursuant to
13 section 43.01 of this chapter, the commissioners shall submit such
14 proposed rules and regulations to the council for its review. The coun-
15 cil shall review all proposed rules and regulations and report its
16 recommendations thereon to the commissioners within sixty days. The
17 commissioner having statutory jurisdiction over the proposed rule or
18 regulation shall not act in a manner inconsistent with the recommenda-
19 tions of the council without first appearing before the council to
20 report the reasons therefor. The council, upon a majority vote of its
21 members, may require that an alternative approach to the proposed rules
22 and regulations be published with the notice of the proposed rules and
23 regulations pursuant to section two hundred two of the state administra-
24 tive procedure act. When an alternative approach is published pursuant
25 to this section, the commissioner having statutory jurisdiction of the
26 subject proposed rule or regulation shall state the reasons for not
27 selecting such alternative approach.

1 (k) The council, by a majority vote of its members, may propose rules
2 and regulations on any matter within the regulatory jurisdiction of the
3 offices of mental health or alcoholism and substance abuse services,
4 other than establishment of fee schedules pursuant to section 43.01 of
5 this chapter, and forward such proposed rules and regulations to both
6 commissioners for review and consideration, provided, however, that only
7 the approval of the commissioner with statutory jurisdiction of the
8 proposed rule or regulation shall be required. Prior to such commission-
9 er's final approval and promulgation of such proposed rules and regu-
10 lations, if such rules and regulations are modified in any respect, they
11 shall be submitted to the council pursuant to subdivision (j) of this
12 section. If such commissioner determines not to promulgate such proposed
13 rules and regulations, the commissioner shall appear before the council
14 to report the reasons therefor.

15 (l) The members of the council shall receive no compensation for their
16 services but shall be reimbursed for expenses actually and necessarily
17 incurred in the performance of their duties.

18 (m) The commissioners, upon request of the council, shall designate
19 one or more officers or employees from either or both offices to provide
20 administrative support services to the council, and may assign from time
21 to time such other employees as the council may request.

22 (n) No civil action shall be brought in any court against any member
23 of the behavioral health services council for any act done, failure to
24 act, or statement or opinion made, while discharging his or her duties
25 as a member of the council, without leave from a justice of the supreme
26 court, first had and obtained. In any event such member shall not be
27 liable for damages in any such action if he or she shall have acted in
28 good faith, with reasonable care and upon probable cause. Members of

1 the council shall be considered public officers for the purposes of
2 section seventeen of the public officers law.

3 (o) The council may establish such committees as it deems necessary.

4 (p) The council may establish written bylaws.

5 (q) For purposes of this section, "behavioral health services" shall
6 mean examination, diagnosis, care, treatment, rehabilitation, or train-
7 ing for persons with mental illness and/or for persons with substance
8 use or compulsive gambling disorders.

9 § 3. The section heading, subdivision (a), the opening paragraph and
10 paragraphs 1 and 3 of subdivision (b) and subdivision (c) of section
11 5.07 of the mental hygiene law, the section heading as amended by chap-
12 ter 55 of the laws of 1992, subdivision (a), the opening paragraph and
13 paragraphs 1 and 3 of subdivision (b) and subdivision (c) as amended by
14 chapter 223 of the laws of 1992, paragraph 1 of subdivision (a) as
15 amended by chapter 37 of the laws of 2011, the opening paragraph of
16 paragraph 1 of subdivision (b) as amended by chapter 168 of the laws of
17 2010, subparagraphs h and i as amended and subparagraph j of paragraph 1
18 of subdivision (b) as added by chapter 413 of the laws of 2009 and para-
19 graph 3 of subdivision (b) as renumbered by chapter 322 of the laws of
20 1992, are amended to read as follows:

21 Establishment of [statewide goals and objectives;] statewide comprehen-
22 sive plans of services for [the mentally disabled] persons with
23 mental disabilities.

24 (a) (1) The [mental health] behavioral health services advisory coun-
25 cil and the advisory [councils] council on developmental disabilities
26 [and alcoholism and substance abuse services] shall [each establish]
27 provide recommendations for statewide priorities and goals [and objec-
28 tives] to guide comprehensive planning, resource allocation and evalu-

1 ation processes for state and local services for persons with mental
2 illness, developmental disabilities [and], and/or those [suffering from
3 chemical abuse or dependence, respectively] with substance use or
4 compulsive gambling disorders. Such goals and objectives shall:

5 a. be measurable in terms of attainment and focused on outcomes for
6 those being served;

7 b. be developed in collaboration with, and communicated to, providers
8 of services, department facilities, consumers and consumer represen-
9 tatives, and other appropriate state and local governmental agencies;

10 c. [require that all state and local public and private services for
11 persons with mental disabilities be organized, staffed and financed to
12 best meet the needs of all persons with mental disabilities whether
13 receiving in-patient or non in-patient services;

14 d.] reflect the partnership between state and local governmental
15 units; and

16 [e.] d. emphasize [that gaps in services be filled and that services
17 are provided to persons with mental disabilities] the need to integrate
18 behavioral health and health services.

