

# PROGRAM BILL # 12

S. \_\_\_\_\_  
Senate  
\_\_\_\_\_

IN SENATE--Introduced by Sen

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

----- A.  
Assembly  
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IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the  
Committee on

\*PUBAUTLA\*  
(Establishes the New York Health  
Benefit Exchange)

Pub Aut. NY Health Benefit Exchan

## AN ACT

to amend the public authorities law  
and the public officers law, in  
relation to the establishment of the  
New York Health Benefit Exchange

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

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

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

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).

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

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

5 ARTICLE 10-E

6 NEW YORK HEALTH BENEFIT EXCHANGE

7 Section 3980. Statement of policy and purposes.

8 3981. Definitions.

9 3982. Establishment of the New York health benefit exchange.

10 3983. General powers of the exchange.

11 3984. Functions of the exchange.

12 3985. Special functions of the exchange related to health plan  
13 certification and qualified health plan oversight.

14 3986. Advisory committee.

15 3987. Funding of the exchange.

16 3988. Studies, findings and recommendations.

17 3989. Tax exemption and tax contract by the state.

18 3990. Officers and employees.

19 3991. Limitation of liability; indemnification.

20 3992. Contingency for federal funding.

21 3993. Construction.

22 § 3980. Statement of policy and purposes. The purpose of this article  
23 is to establish an American health benefit exchange in New York, in  
24 conformance with the federal patient protection and affordable care act,  
25 Public Law 111-148, as amended by the health care and education recon-  
26 ciliation act of 2010, Public Law 111-152. The exchange shall facili-  
27 tate enrollment in public health coverage, the purchase and sale of  
28 qualified health plans in the individual market in this state, and shall

1 incorporate a small business health options program ("SHOP") to assist  
2 qualified employers in facilitating the enrollment of their employees in  
3 qualified health plans offered in the group market. It is the intent of  
4 the legislature, through the establishment of the exchange, to promote  
5 quality and affordable health coverage and care, reduce the number of  
6 uninsured persons, provide a transparent marketplace, educate consumers  
7 and assist individuals with access to coverage, premium assistance tax  
8 credits and cost-sharing reductions. In addition, the legislature  
9 declares its intent that the exchange be properly integrated with public  
10 health coverage, including medicaid, child health plus and family health  
11 plus.

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

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

16 2. "Advisory committee" means the New York health benefit exchange  
17 advisory committee established pursuant to this article.

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

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

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

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

- 1 (a) accident insurance or disability income insurance, or any combina-  
2 tion thereof;
- 3 (b) coverage issued as a supplement to liability insurance;
- 4 (c) liability insurance, including general liability insurance and  
5 automobile liability insurance;
- 6 (d) workers' compensation or similar insurance;
- 7 (e) automobile no-fault insurance;
- 8 (f) credit insurance;
- 9 (g) other similar insurance coverage, as specified in federal regu-  
10 lations, under which benefits for medical care are secondary or inci-  
11 dental to other insurance benefits;
- 12 (h) limited scope dental or vision benefits, benefits for long-term  
13 care insurance, nursing home insurance, home care insurance, or any  
14 combination thereof, or such other similar, limited benefits health  
15 insurance as specified in federal regulations, if the benefits are  
16 provided under a separate policy, certificate or contract of insurance  
17 or are otherwise not an integral part of the plan;
- 18 (i) coverage only for a specified disease or illness, hospital indem-  
19 nity, or other fixed indemnity coverage;
- 20 (j) Medicare supplemental insurance as defined in section 1882(g)(1)  
21 of the federal social security act, coverage supplemental to the cover-  
22 age provided under chapter 55 of title 10 of the United States code, or  
23 similar supplemental coverage provided under a group health plan if it  
24 is offered as a separate policy, certificate or contract of insurance;  
25 or
- 26 (k) the medical indemnity fund established pursuant to title four of  
27 article twenty-nine-D of the public health law.

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

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

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

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

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

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

19 (b) resides in this state;

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

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

25 12. "Secretary" means the secretary of the United States department of  
26 health and human services.

