STATE OF NEW YORK

S. 58 A. 158

SENATE - ASSEMBLY

(Prefiled)

January 7, 2009

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the public health law, the state finance law, the education law and the insurance law, in relation to the early intervention program for infants and toddlers with disabilities and their families; to repeal certain provisions of the public health law, the education law, the insurance law and the elder law relating thereto (Part A); to amend the public health law and the social services law, in relation to long term home health care programs; to amend the public health law, in relation to the office of the Medicaid inspector general; to amend part C of chapter 58 of the laws of 2007 amending the social services law and other laws relating to enacting major components of legislation necessary to implement the health and mental hygiene budget for the 2007-2008 state fiscal year, in relation to the effectiveness of certain provisions of such chapter; to amend the public health law, in relation to payments under the medical assistance program; to amend the public health law and chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential health care facilities, in relation to reimbursements; to amend chapter 884 of the laws of 1990, amending the public health law relating to authorizing bad debt and charity care allowances for certified home health agencies, in relation to the effectiveness thereof; to amend chapter 81 of the laws of 1995, amending the public health law and other laws relating to medical reimbursement and welfare reform, in relation to reimbursements and the effectiveness thereof; to amend chapter 639 of the laws of 1996, amending the public health law and other laws relating to welfare reform, in relation to reimbursements; to amend the public health law and chapter 58 of the laws of 2007 amending the social services law and other laws relating to enacting the major components of legislation necessary to implement the health and mental hygiene budget for the 2007-2008 state fiscal

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

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year, in relation to rates of payment by state governmental agencies; to amend chapter 629 of the laws of 1986, amending the social services law relating to establishing a demonstration program for the delivery of long term home health care services to certain persons, in relation to extending the provisions thereof; to amend chapter 451 of the laws of 2007 amending the public health law, the social services law and the insurance law, relating to providing enhanced consumer and provider protections, in relation to extending the effectiveness of certain provisions thereof; to amend chapter 55 of the laws of 1992, amending the tax law and other laws relating to taxes, surcharges, fees and funding, in relation to the effectiveness thereof; to amend chapter 942 of the laws of 1983 and chapter 541 of the laws of 1984, relating to foster family care demonstration programs, and to amend chapter 256 of the laws of 1985, amending the social services law and other laws relating to foster family care demonstration programs, in relation to extending the expirations thereof; to amend chapter 693 of the laws of 1996, amending the social services law relating to authorizing patient discharge to hospices and residential health care facilities, under the medical assistance presumptive eligibility program, in relation to extending the provisions of such chapter; to amend chapter 631 of the laws of 1997, amending the social services law relating to authorizing medical assistance payments to certain clinics or diagnostic and treatment centers, in relation to extending 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 making such authorization permanent; and to repeal section 74 of the executive law relating to the office of the welfare inspector general (Part B); to amend the public health law, in relation to payment by governmental agencies for general hospital inpatient services, inpatient medical assistance rates for non-public general hospitals, grants to public general hospitals, tobacco control and insurance initiatives pool distributions, health care initiatives pool distributions and payments made on behalf of persons enrolled in Medicaid managed care or family health plus; to direct the commissioners of health and mental health to enhance funding of the ambulatory patient group methodology and expand certain programs; to direct the commissioners of health, and mental retardation and developmental disabilities to enhance funding of the ambulatory patient group methodology; to amend the social services law, in relation to establishing the statewide health care home program; to amend the public health law, in relation to establishing the Adirondack health care home multipayor demonstration program; to amend the social services law, in relation to medicaid coverage of smoking cessation, cardiac rehabilitation services and substance abuse intervention; to amend the social services law, in relation to the provision and reimbursement of transportation costs and the primary care case management program; to amend the public authorities law, in relation to the authorization of the dormitory authority to issue bonds for health care; to amend the social services law, in relation to directing the commissioner of health to negotiate pharmaceutical rebates, retrospective and prospective drug utilization review, and the duration of drug therapy, the development of clinical prescribing guidelines, drug coverage for persons who are beneficiaries under Part D; to amend the public health law and the social services law, in relation to the clinical drug review program; to amend the social services law, in relation to electronic transmission of prescriptions; to amend the public health law

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and the education law, in relation to prohibiting certain payments to prescribers and requiring the disclosure of other payments, prohibiting the presentation of information at continuing professional education programs that is false or misleading and requiring disclosure of certain potential conflicts of interest in connection with such programs, providing for transparency in the business relationships between pharmacy benefit managers and health plans, and requiring pharmacy benefit managers to provide certain information to health plan participants and their prescribers; to amend the social services law, in relation to eligibility for medical assistance and the family health plus program; to amend the welfare reform act of 1997, in relation to applicants for public assistance; to amend the public health law, in relation to child insurance plans; to amend the social services law, in relation to monthly premiums for medical assistance and liens for public assistance care; to amend the public health law, in relation to fees for the establishment of hospitals, approval of the construction of hospitals, licensure of home care services agencies, the establishment of certified home health agencies, changes in the ownership of a home health agency hospice construction, distribution of the professional education pools, the general hospital indigent care pool and the comprehensive diagnostic and treatment centers indigent care program; to amend the elder law, in relation to the program for elderly pharmaceutical insurance coverage; to amend the public health law, in relation to patient services payments; to amend the insurance law, in relation to examinations and appraisals of authorized insurers and employee welfare funds, independent adjusters, establishing a fee on insurance claims processed by independent adjusters; to amend the tax law and the state finance law, in relation to the sales of cigarettes and tobacco products and the health care reform act (HCRA) resources fund; to repeal certain provisions of the public health law relating to the preferred drug program and the telemedicine demonstration program; to repeal certain provisions of chapter 62 of the laws of 2003, amending the social services law and the public health law relating to expanding Medicaid coverage and rates of payment for residential health care facilities, relating thereto; to repeal certain provisions of the social services law relating to specialized HIV pharmacies, the family health plus program, eligibility for medical assistance; to repeal certain provisions of the elder law relating to the program for elderly pharmaceutical insurance coverage; and providing for the repeal of certain provisions upon the expiration thereof (Part C); to amend the public health law, in relation to reimbursement to residential health care facilities, to community service plans, to payments for certified home health agency services, to establishing the long-term care nursing initiative demonstration project; to amend the social services law, in relation to assisted living programs, to payment for AIDS home care programs, to regional long-term care assessment centers, to establishing the cash and counseling demonstration program, to Medicaid extended coverage for the partnership for long-term care program; to amend chapter 1 of the laws of 1999, amending the public health law and other laws, relating to enacting the New York Health Care Reform Act of 2000, in relation to adult day health care services; to amend the education law and the public health law, in relation to establishing long-term care nursing initiative demonstration projects; and providing for the repeal of certain provisions upon expiration thereof (Part D); to amend part E of chapter 58 of the laws of 1998, relating to the deter-

mination of state aid for the long-term sheltered employment program, in relation to availability of funding as certified by the director of the budget (Part E); in relation to the establishment of the authority of the office of mental health to close wards in hospitals operated by such office and to develop transitional placement programs for persons discharged from such hospitals, notwithstanding certain provisions of the mental hygiene law (Part F); to amend chapter 420 of the laws of 2002 amending the education law relating to the profession of social work, and chapter 676 of the laws of 2002 amending the education law relating to defining the practice of psychology, in relation to the professions of social work and mental health practitioners (Part G); to amend the mental hygiene law, in relation to civil commitment of sex offenders (Part H); to amend the mental hygiene law, in relation to the receipt of federal and state benefits received by patients receiving care in facilities operated by an office of the department of mental hygiene (Part I); to amend the mental hygiene law in relation to the consolidation of certain developmental disabilities services offices (Part J); to amend the mental hygiene law, in relation to the closure of the Manhattan Addiction Treatment Center (Part K); to amend chapter 57 of the laws of 2006, establishing a cost of living adjustment for designated human services programs, in relation to foregoing such adjustment during the 2009--2010 state fiscal year (Part L); to amend the mental hygiene law, in relation to the requirement for the commissioner of mental health to annually report on child and adult non-geriatric inpatient bed closures; to amend chapter 119 of the laws of 2007 relating to directing the commissioner of mental health to study, evaluate and report on the unmet mental health service needs of traditionally underserved populations, in relation to such study; to repeal subdivisions (h) and (l) of section 41.55 of the mental hygiene law relating to reports on the community mental health support and workforce reinvestment program; to repeal section 20 of chapter 723 of the laws of 1989 amending the mental hygiene law and other laws relating to the establishment of comprehensive psychiatric emergency programs, relating to reports thereon; and to repeal subdivision (c) of section 7.15 of the mental hygiene law relating to reports on the delivery of care and services in family care homes and other community residences (Part M); to amend chapter 119 of the laws of 1997 authorizing the department of health to establish certain payments to general hospitals, in relation to extending the authorization for the department of health to continue certain payments to general hospitals (Part N); to amend the administrative code of the city of New York, in relation to extending the authorization of the city of New York to lease to the state of New York certain real property on Ward's Island (Part O); and to amend the mental hygiene law and the vehicle and traffic law, in relation to transfer of the alcohol and drug rehabilitation program from the department of motor vehicles to the office of alcoholism and substance abuse services (Part P)

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 2008-2009
3 state fiscal year. Each component is wholly contained within a Part

1 identified as Parts A through P. The effective date for each particular
2 provision contained within such Part is set forth in the last section of
3 such Part. Any provision in any section contained within a Part, includ-
4 ing the effective date of the Part, which makes a reference to a section
5 "of this act", when used in connection with that particular component,
6 shall be deemed to mean and refer to the corresponding section of the
7 Part in which it is found. Section three of this act sets forth the
8 general effective date of this act.

9 PART A

10 Section 1. Section 2541 of the public health law, as added by chapter
11 428 of the laws of 1992, paragraph (a) of subdivision 8 as amended by
12 section 1 of part B-3 of chapter 62 of the laws of 2003 and subdivision
13 13-a as added by chapter 231 of the laws of 1993, is amended to read as
14 follows:
15 § 2541. Definitions. As used in this title the following terms shall
16 have the following meanings, unless the context clearly requires other-
17 wise:
18 1. "Agency" means an entity which employs qualified personnel, or
19 contracts with qualified personnel who are approved by the department,
20 for the provision of early intervention program evaluations, service
21 coordination or early intervention services, and meets the requirements
22 set forth in paragraph (e) of subdivision 5 of section twenty-five
23 hundred fifty-a of this title.
24 2. "Children at risk" means children who may experience a disability
25 because of medical, biological or environmental factors which may
26 produce developmental delay, as determined by the commissioner through
27 regulation.
28 [2. "Coordinated standards and procedures" means standards and proce-
29 dures developed by state early intervention service agencies pursuant to
30 section twenty-five hundred fifty-one of this title.]
31 3. "Council" means the early intervention coordinating council estab-
32 lished under section twenty-five hundred fifty-three of this title.
33 4. "Developmental delay" means that a child has not attained develop-
34 mental milestones expected for the child's chronological age, as meas-
35 ured by qualified professionals using appropriate diagnostic instruments
36 and/or procedures and informed clinical opinion, in one or more of the
37 following areas of development: cognitive, physical, communication,
38 social or emotional, or adaptive; except that for children who have been
39 found, after a multidisciplinary evaluation based on informed clinical
40 opinion and conducted in accordance with the requirements of this title,
41 to have a delay solely in the area of communication, developmental delay
42 for program eligibility shall be defined as a score of two standard
43 deviations below the mean in the area of communication as measured by a
44 standardized, norm-referenced test designed to assess communication
45 development, including expressive and receptive language development; or
46 if no standardized test is available or appropriate for the child, a
47 developmental delay in the area of communication shall be a severe delay
48 or marked regression in communication development as determined by
49 specific qualitative evidence based criteria as set forth by the depart-
50 ment in regulation.
51 5. "Disability" means:
52 (a) a developmental delay; or
53 (b) a diagnosed physical or mental condition that has a high probabil-
54 ity of resulting in developmental delay, such as Down syndrome or other

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1 chromosomal abnormalities, sensory impairments, inborn errors of meta-
2 bolism or fetal alcohol syndrome.
3 6. "Early intervention official" means an appropriate municipal offi-
4 cial designated by the chief executive officer of a municipality and an
5 appropriate designee of such official.
6 7. "Early intervention services" means developmental services that:
7 (a) are provided under public supervision;
8 (b) are selected in collaboration with the parents;
9 (c) are designed to meet a child's developmental needs in any one or
10 more of the following areas:
11 (i) physical development, including vision and hearing,
12 (ii) cognitive development,
13 (iii) communication development,
14 (iv) social or emotional development, or
15 (v) adaptive development;
16 (d) meet [the coordinated standards and procedures] standards devel-
17 oped by the lead agency;
18 (e) are provided by qualified personnel;
19 (f) are provided in conformity with an IFSP;
20 (g) are, to the maximum extent appropriate, provided in natural envi-
21 ronments, including the home and community settings where children with-
22 out disabilities would participate;
23 (h) include, as appropriate:
24 (i) family training, counseling, home visits and parent support
25 groups,
26 (ii) special instruction,
27 (iii) speech pathology and audiology,
28 (iv) occupational therapy,
29 (v) physical therapy,
30 (vi) psychological services,
31 (vii) case management services, hereafter referred to as service coor-
32 dination services,
33 (viii) medical services for diagnostic or evaluation purposes, subject
34 to reasonable prior approval requirements for exceptionally expensive
35 services, as prescribed by the commissioner,
36 (ix) early identification, screening, and assessment services,
37 (x) health services necessary to enable the infant or toddler to bene-
38 fit from the other early intervention services,
39 (xi) nursing services,
40 (xii) nutrition services,
41 (xiii) social work services,
42 (xiv) vision services,
43 (xv) assistive technology devices and assistive technology services,
44 (xvi) transportation and related costs that are necessary to enable a
45 child and the child's family to receive early intervention services, and
46 (xvii) other appropriate services approved by the commissioner[.];
47 (i) are cost-effective.
48 8. (a) "Eligible child" means an infant or toddler from birth through
49 age two who has a disability; provided, however, that any toddler with a
50 disability who has been determined to be eligible for program services
51 under section forty-four hundred ten of the education law and:
52 (i) who turns three years of age on or before the thirty-first day of
53 August shall, if requested by the parent, be eligible to receive early
54 intervention services contained in an IFSP until the first day of
55 September of that calendar year; or

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1 (ii) who turns three years of age on or after the first day of Septem-
2 ber shall, if requested by the parent and if already receiving services
3 pursuant to this title, be eligible to continue receiving such services
4 until the second day of January of the following calendar year.
5 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-
6 sion, a child who receives services pursuant to section forty-four
7 hundred ten of the education law shall not be an eligible child.
8 9. "Evaluation" means a multidisciplinary professional, objective
9 assessment conducted by appropriately qualified personnel and conducted
10 pursuant to section twenty-five hundred forty-four of this title to
11 determine a child's eligibility under this title.
12 10. "Evaluator" means a team of two or more professionals approved
13 pursuant to section twenty-five hundred fifty-one of this title to
14 conduct screenings and evaluations.
15 11. "IFSP" means the individualized family service plan adopted in
16 accordance with section twenty-five hundred forty-five of this title.
17 12. "Individual" shall mean a person who holds a state approved or
18 recognized certificate, license or registration in one of the disci-
19 plines set forth in subdivision fifteen of this section.
20 13 "Lead agency" means the department of health, the public agency
21 responsible for the administration of the early intervention system [in
22 collaboration with the state early intervention service agencies].
23 [13.] 13-a. "Municipality" means a county outside the city of New York
24 or the city of New York in the case of a county contained within the
25 city of New York.
26 [13-a.] 13-b. Subject to federal law and regulations, "natural envi-
27 ronment" or "natural setting" means a setting that is natural or normal
28 for the child's age peers who have no disability.
29 14. "Parent" means parent or person in parental relation to the child.
30 With respect to a child who has no parent or person in a parental
31 relation, "parent" shall mean the person designated to serve in parental
32 relation for the purposes of this title, pursuant to regulations of the
33 commissioner promulgated in consultation with the commissioner of social
34 services for children in foster care.
35 15. "Qualified personnel" means:
36 (a) persons holding a state approved or recognized certificate,
37 license or registration in one of the following fields:
38 (i) special education teachers;
39 (ii) speech and language pathologists and audiologists;
40 (iii) occupational therapists;
41 (iv) physical therapists;
42 (v) social workers;
43 (vi) nurses;
44 (vii) dieticians or nutritionists;
45 (viii) other persons designated by the commissioner who meet require-
46 ments that apply to the area in which the person is providing early
47 intervention services, where not in conflict with existing professional
48 licensing, certification and/or registration requirements.
49 (b) persons holding a state approved license in one of the following
50 fields:
51 (i) psychologists; or
52 (ii) physicians.
53 16. "Service coordinator" means a person who:
54 (a) meets the qualifications established in federal law and regulation
55 and demonstrates knowledge and understanding of:

1 (i) infants and toddlers who may be eligible for services under this
2 title;
3 (ii) principles of family-centered services;
4 (iii) part H of the federal individuals with disabilities education
5 act and its corresponding regulations;
6 (iv) the nature and scope of services available under this title; and
7 (v) the requirements for authorizing and paying for such services and
8 other pertinent information;
9 (b) is responsible for:
10 (i) assisting eligible children and their families in gaining access
11 to services listed on the IFSP;
12 (ii) coordinating early intervention services with other services such
13 as medical and health services provided to the child;
14 (iii) coordinating the performance of evaluations and assessments;
15 (iv) participating in the development, monitoring and evaluation of
16 the IFSP;
17 (v) assisting the parent in identifying available service providers;
18 (vi) coordinating service delivery;
19 (vii) informing the family of advocacy services;
20 (viii) where appropriate, facilitating the transition of the child to
21 other appropriate services; and
22 (ix) assisting in resolving any disputes which may arise between the
23 family and service providers, as necessary and appropriate; and
24 (c) meets such other standards as are specified pursuant to section
25 twenty-five hundred fifty-one of this title.
26 17. ["State early intervention service agencies" means the departments
27 of health, education and social services and the offices of mental
28 health, mental retardation and developmental disabilities and office of
29 alcoholism and substance abuse services.
30 18.] "Year" shall mean the twelve-month period commencing July first
31 unless otherwise specified.
32 § 2. Paragraph (b) of subdivision 3 and subdivision 6 of section 2544
33 of the public health law, as added by chapter 428 of the laws of 1992,
34 are amended, and a new subdivision 4-a is added to read as follows:
35 (b) If, based upon the screening, a child is believed to be eligible,
36 or if otherwise elected by the parent, the child shall, with the consent
37 of a parent, receive a multidisciplinary evaluation. All evaluations
38 shall be conducted in accordance with [the coordinated standards and
39 procedures and with regulations promulgated by] this section and with
40 standards and guidelines established by the commissioner in regulations
41 or otherwise.
42 4-a. The department shall develop a list of evaluation instruments to
43 be used by evaluators, in conjunction with informed clinical opinion, in
44 conducting the multidisciplinary evaluations of children thought to be
45 eligible for the early intervention program. The evaluator shall provide
46 written justification why such instrument or instruments are not appro-
47 priate if the evaluator does not utilize an instrument on the depart-
48 ment's list as part of the multidisciplinary evaluation of a child.
49 Evaluators shall set forth in detail how the child meets eligibility
50 criteria for the program.
51 6. Nothing in this section shall restrict an evaluator from utilizing,
52 in addition to findings from his or her personal examination, other
53 examinations, evaluations or assessments conducted for such child,
54 including those conducted prior to the evaluation under this section, if
55 such examinations, evaluations or assessments are consistent with the
56 [coordinated standards and procedures] requirements set forth in this

1 section and with standards and guidelines established by the commission-
2 er in regulation or otherwise, provided, however, that such examina-
3 tions, evaluations or assessments are used to augment and not replace
4 the multidisciplinary evaluation to determine eligibility.
5 § 3. Subdivision 5 and paragraph (b) of subdivision 8 of section 2549
6 of the public health law, as added by chapter 428 of the laws of 1992,
7 are amended to read as follows:
8 5. The impartial hearing shall be conducted by the hearing officer in
9 accordance with the regulations of the commissioner. The hearing shall
10 be held, and a decision rendered, within thirty days after the depart-
11 ment receives the request for an impartial hearing except to the extent
12 that the parent consents, in writing, to an extension. The decision
13 shall be in writing and shall state the reasons for the decision and
14 shall be final unless appealed by a party to the proceeding. A copy of
15 the decision reached by the hearing officer shall be mailed to the
16 parent, any public or private agency that was a party to the hearing,
17 the service coordinator, and the department [and any state early inter-
18 vention service agency with an interest in the decision]. Where ordered
19 by the hearing officer, the service coordinator shall modify the IFSP in
20 accordance with the decision within five days after such decision.
21 (b) Providers of service to eligible children and families shall main-
22 tain the confidentiality of all personally identifiable information
23 regarding children and families receiving their services. The provider
24 shall ensure that no information regarding the condition, services,
25 needs, or any other individual information regarding a child and family
26 is released to any party other than the early intervention official
27 without the express written consent of the parent, except as specif-
28 ically permitted in [the coordinated standards and procedures,] stand-
29 ards or guidelines developed by the department which shall additionally
30 ensure that the requirements of federal or state law which pertain to
31 the early intervention services [of the state early intervention service
32 agencies] have been maintained.
33 § 4. Paragraph (d) of subdivision 2 of section 2550 of the public
34 health law, as amended by section 5 of part B3 of chapter 62 of the laws
35 of 2003, is amended to read as follows:
36 (d) monitoring of individuals, agencies, institutions and organiza-
37 tions approved under this title [and agencies, institutions and organ-
38 izations providing early intervention services which are under the
39 jurisdiction of a state early intervention service agency] to provide
40 early intervention services and evaluations;
41 § 5. The public health law is amended by adding a new section 2550-a
42 to read as follows:
43 § 2550-a. Providers of evaluations, service coordination services or
44 early intervention services. 1. Individuals and agencies shall apply to
45 the department for approval to provide evaluations, service coordination
46 services or early intervention services. Such approval shall be valid
47 for a period of time as determined by the department, not to exceed five
48 years. Individuals and agencies shall thereafter apply for reapproval to
49 provide such services.
50 2. All individuals shall pay a fee of two hundred seventy dollars to
51 the department upon submission of the individual's application for
52 approval or reapproval. All agency applicants shall pay a fee of three
53 hundred forty-five dollars to the department upon submission of the
54 application for approval or reapproval. The comptroller is hereby
55 authorized and directed to deposit the fee for each application and