19 (2) Such advisory councils shall [establish, review, augment or delete
20 from such goals and objectives, as appropriate,] accomplish their duties
21 by means of a [continuing annual goal-setting] process which is:

22 a. open, visible and accessible to the public; and

23 b. consistent with the statewide and federally mandated planning,
24 appropriation and evaluation processes and activities for services to
25 [the mentally disabled] persons with mental disabilities.

26 (3) The advisory councils are hereby empowered to hold public hearings
27 and meetings to enable them to accomplish their duties.

1 Statewide comprehensive plan for services to [the mentally disabled]
2 persons with mental disabilities.

3 (1) The office of mental health, the office for people with develop-
4 mental disabilities and the office of alcoholism and substance abuse
5 services shall [each] formulate a statewide comprehensive [five-year]
6 plan for the provision of all state and local services for persons with
7 mental illness [and], developmental disabilities, [and] and/or those
8 [suffering from alcoholism and] with substance [abuse, respectively] use
9 or compulsive gambling disorders. [Each] The statewide comprehensive
10 plan shall be [formulated from] based upon an analysis of local [compre-
11 hensive] services plans developed by each local governmental unit, with
12 participation of consumers, consumer groups, providers of services and
13 departmental facilities [furnishing] that furnish services to individ-
14 uals with mental disabilities [of the area] in conformance with state-
15 wide priorities and goals [and objectives] established [by] with recom-
16 mendations of the advisory council of each office. [Each] The plan
17 shall:

18 a. identify [needs and problems which must be addressed during the
19 next ensuing five years which such plan encompasses] statewide priori-
20 ties;

21 b. specify [time-limited] statewide goals [to meet those needs] that
22 reflect the statewide priorities and are focused on obtaining positive
23 measurable outcomes;

24 c. [identify resources to achieve the goals, including but not limited
25 to resource reallocations;

26 d. establish] propose strategies and initiatives to address the prior-
27 ities [for resource allocation] and facilitate achievement of statewide
28 goals;

1 [e. define the authority and responsibility for state and local
2 participation in the delivery of services] d. identify services and
3 supports, which may include programs run or led by peers, that are
4 designed to promote the health and wellness of persons with mental
5 illness, developmental disabilities, and/or substance use or compulsive
6 gambling disorders;

7 [f. propose programs to achieve the goals, which programs may include
8 direct services, development of multi-purpose facilities, contracts for
9 services, and innovative financial and organizational relationships with
10 public and private providers;

11 g. identify services and programs that assist the informal caregiver
12 to care for the mentally disabled; make recommendations to enhance the
13 ability of the informal caregiver to continue providing care; and devel-
14 op strategies for creating informal caregivers for clients in the commu-
15 nity who do not have a system in place;

16 h. analyze] e. provide analysis of current and anticipated utilization
17 of state and local, and public and private facilities [and], programs,
18 services, and/or supports;

19 [i.] f. encourage and promote person-centered, culturally and linguis-
20 tically competent community-based programs, services, and/or supports
21 which reflect the partnership between state and local governmental
22 units; and

23 [j.] g. include progress reports on the implementation of both short-
24 term and long-term recommendations of the children's plan required
25 pursuant to section four hundred eighty-three-f of the social services
26 law.

27 (3) The commissioners of each of the offices shall be responsible for
28 the development of such statewide [five-year] plan for services within

1 the jurisdiction of their respective offices and after giving due notice
2 shall conduct one or more public hearings on such plan. The behavioral
3 health services advisory council [of each office] and the advisory coun-
4 cil on developmental disabilities shall review the statewide [five year]
5 comprehensive plan developed by such office or offices and report its
6 recommendations thereon to such commissioner or commissioners. Each
7 commissioner shall submit the plan, with appropriate modifications, to
8 the governor no later than the first day of [October] November of each
9 year in order that such plan may be considered with the estimates of the
10 offices for the preparation of the executive budget of the state of New
11 York for the next succeeding state fiscal year. [Each commissioner
12 shall also submit such plan to the legislature. The statewide plan] Such
13 plans shall also be posted to the website of each office. Statewide
14 plans shall [be reassessed and updated at least annually to encompass
15 the next ensuing five years to] ensure responsiveness to changing needs
16 and goals and [to] shall reflect the development of new information and
17 the completion of program evaluations. [An interim report detailing the
18 commissioner's actions in fulfilling the requirements of this section in
19 preparation of the plan and modifications in the plan of services being
20 considered by the commissioner shall be submitted to the governor and
21 the legislature on or before the fifteenth day of February of each year.
22 Such interim report shall include, but need not be limited to:

23 (a) actions to include participation of consumers, consumer groups,
24 providers of services and departmental facilities, as required by this
25 subdivision; and

26 (b) any modifications in the plan of services being considered by the
27 commissioner, to include: (i) compelling budgetary, programmatic or
28 clinical justifications or other major appropriate reason for any

1 significant new statewide programs or policy changes from a prior
2 (approved) five year comprehensive plan; and (ii) procedures to involve
3 or inform local governmental units of such actions or plans.