27 13. "SHOP" means the small business health options program designed to  
28 assist qualified employers in this state in facilitating the enrollment

1 of their employees in qualified health plans offered in the group market  
2 in this state.

3 14. "Small employer" means, for plan years prior to January first, two  
4 thousand sixteen, an employer that employed an average of at least one  
5 but not more than fifty employees on business days during the preceding  
6 calendar year. For plan years beginning on and after January first, two  
7 thousand sixteen, small employer means an employer that employed an  
8 average of at least one but not more than one hundred employees on busi-  
9 ness days during the preceding calendar year. For purposes of the defi-  
10 inition of small employer:

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

14 (b) an employer and any predecessor employer shall be treated as a  
15 single employer;

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

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

23 (e) if a qualified employer that makes enrollment in qualified health  
24 plans available to its employees through the exchange ceases to be a  
25 small employer by reason of an increase in the number of its employees,  
26 then the employer shall continue to be treated as a qualified employer  
27 for purposes of this article for the period beginning with the increase

1 and ending with the first day on which the employer does not make such  
2 enrollment available to its employees; and

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

8 15. "Small group market" means the health insurance market under which  
9 individuals receive health insurance coverage on behalf of themselves  
10 and their dependents through a group health plan maintained by a small  
11 employer.

12 16. "State medicaid director" shall mean the employee or officer  
13 designated by the commissioner as the state medicaid director.

14 17. "Superintendent" means the superintendent of insurance until Octo-  
15 ber third, two thousand eleven, when such term shall mean the super-  
16 intendent of financial services.

17 § 3982. Establishment of the New York health benefit exchange. 1.  
18 There is hereby created a public benefit corporation to be known as the  
19 New York health benefit exchange. Such corporation shall be a body  
20 corporate and politic.

21 2. The purpose of the exchange is to facilitate the purchase and sale  
22 of qualified health plans, assist qualified employers in facilitating  
23 the enrollment of their employees in qualified health plans through the  
24 small business health options program, and carry out other functions set  
25 forth in this article.

26 3. (a) The exchange shall be governed by a board of directors consist-  
27 ing of seven voting directors, including the commissioner, the super-

1 intendent, and the state medicaid director, who shall serve as ex offi-  
2 cio directors.

3 (b) Four directors shall be appointed by the governor, one of whom  
4 shall be appointed upon the recommendation of the temporary president of  
5 the senate and one of whom shall be appointed upon the recommendation by  
6 the speaker of the assembly. Each person appointed as a director pursu-  
7 ant to this paragraph shall have expertise in one or more of the follow-  
8 ing areas:

9 (i) Individual health care coverage;

10 (ii) Small employer health care coverage;

11 (iii) Health benefits administration;

12 (iv) Health care finance;

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

14 (vi) Purchasing health plan coverage.

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

19 (d) Recommendations by the temporary president of the senate and the  
20 speaker of the assembly shall be made within sixty days of the effective  
21 date of this article or within sixty days of the occurrence of a vacan-  
22 cy. If a recommendation for an appointment is not received within such  
23 period of time, the governor shall be authorized to make that appoint-  
24 ment without a recommendation.

25 4. The governor shall appoint a chair of the board from among the  
26 directors.

27 5. (a) The terms of the directors, other than the ex officio direc-  
28 tors, shall be three years, provided, however, that:

1 (i) the initial terms of the directors appointed upon recommendation  
2 of the temporary president of the senate and the speaker of the assembly  
3 shall be for two years; and

4 (ii) the initial term of one of the remaining directors shall be for  
5 one year.

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

9 6. The directors shall not receive any compensation for their services  
10 as directors.

11 7. (a) Each member of the board shall have the responsibility and duty  
12 to meet the requirements of this article, the federal act, and all  
13 applicable state and federal laws and regulations to serve the public  
14 interest of the individuals and small businesses seeking health care  
15 coverage through the exchange, consistent with section twenty-eight  
16 hundred twenty-four of this chapter.

17 (b) No member of the board may be employed or otherwise retained by  
18 the exchange.