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1 reapproval application into the early intervention program account
2 established in section ninety-nine-q of the state finance law.
3 3. All agencies and individuals approved to provide evaluations,
4 service coordination services or early intervention services shall be
5 enrolled as providers in the medical assistance program in accordance
6 with the procedures for such enrollment established by the department.
7 4. The department is hereby authorized to review provider capacity and
8 determine provider service need by municipality. The department may deny
9 approval to an applicant who seeks to provide services in a municipality
10 where the department has determined that sufficient provider capacity
11 exists.
12 5. Approval and reapproval of individuals and agencies shall be based
13 on the following criteria:
14 (a) The character and competence of the individual person, or in the
15 case of agencies, the owners, officers, including the chief executive
16 officer and chief financial officer, members, shareholders who own ten
17 percent or more of the voting shares in the agency, directors or spon-
18 sors, the program director and other key employees, and the board of
19 directors of a not-for-profit entity as determined by the department;
20 (b) Documented fiscal viability;
21 (c) Documented ability to provide evaluations, service coordination
22 services, or early intervention services in conformance with laws and
23 regulations applicable to the practice of the professions. For individ-
24 uals, proof of current licensure, certification or registration if
25 required for the service provided. For agencies:
26 (i) identification of all employees who will provide early inter-
27 vention program services, and where applicable, the employees' licenses,
28 registrations, certifications or national provider identification
29 numbers and expiration dates; and
30 (ii) identification of all state-approved agency and individual
31 contractors who will be utilized to provide such services and where
32 applicable, the persons' licenses, registrations, certifications or
33 national provider identification numbers and expiration dates;
34 (d) For agency providers, a quality assurance plan that is approved by
35 the department for each type of professional service offered by the
36 agency, including evaluations and service coordination, to ensure that
37 evaluations, service coordination and early intervention program
38 services are provided in a manner that complies with federal and state
39 laws and regulations. The plan shall include a provision for the employ-
40 ment of a professional or professionals to monitor and oversee implemen-
41 tation of the plan as required by subparagraph (ii) of paragraph (e) of
42 this subdivision;
43 (e) For agency providers, documentation that the agency has in its
44 employment, or in accordance with this paragraph, will have in its
45 employment, the following personnel:
46 (i) a full-time equivalent early intervention program director with a
47 minimum of two years of full-time equivalent experience in an early
48 intervention, clinical pediatric, or early childhood education program
49 serving children ages birth to five years of age, provided that:
50 (A) such experience must have included direct experience in delivering
51 services to children with disabilities and their families; and
52 (B) at least one year of such experience must have been in the deliv-
53 ery of services to children less than three years of age and their fami-
54 lies; and
55 (ii) at least one licensed professional for each type of service being
56 offered by the agency, including evaluations, who holds a license,

1 certification or registration in an occupation authorized to provide
2 that type of service, and whose responsibilities include monitoring the
3 quality assurance plan developed by the agency for the service being
4 rendered, to the extent authorized by the professional's licensure,
5 certification or registration; and
6 (iii) a minimum of two qualified personnel, in addition to the early
7 intervention program director, each of whom provides evaluations,
8 service coordination or early intervention services for a minimum of
9 twenty hours per week.
10 (iv) For purposes of this subdivision, if the agency applying for
11 initial approval has not, at the time of application, employed the
12 personnel required in subparagraphs (i), (ii) and (iii) of this para-
13 graph, the agency may verify that it will employ such personnel within
14 three months of approval. If approved by the department, at the end of
15 the three month period, the agency shall submit documentation of the
16 employment of such personnel in accordance with said requirements.
17 (v) An agency applying for reapproval shall, at the time of applica-
18 tion, submit documentation that it has in its employment the personnel
19 required in subparagraphs (i), (ii) and (iii) of this paragraph;
20 (f) Adherence to, and for purposes of reapproval, evidence of demon-
21 strated compliance with all applicable federal and state laws, regu-
22 lations, standards and guidelines;
23 (g) Delivery of services on a twelve-month basis and flexibility in
24 the hours of service delivery, including weekend and evening hours in
25 accordance with eligible children's IFSPs;
26 (h) Agreement to participate and, for purposes of reapproval, evidence
27 of participation in continuing professional and clinical education rele-
28 vant to early intervention services and in-service training on state and
29 local policies and procedures on the early intervention program, includ-
30 ing department-sponsored training;
31 (i) Adherence to, and for purposes of reapproval, demonstrated compli-
32 ance with the confidentiality requirements applicable to the early
33 intervention program as set forth in federal and state law and regu-
34 lations;
35 (j) Provision of copies of all organizational documents as requested
36 by the department and documentation of licensure or approval granted to
37 the individual or agency by other regulatory agencies;
38 (k) For the purposes of reapproval, documentation that corrective
39 actions required by the department have been implemented and non-compli-
40 ance corrected to the satisfaction of the department;
41 (l) Provision of consolidated fiscal reports to the department or any
42 other such comparable information on revenues and expenses, as requested
43 and in a form developed by the department;
44 (m) For purposes of reapproval of individual providers, documentation
45 that the provider has served a minimum of ten children annually in the
46 program on average over the prior approval period; provided however that
47 the department may waive this requirement if the individual provides
48 services in a geographic area where there is insufficient capacity or
49 otherwise meets a need for which sufficient capacity does not exist as
50 either determined by the department, or identified by a municipality and
51 approved by the department;
52 (n) Documentation from a municipality indicating the municipality
53 intends to contract with the applicant upon the applicant's receipt of
54 department approval; and
55 (o) Provision of such additional pertinent information or documents
56 necessary for approval or reapproval, as requested by the department.

1 6. Providers approved and reapproved to deliver early intervention
2 evaluations, service coordination services and early intervention
3 program services shall meet with or otherwise communicate with parents
4 and other service providers, including participation in case conferenc-
5 ing and consultation. An agency must further require that its employees
6 comply with the provisions of this section.
7 7. An agency's approval to provide services in the early intervention
8 program shall terminate upon the transfer, assignment or other disposi-
9 tion of ten percent or more of an interest or voting rights in the
10 approved agency. If there is a transfer, assignment or other disposi-
11 tion of less than ten percent of an interest or voting rights in the
12 approved agency, but the transfer, assignment or other disposition
13 together with all prior transfers, assignments or other dispositions
14 within the last five years would, in the aggregate involve ten percent
15 or more of an interest in the approved agency, the agency's approval to
16 provide services in the early intervention program shall terminate upon
17 such transfer, assignment or disposition. If the agency's approval
18 terminates as set forth in this subdivision, the agency must apply for
19 approval in accordance with this section to provide services in the
20 early intervention program and, if approved, said agency shall be deemed
21 in existence after the effective date of this section.
22 8. Approved providers shall not disseminate, or cause to be dissem-
23 inated on their behalf, marketing materials that are false, deceptive,
24 or misleading. The department is authorized to require that providers
25 periodically submit copies of marketing materials for review. Marketing
26 materials that do not comply with the provisions of this subdivision may
27 be a basis for action against the provider's approval in accordance with
28 the provisions of section twenty-five hundred fifty-b of this title. The
29 department shall develop standards on appropriate marketing materials.
30 9. An individual provider shall notify the department within two busi-
31 ness days if his or her license is suspended, revoked, limited or
32 annulled or if a contract the provider holds with a municipality or
33 agency provider is terminated. Agency providers shall ensure that
34 services are delivered by those authorized to do so and shall only
35 employ or contract with qualified personnel who are licensed, registered
36 or certified in compliance with applicable provisions of law, if such
37 license, registration or certification is required for the service that
38 is being provided.
39 10. Individual and agency providers shall verify the accuracy of all
40 billing records prior to submission of such billing for payment.
41 11. Notwithstanding any inconsistent provision of law, the approval of
42 individuals and agencies that are in existence on or before the effec-
43 tive date of this section that were approved to deliver early inter-
44 vention services by the department of education shall remain in effect;
45 provided, however that such individuals or agencies shall be subject to
46 the requirements of this section and shall, when requested by the
47 department, apply for and obtain reapproval by the department to contin-
48 ue providing services in the early intervention program.
49 § 6. The public health law is amended by adding a new section 2550-b
50 to read as follows:
51 § 2550-b. Proceedings involving the approval of an individual or agen-
52 cy. 1. An agency's or individual's approval to deliver evaluations,
53 service coordination services and early intervention program services
54 may be revoked, suspended, limited or annulled by the commissioner upon
55 a finding that the agency or individual provider:

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1 (a) has failed to comply with the provisions of this article or rules
2 and regulations promulgated thereunder;
3 (b) no longer meets one of the criteria for approval or reapproval as
4 set forth in subdivision five of section twenty-five hundred fifty-a of
5 this title;
6 (c) does not have current licensure, registration or certification to
7 deliver services in the early intervention program; or
8 (d) for agency providers, used personnel, whether by contract or under
9 employment, to provide an early intervention program service who did not
10 hold a license, registration or certification to provide such service.
11 2. No approval shall be revoked, suspended, limited or annulled with-
12 out first providing the individual or agency an opportunity to be heard.
13 The department shall notify the individual or agency in writing of the
14 proposed action and shall afford the individual or agency an opportunity
15 to be heard in person or by counsel. Such notice may be served by
16 personal delivery to the individual or agency or by mailing it by certi-
17 fied mail to the last known address on file with the department or by
18 any method authorized by the civil practice law and rules for the
19 service of a summons. The hearing shall be at such time and place as
20 the department shall prescribe.
21 3. Approval may be temporarily suspended or limited without a hearing
22 for a period not exceeding one hundred twenty days upon written notice
23 to the provider and an opportunity for a hearing following a finding by
24 the department that the health or safety of a child, parents or staff of
25 the municipality in which the provider is under contract is in imminent
26 risk of danger or there exists any condition or practice or a continuing
27 pattern of conditions or practices which poses imminent danger to the
28 health or safety of such children, parents or staff of the municipality
29 in which the provider is under contract. Upon such a finding and notice,
30 the department may also:
31 (a) prohibit or limit the assignment of children to the provider;
32 (b) remove or cause to be removed some or all of the children the
33 provider currently serves; and
34 (c) suspend or limit or cause to be suspended or limited payment for
35 services to the provider.
36 § 7. Section 2551 of the public health law, as added by chapter 428 of
37 the laws of 1992, is amended to read as follows:
38 § 2551. [Coordinated standards] Standards and procedures. 1. The
39 [state early intervention service agencies shall jointly establish coor-
40 dinated] department may develop standards and procedures for:
41 (a) early intervention services and evaluations;
42 (b) child find system and public awareness program; and
43 (c) [programs and services, operating under the approval authority of
44 any state early intervention service agency, which include any early
45 intervention services or evaluations] approval and reapproval of indi-
46 viduals and agencies providing services under this title.
47 2. Such [coordinated] standards and procedures shall be designed to:
48 (a) enhance the objectives of this title, including the provision of
49 services in natural environments to the maximum extent possible;
50 (b) minimize duplicative and inconsistent regulations and practices
51 among [the] state [early intervention service] agencies;
52 (c) [conform, to the extent appropriate, to existing standards and
53 procedures of state early intervention service agencies] ensure that
54 services are provided in a manner consistent with the requirements of
55 this title by qualified individuals and agencies who meet department
56 criteria; and

1 (d) ensure that persons who provide early intervention services are
2 trained, or can demonstrate proficiency in principles of early childhood
3 development.
4 3. [Coordinated standards] Standards and procedures may include guide-
5 lines suggesting appropriate early intervention services for enumerated
6 disabilities that are most frequently found in eligible children.
7 4. [Coordinated standards] Standards and procedures may encompass or
8 allow for agreements among two or more [such] state agencies.
9 5. [Any standards promulgated by regulation or otherwise by any state
10 early intervention service agency governing early intervention services
11 or evaluations shall be consistent with the coordinated standards and
12 procedures.
13 6. In the event of an inability to agree upon any coordinated standard
14 or procedure, any state early intervention service agency may refer the
15 issue to the early intervention coordinating council for its advice with
16 respect to the standard or procedure which the council shall provide to
17 the early intervention service agencies affected by the issue. The
18 commissioner, after obtaining such advice, shall adopt an appropriate
19 standard or procedure,] The commissioner shall submit proposed standards
20 and procedures to the early intervention coordinating council for its
21 review and advice; provided however, that the commissioner may adopt an
22 interim standard or procedure while awaiting such advice.
23 [7. Coordinated standards and procedures shall provide that any agency
24 which is an approved program or service provider under section forty-
25 four hundred ten of the education law, and which also plans to provide
26 early intervention services may apply to the commissioner of education
27 for approval to provide such services. Such approval shall be granted
28 based on the agency's compliance with the coordinated standards and
29 procedures for early intervention services and, where applicable, educa-
30 tion certifications.
31 8. The early intervention service agencies, in consultation with the
32 director of the budget, shall, where appropriate, require as a condition
33 of approval that evaluators and providers of early intervention services
34 participate in the medical assistance program.
35 9.] 6. The [coordinated] standards and procedures shall permit such
36 evaluators and providers of services to rely on subcontracts or other
37 written agreements with qualified professionals, or agencies employing
38 such professionals, provided that such professionals perform their
39 responsibilities in conformance with regulations of the commissioner and
40 that providers and evaluators fully disclose any such arrangements,
41 including any financial or personal interests, on all applications for
42 approval.
43 [10. Coordinated standards] 7. Standards and procedures may identify
44 circumstances and procedures under which an evaluator or service provid-
45 er may be disqualified under this title, including procedures whereby a
46 municipality may request such disqualification.
47 § 8. Section 2552 of the public health law is amended by adding a new
48 subdivision 5 to read as follows:
49 5. The early intervention official shall require an eligible child's
50 parent to furnish documentation necessary to determine the parent's
51 gross household income. Such documentation shall be provided to the
52 department or the department's agent for the purpose of assessing and
53 collecting parental fees in accordance with section twenty-five hundred
54 fifty-seven-a of this title.

1 § 9. Paragraph (b) of subdivision 2 of section 2553 of the public
2 health law, as added by chapter 428 of the laws of 1992, is amended to
3 read as follows:
4 (b) advise and assist the commissioner [and other state early inter-
5 vention service agencies] in the development of [coordinated] standards
6 and procedures pursuant to section twenty-five hundred fifty-one of this
7 title [in order to promote the full participation and cooperation of
8 such agencies];
9 § 10. Paragraph (k) of subdivision 4 of section 2557 of the public
10 health law is REPEALED.
11 § 10-a. Subdivisions 1, 2 and 5 of section 2557 of the public health
12 law, subdivision 1 as amended by section 4 of part C of chapter 1 of the
13 laws of 2002, subdivision 2 as added by chapter 428 of the laws of 1992
14 and subdivision 5 as added by section 7 of part B3 of chapter 62 of the
15 laws of 2003, are amended to read as follows:
16 1. The approved costs for an eligible child who receives an evaluation
17 and early intervention services pursuant to this title shall be a charge
18 upon the municipality wherein the eligible child resides or, where the
19 services are covered by the medical assistance program, upon the social
20 services district of fiscal responsibility with respect to those eligi-
21 ble children who are also eligible for medical assistance. All approved
22 costs, except for services that are covered by the medical assistance
23 program or under an insurance policy or plan for those children who have
24 coverage under both the medical assistance program and such insurance
25 policy or plan, shall be paid in the first instance and at least quar-
26 terly by the appropriate governing body or officer of the municipality
27 upon vouchers presented and audited in the same manner as the case of
28 other claims against the municipality. Notwithstanding the insurance law
29 or regulations thereunder relating to the permissible exclusion of
30 payments for services under governmental programs, no such exclusion
31 shall apply with respect to payments made pursuant to this title.
32 Notwithstanding the insurance law or any other law or agreement to the
33 contrary, benefits under this title shall be considered secondary to
34 [any plan of insurance or state government benefit program under which
35 an eligible child may have] coverage available to an eligible child
36 under the medical assistance program or an insurance policy or plan and
37 the medical assistance program for those children who have coverage
38 under both the medical assistance program and such insurance policy or
39 plan. Nothing in this section shall increase or enhance coverages
40 provided for within an insurance contract subject to the provisions of
41 this title.
42 2. Reimbursement for approved costs paid by a municipality for the
43 purposes of this title, other than for those approved costs reimbursable
44 by the medical assistance program or under an insurance policy or plan
45 and the medical assistance program for those children who have coverage
46 under both the medical assistance program and such insurance policy or
47 plan shall be as follows:
48 i. The department shall reimburse one hundred percent of the approved
49 costs paid by a municipality for the purposes of this title, [other than
50 those reimbursable by the medical assistance program or by third party
51 payors] provided however that reimbursement pursuant to this paragraph
52 shall not exceed the dollar amount such municipality received from July
53 first, two thousand seven to June thirtieth, two thousand eight from
54 private insurance reimbursement for services covered under an eligible
55 child's insurance policy or plan;

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1 ii. After reimbursement is made in accordance with paragraph (i) of
2 this subdivision, the department shall reimburse one hundred percent of
3 the approved costs paid by a municipality provided however that
4 reimbursement pursuant to this paragraph shall not exceed an amount
5 determined by the department, and approved by the director of the budg-
6 et, based upon a method of allocation proportional to each munici-
7 pality's share of the total payments made by municipalities from July
8 first, two thousand seven to June thirtieth, two thousand eight for
9 services provided under the early intervention program;
10 iii. Thereafter, the department shall reimburse the approved costs
11 paid by a municipality, in an amount of fifty percent of the amount
12 expended in accordance with the rules and regulations of the commission-
13 er.
14 iv. Such state reimbursement to the municipality made in accordance
15 with paragraphs (i), (ii) and (iii) of this subdivision shall not be
16 paid prior to April first of the year in which the approved costs are
17 paid by the municipality.
18 5. The department shall contract with an independent organization to
19 act as the fiscal agent for the department. [A municipality may elect to
20 utilize the services of such organization for early intervention program
21 fiscal management and claiming as determined by the commissioner or may
22 select an independent agent to act as the fiscal agent for such munici-
23 pality or may act as its own fiscal agent.] Municipalities shall use the
24 fiscal agent under contract with the department for the management of
25 municipal payments to providers unless otherwise approved by the depart-
26 ment.
27 § 11. The public health law is amended by adding a new section 2557-a
28 to read as follows:
29 § 2557-a. Parental participation in payment of early intervention
30 services. 1. Parental participation in the payment of early inter-
31 vention services shall be established annually for each family based on
32 a sliding schedule of fees as set forth in subdivision three of this
33 section. Parents shall provide documentation necessary to determine the
34 parent's gross household income and parental fee payment. The department
35 or department's agent shall begin collecting parent fees on April first,
36 two thousand ten. The fee shall be paid on a monthly basis to the
37 department or the department's agent and shall be deposited into the
38 early intervention program account established in section ninety-nine-q
39 of the state finance law. The department shall pay each municipality
40 fifty percent of the fees collected in accordance with this section from
41 parents of eligible children for which the municipality has financial
42 responsibility. No parental fees, however, may be charged for: imple-
43 menting child find, evaluation and assessment, service coordination,
44 development, review, and evaluation of individualized family services
45 plans, or the implementation of procedural safeguards and other adminis-
46 trative components of the early intervention system.
47 2. Parents shall pay a monthly fee as determined by the schedule of
48 fees set forth in subdivision three of this section for each child in
49 the family receiving early intervention services. The parental fee for a
50 parent whose gross household income falls at or below four hundred
51 percent of the federal poverty level (FPL) and who has more than three
52 children receiving services in the early intervention program, shall be
53 limited to the monthly fee charged for parents who have three children
54 receiving services in the early intervention program. Parental fees
55 shall apply without regard to whether the eligible child has coverage
56 under an insurance policy or plan.