4 (c) Three year capital plan. (1) On or before July first of each year,
5 the commissioners of the offices of the department of mental hygiene
6 shall each submit to the advisory council of their respective offices a
7 statewide three year capital plan for facilities within the jurisdiction
8 of their respective offices. The capital plan shall set forth the
9 projects proposed to be designed, constructed, acquired, reconstructed,
10 rehabilitated or otherwise substantially altered pursuant to appropri-
11 ation to meet the capital development needs of the respective agencies
12 for the next ensuing three years; the years of such plan shall corre-
13 spond to the years of the statewide five year plan as required by subdi-
14 vision (b) of this section.

15 (2) Such plan for each office shall include but not be limited to a
16 detailed project schedule indicating the location by county or borough
17 and estimated cost of each project, the anticipated dates on which the
18 design and construction of the project is to commence, the proposed
19 method of financing for the project, the estimated economic life of the
20 project and whether the proposed project constitutes design, new
21 construction or rehabilitation.

22 (3) Such plan shall further specify for each project whether the
23 project is to be a residential or nonresidential facility, a state or
24 voluntary operated facility, and, the number of clients, by source of
25 clients, proposed to utilize the facility. The information on the source
26 of the client shall include but not be limited to identification of
27 clients currently living independently, or at home with families, or
28 with caretakers, clients defined by their respective agencies as special

1 populations, or clients currently residing in an institutional setting
2 under the jurisdiction of the offices of the department.

3 (4) The advisory council of the appropriate office shall review such
4 plan and report its recommendation to the commissioner for inclusion,
5 provided, however, that the mental health services council shall forward
6 its comments on the capital plan of the office of mental health to the
7 mental health planning council which shall forward such recommendations
8 after review to the commissioner of mental health. The commissioner
9 shall submit his or her plan with the formal recommendations of the
10 advisory council of his or her office and any subsequent appropriate
11 modifications to the governor no later than the first day of October of
12 each year or concurrent with the annual submission of estimates and
13 information required by section one of article seven of the constitution
14 in order that such plans shall be considered with the estimates of the
15 offices for the preparation of the executive budget of the state of New
16 York for the next succeeding state fiscal year. The commissioners shall
17 also submit such plans to the chairmen of the senate finance committee
18 and the assembly ways and means committee.

19 (5) Each statewide three year capital plan for facilities shall be
20 evaluated and revised annually to encompass the fiscal year then in
21 progress and the next ensuing two fiscal years to ensure responsiveness
22 to the changing needs and goals of the department, and to reflect the
23 development of new information and project completion.]

24 § 4. Section 7.05 of the mental hygiene law is REPEALED.

25 § 5. Subdivision (c) of section 13.05 of the mental hygiene law, as
26 amended by chapter 37 of the laws of 2011, is amended to read as
27 follows:

1 (c) The developmental disabilities advisory council shall have no
2 executive, administrative or appointive duties. The council shall have
3 the duty to foster public understanding and acceptance of developmental
4 disabilities. It shall, in cooperation with the commissioner of develop-
5 mental disabilities, [establish] provide recommendations for statewide
6 priorities and goals [and objectives] for services for individuals with
7 developmental disabilities and shall advise the commissioner on matters
8 related to development and implementation of the [OPWDD's triennial
9 state developmental disabilities] statewide comprehensive plan as
10 required under [paragraph two of subdivision (b) of] section 5.07 of
11 this chapter. The advisory council shall have the power to consider any
12 matter relating to the improvement of the state developmental disabili-
13 ties program and shall advise the commissioner of developmental disabil-
14 ities thereon and on any matter relating to the performance of their
15 duties with relation to individuals with developmental disabilities and
16 on policies, goals, budget and operation of developmental disabilities
17 services.

18 § 6. Section 19.05 of the mental hygiene law is REPEALED.

19 § 7. Subdivision (c) of section 41.16 of the mental hygiene law, as
20 amended by section 16 of part E of chapter 111 of the laws of 2010, is
21 amended to read as follows:

22 (c) A local services plan shall be developed, in accordance with the
23 regulations of the commissioner or commissioners of the office or
24 offices of the department having jurisdiction of the services by the
25 local governmental unit or units which shall direct and administer a
26 local comprehensive planning process for its geographic area, consistent
27 with statewide goals and objectives established pursuant to section 5.07
28 of this chapter. The planning process shall involve the directors of any

1 department facilities, directors of hospital based mental health
2 services, directors of community mental health centers, the director of
3 the local office for the aging or his or her representative, consumers,
4 consumer groups, voluntary agencies, other providers of services, and
5 local correctional facilities and other local criminal justice agencies.
6 The local governmental unit, or units, shall determine the proposed
7 local services plan to be submitted for approval. If any provider of
8 services including facilities in the department, or any representative
9 of the consumer or community interests within the local planning proc-
10 ess, disputes any element of the proposed plan for the area which it
11 serves, the objection shall be presented in writing to the director of
12 the local governmental unit. If such dispute cannot be resolved to the
13 satisfaction of all parties, the director shall determine the plan to be
14 submitted. If requested and supplied by the objecting party, a written
15 objection to the plan shall be appended thereto and transmitted to the
16 single agent of the department jointly designated by the commissioners.