19 8. (a) The board may create such committees as the board deems neces-  
20 sary. At the first meeting of the board, and at the first meeting in  
21 each subsequent year, the board shall elect from among its members a  
22 secretary and a treasurer. The board also shall elect such other offi-  
23 cers as it shall deem necessary. The officers so elected shall have such  
24 powers and duties as are assigned by the by-laws and this chapter.

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

27 § 3983. General powers of the exchange. The exchange shall have the  
28 following powers:

- 1 1. to sue and be sued and to participate in actions and proceedings,  
2 whether judicial, administrative, arbitrative or otherwise;
- 3 2. to have a corporate seal, and to alter such seal at pleasure, and  
4 to use it by causing it or a facsimile to be affixed or impressed or  
5 reproduced in any other manner;
- 6 3. to purchase, receive, take by grant, gift, devise, bequest or  
7 otherwise, lease, or otherwise acquire, own, hold, improve, employ, use  
8 and otherwise deal in and with, real or personal property, or any inter-  
9 est therein, wherever situated;
- 10 4. to sell, convey, lease, exchange, transfer or otherwise dispose of,  
11 or mortgage or pledge, or create a security interest in, all or any of  
12 its property, or any interest therein, wherever situated;
- 13 5. to make contracts, give guarantees and incur liabilities, and  
14 borrow money; provided, however, that the exchange shall not issue  
15 bonds;
- 16 6. to invest and reinvest its funds, and take and hold real and  
17 personal property as security for the payment of funds so loaned or  
18 invested;
- 19 7. to make and alter by-laws for its organization and management;
- 20 8. to make and alter rules and regulations as necessary to implement  
21 the provisions of this article, subject to the provisions of the state  
22 administrative procedure act;
- 23 9. to hire employees, consistent with section thirty-nine hundred  
24 ninety of this article;
- 25 10. to designate the depositories of its money;
- 26 11. to establish its fiscal year;

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

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

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

8 § 3984. Functions of the exchange. The exchange shall:

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

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

21 2. assign a rating to each qualified health plan offered through the  
22 exchange in accordance with the criteria developed by the secretary  
23 pursuant to section 1311(c)(3) of the federal act, and determine each  
24 qualified health plan's level of coverage in accordance with regulations  
25 issued by the secretary pursuant to section 1302(d)(2)(A) of the federal  
26 act;

- 1 3. utilize a standardized format for presenting health benefit options  
2 in the exchange, including the use of the uniform outline of coverage  
3 established under section 2715 of the federal public health service act;
- 4 4. if the board deems it appropriate, standardize the benefits avail-  
5 able through the exchange at each level of coverage specified in section  
6 1302(d) of the federal act;
- 7 5. provide for enrollment periods pursuant to the federal act or the  
8 insurance law, whichever is in the best interest of qualified individ-  
9 uals and qualified employers, after the initial enrollment period has  
10 been established as required in the federal act; provided, however, that  
11 if enrollment periods pursuant to the insurance law conflict with rules  
12 adopted by the secretary, then enrollment periods pursuant to the feder-  
13 al act shall apply;
- 14 6. implement procedures for the certification, recertification and  
15 decertification of health plans as qualified health plans, consistent  
16 with guidelines developed by the secretary pursuant to section 1311(c)  
17 of the federal act and section thirty-nine hundred eighty-five of this  
18 article;
- 19 7. if the board deems it appropriate, selectively contract for health  
20 care coverage offered to qualified individuals and qualified employers  
21 through the exchange, and in doing so shall seek to contract with insur-  
22 ers so as to provide health care coverage choices that offer the optimal  
23 combination of choice, value, quality, and service;
- 24 8. establish the minimum requirements an insurer shall meet to be  
25 considered for participation in the exchange and the criteria for  
26 selecting qualified health plans to be offered through the exchange that  
27 are in the best interests of qualified individuals and qualified employ-

1 ers, in addition to those set forth in section thirty-nine hundred  
2 eighty-five of this article;

3 9. require qualified health plans to offer those benefits determined  
4 by the secretary to be essential health benefits pursuant to section  
5 1302(b) of the federal act and such additional benefits as are mandated  
6 by state law;

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

9 11. provide for the operation of a toll-free telephone hotline to  
10 respond to requests for assistance;