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1 3. Parental fees for the early intervention program shall be as
2 follows:

Gross Household Income	Parental Fee Per Child/Per Month
161% FPL to 222% FPL	$15.00
223% FPL to 250% FPL	$25.00
251% FPL to 300% FPL	$35.00
301% FPL to 350% FPL	$55.00
351% FPL to 400% FPL	$75.00
401% FPL and above	$150.00

11 4. If a parent refuses to provide documentation necessary to determine
12 the parent's gross household income, it shall be presumed that the
13 parent falls within the highest gross household income bracket for the
14 purposes of establishing the parental fee obligation.
15 5. At the written request of the parent, the parental fee obligation
16 may be adjusted prospectively at any point during the year upon proof of
17 a change in household gross income.
18 6. (a) The department or the department's agent shall mail a bill to
19 the parent for the parent participation fee sixty days prior to the
20 first day of the month in which the fee is due. The bill shall state the
21 amount of the fee and its due date.
22 (b) If payment has not already been received, the department or the
23 department's agent shall mail a notice to the parent reminding the
24 parent of the fee due at least fifteen days prior to its due date. The
25 notice shall also state that failure to pay the fee shall result in the
26 termination of services and loss of eligibility for the program.
27 (c) If the parent participation fee is not paid on or before its due
28 date, the department or department's agent shall mail the parent a final
29 notice stating that failure to pay the fee within thirty days after its
30 due date shall result in termination of services and loss of eligibility
31 for the program. If the parent participation fee is not paid within
32 thirty days after its due date, the department or department's agent
33 shall notify the municipality that the child and family are no longer
34 eligible and that services should cease. The municipality shall notify
35 all providers currently providing services to the child that the child
36 is no longer authorized to receive services. A provider shall be paid
37 for services rendered until such time as the provider is notified that
38 the child is no longer an eligible child.
39 7. The inability of the parents of an eligible child to pay parental
40 fees due to catastrophic circumstances or extraordinary expenses shall
41 not result in the denial of services to the child or the child's family.
42 (a) Parents must document extraordinary expenses or other catastrophic
43 circumstances by providing documentation of one of the following:
44 (i) out-of-pocket medical expenses in excess of fifteen percent of
45 gross income; or
46 (ii) other extraordinary expenses or catastrophic circumstances caus-
47 ing direct out-of-pocket payments in excess of fifteen percent of gross
48 income.
49 (b) Parents must present proof of loss to the department or the
50 department's agent who shall document it. The department or department's
51 agent shall determine whether the parental fee obligation shall be
52 reduced, forgiven, or suspended within ten business days after receipt
53 of the parent's request and supporting documentation.
54 (c) A parent who disagrees with the determination shall have the abil-
55 ity to contest the determination using procedures set forth in section
56 twenty-five hundred forty-nine of this title. If a parent submits a

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1 written request for a mediation or hearing to dispute the department's
2 determination, early intervention services shall not be suspended for
3 nonpayment of the parental fee pending resolution of such mediation or
4 hearing.
5 § 12. Subdivision 3 of section 2559 of the public health law, as added
6 by chapter 428 of the laws of 1992, paragraph (a) as amended and para-
7 graph (d) as added by chapter 231 of the laws of 1993, is amended to
8 read as follows:
9 3. (a) [Providers] For the period March first, two thousand nine to
10 March thirty-first, two thousand ten, providers of early intervention
11 services and transportation services shall [in the first instance and]
12 where applicable, seek payment from [all third party payors including
13 governmental agencies] the medical assistance program under which an
14 enrolled child has coverage prior to claiming payment from a given muni-
15 cipality for services rendered to [eligible children,] the eligible
16 child; however for children who have coverage under a private insurance
17 policy or plan and are also enrolled in the medical assistance program,
18 providers shall first seek payment under the private insurance policy or
19 plan prior to claiming payment from the medical assistance program;
20 provided that, for the purpose of seeking payment from the medical
21 assistance program or from [other third party payors] private insurance
22 policies or plans in instances where a child enrolled in the medical
23 assistance program also has coverage under such private insurance policy
24 or plan, the municipality shall be deemed the provider of such early
25 intervention services to the extent that the provider has promptly
26 furnished to the municipality adequate and complete information neces-
27 sary to support the municipality billing, and provided further that the
28 obligation to seek payment shall not apply to a payment from [a third
29 party payor] an insurer or plan administrator who is not prohibited from
30 applying such payment, and will apply such payment, to an annual or
31 lifetime limit specified in the insured's policy.
32 (a-1) Effective on and after April first, two thousand ten, providers
33 of early intervention services and transportation services shall, where
34 applicable, seek payment from the medical assistance program under which
35 an enrolled child has coverage prior to claiming payment from a given
36 municipality for services rendered to the eligible child; however for
37 children who have coverage under a private insurance policy or plan and
38 are also enrolled in the medical assistance program, providers shall
39 first seek payment under the private insurance policy or plan prior to
40 claiming payment from the medical assistance program; provided that a
41 provider shall not be required to seek payment from an insurer or plan
42 administrator if such payment will be applied to any annual or lifetime
43 limits specified in the insured's policy.
44 (b) i. The commissioner, in consultation with the director of budget
45 and the superintendent of insurance, shall promulgate regulations
46 providing public reimbursement for deductibles and copayments which are
47 imposed under an insurance policy or health benefit plan to the extent
48 that such deductibles and copayments are applicable to early inter-
49 vention services.
50 ii. Parents shall provide the municipality with information on any
51 insurance plan or policy under which an eligible child has coverage. The
52 municipality shall provide such information to the department or the
53 department's agent on a form or in a manner as the department may
54 prescribe. On and after April first, two thousand ten, the municipality
55 shall provide information on an eligible child's medical assistance
56 program and insurance plan or policy coverage to the provider rendering

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1 services to the child to enable the provider to seek payment from such
2 program, plan or policy for covered services in accordance with para-
3 graph (a-1) of this subdivision.
4 iii. Payment for covered services rendered to an eligible child shall
5 be made in the first instance by the municipality, except those covered
6 by the medical assistance program or under an insurance policy or plan
7 available to a child who is also enrolled in the medical assistance
8 program. The state shall reimburse the municipality for such payment in
9 accordance with subdivision two of section twenty-five hundred fifty-
10 seven of this title. Parents shall not be required to pay insurance
11 copayments or deductibles for payment of early intervention services
12 covered under an insurance policy or plan.
13 iv. Except in the case of a child who has coverage under an insurance
14 policy or plan and is also enrolled in the medical assistance program,
15 insurers and plan administrators shall not be billed directly for
16 covered services rendered to an eligible child that are authorized by
17 the child's IFSP and provided under the early intervention program.
18 (c) Payments made for early intervention services covered under an
19 insurance policy or health benefit plan which are provided as part of an
20 IFSP pursuant to section twenty-five hundred forty-five of this title
21 shall not be applied by the insurer or plan administrator against any
22 maximum lifetime or annual limits specified in the policy or health
23 benefits plan, pursuant to section eleven of [the] chapter four hundred
24 twenty-eight of the laws of nineteen hundred ninety-two which added this
25 title and shall not otherwise decrease coverage or visit limits avail-
26 able for services under the child's insurance policy or health benefit
27 plan.
28 (d) [A] For the period March first, two thousand nine to March thir-
29 ty-first, two thousand ten, a municipality, or its designee, shall be
30 subrogated, to the extent of the expenditures by such municipality for
31 early intervention services furnished to persons eligible for benefits
32 under this title, to any rights such person may have or be entitled to
33 from third party reimbursement. The right of subrogation does not attach
34 to benefits paid or provided under any health insurance policy or health
35 benefits plan prior to receipt of written notice of the exercise of
36 subrogation rights by the insurer or plan administrator providing such
37 benefits.
38 § 13. Intentionally omitted.
39 § 14. Section 2559-b of the public health law, as added by chapter 428
40 of the laws of 1992, is amended to read as follows:
41 § 2559-b. Regulations. The commissioner may adopt regulations neces-
42 sary to carry out the provisions of this title. In promulgating such
43 regulations, the commissioner shall [incorporate coordinated standards
44 and procedures, where applicable, and shall] consider the regulations,
45 guidelines and operating procedures of other state agencies that admin-
46 ister or supervise the administration of services to infants, toddlers
47 and preschool children to ensure that families, service providers and
48 municipalities are not unnecessarily required to meet differing eligi-
49 bility, reporting or procedural requirements.
50 § 15. The state finance law is amended by adding a new section 99-q to
51 read as follows:
52 § 99-q. Early intervention program account. 1. There is hereby estab-
53 lished in the joint custody of the state comptroller and the commission-
54 er of the department of taxation and finance an account in the miscella-
55 neous special revenue fund to be known as the "early intervention
56 program account".

1 2. Such account shall consist of monies received from early inter-
2 vention fees.
3 3. Monies of the account, when allocated, shall be available to the
4 department of health for early intervention program administrative costs
5 and for the state share for reimbursement of early intervention
6 services.
7 § 16. The opening paragraph of paragraph a of subdivision 9 of section
8 4410 of the education law, as amended by chapter 82 of the laws of 1995,
9 is amended to read as follows:
10 Providers of special services or programs shall apply to the commis-
11 sioner for program approval on a form prescribed by the commissioner;
12 such application shall include, but not be limited to, a listing of the
13 services to be provided, the population to be served, a plan for provid-
14 ing services in the least restrictive environment and a description of
15 its evaluation component, if any. [Providers of early intervention
16 services seeking approval pursuant to subdivision seven of section twen-
17 ty-five hundred fifty-one of the public health law shall apply to the
18 commissioner for such approval on a form prescribed by the commission-
19 er.] The commissioner shall approve programs in accordance with regu-
20 lations adopted for such purpose and shall periodically review such
21 programs at which time the commissioner shall provide the municipality
22 in which the program is located or for which the municipality bears
23 fiscal responsibility an opportunity for comment within thirty days of
24 the review. In collaboration with municipalities and representatives of
25 approved programs, the commissioner shall develop procedures for
26 conducting such reviews. Municipalities shall be allowed to participate
27 in such departmental review process. Such review shall be conducted by
28 individuals with appropriate experience as determined by the commission-
29 er and shall be conducted not more than once every three years.
30 § 17. Subdivision 18 of section 4403 of the education law is REPEALED.
31 § 17-a. Subsection (c) of section 3235-a of the insurance law is
32 REPEALED.
33 § 18. Subsection (b) of section 3235-a of the insurance law, as added
34 by section 3 of part C of chapter 1 of the laws of 2002, is amended and
35 subsection (d) is relettered subsection (c) to read as follows:
36 (b) Where a policy of accident and health insurance, including a
37 contract issued pursuant to article forty-three of this chapter,
38 provides coverage for an early intervention program service, [such
39 coverage] payments made for services covered under such policy shall not
40 be applied against any maximum annual or lifetime monetary limits set
41 forth in such policy or contract. Visit limitations and other terms and
42 conditions of the policy will continue to apply to early intervention
43 services. However, any visits used for early intervention program
44 services shall not reduce the number of visits otherwise available under
45 the policy or contract for such services.
46 § 19. Paragraph (b) of subdivision 3 of section 602 of the public
47 health law, as added by chapter 901 of the laws of 1986, subparagraph 2
48 as amended by section 5 of part B of chapter 57 of the laws of 2006, is
49 amended to read as follows:
50 (b) The extent to which services in the plan will promote the public
51 health, which, as defined herein, shall be enhancing or sustaining the
52 public health, protecting the public from the threats of disease and
53 illness, or preventing premature death, and which assist in containing
54 the costs of the health care system. Services that promote the public
55 health are the following:

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1 (1) family health, which shall include activities designed to reduce
2 perinatal, infant and maternal mortality and morbidity and to promote
3 the health of infants, children, adolescents, and people of childbearing
4 age. Such activities shall include family centered perinatal care and
5 other services appropriate to promote the birth of a healthy baby to a
6 healthy mother, [and] services to prevent and detect health problems in
7 infants, young children, and school age children, dental health services
8 to children less than twenty-one years of age and, when provided by
9 staff of the local health department, early intervention program admin-
10 istration and service coordination.
11 (2) disease control, which shall include activities to control and
12 mitigate the extent of non-infectious diseases, particularly those of a
13 chronic, degenerative nature, and infectious diseases. Such activities
14 shall include surveillance and epidemiological programs, and programs to
15 detect diseases in their early stages. Specific activities shall include
16 immunizations against infectious diseases, prevention and treatment of
17 sexually transmissible diseases, [and] arthropod vector-borne disease
18 prevention, and inpatient tuberculosis treatment.
19 (3) health education and guidance, which shall include the use of
20 information and education to modify or strengthen practices that will
21 promote the public health and prevent illness. Such activities shall
22 encourage people to assume personal responsibility for maintaining and
23 improving their own health; increase their capacity to utilize appropri-
24 ate health services; help them better control an illness they may have;
25 and[,] provide information to stimulate community action on social and
26 physical environmental factors that impact on health. Special emphasis
27 shall be given to providing health education and guidance to individuals
28 at the same time as they are receiving a health service.
29 (4) community health assessment, which shall include an analysis of
30 community vital statistics and mortality and morbidity indices to detect
31 the source of illnesses and diseases, particularly those of a carcino-
32 genic and mutagenic nature, in order to prevent in an efficient manner
33 as many persons as possible from contracting such illnesses and diseases
34 and to assist in addressing other problems adversely affecting the
35 public health. Such analysis shall also include data relating to toxic
36 sites and occupational illnesses.
37 (5) environmental health, which shall include activities that promote
38 health and prevent illness by ensuring sanitary conditions in water
39 supplies, food service establishments, and other permit sites, [and by
40 abating] taking measures to assure enforcement of property owner's obli-
41 gations to abate public health nuisances, and performing inspections and
42 programs related to radioactive materials licensing and inspection,
43 radiation-producing equipment, housing hygiene and occupancy, individual
44 water supplies and individual sewage systems.
45 (6) the provision of home care services pursuant to article thirty-
46 six of this chapter, except to the extent such services are provided by
47 a long term home health care program, as defined in such article thir-
48 ty-six;
49 (7) the operation of a public health laboratory or utilization of a
50 contract laboratory for the testing, analysis, and reporting of clinical
51 or environmental specimens collected by the local health department in
52 the conduct of basic programs or activities described in this section.
53 The commissioner shall promulgate rules and regulations that define
54 the specific activities within each of the five categories. The commis-
55 sioner prior to promulgation of rules and regulations defining the
56 nature of the specific activities, shall consult with the public health

1 council and county health commissioners, boards and public health direc-
2 tors. The list of specific activities may be altered by the commissioner
3 as necessary and after his consultation with the council, commissioners,
4 boards and public health directors named herein.
5 § 20. Subdivision 2 of section 605 of the public health law, as
6 amended by section 7 of part B of chapter 57 of the laws of 2006, is
7 amended to read as follows:
8 2. State aid reimbursement for public health services provided by a
9 municipality under this title, shall be made as follows:
10 [(a)] if the municipality is providing some or all of the basic public
11 health services identified in paragraph (b) of subdivision three of
12 section six hundred two of this title, pursuant to an approved plan, at
13 a rate of no less than thirty-six per centum of the difference between
14 the amount of moneys expended by the municipality for public health
15 services required by paragraph (b) of subdivision three of section six
16 hundred two of this title during the fiscal year and the base grant
17 provided pursuant to subdivision one of this section. No such reimburse-
18 ment shall be provided for services if they are not approved in a plan
19 or if no plan is submitted for such services. <u>No reimbursement shall be</u>
20 <u>provided to the extent the limitations on reimbursement set forth in</u>
21 <u>section six hundred sixteen of this article are applicable.</u>
22 [(b) if the municipality is providing other public health services
23 within limits to be prescribed by regulation by the commissioner in
24 addition to some or all of the public health services required in para-
25 graph (b) of subdivision three of section six hundred two of this title,
26 pursuant to an approved plan, at a rate of not less than thirty-six per
27 centum of the moneys expended by the municipality for such other
28 services. No such reimbursement shall be provided for services if they
29 are not approved in a plan or if no plan is submitted for such
30 services.]
31 § 21. Subdivisions 1 and 2 of section 609 of the public health law, as
32 amended by chapter 474 of the laws of 1996, are amended and a new subdi-
33 vision 5 is added to read as follows:
34 1. Where a laboratory shall have been or is hereafter established
35 pursuant to article five of this chapter, the state, through the legis-
36 lature and within the limits to be prescribed by the commissioner, shall
37 provide aid at a per centum, determined in accordance with the
38 provisions of [paragraph (b) of] subdivision two of section six hundred
39 five of this article, of the actual cost of installation, equipment and
40 maintenance of the laboratory or laboratories. Such cost shall be the
41 excess, if any, of such expenditures over available revenues of all
42 types, including adequate and reasonable fees, derived from or attribut-
43 able to the performance of laboratory services.
44 2. Where a county or city provides or shall have provided for labora-
45 tory service by contracting with an established laboratory, with the
46 approval of the commissioner, it shall be entitled to state aid at a per
47 centum, determined in accordance with the provisions of [paragraph (b)
48 of] subdivision two of section six hundred five of this article, of the
49 cost of the contracts. State aid shall be available for a district labo-
50 ratory supply station maintained and operated in accordance with article
51 five of this chapter in the same manner and to the same extent as for
52 laboratory services.
53 <u>5. No reimbursement shall be provided to the extent the limitations on</u>
54 <u>reimbursement set forth in section six hundred sixteen of this article</u>
55 <u>are applicable.</u>

1 § 22. Subdivision 1 of section 616 of the public health law, as
2 amended by section 9 of part B of chapter 57 of the laws of 2006, is
3 amended and two new subdivisions 3 and 4 are added to read as follows:
4 1. The total amount of state aid provided pursuant to this article
5 shall be limited to the amount of the annual appropriation made by the
6 legislature. In no event, however, shall such state aid be less than an
7 amount to provide the full base grant and, as otherwise provided by
8 [paragraph (a) of] subdivision two of section six hundred five of this
9 article, at least thirty-six per centum of the difference between the
10 amount of moneys expended by the municipality for public health services
11 required by paragraph (b) of subdivision three of section six hundred
12 two of this article during the fiscal year and the base grant provided
13 pursuant to subdivision one of section six hundred five of this article.
14 [A municipality shall also receive not less than thirty-six per centum
15 of the moneys expended for other public health services pursuant to
16 paragraph (b) of subdivision two of section six hundred five of this
17 article, and, at least the minimum amount so required for the services
18 identified in title two of this article.]
19 3. Notwithstanding the provision of section six hundred nine of this
20 article, no payments shall be made from moneys appropriated for the
21 purpose of this article for laboratory expenses or services, unless such
22 services are directly related to the operation of a public health labo-
23 ratory, or utilization of a contract laboratory, for the testing, analy-
24 sis, and reporting of clinical or environmental specimens collected by
25 the local health department in the conduct of basic programs or activ-
26 ities described in paragraph (b) of subdivision three of section six
27 hundred two of this article.
28 4. Payments shall be made from moneys appropriated for the purpose of
29 this article only for services approved by the department and related to
30 services described in paragraph (b) of subdivision three of section six
31 hundred two of this article. No payment shall be made from moneys
32 appropriated for the purpose of this article for hospice services, emer-
33 gency medical services, medical examiner program, long-term home health
34 care, pre-school administrative services, or pre-school education
35 services provided to children three to five years of age, except as
36 expressly provided in paragraph (b) of subdivision three of section six
37 hundred two of this article.
38 § 23. Paragraphs (a) and (f) of subdivision 4 of section 576 of the
39 public health law, as amended by chapter 436 of the laws of 1993, are
40 amended and a new paragraph (h) is added to read as follows:
41 (a) The department may adopt and amend rules and regulations to effec-
42 tuate the provisions and purposes of this title. [Such] For periods
43 prior to July first, two thousand nine, such rules and regulations shall
44 establish inspection and reference fees for clinical laboratories and
45 blood banks in amounts not exceeding the cost of the inspection and
46 reference program for clinical laboratories and blood banks and shall be
47 subject to the approval of the director of the budget.
48 (f) The commissioner may waive all or any part of such fee charges or
49 assessment for clinical laboratories or blood banks operated by local
50 governments and for nonprofit clinical laboratories or blood banks
51 performing examinations and analyses or providing services under
52 contract with the state or its local governments.
53 (h) Notwithstanding paragraphs (b) and (e) of this subdivision or any
54 other contrary provision of law, for periods on and after July first,
55 two thousand nine, the department shall charge clinical laboratories and
56 blood banks an annual assessment on the gross receipts received by such

1 clinical laboratories and blood banks for all tests or examinations of
2 specimens performed pursuant to a permit issued in accordance with
3 section five hundred seventy-five of this title. The annual assessment
4 to be charged for July first, two thousand nine through June thirtieth,
5 two thousand ten shall be one percent of such gross receipts for the
6 preceding calendar year, and for July first, two thousand ten through
7 June thirtieth, two thousand eleven, one percent of such gross receipts
8 for the preceding calendar year. The annual assessment to be charged for
9 July first, two thousand eleven through June thirtieth, two thousand
10 twelve shall be nine-tenths of one percent of such gross receipts for
11 the preceding calendar year. The annual assessment to be charged for
12 July first, two thousand twelve through June thirtieth, two thousand
13 thirteen and for every year thereafter shall be eight-tenths of one
14 percent of such gross receipts for the preceding calendar year.
15 § 24. Section 4364 of the public health law is amended by adding a
16 new subdivision 6 to read as follows:
17 6. (a) For periods on and after April first, two thousand nine, the
18 department shall charge tissue banks and storage facilities an annual
19 assessment in the amount of one percent of the gross receipts received
20 for the preceding calendar year by such tissue banks and storage facili-
21 ties for all activities performed pursuant to a license issued in
22 accordance with this section.
23 (b) Each tissue bank or storage facility shall submit to the depart-
24 ment, in such form and at such times as the department may require, a
25 report containing information regarding its gross annual receipts from
26 the performance of all activities pursuant to a license issued by the
27 department pursuant to this section. The department may require addi-
28 tional information and audit and review such information to verify its
29 accuracy.
30 § 25. Subdivision 8 of section 6524 of the education law, as amended
31 by section 1 of part G of chapter 57 of the laws of 2008, is amended to
32 read as follows:
33 (8) Fees: pay a fee of two hundred sixty dollars to the department for
34 admission to a department conducted examination and for an initial
35 license, a fee of one hundred seventy-five dollars for each reexamina-
36 tion, a fee of one hundred thirty-five dollars for an initial license
37 for persons not requiring admission to a department conducted examina-
38 tion, a fee of five hundred seventy dollars for any biennial registra-
39 tion period commencing August first, nineteen hundred ninety-six through
40 February twenty-eighth, two thousand nine and a fee of nine hundred
41 seventy dollars for any biennial registration period commencing March
42 first, two thousand nine and thereafter. The comptroller is hereby
43 authorized and directed to deposit the fee for each biennial registra-
44 tion period into the special revenue funds-other entitled "professional
45 medical conduct account" for the purpose of offsetting any expenditures
46 made pursuant to section two hundred thirty of the public health law in
47 relation to the operation of the office of professional medical conduct
48 within the department of health, provided that for each biennial regis-
49 tration fee paid by the licensee using a credit card, the amount of the
50 administrative fee incurred by the department in processing such credit
51 card transaction shall be deposited by the comptroller in the office of
52 the professions account established by section ninety-seven-nnn of the
53 state finance law. The amount of the funds expended as a result of such
54 increase shall not be greater than such fees collected over the regis-
55 tration period.