17 § 8. Section 220 of the public health law, as amended by section 45
18 of part A of chapter 58 of the laws of 2010, is amended to read as
19 follows:

20 § 220. Public health and health planning council; appointment of
21 members. There shall continue to be in the department a public health
22 and health planning council to consist of the commissioner and fourteen
23 members to be appointed by the governor with the advice and consent of
24 the senate; provided that effective December first, two thousand ten,
25 the membership of the council shall consist of the commissioner and
26 twenty-four members to be appointed by the governor with the advice and
27 consent of the senate. Membership on the council shall be reflective of
28 the diversity of the state's population including, but not limited to,

1 the various geographic areas and population densities throughout the
2 state. The members shall include representatives of the public health
3 system, health care providers that comprise the state's health care
4 delivery system, individuals with expertise in the clinical and adminis-
5 trative aspects of health care delivery, issues affecting health care
6 consumers, health planning, health care financing and reimbursement,
7 health care regulation and compliance, and public health practice and at
8 least two members shall also be members of the [mental] behavioral
9 health services council; at least four members shall be representatives
10 of general hospitals or nursing homes; and at least one member shall be
11 a representative of each of the following groups: home care agencies,
12 diagnostic and treatment centers, health care payors, labor organiza-
13 tions for health care employees, and health care consumer advocacy
14 organizations.

15 § 9. This act shall take effect immediately and shall be deemed to
16 have been in full force and effect on and after April 1, 2012; provided,
17 however, that sections one through six of this act shall take effect on
18 the one hundred twentieth day after it shall have become a law.

19 PART O

20 Section 1. Subdivision (b) of section 7.17 of the mental hygiene law,
21 as amended by section 1 of part G of chapter 59 of the laws of 2011, is
22 amended to read as follows:

23 (b) There shall be in the office the hospitals named below for the
24 care, treatment and rehabilitation of persons with mental illness and
25 for research and teaching in the science and skills required for the
26 care, treatment and rehabilitation of such persons with mental illness.

- 1 Greater Binghamton Health Center
- 2 Bronx Psychiatric Center
- 3 Buffalo Psychiatric Center
- 4 Capital District Psychiatric Center
- 5 Central New York Psychiatric Center
- 6 Creedmoor Psychiatric Center
- 7 Elmira Psychiatric Center
- 8 [Hudson River Psychiatric Center
- 9 Kingsboro Psychiatric Center]
- 10 Kirby Forensic Psychiatric Center
- 11 Manhattan Psychiatric Center
- 12 Mid-Hudson Forensic Psychiatric Center
- 13 Mohawk Valley Psychiatric Center
- 14 Nathan S. Kline Institute for Psychiatric Research
- 15 New York State Psychiatric Institute
- 16 Pilgrim Psychiatric Center
- 17 Richard H. Hutchings Psychiatric Center
- 18 Rochester Psychiatric Center
- 19 Rockland Psychiatric Center
- 20 St. Lawrence Psychiatric Center
- 21 South Beach Psychiatric Center
- 22 [Bronx Children's Psychiatric Center
- 23 Brooklyn Children's Center
- 24 Queens Children's Psychiatric Center]
- 25 New York City Children's Center
- 26 Rockland Children's Psychiatric Center
- 27 Sagamore Children's Psychiatric Center
- 28 Western New York Children's Psychiatric Center

1 The New York State Psychiatric Institute and The Nathan S. Kline
2 Institute for Psychiatric Research are designated as institutes for the
3 conduct of medical research and other scientific investigation directed
4 towards furthering knowledge of the etiology, diagnosis, treatment and
5 prevention of mental illness. [The Brooklyn Children's Center is a
6 facility operated by the office to provide community-based mental health
7 services for children with serious emotional disturbances.]

8 § 2. Notwithstanding the provisions of subdivisions (b) and (e) of
9 section 7.17 of the mental hygiene law, section 41.55 of the mental
10 hygiene law, or any other law to the contrary, the office of mental
11 health is authorized to close, consolidate, reduce, transfer or other-
12 wise redesign services of hospitals, other facilities and programs oper-
13 ated by the office of mental health, and to implement significant
14 service reductions and reconfigurations according to this section as
15 shall be determined by the commissioner of mental health to be necessary
16 for the cost-effective and efficient operation of such hospitals, other
17 facilities and programs. One of the intents of actions taken that result
18 in closure, consolidation, reduction, transfer or other redesign
19 services of hospitals is to reinvest appropriate levels of funding for
20 community based mental health services and programs as determined by the
21 commissioner of mental health with approval from the director of the
22 division of the budget.