11 12. maintain an internet website through which enrollees and prospec-  
12 tive enrollees of qualified health plans may obtain standardized compar-  
13 ative information on such plans and public health programs;

14 13. establish and make available by electronic means a calculator to  
15 determine the actual cost of coverage after the application of any  
16 premium tax credit under section 36B of the Internal Revenue Code of  
17 1986 and any cost-sharing reduction under section 1402 of the federal  
18 act;

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

22 15. in accordance with section 1413 of the federal act, inform indi-  
23 viduals of eligibility requirements for the medicaid program under title  
24 XIX of the social security act, the children's health insurance program  
25 (CHIP) under title XXI of the social security act or any applicable  
26 state or local public health insurance program and if, through screening  
27 of the application by the exchange, the exchange determines that such

1 individuals are eligible for any such program, enroll such individuals  
2 in such program;

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

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

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

12 17. transmit to the secretary of the United States department of the  
13 treasury:

14 (a) a list of the individuals to whom the exchange granted a certif-  
15 ication under subdivision sixteen of this section, including the name  
16 and taxpayer identification number of each individual;

17 (b) the name and taxpayer identification number of each individual who  
18 was an employee of an employer who was determined to be eligible for the  
19 premium tax credit under section 36B of the Internal Revenue Code of  
20 1986 because:

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

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

- 1 (c) the name and taxpayer identification number of:
- 2 (i) each individual who notifies the exchange pursuant to section  
3 1411(b)(4) of the federal act that he or she has changed employers; and
- 4 (ii) each individual who ceases coverage under a qualified health plan  
5 during a plan year and the effective date of that cessation;
- 6 18. provide to each employer the name of each employee of the employer  
7 described in paragraph (b) of subdivision seventeen of this section who  
8 ceases coverage under a qualified health plan during a plan year and the  
9 effective date of the cessation;
- 10 19. operate a small business health options program ("SHOP") pursuant  
11 to section 1311 of the federal act through which qualified employers  
12 access coverage for their employees, and may:
- 13 (a) permit qualified employers to specify a level of coverage so their  
14 employees may enroll in any qualified health plan offered through the  
15 SHOP at the specified level of coverage or, unless prohibited by the  
16 federal act, provide a specific amount or other payment formulated in  
17 accordance with the federal act to be used as part of an employee choice  
18 plan; and
- 19 (b) provide premium aggregation and other related services to minimize  
20 administrative burdens for qualified employers;
- 21 20. enter into agreements as necessary with federal and state agencies  
22 and other state exchanges to carry out its responsibilities under this  
23 article, provided such agreements include adequate protections with  
24 respect to the confidentiality of any information to be shared and  
25 comply with all state and federal laws and regulations;
- 26 21. perform duties required by the secretary or the secretary of the  
27 United States department of the treasury related to determining eligi-

1 bility for premium tax credits, reduced cost-sharing, or individual  
2 responsibility requirement exemptions;

3 22. meet financial integrity requirements under section 1313 of the  
4 federal act and this chapter, including:

5 (a) keeping an accurate accounting of all activities, receipts, and  
6 expenditures and annually submitting to the secretary a report concern-  
7 ing such accountings, with a copy of such report provided to the gover-  
8 nor, the temporary president of the senate and the speaker of the assem-  
9 bly; and

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

15 (i) investigate the affairs of the exchange;

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

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

19 23. (a) consult with the advisory committee established pursuant to  
20 section thirty-nine hundred eighty-six of this article; and

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

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

24 (ii) individuals and entities with experience in facilitating enroll-  
25 ment in qualified health plans;

26 (iii) representatives of small businesses and self-employed individ-  
27 uals;

28 (iv) state medicaid offices;

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

2 (vi) health care providers; and

3 (vii) insurers;

4 24. submit information provided by exchange applicants for verifica-  
5 tion as required by section 1411(c) of the federal act;

6 25. establish rules and regulations, pursuant to subdivision eight of  
7 section thirty-nine hundred eighty-three of this article, that do not  
8 conflict with or prevent the application of regulations promulgated by  
9 the secretary; and

10 26. determine eligibility, provide notices, and provide opportunities  
11 for appeal and redetermination in accordance with the requirements of  
12 sections 1411 and 1413 of the federal act.