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1 § 26. Subdivisions 9 and 10 of section 225 of the public health law
2 are REPEALED.
3 § 27. Subdivision 4 of section 1352 of the public health law is
4 REPEALED.
5 § 28. Paragraph (m) of subdivision 1 of section 201 of the public
6 health law, as relettered by chapter 571 of the laws of 1976, is amended
7 to read as follows:
8 (m) supervise and regulate the sanitary aspects of camps, hotels,
9 boarding houses, public eating and drinking establishments, swimming
10 pools, bathing establishments and other businesses and activities
11 affecting public health and respond to complaints relating to hotels,
12 boarding houses and temporary residences as defined in the state sani-
13 tary code and inspect such facilities when otherwise necessary;
14 § 29. Paragraphs (a) and (c) of subdivision 2 and subdivision 3 of
15 section 1370-a of the public health law, paragraphs (a) and (c) of
16 subdivision 2 as added by chapter 485 of the laws of 1992 and subdivi-
17 sion 3 as added by section 23 of part B of chapter 58 of the laws of
18 2007, are amended to read as follows:
19 (a) promulgate and enforce regulations for screening children and
20 pregnant women, including requirements for blood lead testing, for lead
21 poisoning, and for follow up of children and pregnant women who have
22 elevated blood lead levels;
23 (c) establish a statewide registry of lead levels of children [with
24 elevated lead levels] provided such information is [monitored] main-
25 tained as confidential except for (i) disclosure for medical treatment
26 purposes; [and] (ii) disclosure of non-identifying epidemiological data;
27 and (iii) disclosure of information from such registry to the statewide
28 immunization information system established by section twenty-one
29 hundred sixty-eight of this chapter; and
30 3. The department shall identify and designate [a zip code in certain
31 counties] areas in the state with significant concentrations of children
32 identified with elevated blood lead levels as communities of concern for
33 purposes of implementing a [pilot] childhood lead poisoning primary
34 prevention program [to work in cooperation with local health officials
35 to develop a primary prevention plan for each such zip code identified
36 to prevent exposure to lead-based paint], and may, within amounts appro-
37 priated, provide grants to implement approved programs. The commissioner
38 of health of a county or part-county health district, a county health
39 director or a public health director and, in the city of New York, the
40 commissioner of the New York city department of health and mental
41 hygiene shall develop and implement a childhood lead poisoning primary
42 prevention program to prevent exposure to lead-based paint hazards for
43 the communities of concern in their jurisdiction. The department shall
44 provide funding to the New York city department of health and mental
45 hygiene or county health departments to implement the approved work plan
46 for a childhood lead poisoning primary prevention program. The work plan
47 and budget, which shall be subject to the approval of the department,
48 shall include, but not be limited to: (a) identification and designation
49 of an area or areas of high risk within communities of concern; (b) a
50 housing inspection program that includes prioritization and inspection
51 of areas of high risk for lead hazards, correction of identified lead
52 hazards using effective lead-safe work practices and, appropriate over-
53 sight of remediation work; (c) partnerships with other county or munici-
54 pal agencies or community-based organizations to build community aware-
55 ness of the childhood lead poisoning primary prevention program and
56 activities, coordinate referrals for services, and support remediation

1 of housing that contains lead hazards and (d) a mechanism to provide
2 education and referral for lead testing for children and pregnant women
3 to families who are encountered in the course of conducting primary
4 prevention inspections and other outreach activities. The commissioner
5 of health of a county or part-county health district, a county health
6 director or a public health director and, in the city of New York, the
7 commissioner of the New York city department of health and mental
8 hygiene shall also enter into an agreement or subcontract with a munici-
9 pal government regarding inspection of the paint conditions in dwellings
10 built prior to nineteen hundred seventy-eight for the area defined as
11 the community of concern. A portion of grant funding received to
12 support the local primary prevention plan may be used to reduce barriers
13 to lead testing of children and pregnant women within the communities of
14 concern, including the purchase of lead testing devices and supplies
15 when the need for such resources is identified within the community. The
16 commissioner, the commissioner of health of a county or part-county
17 health district, a county health director or a public health director
18 and, in the city of New York, the commissioner of the New York city
19 department of health and mental hygiene is authorized to enter into
20 agreements, contracts, subcontracts or memoranda of understanding with,
21 and provide technical and other resources to, local health officials,
22 local building code officials, real property owners, and community
23 organizations in such areas to create and implement policies, education
24 and other forms of community outreach to address lead exposure,
25 detection and risk reduction. [Such primary] Primary prevention plans
26 shall target children less than six years of age living in the highest
27 risk housing in the [zip code] communities of concern identified. [Such
28 primary prevention] The plans shall also take into consideration the
29 extent the weatherization assistance [or] program and other such
30 programs can be used in [collaboration] conjunction with lead-based
31 paint hazard risk reduction.
32 § 30. Subdivision 1 and paragraph (i) of subdivision 3 of section
33 1370-b of the public health law, as added by chapter 485 of the laws of
34 1992, is amended to read as follows:
35 1. The New York state advisory council on lead poisoning prevention is
36 hereby established in the department, to consist of the following, or
37 their designees: the commissioner; the commissioner of labor; the
38 commissioner of environmental conservation; the commissioner of housing
39 and community renewal; the commissioner of [social services] children
40 and family services; the commissioner of temporary and disability
41 assistance; the secretary of state; the superintendent of insurance; and
42 fifteen public members appointed by the governor. The public members
43 shall have a demonstrated expertise or interest in lead poisoning
44 prevention and at least one public member shall be representative of
45 each of the following: local government; community groups; labor unions;
46 real estate; industry; parents; educators; local housing authorities;
47 child health advocates; environmental groups; professional medical
48 organizations and hospitals. The public members of the council shall
49 have fixed terms of three years; except that five of the initial
50 appointments shall be for two years and five shall be for one year. The
51 council shall be chaired by the commissioner or his or her designee.
52 (i) To report on or before [January] December first of each year to
53 the governor and the legislature concerning the previous year's develop-
54 ment and implementation of the statewide plan and operation of the
55 program, together with recommendations it deems necessary and the most
56 currently available lead surveillance measures, including the actual

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1 number and estimated percentage of children screened for lead in accord-
2 ance with New York state regulations, including age-specific screening
3 requirements, and the actual number and estimated percentage of children
4 identified with elevated blood lead levels. Such report shall be made
5 available on the department's website.
6 § 31. Subdivision 3 of section 1370-e of the public health law, as
7 added by chapter 485 of the laws of 1992, is amended to read as follows:
8 3. Whenever an analysis of a clinical specimen for lead is performed
9 by a laboratory or a physician or authorized practitioner, the director
10 of such laboratory or such physician or authorized practitioner shall,
11 within such period specified by the commissioner report the results and
12 any related information in connection therewith to the local and state
13 health officer to whom a physician or authorized practitioner is
14 required to report such cases pursuant to this section.
15 § 32. Section 2168 of the public health law, as added by chapter 544
16 of the laws of 2006, is amended to read as follows:
17 § 2168. Statewide immunization [registry] information system. 1. The
18 department is hereby directed to establish a statewide automated and
19 electronic immunization [registry] information system that will serve,
20 and shall be administered consistent with, the following public health
21 purposes:
22 (a) collect reports of immunizations and thus reduce the incidence of
23 illness, disability and death due to vaccine preventable diseases and
24 collect results of blood lead analyses performed by physician office
25 laboratories to provide to the statewide registry of lead levels of
26 children established pursuant to section thirteen hundred seventy-a of
27 this chapter;
28 (b) establish the public health infrastructure necessary to obtain,
29 collect, preserve, and disclose information relating to vaccine prevent-
30 able disease as it may promote the health and well-being of all children
31 in this state;
32 (c) make available to an individual, or parents, guardians, or other
33 person in a custodial relation to a child or, to local health districts,
34 local social services districts responsible for the care and custody of
35 children, health care providers and their designees, schools, WIC
36 programs, and [third party payers] health insurers the immunization
37 status of children; and
38 (d) appropriately protecting the confidentiality of individual identi-
39 fying information and the privacy of persons included in the [registry]
40 statewide immunization information system and their families.
41 2. For the purposes of this section:
42 (a) The term "authorized user" shall mean any person or entity author-
43 ized to provide information to or to receive information from the state-
44 wide immunization [registry] information system and shall include health
45 care providers and their designees, as defined in paragraph (d) of this
46 subdivision, schools as defined in paragraph a of subdivision one of
47 section twenty-one hundred sixty-four of this title, [health maintenance
48 organizations certified under article forty-four of this chapter or
49 article forty-three of the insurance law,] health insurers as defined in
50 paragraph (f) of this subdivision, local health districts as defined by
51 paragraph (c) of subdivision one of section two of this chapter, [and]
52 local social services districts and the office of children and family
53 services with regard to children in their legal custody, and WIC
54 programs as defined in paragraph (g) of this subdivision. An authorized
55 user may be located outside New York state. An entity other than a local
56 health district shall be an authorized user only with respect to a

1 person seeking or receiving a health care service from the health care
2 provider, a person enrolled or seeking to be enrolled in the school, a
3 person insured by the health [maintenance organization] insurer, [or] a
4 person in the custody of the local social services district or the
5 office of children and family services, or a person seeking or receiving
6 services through WIC programs, as the case may be.
7 (b) The term "statewide immunization [registry] information system" or
8 "system" shall mean a statewide-computerized database maintained by the
9 department capable of collecting, storing, and disclosing the electronic
10 and paper records of vaccinations received by persons under nineteen
11 years of age.
12 (c) The term "citywide immunization registry" shall mean the computer-
13 ized database maintained by the city of New York department of health
14 and mental hygiene capable of collecting, storing, and disclosing the
15 electronic and paper records of vaccinations received by persons [under]
16 less than nineteen years of age. The term "citywide immunization regis-
17 try" shall not include the childhood blood lead registry established
18 pursuant to the health code of the city of New York. For the purposes of
19 this section the term New York city department of health and mental
20 hygiene shall mean such agency or any successor agency responsible for
21 the citywide immunization registry.
22 (d) The term "health care provider" shall mean any person authorized
23 by law to order [or administer] an immunization or analysis of a blood
24 sample for lead or any health care facility licensed under article twen-
25 ty-eight of this chapter or any certified home health agency established
26 under section thirty-six hundred six of this chapter; with respect to a
27 person seeking or receiving a health care service from the health care
28 provider.
29 (e) For purposes of this section a school is a public health authori-
30 ty, as defined in section 164.501 of part 45 of the federal code of
31 rules, responsible for screening the immunization status of each child
32 pursuant to section twenty-one hundred sixty-four of this article.
33 (f) The term "health insurer" shall mean health maintenance organiza-
34 tions certified under article forty-four of this chapter, health service
35 corporations licensed pursuant to article forty-three of the insurance
36 law, health insurance companies subject to article thirty-two of the
37 insurance law which offer preferred provider products, corporations
38 subject to article forty-three of the insurance law which offer
39 preferred provider products, municipal cooperative health benefit plans
40 certified pursuant to article forty-seven of the insurance law which
41 offer preferred provider products, and preferred provider organizations
42 as defined in section three hundred fifty-two of the workers' compen-
43 sation law.
44 (g) For purposes of this section a WIC program is a state or local
45 agency, as described pursuant to section 1786 of title 42 of the United
46 States Code.
47 (h) The term "physician office laboratory" shall mean a laboratory
48 operated by a health care provider pursuant to subdivision one of
49 section five hundred seventy-nine of this chapter that is certified by
50 the Centers for Medicare and Medicaid Services under regulations imple-
51 menting the federal Clinical Laboratory Improvement Amendments of 1988
52 (CLIA).
53 3. (a) Any health care provider who administers any vaccine to a
54 person [under] less than nineteen years of age or, on or after September
55 first, two thousand nine, conducts a blood lead analysis of a sample
56 obtained from a person under eighteen years of age in accordance with

1 paragraph (h) of subdivision two of this section; and immunizations
2 received by a person [under] less than nineteen years of age in the past
3 if not already reported, shall report all such immunizations and the
4 results of any blood lead analysis to the department in a format
5 prescribed by the commissioner within fourteen days of administration of
6 such immunizations or of obtaining the results of any such blood lead
7 analysis. Health care providers administering immunizations to persons
8 [under] less than nineteen years of age in the city of New York shall
9 report, in a format prescribed by the city of New York commissioner of
10 health and mental hygiene, all such immunizations to the citywide immun-
11 ization registry. The commissioner, and for the city of New York the
12 commissioner of health and mental hygiene, shall have the discretion to
13 accept for inclusion in the [registry] system information regarding
14 immunizations administered to individuals nineteen years of age or older
15 with the express written consent of the vaccine. Health care providers
16 who conduct a blood lead analysis on a person under eighteen years of
17 age and who report the results of such analysis to the city of New York
18 commissioner of health and mental hygiene pursuant to New York City
19 reporting requirements shall be exempt from this requirement for report-
20 ing blood lead analysis results to the state commissioner of health;
21 provided, however, blood lead analysis data collected from physician
22 office laboratories by the commissioner of health and mental hygiene of
23 the city of New York pursuant to the health code of the city of New York
24 shall be provided to the department in a format prescribed by the
25 commissioner.
26 (b) The statewide immunization [registry] information system shall
27 provide a method for health care providers to determine when the regis-
28 trant is due or late for a recommended immunization and shall serve as a
29 means for authorized users to receive prompt and accurate information,
30 as reported to the [registry] system, about the vaccines that the regis-
31 trant has received.
32 4. (a) All information maintained by the department, or in the case of
33 the citywide immunization registry, the city of New York under the
34 provisions of this section shall be confidential except as necessary to
35 carry out the provisions of this section and shall not be released for
36 any other purpose.
37 (b) The department and for the city of New York the department of
38 health and mental hygiene may also disclose or provide such information
39 to an authorized user when (i) such person or agency provides sufficient
40 identifying information satisfactory to the department to identify such
41 registrant and (ii) such disclosure or provision of information is in
42 the best interests of the registrant or his or her family, or will
43 contribute to the protection of the public health.
44 (c) Any data collected by the department may be included in the state-
45 wide immunization [registry] information system and the statewide regis-
46 try of lead levels of children if collection, storage and access of such
47 data is otherwise authorized. Such data may be disclosed to the state-
48 wide immunization [registry] information system only if provided for in
49 statute and regulation, and shall be subject to any provisions in such
50 statute or regulation limiting the use or redisclosure of the data.
51 Nothing contained in this paragraph shall permit inclusion of data in
52 the statewide immunization [registry] information system if that data
53 could not otherwise be accessed or disclosed in the absence of the
54 [registry] system. For the city of New York the commissioner of health
55 and mental hygiene may include data collected in the citywide immuniza-
56 tion registry as provided in this paragraph.

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1 (d) A person, institution or agency to whom such immunization [regis-
2 try] information is furnished or to whom, access to records or informa-
3 tion has been given, shall not divulge any part thereof so as to
4 disclose the identity of such person to whom such information or record
5 relates, except insofar as such disclosure is necessary for the best
6 interests of the person or other persons, consistent with the purposes
7 of this section.
8 5. (a) All health care providers and their designees, except for
9 providers reporting to the citywide immunization registry, shall submit
10 to the commissioner information about any vaccinee [under] less than
11 nineteen years of age and about each vaccination given after January
12 first, two thousand eight. The information provided to the [registry]
13 system or the citywide immunization registry shall include the national
14 immunization program data elements and other elements required by the
15 commissioner. For the city of New York the commissioner of health and
16 mental hygiene may require additional elements with prior notice to the
17 commissioner of any changes.
18 (b) In addition to the immunization administration information
19 required by this section, the operation of any immunization registry
20 established under chapter five hundred twenty-one of the laws of nine-
21 teen hundred ninety-four, section 11.04 of title twenty-four of volume
22 eight of the compilation of the rules of the city of New York and admin-
23 istered by a local health district collecting information from health
24 care providers about vaccinations previously administered to a vaccinee
25 prior to the effective date of this section shall provide the commis-
26 sioner access to such information.
27 (c) All health care providers shall provide the department or, as
28 appropriate, the city of New York with additional or clarifying informa-
29 tion upon request reasonably related to the purposes of this section.
30 (d) Notwithstanding the above, submission of incomplete information
31 shall not prohibit entry of incomplete but viable data into the [regis-
32 try database] statewide immunization information system.
33 (e) The commissioner of the department of health and mental hygiene
34 for the city of New York shall implement the requirements of this subdi-
35 vision.
36 (f) The immunization status of children exempt from immunizations
37 pursuant to subdivision eight and a parent claiming exemption pursuant
38 to subdivision nine of section twenty-one hundred sixty-four of this
39 title shall be reported by the health care provider.
40 6. In the city of New York, the commissioner of the department of
41 health and mental hygiene of the city of New York may maintain its
42 existing registry consistent with the requirements of this section and
43 shall provide information to the commissioner and to authorized users.
44 7. Each parent or legal guardian of a newborn infant or a child newly
45 enrolled in the [registry] statewide immunization information system
46 shall receive information, developed by the department, describing the
47 [registry] enrollment process and how to review and correct information
48 and obtain a copy of the child's immunization record. The city of New
49 York will be responsible for providing information about the processes
50 for enrollment and access to the citywide immunization registry by a
51 parent or legal guardian of a newborn infant or newly enrolled child
52 residing in the city of New York.
53 8. Access and use of identifiable registrant information shall be
54 limited to authorized users consistent with this subdivision and the
55 purposes of this section. (a) The commissioner shall provide a method by
56 which authorized users apply for access to the [registry] system. For

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1 the city of New York, the commissioner of health and mental hygiene
2 shall provide a method by which authorized users apply for access to the
3 citywide immunization registry.
4 (b) (i) The commissioner may use the statewide immunization [registry]
5 information system and the blood lead information in such system for
6 purposes of outreach, quality improvement and [vaccine] accountability,
7 research, epidemiological studies and disease control, and to obtain
8 blood lead test results from physician office laboratories for the
9 statewide registry of lead levels of children established pursuant to
10 subdivision two of section thirteen hundred seventy-a of this chapter;
11 (ii) the commissioner of health and mental hygiene for the city of New
12 York may use the immunization registry and the blood lead information in
13 such system for purposes of outreach, quality improvement and [vaccine]
14 accountability, research, epidemiological studies and disease control;
15 (iii) local health departments shall have access to the immunization
16 [registry] information system and the blood lead information in such
17 system for purposes of outreach, quality improvement and [vaccine]
18 accountability, epidemiological studies and disease control within their
19 county; and
20 (c) health care providers and their designees shall have access to the
21 statewide immunization [registry] information system and the blood lead
22 information in such system only for purposes of submission of informa-
23 tion about vaccinations received by a specific registrant, determination
24 of the immunization status of a specific registrant, determination of
25 the blood lead testing status of a specific registrant, submission of
26 the results from a blood lead analysis of a sample obtained from a
27 specific registrant in accordance with paragraph (h) of subdivision two
28 of this section, review of practice coverage, generation of reminder
29 notices, quality improvement and [vaccine] accountability and printing a
30 copy of the immunization or lead testing record for the registrant's
31 medical record, for the registrant's parent or guardian, or other person
32 in parental or custodial relation to a child, or for a registrant upon
33 reaching eighteen years of age.
34 (d) The following authorized users shall have access to the statewide
35 immunization [registry] information system and the blood lead informa-
36 tion in such system and the citywide immunization registry for the
37 purposes stated in this paragraph: (i) schools for verifying immuniza-
38 tion status for eligibility for admission; (ii) health [maintenance
39 organizations] insurers for performing quality assurance, accountability
40 and outreach, relating to enrollees covered by the health [maintenance
41 organization] insurer; (iii) commissioners of local social services
42 districts with regard to a child in his/her legal custody; [and] (iv)
43 the commissioner of the office of children and family services with
44 regard to children in their legal custody, and for quality assurance and
45 accountability of commissioners of local social services districts, care
46 and treatment of children in the custody of commissioners of local
47 social services districts; and (v) WIC programs for the purposes of
48 verifying immunization and lead testing status for those seeking or
49 receiving services.
50 9. The commissioner may judge the legitimacy of any request for immun-
51 ization [registry] system information and may refuse access to the
52 statewide immunization [registry] information system based on the
53 authenticity of the request, credibility of the authorized user or other
54 reasons as provided for in regulation. For the city of New York the
55 commissioner of health and mental hygiene may judge the legitimacy of
56 requests for access to the citywide immunization registry and refuse

1 access to the immunization registry based on the authenticity of the
2 request, credibility of the authorized user or other reasons as provided
3 for in regulation.
4 10. The person to whom any immunization record relates, or his or her
5 parent, or guardian, or other person in parental or custodial relation
6 to such person may request a copy of an immunization or lead testing
7 record from the registrant's healthcare provider, the statewide immuni-
8 zation [registry] information system or the citywide immunization regis-
9 try according to procedures established by the commissioner or, in the
10 case of the citywide immunization registry, by the city of New York
11 commissioner of the department of health and mental hygiene.
12 11. The commissioner, or in the city of New York, the commissioner of
13 the department of health and mental hygiene, may provide registrant
14 specific immunization records to other state registries pursuant to a
15 written agreement requiring that the [foreign] out-of-state registry
16 conform to national standards for maintaining the integrity of the data
17 and will not be used for purposes inconsistent with the provisions of
18 this section.
19 12. Information that would be provided upon the enrollment in the
20 [registry] statewide immunization information system of a child being
21 vaccinated, from birth records of all infants born in New York state on
22 or after January first, two thousand four shall be entered into the
23 statewide immunization [registry] information system, except in the city
24 of New York, where birth record information shall be entered into the
25 citywide immunization registry.
26 13. The commissioner shall promulgate regulations as necessary to
27 effectuate the provisions of this section. Such regulations shall
28 include provision for orderly implementation and operation of the
29 [registry] statewide immunization information system, including the
30 method by which each category of authorized user may access the [regis-
31 try] system. Access standards shall include at a minimum a method for
32 assigning and authenticating each user identification and password
33 assigned.
34 14. No authorized user shall be subjected to civil or criminal liabil-
35 ity, or be deemed to have engaged in unprofessional conduct for report-
36 ing to, receiving from, or disclosing information relating to the
37 [registry] statewide immunization information system when made reason-
38 ably and in good faith and in accordance with the provisions of this
39 section or any regulation adopted thereto.
40 § 33. Section 215-b of the elder law is REPEALED.
41 § 34. Section 223 of the elder law is REPEALED.
42 § 35. Subdivision 21 of section 206 of the public health law, as added
43 by section 24 of part B of chapter 58 of the laws of 2004, is REPEALED.
44 § 36. Section 210-a of the insurance law is REPEALED.
45 § 37. Paragraph (qq) of subdivision 1 of section 2807-v of the public
46 health law is REPEALED.
47 § 38. This act shall take effect March 1, 2009; provided that the
48 commissioner of health is authorized to promulgate emergency regulations
49 to effectuate the requirements of subdivision 4 of section 2541 of the
50 public health law as added by section one of this act; provided however
51 that sections nineteen, twenty, twenty-one and twenty-two of this act
52 shall take effect immediately and be deemed to have been in full force
53 and effect on and after January 1, 2009.