23 (a) In addition to the closure, consolidation or merger of one or more
24 facilities, the commissioner of mental health is authorized to perform
25 any significant service reductions that would reduce inpatient bed
26 capacity, which shall include but not be limited to, closures of wards
27 at a state-operated psychiatric center or the conversion of beds to
28 transitional placement programs, provided that the commissioner provide

1 at least 30 days notice of such reductions to the temporary president of
2 the senate and the speaker of the assembly and simultaneously post such
3 notice upon its public website. In assessing which significant service
4 reductions to undertake, the commissioner shall consider data related to
5 inpatient census, indicating nonutilization or under utilization of
6 beds, and the efficient operation of facilities.

7 (b) At least sixty days prior to the anticipated closure, consol-
8 idation or merger of any hospitals named in subdivision (b) of section
9 7.17 of the mental hygiene law, the commissioner of mental health shall
10 provide notice of such closure, consolidation or merger to the temporary
11 president of the senate, and speaker of the assembly, the chief execu-
12 tive officer of the county in which the facility is located, and shall
13 post such notice upon its public website. The commissioner shall be
14 authorized to conduct any and all preparatory actions which may be
15 required to effectuate such closures during such sixty day period. In
16 assessing which of such hospitals to close, the commissioner shall
17 consider the following factors: (1) the size, scope and type of services
18 provided by the hospital; (2) the relative quality of the care and
19 treatment provided by the hospital, as may be informed by internal or
20 external quality or accreditation reviews; (3) the current and antic-
21 ipated long-term need for the types of services provided by the facility
22 within its catchment area, which may include, but not be limited to,
23 services for adults or children, or other specialized services, such as
24 forensic services; (4) the availability of staff sufficient to address
25 the current and anticipated long term service needs; (5) the long term
26 capital investment required to ensure that the facility meets relevant
27 state and federal regulatory and capital construction requirements, and
28 national accreditation standards; (6) the proximity of the facility to

1 other facilities with space that could accommodate anticipated need, the
2 relative cost of any necessary renovations of such space, the relative
3 potential operating efficiency of such facilities, and the size, scope
4 and types of services provided by the other facilities; (7) anticipated
5 savings based upon economies of scale or other factors; (8) community
6 mental health services available in the facility catchment area and the
7 ability of such community mental health services to meet the behavioral
8 health needs of the impacted consumers; (9) the obligations of the state
9 to place persons with mental disabilities in community settings rather
10 than in institutions, when appropriate; and (10) the anticipated impact
11 of the closure on access to mental health services.

12 (c) Any transfers of inpatient capacity or any resulting transfer of
13 functions shall be authorized to be made by the commissioner of mental
14 health and any transfer of personnel upon such transfer of capacity or
15 transfer of functions shall be accomplished in accordance with the
16 provisions of section 70 of the civil service law.

17 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
18 sion, section or part of this act shall be adjudged by any court of
19 competent jurisdiction to be invalid, such judgment shall not affect,
20 impair, or invalidate the remainder thereof, but shall be confined in
21 its operation to the clause, sentence, paragraph, subdivision, section
22 or part thereof directly involved in the controversy in which such judg-
23 ment shall have been rendered. It is hereby declared to be the intent of
24 the legislature that this act would have been enacted even if such
25 invalid provisions had not been included herein.

26 § 4. This act shall take effect immediately and shall be deemed to
27 have been in full force and effect on and after April 1, 2012; provided

1 that the date for the closure of Kingsboro psychiatric center shall be
2 on a date certified by the commissioner of mental health.

3 PART P

4 Section 1. Subdivision (o) of section 10.03 of the mental hygiene law,
5 as amended by chapter 168 of the laws of 2010, is amended to read as
6 follows:

7 (o) "Secure treatment facility" means a facility or a portion of a
8 facility, designated by the commissioner, that may include a facility
9 located on the grounds of a correctional facility, that is staffed with
10 personnel from the office of mental health or the office for people with
11 developmental disabilities for the purposes of providing care and treat-
12 ment to persons confined under this article, and persons defined in
13 paragraph five of subdivision (g) of this section. Personnel from these
14 same agencies may provide security services, provided that such staff
15 are adequately trained in security methods and so equipped as to mini-
16 mize the risk or danger of escape. The commissioner shall have the
17 discretion to enter into agreements for the provision of care and treat-
18 ment to persons held at a secure treatment facility pursuant to this
19 article, or for the provision of appropriate security services, by indi-
20 viduals who are not personnel of such agencies.