13 § 3985. Special functions of the exchange related to health plan  
14 certification and qualified health plan oversight. 1. Health plans  
15 certified by the exchange shall meet the following requirements:

16 (a) the insurer offering the health plan:

17 (i) is licensed or certified by the superintendent or commissioner and  
18 in good standing to offer health insurance coverage in this state;

19 (ii) offers at least one qualified health plan in each of the silver  
20 and gold levels, provided, however, that the exchange may require addi-  
21 tional benefit levels to be offered by all insurers participating in the  
22 exchange;

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

26 (iv) does not charge any cancellation fees or penalties in violation  
27 of subdivision ten of section thirty-nine hundred eighty-four of this  
28 article; and

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

4 (b) the health plan: (i) provides the essential health benefits pack-  
5 age described in section 1302(a) of the federal act and includes such  
6 additional benefits as are mandated by state law, except that the health  
7 plan shall not be required to provide essential benefits that duplicate  
8 the minimum benefits of qualified dental plans if:

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

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

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

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

24 (iv) complies with regulations promulgated by the secretary pursuant  
25 to section 1311(c) of the federal act, which include minimum standards  
26 in the areas of marketing practices, network adequacy, essential commu-  
27 nity providers in underserved areas, accreditation, quality improvement,

1 uniform enrollment forms and descriptions of coverage and information on  
2 quality measures for health benefit plan performance;  
3 (v) meets standards specified and determined by the exchange, provided  
4 that the standards do not conflict with or prevent the application of  
5 federal requirements;  
6 (vi) complies with the insurance law and the public health law  
7 requirements applicable to health insurance issued in this state and any  
8 regulations promulgated pursuant thereto that do not conflict with or  
9 prevent the application of federal requirements; and  
10 (c) the exchange determines that making the health plan available  
11 through the exchange is in the interest of qualified individuals and  
12 qualified employers in this state.

13 2. The exchange shall not exclude a health plan:  
14 (a) on the basis that the health plan is a fee-for-service plan;  
15 (b) through the imposition of premium price controls by the exchange;  
16 or  
17 (c) on the basis that the health plan provides treatments necessary to  
18 prevent patients' deaths in circumstances the exchange determines are  
19 inappropriate or too costly.

20 3. The exchange shall require each insurer seeking certification of a  
21 health plan as a qualified health plan to:  
22 (a) submit a justification for any premium increase to the exchange  
23 prior to implementation of such increase. The insurer shall prominently  
24 post the information on its internet website. The exchange shall take  
25 this information, and the information and the recommendations provided  
26 to the exchange by the superintendent under section 1003 of the federal  
27 act (relating to patterns or practices of excessive or unjustified  
28 premium increases), into consideration when determining whether to allow

1 the insurer to make health plans available through the exchange. Such  
2 rate increases shall be subject to the prior approval of the superinten-  
3 dent pursuant to the insurance law;

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

6 (A) claims payment policies and practices;

7 (B) periodic financial disclosures;

8 (C) data on enrollment and disenrollment;

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

10 (E) data on rating practices;

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

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

15 (H) other information as determined appropriate by the secretary or  
16 otherwise required by the exchange;

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

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

1 4. The exchange shall not exempt any insurer seeking certification of  
2 a health plan, regardless of the type or size of the insurer, from  
3 licensing or solvency requirements under the insurance law or the public  
4 health law, and shall apply the criteria of this section in a manner  
5 that ensures a level playing field for insurers participating in the  
6 exchange.

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

11 (b) The qualified dental plan shall be limited to dental and oral  
12 health benefits, without substantially duplicating the benefits typical-  
13 ly offered by health benefit plans without dental coverage, and shall  
14 include, at a minimum, the essential pediatric dental benefits  
15 prescribed by the secretary pursuant to section 1302(b)(1)(J) of the  
16 federal act, and such other dental benefits as the exchange or secretary  
17 may require.