54 PART B

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1 Section 1. Subdivision 2 of section 3614-a of the public health law is
2 amended by adding a new paragraph (c) to read as follows:
3 (c) Notwithstanding any contrary provisions of this section or any
4 other contrary provision of law or regulation, for certified home health
5 agencies and for providers of long term home health care programs the
6 assessment shall be seven-tenths of one percent of each agency's or
7 provider's gross receipts received from all home health care services
8 and other operating income on a cash basis for periods on and after
9 March first, two thousand nine.
10 § 2. Subdivision 4 of section 3614-a of the public health law, as
11 amended by section 66 of part B of chapter 58 of the laws of 2005, is
12 amended to read as follows:
13 4. [For periods prior to January first, two thousand five, the] The
14 commissioner is authorized to contract with the article forty-three
15 insurance law plans, or such other administrators as the commissioner
16 shall designate, to receive and distribute home care provider assessment
17 funds and personal care services provider assessment funds assessed
18 pursuant to section three hundred sixty-seven-i of the social services
19 law. In the event contracts with the article forty-three insurance law
20 plans or other commissioner's designees are effectuated, the commission-
21 er shall conduct annual audits of the receipt and distribution of the
22 assessment funds. The reasonable costs and expenses of an administrator
23 as approved by the commissioner, not to exceed for personnel services on
24 an annual basis two hundred thousand dollars for all assessments estab-
25 lished pursuant to this section and the personal care services provider
26 assessment established pursuant to section three hundred sixty-seven-i
27 of the social services law, shall be paid from the assessment funds.
28 § 3. Subdivision 2 of section 3614-b of the public health law, as
29 amended by section 9 of part CC of chapter 407 of the laws of 1999, is
30 amended to read as follows:
31 2. (a) The assessment shall be six-tenths of one percent of such
32 licensed home care services agency's gross receipts received from all
33 patient care services and other operating income on a cash basis begin-
34 ning April first, nineteen hundred ninety-two; provided, however, that
35 for all such gross receipts received on or after April first, nineteen
36 hundred ninety-nine, such assessment shall be two-tenths of one percent,
37 and further provided that such assessment shall expire and be of no
38 further effect for all such gross receipts received on or after January
39 first, two thousand.
40 (b) Notwithstanding any contrary provisions of this section or any
41 other contrary provision of law or regulation, the assessment shall be
42 seven-tenths of one percent of each such licensed home care services
43 agency's gross receipts received from all personal care services and
44 other operating income on a cash basis for periods on and after March
45 first, two thousand nine.
46 § 4. Subdivision 2 of section 367-i of the social services law, as
47 amended by section 10 of part CC of chapter 407 of the laws of 1999, is
48 amended to read as follows:
49 2. (a) The assessment shall be six-tenths of one percent of each such
50 provider's gross receipts received from all personal care services and
51 other operating income on a cash basis beginning January first, nineteen
52 hundred ninety-one; provided, however, that for all such gross receipts
53 received on or after April first, nineteen hundred ninety-nine, such
54 assessment shall be two-tenths of one percent, and further provided that
55 such assessment shall expire and be of no further effect for all such
56 gross receipts received on or after January first, two thousand.

1 (b) Notwithstanding any contrary provisions of this section or any
2 other contrary provision of law or regulation, the assessment shall be
3 seven-tenths of one percent of each such provider's gross receipts from
4 all personal care services and other operating income on a cash basis
5 for periods on and after March first, two thousand nine.
6 § 5. (a) Notwithstanding any provision of law to the contrary, in the
7 event that certain "proposed or final regulations of the federal Centers
8 for Medicare and Medicaid Services," as defined in subdivision (b) of
9 this section, become final and enforceable, the commissioner of health,
10 in consultation with the director of the budget, may impose federal
11 financial participation contingency requirements on expenditures that
12 would otherwise be required to be made pursuant to state law but which,
13 as a result of such final and enforceable regulations, would be required
14 to be made entirely with non-federal funds. In such event, the commis-
15 sioner of health, in consultation with the director of the budget, may
16 make expenditures of such non-federal funds as he or she, in his or her
17 discretion, deems to be available for such purposes.
18 (b) For purposes of this section, "proposed or final regulations of
19 the Centers for Medicare and Medicaid Services" are regulations subject
20 to a moratorium in effect until April 1, 2009 pursuant to P.L. 110-252,
21 specifically: (i) interim final regulation dealing with case management
22 and targeted case management published December 4, 2007 (CMS-2237-IFC);
23 (ii) final rule implementing changes to Medicaid provider tax provisions
24 published February 22, 2008 (CMS-2275-F); (iii) final rule dealing with
25 public provider cost limits published May 29, 2007 (CMS-2258-FC); (iv)
26 proposed rule dealing with Medicaid graduate medical education published
27 May 23, 2007 (CMS-2279-P); (v) proposed rule dealing with the Medicaid
28 rehabilitation services option published August 13, 2007 (CMS-2261-P);
29 and (vi) final rule concerning school-based services published December
30 28, 2007 (CMS-2287-F).
31 § 6. Section 74 of the executive law is REPEALED.
32 § 7. Subdivision 2 of section 30-a of the public health law, as added
33 by chapter 442 of the laws of 2006, is amended to read as follows:
34 2. "Investigation" means investigations of fraud, abuse, or illegal
35 acts perpetrated within the medical assistance program, by providers or
36 recipients of medical assistance care, services and supplies; provided
37 that for the purposes of section thirty-two-a of this title, investi-
38 gations of fraud, abuse or illegal acts relating to the programs admin-
39 istered or provided by the office of temporary and disability assist-
40 ance, the office of children and family services or local social
41 services districts pursuant to the social services law, or those
42 programs of the department of health that were transferred to such
43 department pursuant to section two hundred thirty-three of chapter four
44 hundred seventy-four of the laws of nineteen hundred ninety-six and
45 section one hundred twenty-two of part B of chapter four hundred thir-
46 ty-six of the laws of nineteen hundred ninety-seven, including by
47 contractees or recipients of such programs as well as social services
48 benefits as provided by or regulated by the department of labor.
49 § 8. Subdivisions 1, 3 and 7 of section 32 of the public health law,
50 subdivisions 1 and 7 as added by chapter 442 of the laws of 2006 and
51 subdivision 3 as amended by chapter 109 of the laws of 2007, are amended
52 to read as follows:
53 1. to appoint such deputies, directors, assistants and other officers
54 and employees as may be needed for the performance of his or her duties
55 and may prescribe their duties and fix their compensation within the
56 amounts appropriated therefor; provided, however, that the inspector

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1 shall appoint a deputy inspector general for social services investi-
2 gations subject to the limitations of, and as set forth in, section
3 thirty-two-a of this title;
4 3. to coordinate, to the greatest extent possible, activities to
5 prevent, detect and investigate medical assistance program fraud and
6 abuse amongst the following: the department; the offices of mental
7 health, mental retardation and developmental disabilities, alcoholism
8 and substance abuse services, temporary disability assistance, and chil-
9 dren and family services; the commission on quality of care and advocacy
10 for persons with disabilities; the department of education; the fiscal
11 agent employed to operate the medical assistance information and payment
12 system; local governments and entities; and to work in a coordinated and
13 cooperative manner with, to the greatest extent possible, the deputy
14 attorney general for Medicaid fraud control; [the welfare inspector
15 general,] federal prosecutors, district attorneys within the state, the
16 special investigative unit maintained by each health insurer operating
17 within the state, and the state comptroller;
18 7. to make information and evidence relating to suspected criminal
19 acts which he or she may obtain in carrying out his or her duties avail-
20 able to appropriate law enforcement officials and to consult with the
21 deputy attorney general for Medicaid fraud control[, the welfare inspec-
22 tor general,] and other state and federal law enforcement officials for
23 coordination of criminal investigations and prosecutions.
24 The inspector shall refer suspected fraud or criminality to the deputy
25 attorney general for Medicaid fraud control and make any other referrals
26 to such deputy attorney general as required or contemplated by federal
27 law. At any time after such referral, with ten days written notice to
28 the deputy attorney general for Medicaid fraud control or such shorter
29 time as such deputy attorney general consents to, the inspector may
30 additionally provide relevant information about suspected fraud or
31 criminality to any other federal or state law enforcement agency that
32 the inspector deems appropriate under the circumstances;
33 § 9. The public health law is amended by adding a new section 32-a to
34 read as follows:
35 § 32-a. Functions, duties and responsibilities regarding investi-
36 gations of welfare fraud. 1. The inspector shall appoint a deputy
37 inspector general for social services investigations; provided, however,
38 that a person who is serving as the welfare inspector general, as a
39 result of an appointment by the governor and approval by the senate, on
40 the effective date of this section, shall become the deputy inspector
41 general for social services investigations and continue in that role
42 with the support of and in collaboration with the inspector, through the
43 welfare inspector general's term, or until his or her resignation from
44 office or his or her removal from office for neglect or malfeasance by
45 the senate upon a vote of two-thirds of its members.
46 2. The inspector shall, within amounts appropriated therefor, appoint
47 such directors, assistants and other officers and employees as may be
48 needed for the performance of the duties set forth in this section;
49 provided, however, that any necessary officers and employees who are
50 substantially engaged in the performance of the functions of the office
51 of the welfare inspector general on the effective date of this section
52 shall be deemed employees of the office of the medicaid inspector gener-
53 al. In accordance with subdivision two of section seventy of the civil
54 service law, officers and employees so transferred shall be transferred
55 without further examination or qualification and shall retain their
56 respective civil service classifications and status.

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1 3. The inspector, through the deputy inspector general for social
2 services investigations, as set forth in subdivision two of this
3 section, shall have the following functions, duties and responsibil-
4 ities:
5 (a) to conduct and supervise investigations of fraud, abuse or illegal
6 acts relating to the programs described in subdivision two of section
7 thirty-a of this article;
8 (b) to the greatest extent possible, to coordinate its investigative
9 activities with the commissioner, the deputy attorney general for medi-
10 caid fraud control or such other person designated by the attorney
11 general, the commissioner of the office of temporary and disability
12 assistance, the commissioner of the office of children and family
13 services, the commissioner of education, the commissioner of labor, the
14 fiscal agent employed to operate the medicaid management information
15 system and the state comptroller;
16 (c) to make information and evidence relating to criminal acts which
17 he or she may obtain available to appropriate law enforcement officials
18 and to consult with local district attorneys and, where appropriate, the
19 deputy attorney general for medicaid fraud or such other person desig-
20 nated by the attorney general, in addition to federal officials, to
21 coordinate investigations and criminal prosecutions;
22 (d) to subpoena witnesses, administer oaths or affirmations, take
23 testimony and compel the production of such books, papers, records and
24 documents as he or she may deem to be relevant to an investigation
25 undertaken pursuant to this section;
26 (e) to keep the governor, attorney general, state comptroller, tempo-
27 rary president of the senate and the minority leader of the senate, the
28 speaker of the assembly and the minority and majority leaders of the
29 assembly, apprised of fraud and abuse in social services programs and
30 expenditures;
31 (f) to recommend policies relating to the prevention and detection of
32 fraud and abuse or the identification and prosecution of participants in
33 such fraud and abuse;
34 (g) to monitor the implementation by the relevant office of his or her
35 recommendations and those of other investigative agencies; and
36 (h) to receive complaints of alleged failures of state and local offi-
37 cials to prevent, detect and prosecute fraud and abuse in social
38 services programs and expenditures.
39 4. (a) In addition to the authority otherwise provided by this
40 section, in carrying out the provisions of this section, the inspector
41 and the deputy inspector general for social services investigations, as
42 set forth in subdivision two of this section, are authorized:
43 (i) to have full and unrestricted access to all records, reports,
44 audits, reviews, documents, papers, recommendations or other material
45 available to the department, the office of temporary and disability
46 assistance, the office of children and family services, the department
47 of labor and local social services districts relating to programs and
48 operations as described in subdivision two of section thirty-a of this
49 article;
50 (ii) to make such investigations relating to the administration of
51 social services programs and expenditures as are, in the judgment of the
52 inspector, necessary or desirable; and
53 (iii) to request such information, assistance and cooperation from any
54 federal, state or local governmental department, board, bureau, commis-
55 sion, or other agency or unit thereof as may be necessary for carrying
56 out the duties and responsibilities enjoined upon them by this section.

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1 State and local agencies or units thereof are hereby authorized and
2 directed to provide such information, assistance and cooperation.
3 (b) Notwithstanding any other provision of law, rule or regulation to
4 the contrary, no person shall prevent, seek to prevent, interfere with,
5 obstruct or otherwise hinder any investigation being conducted pursuant
6 to this section. Section one hundred thirty-six of the social services
7 law shall in no way be construed to restrict any person or governmental
8 body from cooperating and assisting the inspector or his or her employ-
9 ees in carrying out their duties under this section. Any violation of
10 this paragraph shall constitute cause for suspension or removal from
11 office or employment.
12 5. The inspector, in consultation with the deputy inspector general
13 for social services investigations, shall, no later than October first
14 of each year submit to the governor, the state comptroller, the attorney
15 general and the legislature a report summarizing the activities of the
16 office during the preceding calendar year with respect to its responsi-
17 bilities under this section.
18 6. (a) The inspector and the deputy inspector general for social
19 services investigations shall not publicly disclose information which
20 is:
21 (i) a part of any ongoing investigation; or
22 (ii) specifically prohibited from disclosure by any other provision of
23 law.
24 (b) Notwithstanding paragraph (a) of this subdivision, any report
25 under this section may be disclosed to the public in a form which
26 includes information with respect to a part of an ongoing criminal
27 investigation if such information has been included in a public record.
28 7. With the exception of any documents or records required by the
29 attorney general pursuant to subdivision eight of this section, any
30 documents and records relevant and necessary and related to the transfer
31 of functions from the office of the welfare inspector general shall be
32 transferred to the office of the medicaid inspector general.
33 8. If, prior to the effective date of this section, the welfare
34 inspector general has commenced a criminal proceeding against any
35 person, prosecution of such a case shall become the responsibility of
36 the attorney general; provided, however, that the welfare inspector
37 general may continue to assist in the prosecution of the case as a
38 special assistant attorney general, at the discretion of the attorney
39 general. For purposes of this subdivision, a criminal proceeding has
40 been commenced when criminal charges are pending in any court or a grand
41 jury has commenced an investigation of the matter.
42 9. The director of the budget is hereby authorized to transfer to the
43 office of the medicaid inspector general, for use by the office, funds
44 otherwise appropriated or reappropriated to the office of the welfare
45 inspector general consistent with the purposes of this section.
46 10. All rules, regulations, acts, determinations and decisions of the
47 welfare inspector general with respect to the functions, powers, duties,
48 and obligations of the office of the welfare inspector general in effect
49 on the effective date of this section shall continue in full force and
50 effect as rules, regulations, acts, determinations and decisions of the
51 medicaid inspector general until amended or revised by the medicaid
52 inspector general.
53 § 10. Subdivision 2 of section 93 of part C of chapter 58 of the laws
54 of 2007 amending the social services law and other laws relating to
55 enacting the major components of legislation necessary to implement the

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1 health and mental hygiene budget for the 2007-2008 fiscal year, is
2 amended to read as follows:
3 2. section two of this act shall expire and be deemed repealed on
4 March 31, [2010] 2013;
5 § 11. Paragraph (e-1) of subdivision 12 of section 2808 of the public
6 health law, as amended by section 64 of part C of chapter 58 of the laws
7 of 2007, is amended to read as follows:
8 (e-1) Notwithstanding any inconsistent provision of law or regulation,
9 the commissioner shall provide, in addition to payments established
10 pursuant to this article prior to application of this section, addi-
11 tional payments under the medical assistance program pursuant to title
12 eleven of article five of the social services law for non-state operated
13 public residential health care facilities, including public residential
14 health care facilities located in the county of Nassau, the county of
15 Westchester and the county of Erie, but excluding public residential
16 health care facilities operated by a town or city within a county, in
17 aggregate annual amounts of up to one hundred fifty million dollars in
18 additional payments for the state fiscal year beginning April first, two
19 thousand six and for the state fiscal year beginning April first, two
20 thousand seven and for the state fiscal year beginning April first, two
21 thousand eight and for the state fiscal year beginning April first, two
22 thousand nine, and each state fiscal year thereafter. The amount allo-
23 cated to each eligible public residential health care facility for this
24 period shall be computed in accordance with the provisions of paragraph
25 (f) of this subdivision, provided, however, that patient days shall be
26 utilized for such computation reflecting actual reported data for two
27 thousand three and each representative succeeding year as applicable.
28 § 12. Paragraph (a) of subdivision 1 of section 212 of chapter 474 of
29 the laws of 1996, amending the education law and other laws relating to
30 rates for residential health care facilities, as amended by section 65
31 of part C of chapter 58 of the laws of 2007, is amended to read as
32 follows:
33 (a) Notwithstanding any inconsistent provision of law or regulation to
34 the contrary, effective beginning August 1, 1996, for the period April
35 1, 1997 through March 31, 1998, April 1, 1998 for the period April 1,
36 1998 through March 31, 1999, August 1, 1999, for the period April 1,
37 1999 through March 31, 2000, April 1, 2000, for the period April 1, 2000
38 through March 31, 2001, April 1, 2001, for the period April 1, 2001
39 through March 31, 2002, April 1, 2002, for the period April 1, 2002
40 through March 31, 2003, and for the state fiscal year beginning April 1,
41 2005 through March 31, 2006, and for the state fiscal year beginning
42 April 1, 2006 through March 31, 2007, and for the state fiscal year
43 beginning April 1, 2007 through March 31, 2008, and for the state fiscal
44 year beginning April 1, 2008 through March 31, 2009, and each state
45 fiscal year thereafter, the department of health is authorized to pay
46 public general hospitals, as defined in subdivision 10 of section 2801
47 of the public health law, operated by the state of New York or by the
48 state university of New York or by a county, which shall not include a
49 city with a population of over one million, of the state of New York,
50 and those public general hospitals located in the county of Westchester,
51 the county of Erie or the county of Nassau, additional payments for
52 inpatient hospital services as medical assistance payments pursuant to
53 title 11 of article 5 of the social services law for patients eligible
54 for federal financial participation under title XIX of the federal
55 social security act in medical assistance pursuant to the federal laws
56 and regulations governing disproportionate share payments to hospitals

1 up to one hundred percent of each such public general hospital's medical
2 assistance and uninsured patient losses after all other medical assist-
3 ance, including disproportionate share payments to such public general
4 hospital for 1996, 1997, 1998, and 1999, based initially for 1996 on
5 reported 1994 reconciled data as further reconciled to actual reported
6 1996 reconciled data, and for 1997 based initially on reported 1995
7 reconciled data as further reconciled to actual reported 1997 reconciled
8 data, for 1998 based initially on reported 1995 reconciled data as
9 further reconciled to actual reported 1998 reconciled data, for 1999
10 based initially on reported 1995 reconciled data as further reconciled
11 to actual reported 1999 reconciled data, for 2000 based initially on
12 reported 1995 reconciled data as further reconciled to actual reported
13 2000 data, for 2001 based initially on reported 1995 reconciled data as
14 further reconciled to actual reported 2001 data, for 2002 based initial-
15 ly on reported 2000 reconciled data as further reconciled to actual
16 reported 2002 data, and for state fiscal years beginning on April 1,
17 2005, based initially on reported 2000 reconciled data as further recon-
18 ciled to actual reported data for 2005, and for state fiscal years
19 beginning on April 1, 2006, based initially on reported 2000 reconciled
20 data as further reconciled to actual reported data for 2006 and for
21 state fiscal years beginning on and after April 1, 2007, based initially
22 on reported 2000 reconciled data as further reconciled to actual
23 reported data for 2007, and to actual reported data for each respective
24 succeeding year. The payments may be added to rates of payment or made
25 as aggregate payments to an eligible public general hospital.
26 § 13. Paragraph (b) of subdivision 1 of section 211 of chapter 474 of
27 the laws of 1996, amending the education law and other laws relating to
28 rates for residential health care facilities, as amended by section 66
29 of part C of chapter 58 of the laws of 2007, is amended to read as
30 follows:
31 (b) Notwithstanding any inconsistent provision of law or regulation to
32 the contrary, effective beginning April 1, 2000, the department of
33 health is authorized to pay public general hospitals, other than those
34 operated by the state of New York or the state university of New York,
35 as defined in subdivision 10 of section 2801 of the public health law,
36 located in a city with a population of over 1 million, additional
37 initial payments for inpatient hospital services of $120 million during
38 each state fiscal year until March 31, 2003, and up to $120 million
39 during the state fiscal year beginning April 1, 2005 through March 31,
40 2006 and during the state fiscal year beginning April 1, 2006 through
41 March 31, 2007 and during the state fiscal year beginning April 1, 2007
42 through March 31, 2008 and during the state fiscal year beginning April
43 1, 2008 through March 31, 2009, <u>and each state fiscal year thereafter,</u>
44 as medical assistance payments pursuant to title 11 of article 5 of the
45 social services law for patients eligible for federal financial partic-
46 ipation under title XIX of the federal social security act in medical
47 assistance pursuant to the federal laws and regulations governing
48 disproportionate share payments to hospitals based on the relative share
49 of each such non-state operated public general hospital of medical
50 assistance and uninsured patient losses after all other medical assist-
51 ance, including disproportionate share payments to such public general
52 hospitals for payments made during the state fiscal year ending March
53 31, 2001, based initially on reported 1995 reconciled data as further
54 reconciled to actual reported 2000 or 2001 data, for payments made
55 during the state fiscal year ending March 31, 2002, based initially on
56 reported 1995 reconciled data as further reconciled to actual reported