21 § 2. Subdivision (k) of section 10.06 of the mental hygiene law, as
22 amended by section 118-c of subpart B of part C of chapter 62 of the
23 laws of 2011, is amended to read as follows:

24 (k) At the conclusion of the hearing, the court shall determine wheth-
25 er there is probable cause to believe that the respondent is a sex
26 offender requiring civil management. If the court determines that proba-

1 ble cause has not been established, the court shall issue an order
2 dismissing the petition, and the respondent's release shall be in
3 accordance with other applicable provisions of law. If the court deter-
4 mines that probable cause has been established: (i) the court shall
5 order that the respondent be committed to a secure treatment facility
6 designated by the commissioner for care, treatment and control upon his
7 or her release, provided, however, that a respondent who otherwise would
8 be required to be transferred to a secure treatment facility [may,]
9 shall remain in the custody of the department of corrections and commu-
10 nity supervision pending the outcome of the proceedings under this arti-
11 cle until he or she has reached the maximum expiration of his or her
12 sentence or has been approved for release to parole supervision by the
13 state board of parole, provided, further that a respondent may, upon a
14 written consent signed by the respondent and his or her counsel, consent
15 to remain in the custody of the department of corrections and community
16 supervision pending the outcome of the proceedings under this article,
17 and that such consent may be revoked in writing at any time; (ii) the
18 court shall set a date for trial in accordance with subdivision (a) of
19 section 10.07 of this article; and (iii) the respondent shall not be
20 released pending the completion of such trial.

21 § 3. Subdivision (f) of section 10.07 of the mental hygiene law, as
22 added by chapter 7 of the laws of 2007, is amended to read as follows:

23 (f) If the jury, or the court if a jury trial is waived, determines
24 that the respondent is a detained sex offender who suffers from a mental
25 abnormality, then the court shall consider whether the respondent is a
26 dangerous sex offender requiring confinement or a sex offender requiring
27 strict and intensive supervision. The parties may offer additional
28 evidence, and the court shall hear argument, as to that issue. If the

1 court finds by clear and convincing evidence that the respondent has a
2 mental abnormality involving such a strong predisposition to commit sex
3 offenses, and such an inability to control behavior, that the respondent
4 is likely to be a danger to others and to commit sex offenses if not
5 confined to a secure treatment facility, then the court shall find the
6 respondent to be a dangerous sex offender requiring confinement. In such
7 case, the respondent shall be committed to a secure treatment facility
8 for care, treatment, and control until such time as he or she no longer
9 requires confinement. Failure of a dangerous sex offender requiring
10 confinement to meaningfully participate in treatment in a secure treat-
11 ment facility shall constitute a violation of the order of confinement.
12 If the court does not find that the respondent is a dangerous sex offen-
13 der requiring confinement, then the court shall make a finding of dispo-
14 sition that the respondent is a sex offender requiring strict and inten-
15 sive supervision, and the respondent shall be subject to a regimen of
16 strict and intensive supervision and treatment in accordance with
17 section 10.11 of this article. In making a finding of disposition, the
18 court shall consider the conditions that would be imposed upon the
19 respondent if subject to a regimen of strict and intensive supervision,
20 and all available information about the prospects for the respondent's
21 possible re-entry into the community.

22 § 4. Section 10.08 of the mental hygiene law is amended by adding a
23 new subdivision (i) to read as follows:

24 (i) At any proceeding conducted pursuant to this article other than a
25 trial conducted pursuant to section 10.07 of this article, the respond-
26 ent or any witness shall be permitted, upon good cause shown, to make an
27 electronic appearance in the court by means of an independent audio-vi-
28 sual system, as that term is defined in subdivision one of section

1 182.10 of the criminal procedure law, for purposes of a court appearance
2 or for giving testimony. It shall constitute good cause that a witness
3 is currently employed by the state at a secure treatment facility or
4 another work location, unless there are compelling circumstances requir-
5 ing the witness's personal presence at the court proceeding. For
6 purposes of this subdivision, an "electronic appearance" means an
7 appearance at which a participant is not present in the court, but in
8 which: (i) all of the participants are able to see and hear the simul-
9 taneous reproductions of the voices and images of the judge, counsel,
10 respondent or any other appropriate participant, and (ii) counsel is
11 present with the respondent or the respondent and counsel are able to
12 see and hear each other and engage in private conversation. When a
13 respondent or a witness makes an electronic appearance, the court
14 stenographer shall record any statements in the same manner as if the
15 respondent or witness had made a personal appearance. Nothing in this
16 subdivision shall be construed to prohibit the respondent or any witness
17 from making an electronic appearance in the court at a trial conducted
18 pursuant to section 10.07 of this article by means of an independent
19 audio-visual system, upon good cause shown and consent of the parties.

20 § 5. The section heading and subdivisions (a), (b), (c), (d), and (f)
21 of section 10.09 of the mental hygiene law, as added by chapter 7 of the
22 laws of 2007, are amended to read as follows:

23 [Annual] Biennial examinations and petitions for discharge.

24 (a) The commissioner shall provide the respondent and counsel for
25 respondent with [an annual] a biennial written notice of the right to
26 petition the court for discharge. The notice shall contain a form for
27 the waiver of the right to petition for discharge.