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

23 § 3986. Advisory committee. 1. There is hereby created the New York  
24 health benefit exchange advisory committee ("advisory committee"),  
25 comprised of eighteen members appointed by the governor.

26 (a) (i) Three members shall be appointed upon the recommendation of  
27 the temporary president of the senate.

1 (ii) Three members shall be appointed upon the recommendation of the  
2 speaker of the assembly.

3 (iii) One member shall be appointed upon the recommendation of the  
4 minority leader of the senate.

5 (iv) One member shall be appointed upon the recommendation of the  
6 minority leader of the assembly.

7 (b) The advisory committee shall be representative of the interests of  
8 health care consumers, small businesses, the medical community and  
9 insurers; and shall meet the following criteria:

10 (i) seven members shall be health insurance consumer advocates,  
11 including at least two small business consumer representatives;

12 (ii) five members shall be health care provider representatives;

13 (iii) four members shall be representatives of the health insurance  
14 industry;

15 (iv) one member shall be a New York licensed insurance producer; and

16 (v) one member shall be a representative of a labor organization.

17 (c) Appointments shall be made so that the membership of the advisory  
18 committee is representative of various areas of this state.

19 (d) Recommendations by the temporary president of the senate, the  
20 speaker of the assembly, the minority leader of the senate and the  
21 minority leader of the assembly shall be made within sixty days of the  
22 effective date of this article or within sixty days of the occurrence of  
23 a vacancy. If a recommendation for an appointment is not received within  
24 such period of time, the governor shall be authorized to make that  
25 appointment without a recommendation.

26 (e) The board of directors shall select the chair of the advisory  
27 committee from among the members of the advisory committee.

1 (f) Vacancies shall be filled in the same manner as original appoint-  
2 ments.

3 (g) Members of the advisory committee shall serve without compen-  
4 sation.

5 (h) As designated by the governor, six of the initial appointees shall  
6 serve an initial term of three years, six shall serve an initial term of  
7 two years, and six shall serve an initial term of one year. Thereafter,  
8 members shall serve terms of three years and until their successors are  
9 appointed. Members may serve up to two consecutive terms.

10 (i) The advisory committee shall adopt rules for its governance and  
11 shall meet at least once each quarter and at such other times as deter-  
12 mined to be necessary.

13 2. For the purpose of facilitating the work of the advisory commit-  
14 tee, the board shall identify regions of the state and shall establish a  
15 mechanism by which the advisory committee will obtain input from the  
16 regions regarding regional variations that affect the operations of the  
17 exchange.

18 3. The advisory committee shall provide advice and make recommenda-  
19 tions to the board of directors in the form of an initial report with  
20 respect to the functions of the exchange as set forth in this article.  
21 Such report shall include specific sections for each region identified  
22 by the board. The regional sections of the report shall reflect the  
23 findings of the advisory committee regarding the similarities and  
24 differences within each region relating to the availability of health  
25 insurance coverage, and such other elements as the board and advisory  
26 committee deem necessary. The board shall determine a date for the  
27 submission of the initial report, and shall thereafter receive such  
28 advice and recommendations as the advisory committee may provide. The

1 report of the advisory committee and all subsequent advice and recommen-  
2 ations, shall be posted on the website of the exchange and shall be  
3 considered by the board in a reasonably timely fashion.

4 § 3987. Funding of the exchange. 1. The exchange shall be financially  
5 self-sufficient by January first, two thousand fifteen.

6 2. The exchange shall conduct or cause to be conducted a study of, and  
7 shall report its findings and recommendations upon, the options to  
8 generate funding for the ongoing operation of the exchange, as provided  
9 for in subdivision seven of section thirty-nine hundred eighty-eight of  
10 this article.

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

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

20 5. No funds of the exchange shall be transferred to the general fund  
21 or any special revenue fund or shall be used for any purpose other than  
22 the purposes set forth in this article. No funds shall be transferred  
23 from the general fund or any special revenue fund to the exchange with-  
24 out an appropriation.