1 2001 or 2002 data, for payments made during the state fiscal year ending
2 March 31, 2003, based initially on reported 2000 reconciled data as
3 further reconciled to actual reported 2002 or 2003 data, for payments
4 made during the state fiscal year ending on and after March 31, 2006,
5 based initially on reported 2000 reconciled data as further reconciled
6 to actual reported 2005 or 2006 data, for payments made during the state
7 fiscal year ending on and after March 31, 2007, based initially on
8 reported 2000 reconciled data as further reconciled to actual reported
9 2006 or 2007 data for payments made during the state fiscal years ending
10 on and after March 31, 2008, based initially on reported 2000 reconciled
11 data as further reconciled to actual reported 2007 or 2008 data, and to
12 actual reported data for each respective succeeding year. The payments
13 may be added to rates of payment or made as aggregate payments to an
14 eligible public general hospital.
15 § 14. Section 11 of chapter 884 of the laws of 1990, amending the
16 public health law relating to authorizing bad debt and charity care
17 allowances for certified home health agencies, as amended by section 68
18 of part C of chapter 58 of the laws of 2007, is amended to read as
19 follows:
20 § 11. This act shall take effect immediately and:
21 (a) sections one and three shall expire on December 31, 1996, <u>and</u>
22 (b) [sections four through ten shall expire on June 30, 2009, and
23 (c)] provided that the amendment to section 2807-b of the public
24 health law by section two of this act shall not affect the expiration of
25 such section 2807-b as otherwise provided by law and shall be deemed to
26 expire therewith.
27 § 15. Subdivisions 2 and 4 of section 246 of chapter 81 of the laws of
28 1995, amending the public health law and other laws relating to medical
29 reimbursement and welfare reform, as amended by section 69 of part C of
30 chapter 58 of the laws of 2007, are amended to read as follows:
31 2. Sections five, seven through nine, twelve through fourteen, and
32 eighteen of this act shall be deemed to have been in full force and
33 effect on and after April 1, 1995 through March 31, 1999 and on and
34 after July 1, 1999 through March 31, 2000 and on and after April 1, 2000
35 through March 31, 2003 and on and after April 1, 2003 through March 31,
36 2006 and on and after April 1, 2006 through March 31, 2007 and on and
37 after April 1, 2007 through March 31, 2009 <u>and on and after April 1,</u>
38 <u>2009</u>;
39 4. Section one of this act shall be deemed to have been in full force
40 and effect on and after April 1, 1995 through March 31, 1999 and on and
41 after July 1, 1999 through March 31, 2000 and on and after April 1, 2000
42 through March 31, 2003 and on and after April 1, 2003 through March 31,
43 2006 and on and after April 1, 2006 through March 31, 2007 and on and
44 after April 1, 2007 through March 31, 2009 <u>and on and after April 1,</u>
45 <u>2009</u>.
46 § 16. Subparagraph (iii) of paragraph (f) of subdivision 4 of section
47 2807-c of the public health law, as amended by section 70 of part C of
48 chapter 58 of the laws of 2007, is amended to read as follows:
49 (iii) commencing April first, nineteen hundred ninety-seven through
50 March thirty-first, nineteen hundred ninety-nine and commencing July
51 first, nineteen hundred ninety-nine through March thirty-first, two
52 thousand and April first, two thousand through March thirty-first, two
53 thousand five and for periods commencing April first, two thousand five
54 through March thirty-first, two thousand six and for periods commencing
55 on and after April first, two thousand six through March thirty-first,
56 two thousand seven<u>,</u> and for periods commencing on and after April first,

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1 two thousand seven through March thirty-first, two thousand nine, and
2 for periods commencing on and after April first, two thousand nine, the
3 reimbursable inpatient operating cost component of case based rates of
4 payment per diagnosis-related group, excluding any operating cost compo-
5 nents related to direct and indirect expenses of graduate medical educa-
6 tion, for patients eligible for payments made by state governmental
7 agencies shall be reduced by three and thirty-three hundredths percent
8 to encourage improved productivity and efficiency. Such election shall
9 not alter the calculation of the group price component calculated pursu-
10 ant to subparagraph (i) of paragraph (a) of subdivision seven of this
11 section;
12 § 17. Subparagraph (iii) of paragraph (k) of subdivision 4 of section
13 2807-c of the public health law, as amended by section 71 of part C of
14 chapter 58 of the laws of 2007, is amended to read as follows:
15 (iii) commencing April first, nineteen hundred ninety-seven through
16 March thirty-first, nineteen hundred ninety-nine and commencing July
17 first, nineteen hundred ninety-nine through March thirty-first, two
18 thousand and April first, two thousand through March thirty-first, two
19 thousand five and commencing April first, two thousand five through
20 March thirty-first, two thousand six, and for periods commencing on and
21 after April first, two thousand six through March thirty-first, two
22 thousand seven, and for periods commencing on and after April first, two
23 thousand seven through March thirty-first, two thousand nine, and for
24 periods commencing on and after April first, two thousand nine, the
25 operating cost component of rates of payment, excluding any operating
26 cost components related to direct and indirect expenses of graduate
27 medical education, for patients eligible for payments made by a state
28 governmental agency shall be reduced by three and thirty-three
29 hundredths percent to encourage improved productivity and efficiency.
30 The facility will be eligible to receive the financial incentives for
31 the physician specialty weighting incentive towards primary care pursu-
32 ant to subparagraph (ii) of paragraph (a) of subdivision twenty-five of
33 this section.
34 § 18. The opening paragraph of subparagraph (vi) of paragraph (b) of
35 subdivision 5 of section 2807-c of the public health law, as amended by
36 section 72 of part C of chapter 58 of the laws of 2007, is amended to
37 read as follows:
38 for discharges on or after April first, nineteen hundred ninety-seven
39 through March thirty-first, nineteen hundred ninety-nine and for
40 discharges on or after July first, nineteen hundred ninety-nine through
41 March thirty-first, two thousand and for discharges on or after April
42 first, two thousand through March thirty-first, two thousand five and
43 for discharges on or after April first, two thousand five through March
44 thirty-first, two thousand six, and for discharges on or after April
45 first, two thousand six through March thirty-first, two thousand seven,
46 and for discharges on or after April first, two thousand seven through
47 March thirty-first, two thousand nine, and for discharges on or after
48 April first, two thousand nine, for purposes of reimbursement of inpa-
49 tient hospital services for patients eligible for payments made by state
50 governmental agencies, the average reimbursable inpatient operating cost
51 per discharge of a general hospital shall, to encourage improved produc-
52 tivity and efficiency, be the sum of:
53 § 19. The opening paragraph and subparagraph (i) of paragraph (c) of
54 subdivision 5 of section 2807-c of the public health law, as amended by
55 section 73 of part C of chapter 58 of the laws of 2007, are amended to
56 read as follows:

1 Notwithstanding any inconsistent provision of this section, commencing
2 July first, nineteen hundred ninety-six through March thirty-first,
3 nineteen hundred ninety-nine and July first, nineteen hundred ninety-
4 nine through March thirty-first, two thousand and April first, two thou-
5 sand through March thirty-first, two thousand five and for periods on
6 and after April first, two thousand five through March thirty-first, two
7 thousand six, and for periods on and after April first, two thousand six
8 through March thirty-first, two thousand seven, and for periods on and
9 after April first, two thousand seven through March thirty-first, two
10 thousand nine, <u>and for periods on and after April first, two thousand</u>
11 <u>nine,</u> rates of payment for a general hospital for patients eligible for
12 payments made by state governmental agencies shall be further reduced by
13 the commissioner to encourage improved productivity and efficiency by
14 providers by a factor determined as follows:
15 (i) an aggregate reduction shall be calculated for each general hospi-
16 tal commencing July first, nineteen hundred ninety-six through March
17 thirty-first, nineteen hundred ninety-nine and July first, nineteen
18 hundred ninety-nine through March thirty-first, two thousand and April
19 first, two thousand through March thirty-first, two thousand five and
20 for periods on and after April first, two thousand five through March
21 thirty-first, two thousand six, and for periods on and after April
22 first, two thousand six through March thirty-first, two thousand seven,
23 and for periods on and after April first, two thousand seven through
24 March thirty-first, two thousand nine, <u>and for periods on and after</u>
25 <u>April first, two thousand nine,</u> as the result of (A) eighty-nine million
26 dollars on an annualized basis for each year, multiplied by (B) the
27 ratio of patient days for patients eligible for payments made by state
28 governmental agencies provided in a base year two years prior to the
29 rate year by a general hospital, divided by the total of such patient
30 days summed for all general hospitals; and
31 § 20. Clause (B-1) of subparagraph (i) of paragraph (f) of subdivision
32 11 of section 2807-c of the public health law, as amended by section 74
33 of part C of chapter 58 of the laws of 2007, is amended to read as
34 follows:
35 (B-1) The increase in the statewide average case mix in the periods
36 January first, nineteen hundred ninety-seven through March thirty-first,
37 two thousand and on and after April first, two thousand through March
38 thirty-first, two thousand six and on and after April first, two thou-
39 sand six through March thirty-first, two thousand seven, and on and
40 after April first, two thousand seven through March thirty-first, two
41 thousand nine, <u>and on and after April first, two thousand nine,</u> from the
42 statewide average case mix for the period January first, nineteen
43 hundred ninety-six through December thirty-first, nineteen hundred nine-
44 ty-six shall not exceed one percent for nineteen hundred ninety-seven,
45 two percent for nineteen hundred ninety-eight, three percent for the
46 period January first, nineteen hundred ninety-nine through September
47 thirtieth, nineteen hundred ninety-nine, four percent for the period
48 October first, nineteen hundred ninety-nine through December thirty-
49 first, nineteen hundred ninety-nine, and four percent for two thousand
50 plus an additional one percent per year thereafter, based on comparison
51 of data only for patients that are eligible for medical assistance
52 pursuant to title eleven of article five of the social services law,
53 including such patients enrolled in health maintenance organizations.
54 § 21. Subdivision 1 of section 46 of chapter 639 of the laws of 1996
55 amending the public health law and other laws relating to welfare

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1 reform, as amended by section 75 of part C of chapter 58 of the laws of
2 2007, is amended to read as follows:
3 1. Notwithstanding any inconsistent provision of law or regulation to
4 the contrary, the trend factors used to project reimbursable operating
5 costs to the rate period for purposes of determining rates of payment
6 pursuant to article 28 of the public health law for general hospitals
7 for reimbursement of inpatient hospital services provided to patients
8 eligible for payments made by state governmental agencies on and after
9 April 1, 1996 through June 30, 1996 and on or after July 1, 1996 through
10 March 31, 1999 and on and after July 1, 1999 through March 31, 2000 and
11 on and after April 1, 2000 through March 31, 2005 and on and after April
12 1, 2005 through March 31, 2006 and on and after April 1, 2006 through
13 March 31, 2007 and on and after April 1, 2007 through March 31, 2009,
14 and on and after April 1, 2009, shall reflect no trend factor projec-
15 tions or adjustments for the period April 1, 1996, through March 31,
16 1997.
17 § 22. Section 4 of chapter 81 of the laws of 1995, amending the public
18 health law and other laws relating to medical reimbursement and welfare
19 reform, as amended by section 76 of part C of chapter 58 of the laws of
20 2007, is amended to read as follows:
21 § 4. Notwithstanding any inconsistent provision of law, except subdi-
22 vision 15 of section 2807 of the public health law and section 364-j-2
23 of the social services law and section 32-g of part F of chapter 412 of
24 the laws of 1999, rates of payment for diagnostic and treatment centers
25 established in accordance with paragraphs (b) and (h) of subdivision 2
26 of section 2807 of the public health law for the period ending September
27 30, 1995 shall continue in effect through September 30, 2000 and for the
28 periods October 1, 2000 through September 30, 2003 and October 1, 2003
29 through September 30, 2007 and October 1, 2007 through September 30,
30 2009, and on and after October 1, 2009, and further provided that rates
31 in effect on March 31, 2003 as established in accordance with paragraph
32 (e) of subdivision 2 of section 2807 of the public health law shall
33 continue in effect for the period April 1, 2003 through September 30,
34 2007 and October 1, 2007 through September 30, 2009, and on and after
35 October 1, 2009, provided however that, subject to the approval of the
36 director of the budget, such rates may be adjusted to include expendi-
37 tures in those components of rates not subject to the ceilings of the
38 corresponding rate methodology.
39 § 23. Subdivision 5 of section 246 of chapter 81 of the laws of 1995,
40 amending the public health law and other laws relating to medical
41 reimbursement and welfare reform, as amended by section 77 of part C of
42 chapter 58 of the laws of 2007, is amended to read as follows:
43 5. Section three of this act shall be deemed to have been in full
44 force and effect on and after April 1, 1995 through March 31, 1999 and
45 on and after July 1, 1999 through March 31, 2000 and on and after April
46 1, 2000 through March 31, 2003 and on and after April 1, 2003 through
47 March 31, 2007 and on and after April 1, 2007 through March 31, 2009,
48 and on and after April 1, 2009;
49 § 24. Section 194 of chapter 474 of the laws of 1996, amending the
50 education law and other laws relating to rates of residential health
51 care facilities, as amended by section 78 of part C of chapter 58 of the
52 laws of 2007, is amended to read as follows:
53 § 194. 1. Notwithstanding any inconsistent provision of law or regu-
54 lation, the trend factors used to project reimbursable operating costs
55 to the rate period for purposes of determining rates of payment pursuant
56 to article 28 of the public health law for residential health care

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1 facilities for reimbursement of inpatient services provided to patients
2 eligible for payments made by state governmental agencies on and after
3 April 1, 1996 through March 31, 1999 and for payments made on and after
4 July 1, 1999 through March 31, 2000 and on and after April 1, 2000
5 through March 31, 2003 and on and after April 1, 2003 through March 31,
6 2007 and on and after April 1, 2007 through March 31, 2009 and on and
7 after April 1, 2009 shall reflect no trend factor projections or adjust-
8 ments for the period April 1, 1996, through March 31, 1997.
9 2. The commissioner of health shall adjust such rates of payment to
10 reflect the exclusion pursuant to this section of such specified trend
11 factor projections or adjustments.
12 § 25. Subdivision 1 of section 89-a of part C of chapter 58 of the
13 laws of 2007 amending the social services law and other laws relating to
14 enacting major components of legislation necessary to implement the
15 health and mental hygiene budget for the 2007-2008 fiscal year, is
16 amended to read as follows:
17 1. Notwithstanding paragraph (c) of subdivision 10 of section 2807-c
18 of the public health law and section 21 of chapter 1 of the laws of
19 1999, as amended, and any other inconsistent provision of law or regu-
20 lation to the contrary, in determining rates of payments by state
21 governmental agencies effective for services provided beginning April 1,
22 2006, through March 31, 2009, and on and after April 1, 2009 for inpa-
23 tient and outpatient services provided by general hospitals and for
24 inpatient services and outpatient adult day health care services
25 provided by residential health care facilities pursuant to article 28 of
26 the public health law, the commissioner of health shall apply a trend
27 factor projection of two and twenty-five hundredths percent attributable
28 to the period January 1, 2006 through December 31, 2006, and on and
29 after January 1, 2007, provided, however, that on reconciliation of such
30 trend factor for the period January 1, 2006 through December 31, 2006
31 pursuant to paragraph (c) of subdivision 10 of section 2807-c of the
32 public health law, such trend factor shall be the final US Consumer
33 Price Index (CPI) for all urban consumers, as published by the US
34 Department of Labor, Bureau of Labor Statistics less twenty-five
35 hundredths of a percentage point.
36 § 26. Paragraph (f) of subdivision 1 of section 64 of chapter 81 of
37 the laws of 1995, amending the public health law and other laws relating
38 to medical reimbursement and welfare reform, as amended by section 79 of
39 part C of chapter 58 of the laws of 2007, is amended to read as follows:
40 (f) Prior to February 1, 2001, February 1, 2002, February 1, 2003,
41 February 1, 2004, February 1, 2005, February 1, 2006, February 1, 2007,
42 February 1, 2008 [and], February 1, 2009 and February 1 of each year
43 thereafter the commissioner of health shall calculate the result of the
44 statewide total of residential health care facility days of care
45 provided to beneficiaries of title XVIII of the federal social security
46 act (medicare), divided by the sum of such days of care plus days of
47 care provided to residents eligible for payments pursuant to title 11 of
48 article 5 of the social services law minus the number of days provided
49 to residents receiving hospice care, expressed as a percentage, for the
50 period commencing January 1, through November 30, of the prior year
51 respectively, based on such data for such period. This value shall be
52 called the 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 [and],
53 2009 and each year thereafter statewide target percentage respectively.
54 § 27. Subparagraph (ii) of paragraph (b) of subdivision 3 of section
55 64 of chapter 81 of the laws of 1995, amending the public health law and
56 other laws relating to medical reimbursement and welfare reform, as

1 amended by section 80 of part C of chapter 58 of the laws of 2007, is
2 amended to read as follows:
3 (ii) If the 1997, 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006,
4 2007, 2008 [and], 2009, and each year thereafter statewide target
5 percentages are not for each year at least three percentage points high-
6 er than the statewide base percentage, the commissioner of health shall
7 determine the percentage by which the statewide target percentage for
8 each year is not at least three percentage points higher than the state-
9 wide base percentage. The percentage calculated pursuant to this para-
10 graph shall be called the 1997, 1998, 2000, 2001, 2002, 2003, 2004,
11 2005, 2006, 2007, 2008 [and], 2009, and each year thereafter statewide
12 reduction percentage respectively. If the 1997, 1998, 2000, 2001, 2002,
13 2003, 2004, 2005, 2006, 2007, 2008 [and], 2009, and each year thereafter
14 statewide target percentage for the respective year is at least three
15 percentage points higher than the statewide base percentage, the state-
16 wide reduction percentage for the respective year shall be zero.
17 § 28. Subparagraph (iii) of paragraph (b) of subdivision 4 of section
18 64 of chapter 81 of the laws of 1995, amending the public health law and
19 other laws relating to medical reimbursement and welfare reform, as
20 amended by section 81 of part C of chapter 58 of the laws of 2007, is
21 amended to read as follows:
22 (iii) The 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008
23 [and], 2009, and each year thereafter statewide reduction percentage
24 shall be multiplied by one hundred two million dollars respectively to
25 determine the 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008
26 [and], 2009, and each year thereafter statewide aggregate reduction
27 amount. If the 1998 and the 2000, 2001, 2002, 2003, 2004, 2005, 2006,
28 2007, 2008 [and], 2009, and each year thereafter statewide reduction
29 percentage shall be zero respectively, there shall be no 1998, 2000,
30 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 [and], 2009, and each
31 year thereafter reduction amount.
32 § 29. Paragraph (b) of subdivision 5 of section 64 of chapter 81 of
33 the laws of 1995, amending the public health law and other laws relating
34 to medical reimbursement and welfare reform, as amended by section 82 of
35 part C of chapter 58 of the laws of 2007, is amended to read as follows:
36 (b) The 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005,
37 2006, 2007, 2008 [and], 2009, and each year thereafter statewide aggre-
38 gate reduction amounts shall for each year be allocated by the commis-
39 sioner of health among residential health care facilities that are
40 eligible to provide services to beneficiaries of title XVIII of the
41 federal social security act (medicare) and residents eligible for
42 payments pursuant to title 11 of article 5 of the social services law on
43 the basis of the extent of each facility's failure to achieve a two
44 percentage points increase in the 1996 target percentage, a three
45 percentage point increase in the 1997, 1998, 2000, 2001, 2002, 2003,
46 2004, 2005, 2006, 2007, 2008 [and], 2009, and each year thereafter
47 target percentage and a two and one-quarter percentage point increase in
48 the 1999 target percentage for each year, compared to the base percent-
49 age, calculated on a facility specific basis for this purpose, compared
50 to the statewide total of the extent of each facility's failure to
51 achieve a two percentage points increase in the 1996 and a three
52 percentage point increase in the 1997 and a three percentage point
53 increase in the 1998 and a two and one-quarter percentage point increase
54 in the 1999 target percentage and a three percentage point increase in
55 the 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 [and], 2009,
56 and each year thereafter target percentage compared to the base percent-

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1 age. These amounts shall be called the 1996, 1997, 1998, 1999, 2000,
2 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 [and], 2009, and each
3 year thereafter facility specific reduction amounts respectively.
4 § 30. Section 228 of chapter 474 of the laws of 1996, amending the
5 education law and other laws relating to rates for residential health
6 care facilities, as amended by section 85 of part C of chapter 58 of the
7 laws of 2007, is amended to read as follows:
8 § 228. 1. Definitions. (a) Regions, for purposes of this section,
9 shall mean a downstate region to consist of Kings, New York, Richmond,
10 Queens, Bronx, Nassau and Suffolk counties and an upstate region to
11 consist of all other New York state counties. A certified home health
12 agency or long term home health care program shall be located in the
13 same county utilized by the commissioner of health for the establishment
14 of rates pursuant to article 36 of the public health law.
15 (b) Certified home health agency (CHHA) shall mean such term as
16 defined in section 3602 of the public health law.
17 (c) Long term home health care program (LTHHCP) shall mean such term
18 as defined in subdivision 8 of section 3602 of the public health law.
19 (d) Regional group shall mean all those CHHAs and LTHHCPs, respective-
20 ly, located within a region.
21 (e) Medicaid revenue percentage, for purposes of this section, shall
22 mean CHHA and LTHHCP revenues attributable to services provided to
23 persons eligible for payments pursuant to title 11 of article 5 of the
24 social services law divided by such revenues plus CHHA and LTHHCP reven-
25 ues attributable to services provided to beneficiaries of Title XVIII of
26 the federal social security act (medicare).
27 (f) Base period, for purposes of this section, shall mean calendar
28 year 1995.
29 (g) Target period. For purposes of this section, the 1996 target peri-
30 od shall mean August 1, 1996 through March 31, 1997, the 1997 target
31 period shall mean January 1, 1997 through November 30, 1997, the 1998
32 target period shall mean January 1, 1998 through November 30, 1998, the
33 1999 target period shall mean January 1, 1999 through November 30, 1999,
34 the 2000 target period shall mean January 1, 2000 through November 30,
35 2000, the 2001 target period shall mean January 1, 2001 through November
36 30, 2001, the 2002 target period shall mean January 1, 2002 through
37 November 30, 2002, the 2003 target period shall mean January 1, 2003
38 through November 30, 2003, the 2004 target period shall mean January 1,
39 2004 through November 30, 2004, and the 2005 target period shall mean
40 January 1, 2005 through November 30, 2005, the 2006 target period shall
41 mean January 1, 2006 through November 30, 2006, and the 2007 target
42 period shall mean January 1, 2007 through November 30, 2007 and the 2008
43 target period shall mean January 1, 2008 through November 30, 2008, and
44 the 2009 target period shall mean January 1, 2009 through November 30,
45 2009 and each year thereafter the target period shall be January 1
46 through November 30, for that respective year.
47 2. (a) Prior to February 1, 1997, for each regional group the commis-
48 sioner of health shall calculate the 1996 medicaid revenue percentages
49 for the period commencing August 1, 1996 to the last date for which such
50 data is available and reasonably accurate.
51 (b) Prior to February 1, 1998, prior to February 1, 1999, prior to
52 February 1, 2000, prior to February 1, 2001, prior to February 1, 2002,
53 prior to February 1, 2003, prior to February 1, 2004, prior to February
54 1, 2005, prior to February 1, 2006, and prior to February 1, 2007, and
55 prior to February 1, 2008 and prior to February 1, 2009, and prior to
56 February 1 of each year thereafter for each regional group the commis-