1 (b) The commissioner shall also assure that each respondent committed
2 under this article shall have an examination for evaluation of his or
3 her mental condition made at least once every [year] two years by a
4 psychiatric examiner who shall report to the commissioner his or her
5 written findings as to whether the respondent is currently a dangerous
6 sex offender requiring confinement. At such time, the respondent also
7 shall have the right to be evaluated by an independent psychiatric exam-
8 iner. If the respondent is financially unable to obtain an examiner,
9 the court shall appoint an examiner of the respondent's choice to be
10 paid within the limits prescribed by law. Following such evaluation,
11 each psychiatric examiner shall report his or her findings in writing to
12 the commissioner and to counsel for respondent. The commissioner shall
13 review relevant records and reports, along with the findings of the
14 psychiatric examiners, and shall make a determination in writing as to
15 whether the respondent is currently a dangerous sex offender requiring
16 confinement.

17 (c) The commissioner shall [annually] biennially forward the notice
18 and waiver form, along with a report including the commissioner's writ-
19 ten determination and the findings of the psychiatric examination, to
20 the supreme or county court where the respondent is located.

21 (d) The court shall hold an evidentiary hearing as to retention of the
22 respondent within forty-five days if it appears from one of the [annual]
23 biennial submissions to the court under subdivision (c) of this section
24 (i) that the respondent has petitioned, or has not affirmatively waived
25 the right to petition, for discharge, or (ii) that even if the respond-
26 ent has waived the right to petition, and the commissioner has deter-
27 mined that the respondent remains a dangerous sex offender requiring
28 confinement, the court finds on the basis of the materials described in

1 subdivision (b) of this section that there is a substantial issue as to
2 whether the respondent remains a dangerous sex offender requiring
3 confinement. At an evidentiary hearing on that issue under this subdivi-
4 sion, the attorney general shall have the burden of proof.

5 (f) The respondent may at any time petition the court for discharge
6 and/or release to the community under a regimen of strict and intensive
7 supervision and treatment. Upon review of the respondent's petition,
8 other than in connection with [annual] biennial reviews as described in
9 subdivisions (a), (b) and (d) of this section, the court may order that
10 an evidentiary hearing be held, or may deny an evidentiary hearing and
11 deny the petition upon a finding that the petition is frivolous or does
12 not provide sufficient basis for reexamination prior to the next [annu-
13 al] biennial review. If the court orders an evidentiary hearing under
14 this subdivision, the attorney general shall have the burden of proof as
15 to whether the respondent is currently a dangerous sex offender requir-
16 ing confinement.

17 § 6. Subdivision (a) of section 10.10 of the mental hygiene law, as
18 added by chapter 7 of the laws of 2007, is amended to read as follows:

19 (a) If the respondent is found to be a dangerous sex offender requir-
20 ing confinement and committed to a secure treatment facility, that
21 facility shall provide care, treatment, and control of the respondent
22 until such time that a court discharges the respondent in accordance
23 with the provisions of this article. Failure of a dangerous sex offender
24 requiring confinement to meaningfully participate in treatment in a
25 secure treatment facility shall constitute a violation of the order of
26 confinement.

1 § 7. Subdivision (c) of section 10.11 of the mental hygiene law, as
2 amended by section 118-e of subpart B of part C of chapter 62 of the
3 laws of 2011, is amended to read as follows:

4 (c) An order for a regimen of strict and intensive supervision and
5 treatment places the person in the custody and control of the department
6 of corrections and community supervision. A person ordered to undergo a
7 regimen of strict and intensive supervision and treatment pursuant to
8 this article is subject to lawful conditions set by the court and the
9 department of corrections and community supervision. A violation of a
10 condition of the regimen of strict and intensive supervision and treat-
11 ment for a person under community supervision, as defined in subdivision
12 three of section two hundred fifty-nine of the executive law, may be the
13 basis for revocation of parole pursuant to section two hundred fifty-
14 nine-i of the executive law. A person who intentionally violates a mate-
15 rial condition of the regimen of strict and intensive supervision and
16 treatment shall be guilty of a class E felony.

17 § 8. Section 120.05 of the penal law is amended by adding a new subdi-
18 vision 13 to read as follows:

19 13. Having been found to be a dangerous sex offender requiring
20 confinement and while confined in a secure treatment facility, as
21 defined in section 7.18 of the mental hygiene law, with intent to cause
22 physical injury to another person, he causes such injury to such person
23 or to a third person.

24 § 9. This act shall take effect immediately.

1 Section 1. Section 730.10 of the criminal procedure law is amended by
2 adding a new subdivision 9 to read as follows:

3 9. "Appropriate institution" means: (a) a hospital operated by the
4 office of mental health or a developmental center operated by the office
5 for people with developmental disabilities; (b) a local correctional
6 facility, as such terms are defined in section two of the correction
7 law, which operates a mental health unit; or (c) a hospital licensed by
8 the department of health which operates a psychiatric unit licensed by
9 the office of mental health, as determined by the commissioner.