25 § 3988. Studies, findings and recommendations. 1. (a) The exchange  
26 shall conduct or cause to be conducted a study of, and shall make find-  
27 ings and recommendations upon, the essential health benefits identified  
28 by the secretary pursuant to section 1302(b) of the federal act and of

1 the benefits required under the insurance law or regulations promulgated  
2 thereunder that are not determined by the secretary to be essential  
3 health benefits. Such study, findings and recommendations shall address  
4 matters including but not limited to:

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

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

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

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

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

25 (c) The exchange shall submit a report of its findings and recommenda-  
26 tions to the governor, the temporary president of the senate and the  
27 speaker of the assembly on or before July first, two thousand twelve.

1     2. (a) The exchange shall conduct or cause to be conducted a study of,  
2     and shall make findings and recommendations upon: (i) whether insurers  
3     participating in the exchange should be required to offer all health  
4     plans sold in the exchange to individuals or small groups purchasing  
5     coverage outside of the exchange;  
6     (ii) whether the individual and small group markets should be placed  
7     entirely inside the exchange;  
8     (iii) whether the benefits in the individual and small group markets  
9     should be standardized both inside and outside the exchange;  
10    (iv) how to develop and implement the transitional reinsurance program  
11    for the individual market and any other risk adjustment mechanisms  
12    developed in accordance with sections 1341, 1342 and 1343 of the federal  
13    act;  
14    (v) whether to merge the individual and small group health insurance  
15    markets for rating purposes including an analysis of the impact such  
16    merger would have on premiums;  
17    (vi) whether to increase the size of small employers from an average  
18    of at least one but not more than fifty employees to an average of at  
19    least one but not more than one hundred employees prior to January  
20    first, two thousand sixteen;  
21    (vii) how to account for sole proprietors in defining "small employ-  
22    ers"; and  
23    (viii) whether to revise the definition of "small employer" outside  
24    the exchange to be consistent with the definition as it applies within  
25    the exchange.  
26    (b) The exchange shall submit a report of its findings and recommenda-  
27    tions to the governor, the temporary president of the senate and the  
28    speaker of the assembly on or before July first, two thousand twelve.

1 3. (a) The exchange shall conduct or cause to be conducted a study of,  
2 and shall make findings and recommendations upon, whether the state  
3 should establish a basic health plan program identified by the secretary  
4 pursuant to section 1331 of the federal act.

5 (b) The exchange shall submit a report of its findings and recommenda-  
6 tions to the governor, the temporary president of the senate and the  
7 speaker of the assembly on or before July first, two thousand twelve.

8 4. (a) The exchange shall conduct or cause to be conducted a study of,  
9 and shall make findings and recommendations upon, the options to gener-  
10 ate funding for the ongoing operation and self-sufficiency of the  
11 exchange including but not limited to assessments upon insurers and  
12 providers;

13 (b) The exchange shall submit a report of its findings and recommenda-  
14 tions to the governor, the temporary president of the senate and the  
15 speaker of the assembly on or before July first, two thousand twelve.

16 5. (a) The exchange shall conduct or cause to be conducted a study of,  
17 and shall make findings and recommendations upon, the benchmark benefits  
18 identified by the secretary and of the benefits required under the  
19 public health law or regulations promulgated thereunder that are not  
20 determined by the secretary to be benchmark benefits. Such study, find-  
21 ings and recommendations shall address matters including but not limited  
22 to:

23 (i) whether any benefits required under the public health law or regu-  
24 lations promulgated thereunder that are not identified as benchmark  
25 benefits by the secretary should continue to be required as covered  
26 benefits available to newly medicaid-eligible individuals inside the  
27 exchange;

1 (ii) the costs of extending any benefits required under the public  
2 health law or regulations promulgated thereunder as covered benefits  
3 available to newly medicaid-eligible individuals through the exchange;  
4 and

5 (iii) mechanisms to finance any costs pursuant to the federal act of  
6 extending any benefits required under the public health law or regu-  
7 lations promulgated thereunder to policies and contracts sold through  
8 the exchange.

9 (b) The exchange shall submit a report of its findings and recommenda-  
10 tions to the governor, the temporary president of the senate and the  
11 speaker of the assembly on or before July first, two thousand twelve.