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1 sioner of health shall calculate the prior year's medicaid revenue
2 percentages for the period commencing January 1 through November 30 of
3 such prior year.
4 3. By September 15, 1996, for each regional group the commissioner of
5 health shall calculate the base period medicaid revenue percentage.
6 4. (a) For each regional group, the 1996 target medicaid revenue
7 percentage shall be calculated by subtracting the 1996 medicaid revenue
8 reduction percentages from the base period medicaid revenue percentages.
9 The 1996 medicaid revenue reduction percentage, taking into account
10 regional and program differences in utilization of medicaid and medicare
11 services, for the following regional groups shall be equal to:
12 (i) one and one-tenth percentage points for CHHAs located within the
13 downstate region;
14 (ii) six-tenths of one percentage point for CHHAs located within the
15 upstate region;
16 (iii) one and eight-tenths percentage points for LTHHCPs located with-
17 in the downstate region; and
18 (iv) one and seven-tenths percentage points for LTHHCPs located within
19 the upstate region.
20 (b) For 1997, 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007,
21 2008 [and], 2009, and each year thereafter for each regional group, the
22 target medicaid revenue percentage for the respective year shall be
23 calculated by subtracting the respective year's medicaid revenue
24 reduction percentage from the base period medicaid revenue percentage.
25 The medicaid revenue reduction percentages for 1997, 1998, 2000, 2001,
26 2002, 2003, 2004, 2005, 2006, 2007, 2008 [and], 2009, and each year
27 thereafter taking into account regional and program differences in
28 utilization of medicaid and medicare services, for the following
29 regional groups shall be equal to for each such year:
30 (i) one and one-tenth percentage points for CHHAs located within the
31 downstate region;
32 (ii) six-tenths of one percentage point for CHHAs located within the
33 upstate region;
34 (iii) one and eight-tenths percentage points for LTHHCPs located with-
35 in the downstate region; and
36 (iv) one and seven-tenths percentage points for LTHHCPs located within
37 the upstate region.
38 (c) For each regional group, the 1999 target medicaid revenue percent-
39 age shall be calculated by subtracting the 1999 medicaid revenue
40 reduction percentage from the base period medicaid revenue percentage.
41 The 1999 medicaid revenue reduction percentages, taking into account
42 regional and program differences in utilization of medicaid and medicare
43 services, for the following regional groups shall be equal to:
44 (i) eight hundred twenty-five thousandths (.825) of one percentage
45 point for CHHAs located within the downstate region;
46 (ii) forty-five hundredths (.45) of one percentage point for CHHAs
47 located within the upstate region;
48 (iii) one and thirty-five hundredths percentage points (1.35) for
49 LTHHCPs located within the downstate region; and
50 (iv) one and two hundred seventy-five thousandths percentage points
51 (1.275) for LTHHCPs located within the upstate region.
52 5. (a) For each regional group, if the 1996 medicaid revenue percent-
53 age is not equal to or less than the 1996 target medicaid revenue
54 percentage, the commissioner of health shall compare the 1996 medicaid
55 revenue percentage to the 1996 target medicaid revenue percentage to
56 determine the amount of the shortfall which, when divided by the 1996

1 medicaid revenue reduction percentage, shall be called the 1996
2 reduction factor. These amounts, expressed as a percentage, shall not
3 exceed one hundred percent. If the 1996 medicaid revenue percentage is
4 equal to or less than the 1996 target medicaid revenue percentage, the
5 1996 reduction factor shall be zero.
6 (b) For 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006,
7 2007, 2008 [and], 2009, and each year thereafter for each regional
8 group, if the medicaid revenue percentage for the respective year is not
9 equal to or less than the target medicaid revenue percentage for such
10 respective year, the commissioner of health shall compare such respec-
11 tive year's medicaid revenue percentage to such respective year's target
12 medicaid revenue percentage to determine the amount of the shortfall
13 which, when divided by the respective year's medicaid revenue reduction
14 percentage, shall be called the reduction factor for such respective
15 year. These amounts, expressed as a percentage, shall not exceed one
16 hundred percent. If the medicaid revenue percentage for a particular
17 year is equal to or less than the target medicaid revenue percentage for
18 that year, the reduction factor for that year shall be zero.
19 6. (a) For each regional group, the 1996 reduction factor shall be
20 multiplied by the following amounts to determine each regional group's
21 applicable 1996 state share reduction amount:
22 (i) two million three hundred ninety thousand dollars ($2,390,000) for
23 CHHAs located within the downstate region;
24 (ii) seven hundred fifty thousand dollars ($750,000) for CHHAs located
25 within the upstate region;
26 (iii) one million two hundred seventy thousand dollars ($1,270,000)
27 for LTHHCPs located within the downstate region; and
28 (iv) five hundred ninety thousand dollars ($590,000) for LTHHCPs
29 located within the upstate region.
30 For each regional group reduction, if the 1996 reduction factor shall
31 be zero, there shall be no 1996 state share reduction amount.
32 (b) For 1997, 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007,
33 2008 [and], 2009, and each year thereafter for each regional group, the
34 reduction factor for the respective year shall be multiplied by the
35 following amounts to determine each regional group's applicable state
36 share reduction amount for such respective year:
37 (i) two million three hundred ninety thousand dollars ($2,390,000) for
38 CHHAs located within the downstate region;
39 (ii) seven hundred fifty thousand dollars ($750,000) for CHHAs located
40 within the upstate region;
41 (iii) one million two hundred seventy thousand dollars ($1,270,000)
42 for LTHHCPs located within the downstate region; and
43 (iv) five hundred ninety thousand dollars ($590,000) for LTHHCPs
44 located within the upstate region.
45 For each regional group reduction, if the reduction factor for a
46 particular year shall be zero, there shall be no state share reduction
47 amount for such year.
48 (c) For each regional group, the 1999 reduction factor shall be multi-
49 plied by the following amounts to determine each regional group's appli-
50 cable 1999 state share reduction amount:
51 (i) one million seven hundred ninety-two thousand five hundred dollars
52 ($1,792,500) for CHHAs located within the downstate region;
53 (ii) five hundred sixty-two thousand five hundred dollars ($562,500)
54 for CHHAs located within the upstate region;
55 (iii) nine hundred fifty-two thousand five hundred dollars ($952,500)
56 for LTHHCPs located within the downstate region; and

1 (iv) four hundred forty-two thousand five hundred dollars ($442,500)
2 for LTHHCPs located within the upstate region.
3 For each regional group reduction, if the 1999 reduction factor shall
4 be zero, there shall be no 1999 state share reduction amount.
5 7. (a) For each regional group, the 1996 state share reduction amount
6 shall be allocated by the commissioner of health among CHHAs and LTHHCPs
7 on the basis of the extent of each CHHA's and LTHHCP's failure to
8 achieve the 1996 target medicaid revenue percentage, calculated on a
9 provider specific basis utilizing revenues for this purpose, expressed
10 as a proportion of the total of each CHHA's and LTHHCP's failure to
11 achieve the 1996 target medicaid revenue percentage within the applica-
12 ble regional group. This proportion shall be multiplied by the applica-
13 ble 1996 state share reduction amount calculation pursuant to paragraph
14 (a) of subdivision 6 of this section. This amount shall be called the
15 1996 provider specific state share reduction amount.
16 (b) For 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006,
17 2007, 2008 [and]<u>,</u> 2009<u>, and each year thereafter</u> for each regional
18 group, the state share reduction amount for the respective year shall be
19 allocated by the commissioner of health among CHHAs and LTHHCPs on the
20 basis of the extent of each CHHA's and LTHHCP's failure to achieve the
21 target medicaid revenue percentage for the applicable year, calculated
22 on a provider specific basis utilizing revenues for this purpose,
23 expressed as a proportion of the total of each CHHA's and LTHHCP's fail-
24 ure to achieve the target medicaid revenue percentage for the applicable
25 year within the applicable regional group. This proportion shall be
26 multiplied by the applicable year's state share reduction amount calcu-
27 lation pursuant to paragraph (b) or (c) of subdivision 6 of this
28 section. This amount shall be called the provider specific state share
29 reduction amount for the applicable year.
30 8. (a) The 1996 provider specific state share reduction amount shall
31 be due to the state from each CHHA and LTHHCP and may be recouped by the
32 state by March 31, 1997 in a lump sum amount or amounts from payments
33 due to the CHHA and LTHHCP pursuant to title 11 of article 5 of the
34 social services law.
35 (b) The provider specific state share reduction amount for 1997, 1998,
36 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 [and]<u>,</u> 2009<u>,</u>
37 <u>and each year thereafter</u> respectively, shall be due to the state from
38 each CHHA and LTHHCP and each year the amount due for such year may be
39 recouped by the state by March 31 of the following year in a lump sum
40 amount or amounts from payments due to the CHHA and LTHHCP pursuant to
41 title 11 of article 5 of the social services law.
42 9. CHHAs and LTHHCPs shall submit such data and information at such
43 times as the commissioner of health may require for purposes of this
44 section. The commissioner of health may use data available from third-
45 party payors.
46 10. On or about June 1, 1997, for each regional group the commissioner
47 of health shall calculate for the period August 1, 1996 through March
48 31, 1997 a medicaid revenue percentage, a reduction factor, a state
49 share reduction amount, and a provider specific state share reduction
50 amount in accordance with the methodology provided in paragraph (a) of
51 subdivision 2, paragraph (a) of subdivision 5, paragraph (a) of subdivi-
52 sion 6 and paragraph (a) of subdivision 7 of this section. The provider
53 specific state share reduction amount calculated in accordance with this
54 subdivision shall be compared to the 1996 provider specific state share
55 reduction amount calculated in accordance with paragraph (a) of subdivi-
56 sion 7 of this section. Any amount in excess of the amount determined in

1 accordance with paragraph (a) of subdivision 7 of this section shall be
2 due to the state from each CHHA and LTHHCP and may be recouped in
3 accordance with paragraph (a) of subdivision 8 of this section. If the
4 amount is less than the amount determined in accordance with paragraph
5 (a) of subdivision 7 of this section, the difference shall be refunded
6 to the CHHA and LTHHCP by the state no later than July 15, 1997. CHHAs
7 and LTHHCPs shall submit data for the period August 1, 1996 through
8 March 31, 1997 to the commissioner of health by April 15, 1997.
9 11. If a CHHA or LTHHCP fails to submit data and information as
10 required for purposes of this section:
11 (a) such CHHA or LTHHCP shall be presumed to have no decrease in medi-
12 caid revenue percentage between the applicable base period and the
13 applicable target period for purposes of the calculations pursuant to
14 this section; and
15 (b) the commissioner of health shall reduce the current rate paid to
16 such CHHA and such LTHHCP by state governmental agencies pursuant to
17 article 36 of the public health law by one percent for a period begin-
18 ning on the first day of the calendar month following the applicable due
19 date as established by the commissioner of health and continuing until
20 the last day of the calendar month in which the required data and infor-
21 mation are submitted.
22 12. The commissioner of health shall inform in writing the director of
23 the budget and the chair of the senate finance committee and the chair
24 of the assembly ways and means committee of the results of the calcu-
25 lations pursuant to this section.
26 § 31. Notwithstanding any inconsistent provision of law, rule or regu-
27 lation, the annual percentage reductions set forth in sections twenty-
28 six through thirty of this act shall be prorated by the commissioner of
29 health for periods on and after April 1, 2009.
30 § 32. Subdivision 5-a of section 246 of chapter 81 of the laws of
31 1995, amending the public health law and other laws relating to medical
32 reimbursement and welfare reform, as amended by section 86 of part C of
33 chapter 58 of the laws of 2007, is amended to read as follows:
34 5-a. Section sixty-four-a of this act shall be deemed to have been in
35 full force and effect on and after April 1, 1995 through March 31, 1999
36 and on and after July 1, 1999 through March 31, 2000 and on and after
37 April 1, 2000 through March 31, 2003 and on and after April 1, 2003
38 through March 31, 2007, and on and after April 1, 2007 through March 31,
39 2009, and on and after April 1, 2009;
40 § 33. Section 64-b of chapter 81 of the laws of 1995, amending the
41 public health law and other laws relating to medical reimbursement and
42 welfare reform, as amended by section 87 of part C of chapter 58 of the
43 laws of 2007, is amended to read as follows:
44 § 64-b. Notwithstanding any inconsistent provision of law, the
45 provisions of subdivision 7 of section 3614 of the public health law, as
46 amended, shall remain and be in full force and effect on April 1, 1995
47 through March 31, 1999 and on July 1, 1999 through March 31, 2000 and on
48 and after April 1, 2000 through March 31, 2003 and on and after April 1,
49 2003 through March 31, 2007, and on and after April 1, 2007 through
50 March 31, 2009, and on and after April 1, 2009.
51 § 34. Paragraph (s-8) of subdivision 11 of section 2807-c of the
52 public health law, as amended by section 57 of part C of chapter 58 of
53 the laws of 2008, is amended to read as follows:
54 (s-8) To the extent funds are available and otherwise notwithstanding
55 any inconsistent provision of law to the contrary, for rate periods on
56 and after April first, two thousand seven through [March thirty-first]

1 June thirtieth, two thousand nine, the commissioner shall increase rates
2 of payment for patients eligible for payments made by state governmental
3 agencies by an amount not to exceed sixty million dollars annually in
4 the aggregate. Such amount shall be allocated among those voluntary
5 non-profit general hospitals which continue to provide inpatient
6 services as of April first, two thousand seven through March thirty-
7 first, two thousand eight and which have medicaid inpatient discharges
8 percentages equal to or greater than thirty-five percent. This percent-
9 age shall be computed based upon data reported to the department in each
10 hospital's two thousand four institutional cost report, as submitted to
11 the department on or before January first, two thousand seven. The rate
12 adjustments calculated in accordance with this paragraph shall be allo-
13 cated proportionally based on each eligible hospital's total reported
14 medicaid inpatient discharges in two thousand four, to the total
15 reported medicaid inpatient discharges for all such eligible hospitals
16 in two thousand four, provided, however, that such rate adjustments
17 shall be subject to reconciliation to ensure that each hospital receives
18 in the aggregate its proportionate share of the full allocation to the
19 extent allowable under federal law. Such payments may be added to rates
20 of payment or made as aggregate payments to eligible hospitals,
21 provided, however, that subject to the availability of federal financial
22 participation and solely for the period April first, two thousand seven
23 through March thirty-first, two thousand eight, six million dollars in
24 the aggregate of this sixty million dollars shall be allocated to volun-
25 tary non-profit hospitals which continue to provide inpatient services
26 as of April first, two thousand seven through March thirty-first, two
27 thousand eight and which have Medicaid inpatient discharge percentages
28 of less than thirty-five percent and which had previously qualified for
29 distributions pursuant to paragraph (s-7) of this subdivision. The rate
30 adjustment calculated in accordance with this paragraph shall be allo-
31 cated proportionally based on the amount of money the hospital had
32 received in two thousand six.
33 § 35. Section 3 of chapter 629 of the laws of 1986, amending the
34 social services law relating to establishing a demonstration program for
35 the delivery of long term home health care services to certain persons,
36 as amended by section 71 of part C of chapter 58 of the laws of 2008, is
37 amended to read as follows:
38 § 3. This act shall take effect July 1, 1986, and shall remain in
39 effect until March 31, [2012] 2013, when upon such date the provisions
40 of this act shall be deemed repealed.
41 § 36. Subdivision 1 of section 2807-p of the public health law is
42 amended by adding two new paragraphs (c) and (d) to read as follows:
43 (c) Notwithstanding paragraph (a) of this subdivision, subdivision
44 four-c of this section or any other inconsistent provision of this
45 section, distributions made pursuant to this section for annual periods
46 on and after July first, two thousand nine shall be subject to a uniform
47 reduction of two percent.
48 (d) The commissioner may require facilities receiving distributions
49 pursuant to this section as a condition of participating in such
50 distributions, to provide reports and data to the department as the
51 commissioner deems necessary to adequately implement the provisions of
52 this section.
53 § 37. Subdivision 6-a of section 93 of part C of chapter 58 of the
54 laws of 2007 amending the social services law and other laws relating to
55 enacting major components of legislation necessary to implement the

1 health and mental hygiene budget for the 2007-2008 fiscal year, is
2 amended to read as follows:
3 6-a. section fifty-seven of this act shall expire and be deemed
4 repealed on [March] <u>December</u> 31, [2010] <u>2013</u>; provided that such section
5 shall not apply to any person as to whom federal financial participation
6 is available for the costs of services provided under the provisions of
7 subdivision 4 of section 366-c of the social services law in effect
8 immediately prior to the effective date of this act.
9 § 38. Subdivision 1 of section 20 of chapter 451 of the laws of 2007
10 amending the public health law, the social services law and the insur-
11 ance law, relating to providing enhanced consumer and provider
12 protections, is amended to read as follows:
13 1. sections four, eleven and thirteen of this act shall take effect
14 immediately and shall expire and be deemed repealed June 30, [2009]
15 <u>2011</u>;
16 § 39. Subdivision (r) of section 427 of chapter 55 of the laws of
17 1992, amending the tax law and other laws relating to taxes, surcharges,
18 fees and funding, as amended by section 15 of part C of chapter 56 of
19 the laws of 2007, is amended to read as follows:
20 (r) the provisions of sections two hundred eighty-six through two
21 hundred ninety-one of this act shall apply to all persons released on
22 medical parole prior to September 1, [2009] <u>2011</u>, and shall expire and
23 be of no further effect on September 1, [2009] <u>2011</u>;
24 § 40. Section 3 of chapter 942 of the laws of 1983, relating to foster
25 family care demonstration programs, as amended by chapter 219 of the
26 laws of 2007, is amended to read as follows:
27 § 3. This act shall take effect immediately and shall expire December
28 31, [2009] <u>2013</u>.
29 § 41. Section 3 of chapter 541 of the laws of 1984, relating to foster
30 family care demonstration programs, as amended by chapter 219 of the
31 laws of 2007, is amended to read as follows:
32 § 3. This section and subdivision two of section two of this act shall
33 take effect immediately and the remaining provisions of this act shall
34 take effect on the one hundred twentieth day next thereafter. This act
35 shall expire December 31, [2009] <u>2013</u>.
36 § 42. Section 6 of chapter 256 of the laws of 1985, amending the
37 social services law and other laws relating to foster family care demon-
38 stration programs, as amended by chapter 219 of the laws of 2007, is
39 amended to read as follows:
40 § 6. This act shall take effect immediately and shall expire December
41 31, [2009] <u>2013</u> and upon such date the provisions of this act shall be
42 deemed to be repealed.
43 § 43. Section 2 of chapter 693 of the laws of 1996, amending the
44 social services law relating to authorizing patient discharge to hospic-
45 es and residential health care facilities, under the medical assistance
46 presumptive eligibility program, as amended by chapter 124 of the laws
47 of 2006, is amended to read as follows:
48 § 2. This act shall take effect immediately and shall be deemed
49 repealed on July 31, [2009] <u>2012</u>.
50 § 44. Section 2 of chapter 631 of the laws of 1997, amending the
51 social services law relating to authorizing medical assistance payments
52 to certain clinics or diagnostic and treatment centers, as amended by
53 chapter 47 of the laws of 2007, is amended to read as follows:
54 § 2. This act shall take effect immediately and shall be deemed to
55 apply to claims for reimbursement payments whether submitted before, on

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1 or after the effective date of this act, and shall expire and be deemed
2 repealed July 1, [2009] 2011.
3 § 45. Section 4 of chapter 519 of the laws of 1999, amending the alco-
4 holic beverage control law and the public health law relating to the
5 sale of alcohol and tobacco products to minors, as amended by chapter
6 594 of the laws of 2007, is amended to read as follows:
7 § 4. This act shall take effect September 1, 1999[, and shall remain
8 in full force and effect until January 1, 2010 when upon such date the
9 provisions of this act shall expire and be deemed repealed]; provided,
10 however, the state liquor authority, state department of motor vehicles
11 and state department of health shall promulgate rules and regulations
12 necessary to implement the provisions of this act on or before such
13 date; [provided further that the provisions of this act shall apply
14 after such expiration date to any proceeding pursuant to the alcoholic
15 beverage control law or public health law to invoke or enforce the
16 provisions of this act which were commenced prior to such expiration
17 date;] and provided, further however, that the amendments to section
18 65-b of the alcoholic beverage control law made by section two of this
19 act shall not affect the repeal of such section and shall be deemed
20 repealed therewith.
21 § 46. The opening paragraph of subdivision 7-a of section 3614 of the
22 public health law, as amended by section 89 of part C of chapter 58 of
23 the laws of 2007, is amended to read as follows:
24 Notwithstanding any inconsistent provision of law or regulation, for
25 the purposes of establishing rates of payment by governmental agencies
26 for long term home health care programs for the period April first, two
27 thousand five, through December thirty-first, two thousand five, and for
28 the period January first, two thousand six through March thirty-first,
29 two thousand seven, and on and after April first, two thousand seven
30 through March thirty-first, two thousand nine, and on and after April
31 first, two thousand nine, the reimbursable base year administrative and
32 general costs of a provider of services shall not exceed the statewide
33 average of total reimbursable base year administrative and general costs
34 of such providers of services.
35 § 47. This act shall take effect immediately; provided, however, that
36 the amendments to section 2807-c of the public health law made by
37 sections sixteen, seventeen, eighteen, and nineteen of this act shall
38 not affect the expiration of such provisions and shall be deemed to
39 expire therewith.