10 § 2. Subdivision 1 of section 730.40 of the criminal procedure law, as
11 amended by chapter 231 of the laws of 2008, is amended to read as
12 follows:

13 1. When a local criminal court, following a hearing conducted pursuant
14 to subdivision three or four of section 730.30, is satisfied that the
15 defendant is not an incapacitated person, the criminal action against
16 him or her must proceed. If it is satisfied that the defendant is an
17 incapacitated person, or if no motion for such a hearing is made, such
18 court must issue a final or temporary order of observation committing
19 him or her to the custody of the commissioner for care and treatment in
20 an appropriate institution for a period not to exceed ninety days from
21 the date of the order, provided, however, that the commissioner may
22 designate an appropriate hospital for placement of a defendant for whom
23 a final order of observation has been issued, where such hospital is
24 licensed by the office of mental health and has agreed to accept, upon
25 referral by the commissioner, defendants subject to final orders of
26 observation issued under this subdivision. When a local criminal court
27 accusatory instrument other than a felony complaint has been filed
28 against the defendant, such court must issue a final order of observa-

1 tion[; when]. When a felony complaint has been filed against the defend-
2 ant, such court must issue a temporary order of observation committing
3 him or her to the jurisdiction of the commissioner for care and treat-
4 ment in an appropriate institution or on an out-patient basis for a
5 period not to exceed ninety days from the date of such order, except
6 that, with the consent of the district attorney, it may issue a final
7 order of observation.

8 § 3. Subdivision 1 of section 730.50 of the criminal procedure law, as
9 amended by chapter 231 of the laws of 2008, is amended to read as
10 follows:

11 1. When a superior court, following a hearing conducted pursuant to
12 subdivision three or four of section 730.30, is satisfied that the
13 defendant is not an incapacitated person, the criminal action against
14 him or her must proceed. If it is satisfied that the defendant is an
15 incapacitated person, or if no motion for such a hearing is made, it
16 must adjudicate him or her an incapacitated person, and must issue a
17 final order of observation or an order of commitment. When the indict-
18 ment does not charge a felony or when the defendant has been convicted
19 of an offense other than a felony, such court (a) must issue a final
20 order of observation committing the defendant to the custody of the
21 commissioner for care and treatment in an appropriate institution for a
22 period not to exceed ninety days from the date of such order, provided,
23 however, that the commissioner may designate an appropriate hospital for
24 placement of a defendant for whom a final order of observation has been
25 issued, where such hospital is licensed by the office of mental health
26 and has agreed to accept, upon referral by the commissioner, defendants
27 subject to final orders of observation issued under this subdivision,
28 and (b) must dismiss the indictment filed in such court against the

1 defendant, and such dismissal constitutes a bar to any further prose-
2 cution of the charge or charges contained in such indictment. When the
3 indictment charges a felony or when the defendant has been convicted of
4 a felony, it must issue an order of commitment committing the defendant
5 to the [custody] jurisdiction of the commissioner for care and treatment
6 in an appropriate institution or on an out-patient basis for a period
7 not to exceed one year from the date of such order. Upon the issuance of
8 an order of commitment, the court must exonerate the defendant's bail if
9 he or she was previously at liberty on bail; provided, however, that
10 exoneration of bail is not required when a defendant is committed to the
11 jurisdiction of the commissioner for care and treatment on an out-pa-
12 tient basis.

13 § 4. This act shall take effect immediately.

14 PART R

15 Section 1. Section 1 of part D of chapter 111 of the laws of 2010
16 relating to the recovery of exempt income by the office of mental health
17 for community residences and family-based treatment programs is amended
18 to read as follows:

19 Section 1. The office of mental health is authorized to recover fund-
20 ing from community residences and family-based treatment providers
21 licensed by the office of mental health, consistent with contractual
22 obligations of such providers, and notwithstanding any other inconsis-
23 tent provision of law to the contrary, in an amount equal to 50 percent
24 of the income received by such providers which exceeds the fixed amount
25 of annual Medicaid revenue limitations, as established by the commis-
26 sioner of mental health. Recovery of such excess income shall be for the

1 following fiscal periods: for programs in counties located outside of
2 the city of New York, the applicable fiscal periods shall be January 1,
3 2003 through December 31, 2009 and January 1, 2011 through December 31,
4 2013; and for programs located within the city of New York, the applica-
5 ble fiscal periods shall be July 1, 2003 through June 30, 2010 and July
6 1, 2011 through June 30, 2013.

7 § 2. This act shall take effect immediately.

8 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
9 sion, section or part of this act shall be adjudged by any court of
10 competent jurisdiction to be invalid, such judgment shall not affect,
11 impair, or invalidate the remainder thereof, but shall be confined in
12 its operation to the clause, sentence, paragraph, subdivision, section
13 or part thereof directly involved in the controversy in which such judg-
14 ment shall have been rendered. It is hereby declared to be the intent of
15 the legislature that this act would have been enacted even if such
16 invalid provisions had not been included herein.

17 § 3. This act shall take effect immediately provided, however, that
18 the applicable effective date of Parts A through R of this act shall be
19 as specifically set forth in the last section of such Parts.