12 6. (a) The exchange shall make recommendations upon the impact of the  
13 establishment and operation of the exchange on the healthy New York  
14 program established pursuant to section forty-three hundred twenty-six  
15 of the insurance law and the family health plus employer partnership  
16 program established pursuant to section three hundred sixty-nine-ff of  
17 the social services law.

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

21 7. (a) The board shall conduct or cause to be conducted a study of,  
22 and shall make findings and recommendations upon, the role of licensed  
23 health insurance producers within the exchange; and

24 (b) The board shall submit a report of its findings and recommenda-  
25 tions to the governor, the temporary president of the senate and speaker  
26 of the assembly on or before July first, two thousand twelve.

1 8. (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 notify the governor, the temporary president of  
5 the senate and the speaker of the assembly of its recommendations on or  
6 before July first, two thousand twelve.

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

13 (b) The exchange shall submit a report of its findings and recommenda-  
14 tions to the governor, the temporary president of the senate and the  
15 speaker of the assembly on or before December first, two thousand  
16 sixteen.

17 10. Any of the studies and reports required under this section may be  
18 combined with other studies and reports required under this section or  
19 otherwise undertaken by the exchange to the extent feasible and timely.

20 11. The exchange shall have no authority, whether express or implied,  
21 to implement any recommendation on the issues set forth in subdivisions  
22 one through ten of this section without further statutory authority;  
23 provided, however, that nothing in this subdivision shall be deemed to  
24 alter any powers expressly granted elsewhere in this article.

25 § 3989. Tax exemption and tax contract by the state. 1. It is hereby  
26 determined that the creation of the exchange and the fulfillment of its  
27 corporate purposes is in all respects for the benefit of the people of  
28 this state and is a public purpose. Accordingly, the exchange shall be

1 regarded as performing an essential governmental function in the exer-  
2 cise of the powers conferred upon it by this article, and the exchange  
3 shall not be required to pay any fees, taxes, special ad valorem levies  
4 or assessments of any kind, whether state or local, including but not  
5 limited to fees, taxes, special ad valorem levies or assessments on real  
6 property, franchise taxes, sales taxes, transfer taxes, mortgage taxes  
7 or other taxes, upon or with respect to any property owned by it or  
8 under its jurisdiction, control or supervision, or upon the uses there-  
9 of, or upon or with respect to its activities or operations in further-  
10 ance of the powers conferred upon it by this article, or upon or with  
11 respect to any fares, tolls, rentals, rates, charges, fees, revenues or  
12 other income received by the exchange.

13 2. The exchange may pay, or may enter into agreements with any county  
14 or municipality to pay, a sum or sums annually or otherwise or to  
15 provide other considerations with respect to real property owned by the  
16 corporation located within such county or municipality.

17 § 3990. Officers and employees. 1. The board shall have the power to  
18 appoint employees to serve as senior managerial staff of the exchange as  
19 necessary, who shall be designated to be in the exempt class of civil  
20 service. The board shall also have the power to fix the salaries of such  
21 employees.

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

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

3 4. 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 5. 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 on sufficient federal  
5 financial support to establish and implement the exchange.

6 § 3993. Construction. Nothing in this article, and no action taken by  
7 the exchange pursuant hereto, shall be construed to:

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

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

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

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

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

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

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

1 application; and to that end, the provisions and applications of this  
2 act are severable; provided, however, that nothing in this section shall  
3 be deemed to invalidate the provisions of section 3992 of the public  
4 authorities law, as added by section two of this act.

5 § 6. This act shall take effect immediately; provided, however, that  
6 until such time as the members of the board of directors of the New York  
7 health benefit exchange are initially appointed pursuant to section 3982  
8 of the public authorities law, as added by section two of this act, and  
9 the first meeting of such board is convened, nothing in this act shall  
10 be deemed to prevent the commissioner of health or the superintendent of  
11 insurance or, after October 3, 2011, the superintendent of financial  
12 services, from applying for, accepting the award of, and spending any  
13 available grant money pertaining to the establishment or operation of  
14 such exchange for purposes consistent with this act or, at any time,  
15 from accepting or spending grant money awarded prior to the enactment of  
16 this act.