40 PART C

41 Section 1. Legislative intent. (a) The legislature finds that New York
42 leads the nation in Medicaid spending per capita and ranks third highest
43 in overall health care spending per capita. Despite this extraordinary
44 level of spending, 2.3 million New Yorkers are uninsured and New York's
45 health care system is ranked average among states and below average on
46 hospitalizations that could have been avoided if patients had timely
47 access to quality outpatient care. It is the intent of this legislation
48 to ensure that New Yorkers have access to a high-performing health
49 system and that New York Medicaid buys quality, cost-effective care by:
50 implementing a transparent and accurate inpatient reimbursement system
51 that rewards quality and efficiency; investing in ambulatory care
52 services and supporting the development of health care homes; supporting
53 providers that serve uninsured patients; increasing affordable coverage
54 in partnership with the federal government; investing in health informa-

1 tion technology; and more effectively and efficiently managing pharma-
2 ceutical benefits.
3 (b) With respect to improper influences exerted on prescribing deci-
4 sions and the lack of transparency in the administration of pharmacy
5 benefits by pharmacy benefit managers, the legislature finds that:
6 i. The pharmaceutical, biological product and medical device indus-
7 tries spend billions of dollars annually to attempt to influence pres-
8 cribers' decisions about which drugs or other treatment to prescribe to
9 their patients, including more than half of all formal continuing
10 medical education programs. Legislation is necessary to prohibit drug
11 and device manufacturers from making payments to prescribers in an
12 attempt to influence their prescribing decisions and further to require
13 prescribers and manufacturers to disclose the things of value that are
14 legitimately transferred from drug and device manufacturers to prescri-
15 bers.
16 ii. There is compelling evidence that the vast majority of physicians
17 accept some type of gift or payment from pharmaceutical and medical
18 device manufacturers, and often such gifts and payments, even when of
19 little value, influence physicians to prescribe treatments that are more
20 expensive and no more effective or safe, and are sometimes less effec-
21 tive and more dangerous, than other available treatments.
22 iii. Legislation is necessary to prohibit presenters at continuing
23 professional education programs from providing false or misleading
24 information to prescribers and to require all potential conflicts of
25 interest be disclosed to attendees of such programs.
26 iv. Drug manufacturers, including labelers, make payments to pharmacy
27 benefit managers and their affiliates in an effort to influence the
28 drugs covered by the health plans which contract with the pharmacy bene-
29 fit manager and, therefore, the drugs purchased by the health plans'
30 participants. Health plans have been unable to obtain from pharmacy
31 benefit managers information about these payments and other information
32 material to a health plan's choice of pharmacy benefit manager and to
33 the health plan's evaluation of the quality and value of the pharmacy
34 benefit services it receives. Legislation is needed to require pharmacy
35 benefit managers to disclose to the health plans that contract with them
36 basic information about their financial dealings that affect the health
37 plans and their participants.
38 § 1-a. Short title. This act shall be known and may be cited as the
39 "health care improvement act".
40 § 2. Section 2807-c of the public health law is amended by adding a
41 new subdivision 35 to read as follows:
42 35. Notwithstanding any inconsistent provision of this section, or any
43 other contrary provision of law and subject to the availability of
44 federal financial participation, rates of payment by governmental agen-
45 cies for general hospital inpatient services with regard to discharges
46 occurring on and after July first, two thousand nine shall be in accord-
47 ance with the following:
48 (a) For periods on and after July first, two thousand nine the operat-
49 ing cost component of such rates of payments shall reflect the use of
50 two thousand five operating costs as reported by each facility to the
51 department prior to December first, two thousand eight and as otherwise
52 computed in accordance with the provisions of this subdivision;
53 (b) The commissioner shall promulgate regulations, and may promulgate
54 emergency regulations, establishing methodologies for the computation of
55 general hospital inpatient rates and such regulations shall include, but
56 not be limited to, the following:

1 (i) The computation of a case mix neutral statewide base price appli-
2 cable to each rate period, but excluding adjustments for graduate
3 medical education costs, high cost outlier costs and cost related to
4 patient transfers, and as may be periodically adjusted to reflect chang-
5 es in provider coding patterns and case-mix.
6 (ii) Only those two thousand five base year costs which relate to the
7 cost of services provided to Medicaid inpatients, as determined by the
8 applicable ratio of costs to charges methodology, shall be utilized for
9 rate-setting and case-mix purposes;
10 (iii) Such rates shall reflect the application of hospital specific
11 wage equalization factors and power equalization factors reflecting
12 differences in wage rates and utility costs;
13 (iv) Such rates shall reflect the utilization of the all patient
14 refined (APR) case mix methodology, utilizing diagnostic related groups
15 with assigned weights that incorporate differing levels of severity of
16 patient condition and the associated risk of mortality, and as may be
17 periodically updated by the commissioner;
18 (v) Such regulations may incorporate quality related measures pertain-
19 ing to potentially preventable complications and re-admissions;
20 (vi) Such regulations shall address adjustments based on the costs of
21 high cost outlier patients;
22 (vii) Such rates shall continue to reflect trend factor adjustments as
23 otherwise provided in paragraph (c) of subdivision ten of this section;
24 (viii) Such rates shall not include any adjustments pursuant to subdi-
25 vision nine of this section;
26 (ix) Rates for non-public, not-for-profit general hospitals which have
27 not, as of the effective date of this subdivision, published an ancil-
28 lary charges schedule as provided in paragraph (j) of subdivision one of
29 section twenty-eight hundred three of this article shall have their
30 inlier payments increased by an amount equal to the statewide average of
31 cost outlier payments as determined by such regulations;
32 (x) Such regulations shall provide for administrative rate appeals,
33 but only with regard to: (A) the correction of computational errors or
34 omissions of data, including with regard to the hospital specific compu-
35 tations pertaining to graduate medical education, wage equalization
36 factor adjustments and power equalization factor adjustments, and (B)
37 capital cost reimbursement;
38 (xi) Rates for teaching general hospitals shall include reimbursement
39 for direct and indirect graduate medical education as defined and calcu-
40 lated pursuant to such regulations. In addition, such regulations shall
41 specify the reports and information required by the commissioner to
42 assess the cost, quality and health system needs for medical education
43 provided.
44 (c) The base period reported costs and statistics used for rate-set-
45 ting for operating cost components, including the weights assigned to
46 diagnostic related groups, shall be updated no less frequently than
47 every four years and the new base period shall be no more than four
48 years prior to the first applicable rate period that utilizes such new
49 base period.
50 (d) Capital cost reimbursement for general hospitals otherwise subject
51 to the provisions of this subdivision shall remain subject to the
52 provisions of subdivision eight of this section.
53 (e) The provisions of this subdivision shall not apply to those gener-
54 al hospitals or distinct units of general hospitals whose inpatient
55 reimbursement does not, as of June thirtieth, two thousand nine, reflect
56 case based payment per diagnosis-related group or whose inpatient

1 reimbursement is, for periods on and after July first, two thousand
2 nine, governed by the provisions of paragraphs (e-1) or (e-2) of subdi-
3 vision four of this section.
4 (f) Notwithstanding section one hundred twelve or one hundred sixty-
5 three of the state finance law or any other law, rule or regulation to
6 the contrary, the commissioner may contract with a vendor for consider-
7 ation to develop the specifications for the diagnosis-related groups
8 methodology as provided for in regulations promulgated pursuant to para-
9 graph (b) of this subdivision if the commissioner certifies to the comp-
10 troller that such contract is in the best interest of the health of the
11 people of the state. Notwithstanding that such specifications shall be
12 available pursuant to article six of the public officers law, such
13 contract may provide that the specifications for such adjusted or addi-
14 tional diagnosis-related groups provided by the vendor shall be subject
15 to copyright protection pursuant to federal copyright law.
16 (g) Notwithstanding any inconsistent provision of this subdivision or
17 any other contrary provision of law, the commissioner may, for rate
18 periods on and after July first, two thousand nine and subject to the
19 availability of federal financial participation, make additional adjust-
20 ments to the inpatient rates of payment of eligible general hospitals,
21 to facilitate improvements in hospital operations and finances, in
22 accordance with the following:
23 (i) General hospitals eligible for distributions pursuant to this
24 paragraph shall be those non-public hospitals which, as determined by
25 the commissioner, experience a reduction in their Medicaid inpatient
26 revenue of a percentage as determined by the commissioner, as a result
27 of the application of the provisions of paragraphs (a) and (b) of this
28 subdivision.
29 (ii) Funds distributed pursuant to this paragraph shall be allocated
30 based on each eligible facility's relative need as determined by the
31 commissioner.
32 (iii) Funding pursuant to this paragraph shall be available for the
33 following periods and in the following amounts:
34 (A) for the period July first, two thousand nine through June thirti-
35 eth, two thousand ten, up to seventy-five million dollars;
36 (B) for the period July first, two thousand ten through June thirti-
37 eth, two thousand eleven, up to seventy-five million dollars;
38 (C) for the period July first, two thousand eleven through June thir-
39 tieth, two thousand twelve, up to fifty million dollars;
40 (D) for the period July first, two thousand twelve through June thir-
41 tieth, two thousand thirteen, up to twenty-five million dollars.
42 (iv) Payments made pursuant to this paragraph shall not be subject to
43 retroactive adjustment or reconciliation and may be added to rates of
44 payment or made as lump sum payments.
45 (v) Each hospital receiving funds pursuant to this paragraph shall, as
46 a condition for eligibility for such funds, adopt a resolution of the
47 board of directors of each such hospital setting forth its current
48 financial condition and a plan for reforming and improving such finan-
49 cial condition, including ongoing board oversight, and shall, after two
50 years, issue a report as adopted by each such board of directors setting
51 forth what progress has been achieved regarding such improvement,
52 provided, however, if such report is not issued and adopted by each such
53 board of directors, or if such report fails to set forth adequate
54 progress, as determined by the commissioner, the commissioner may deem
55 such facility ineligible for further distributions pursuant to this
56 paragraph and may redistribute such further distributions to other

1 eligible facilities in accordance with the provisions of this paragraph.
2 The commissioner shall be provided with copies of all such resolutions
3 and reports.
4 (h) Inpatient rate adjustments made pursuant to paragraphs (a) through
5 (f) of this subdivision after application of adjustments authorized
6 pursuant to subdivision thirty-three of this section shall result in a
7 net statewide decrease in aggregate Medicaid payments of no less than
8 one hundred sixty-eight million dollars for the period July first, two
9 thousand nine through March thirty-first, two thousand ten, and no less
10 than two hundred twenty-five million dollars for the period April first,
11 two thousand ten through March thirty-first, two thousand eleven.
12 § 3. Notwithstanding any contrary provision of law, if the commission-
13 er of health determines that federal financial participation will not be
14 available with regard to the provisions of subparagraph (ii) of para-
15 graph (g) of subdivision 35 of section 2807-c of the public health law,
16 such commissioner may deem such provision null and void and instead may
17 allocate funds pursuant to such paragraph (g) proportionally, based on
18 each eligible facility's relative share of Medicaid inpatient discharges
19 in the year two years prior to the distribution year.
20 § 4. Clause (A) of subparagraph (i) of paragraph (a) of subdivision 30
21 of section 2807-c of the public health law, as amended by section 22-b
22 of part B of chapter 58 of the laws of 2008, is amended to read as
23 follows:
24 (A) ninety-three million two hundred thousand dollars on an annualized
25 basis for the period April first, two thousand two through December
26 thirty-first, two thousand two; one hundred eighty-seven million eight
27 hundred thousand dollars on an annualized basis for the period January
28 first, two thousand three through December thirty-first, two thousand
29 three; two hundred sixty-two million one hundred thousand dollars on an
30 annualized basis for the period January first, two thousand four through
31 December thirty-first, two thousand six; one hundred thirty-one million
32 one hundred thousand dollars for the period January first, two thousand
33 seven through June thirtieth, two thousand seven, and two hundred
34 forty-three million five hundred thousand dollars for the period July
35 first, two thousand seven through March thirty-first, two thousand
36 eight, two hundred forty-three million five hundred thousand dollars for
37 the period April first, two thousand eight through March thirty-first,
38 two thousand nine; [two hundred forty-three] sixty million [five] eight
39 hundred seventy-five thousand dollars for the period April first, two
40 thousand nine through [March thirty-first] June thirtieth, two thousand
41 [ten] nine[; two hundred forty-three million five hundred thousand
42 dollars for the period April first, two thousand ten through March thir-
43 ty-first, two thousand eleven].
44 § 5. Clause (A) of subparagraph (i) of paragraph (b) of subdivision 30
45 of section 2807-c of the public health law, as amended by section 22-b
46 of part B of chapter 58 of the laws of 2008, is amended to read as
47 follows:
48 (A) eighteen million five hundred thousand dollars on an annualized
49 basis for the period April first, two thousand two through December
50 thirty-first, two thousand two; thirty-seven million four hundred thou-
51 sand dollars on an annualized basis for the period January first, two
52 thousand three through December thirty-first, two thousand three;
53 fifty-two million two hundred thousand dollars on an annualized basis
54 for the period January first, two thousand four through December thir-
55 ty-first, two thousand six; twenty-six million one hundred thousand
56 dollars for the period January first, two thousand seven through June

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1 thirtieth, two thousand seven[;], forty-nine million dollars for the
2 period July first, two thousand seven through March thirty-first, two
3 thousand eight[;], and forty-nine million dollars for the period April
4 first, two thousand eight through March thirty-first, two thousand
5 nine[; forty-nine million dollars for the period April first, two thou-
6 sand nine through March thirty-first, two thousand ten; and forty-nine
7 million dollars for the period April first, two thousand ten through
8 March thirty-first, two thousand eleven].
9 § 6. Paragraphs (x) and (y) of subdivision 1 of section 2807-v of the
10 public health law, as amended by section 5 of part B of chapter 58 of
11 the laws of 2008, are amended to read as follows:
12 (x) Funds shall be deposited by the commissioner, within amounts
13 appropriated, and the state comptroller is hereby authorized and
14 directed to receive for deposit to the credit of the state special
15 revenue funds - other, HCRA transfer fund, medical assistance account,
16 or any successor fund or account, for purposes of funding the state
17 share of the non-public general hospital rates increases for recruitment
18 and retention of health care workers from the tobacco control and insur-
19 ance initiatives pool established for the following periods in the
20 following amounts:
21 (i) twenty-seven million one hundred thousand dollars on an annualized
22 basis for the period January first, two thousand two through December
23 thirty-first, two thousand two;
24 (ii) fifty million eight hundred thousand dollars on an annualized
25 basis for the period January first, two thousand three through December
26 thirty-first, two thousand three;
27 (iii) sixty-nine million three hundred thousand dollars on an annual-
28 ized basis for the period January first, two thousand four through
29 December thirty-first, two thousand four;
30 (iv) sixty-nine million three hundred thousand dollars for the period
31 January first, two thousand five through December thirty-first, two
32 thousand five;
33 (v) sixty-nine million three hundred thousand dollars for the period
34 January first, two thousand six through December thirty-first, two thou-
35 sand six;
36 (vi) sixty-five million three hundred thousand dollars for the period
37 January first, two thousand seven through December thirty-first, two
38 thousand seven;
39 (vii) sixty-one million one hundred fifty thousand dollars for the
40 period January first, two thousand eight through December thirty-first,
41 two thousand eight; and
42 (viii) [fifty-three] twenty-six million [one] five hundred [fifty]
43 seventy-five thousand dollars for the period January first, two thousand
44 nine through [December thirty-first] June thirtieth, two thousand nine[;
45 (ix) thirty million twenty-five thousand dollars for the period Janu-
46 ary first, two thousand ten through December thirty-first, two thousand
47 ten; and
48 (x) eight million eight hundred thousand dollars for the period Janu-
49 ary first, two thousand eleven through March thirty-first, two thousand
50 eleven].
51 (y) Funds shall be reserved and accumulated from year to year and
52 shall be available, including income from invested funds, for purposes
53 of grants to public general hospitals for recruitment and retention of
54 health care workers pursuant to paragraph (b) of subdivision thirty of
55 section twenty-eight hundred seven-c of this article from the tobacco

1 control and insurance initiatives pool established for the following
2 periods in the following amounts:
3 (i) eighteen million five hundred thousand dollars on an annualized
4 basis for the period January first, two thousand two through December
5 thirty-first, two thousand two;
6 (ii) thirty-seven million four hundred thousand dollars on an annual-
7 ized basis for the period January first, two thousand three through
8 December thirty-first, two thousand three;
9 (iii) fifty-two million two hundred thousand dollars on an annualized
10 basis for the period January first, two thousand four through December
11 thirty-first, two thousand four;
12 (iv) fifty-two million two hundred thousand dollars for the period
13 January first, two thousand five through December thirty-first, two
14 thousand five;
15 (v) fifty-two million two hundred thousand dollars for the period
16 January first, two thousand six through December thirty-first, two thou-
17 sand six;
18 (vi) forty-nine million dollars for the period January first, two
19 thousand seven through December thirty-first, two thousand seven;
20 (vii) forty-nine million dollars for the period January first, two
21 thousand eight through December thirty-first, two thousand eight; <u>and</u>
22 (viii) [forty-nine] <u>twelve</u> million <u>two hundred fifty thousand</u> dollars
23 for the period January first, two thousand nine through [December] <u>March</u>
24 thirty-first, two thousand nine[;
25 (ix) forty-nine million dollars for the period January first, two
26 thousand ten through December thirty-first, two thousand ten; and
27 (x) twelve million two hundred fifty thousand dollars for the period
28 January first, two thousand eleven through March thirty-first, two thou-
29 sand eleven].
30 Provided, however, amounts pursuant to this paragraph may be reduced
31 in an amount to be approved by the director of the budget to reflect
32 amounts received from the federal government under the state's 1115
33 waiver which are directed under its terms and conditions to the health
34 workforce recruitment and retention program.
35 § 7. Paragraphs (ggg) and (hhh) of subdivision 1 of section 2807-v of
36 the public health law, as added by section 5 of part B of chapter 58 of
37 the laws of 2008, are amended to read as follows:
38 (ggg) Funds shall be deposited by the commissioner, within amounts
39 appropriated, and the state comptroller is hereby authorized and
40 directed to receive for deposit to the credit of the state special
41 revenue fund - other, HCRA transfer fund, medical assistance account, or
42 any successor fund or account, for the purpose of supporting the state
43 share of Medicaid expenditures for hospital translation services as
44 authorized pursuant to paragraph (k) of subdivision one of section twen-
45 ty-eight hundred seven-c of this article from the tobacco control and
46 initiatives pool established for the following periods in the following
47 amounts:
48 (i) sixteen million dollars for the period July first, two thousand
49 eight through December thirty-first, two thousand eight; <u>and</u>
50 (ii) [sixteen] <u>eight</u> million dollars for the period January first, two
51 thousand nine through [December thirty-first] <u>June thirtieth</u>, two thou-
52 sand nine[;
53 (iii) sixteen million dollars for the period January first, two thou-
54 sand ten through December thirty-first, two thousand ten; and
55 (iv) four million dollars for the period January first, two thousand
56 eleven through March thirty-first, two thousand eleven].

1 (hhh) Funds shall be deposited by the commissioner, within amounts
2 appropriated, and the state comptroller is hereby authorized and
3 directed to receive for deposit to the credit of the state special
4 revenue fund - other, HCRA transfer fund, medical assistance account, or
5 any successor fund or account, for the purpose of supporting the state
6 share of Medicaid expenditures for adjustments to inpatient rates of
7 payment for general hospitals located in the counties of Nassau and
8 Suffolk as authorized pursuant to paragraph (l) of subdivision one of
9 section twenty-eight hundred seven-c of this article from the tobacco
10 control and initiatives pool established for the following periods in
11 the following amounts:
12 (i) two million five hundred thousand dollars for the period April
13 first, two thousand eight through December thirty-first, two thousand
14 eight; <u>and</u>
15 (ii) [two] <u>one</u> million [five] <u>two</u> hundred <u>fifty</u> thousand dollars for
16 the period January first, two thousand nine through [December thirty-
17 first] <u>June thirtieth</u>, two thousand nine[;
18 (iii) two million five hundred thousand dollars for the period January
19 first, two thousand ten through December thirty-first, two thousand ten;
20 and
21 (iv) six hundred twenty-five thousand dollars for the period January
22 first, two thousand eleven through March thirty-first two thousand elev-
23 en].
24 § 8. Paragraph (s) of subdivision 1 of section 2807-v of the public
25 health law, as amended by section 5 of part B of chapter 58 of the laws
26 of 2008, is amended to read as follows:
27 (s) Funds shall be deposited by the commissioner within amounts appro-
28 priated, and the state comptroller is hereby authorized and directed to
29 receive for deposit to the credit of the state special revenue funds -
30 other, HCRA transfer fund, medical assistance account, or any successor
31 fund or account, for purposes of providing distributions pursuant to
32 paragraphs (s-5), (s-6), (s-7) and (s-8) of subdivision eleven of
33 section twenty-eight hundred seven-c of this article from the tobacco
34 control and insurance initiatives pool established for the following
35 periods in the following amounts:
36 (i) eighteen million dollars for the period January first, two thou-
37 sand through December thirty-first, two thousand;
38 (ii) twenty-four million dollars annually for the periods January
39 first, two thousand one through December thirty-first, two thousand two;
40 (iii) up to twenty-four million dollars for the period January first,
41 two thousand three through December thirty-first, two thousand three;
42 (iv) up to twenty-four million dollars for the period January first,
43 two thousand four through December thirty-first, two thousand four;
44 (v) up to twenty-four million dollars for the period January first,
45 two thousand five through December thirty-first, two thousand five;
46 (vi) up to twenty-four million dollars for the period January first,
47 two thousand six through December thirty-first, two thousand six;
48 (vii) up to twenty-four million dollars for the period January first,
49 two thousand seven through December thirty-first, two thousand seven;
50 (viii) up to twenty-four million dollars for the period January first,
51 two thousand eight through December thirty-first, two thousand eight;
52 <u>and</u>
53 (ix) up to [twenty-four] <u>twelve</u> million dollars for the period January
54 first, two thousand nine through [December thirty-first] <u>June thirtieth</u>,
55 two thousand nine[;

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1 (x) up to twenty-four million dollars for the period January first,
2 two thousand ten through December thirty-first, two thousand ten; and
3 (xi) up to six million dollars for the period January first, two thou-
4 sand eleven through March thirty-first, two thousand eleven].
5 § 9. Paragraph (n) of subdivision 1 of section 2807-l of the public
6 health law, as amended by section 4 of part B of chapter 58 of the laws
7 of 2008, is amended to read as follows:
8 (n) Funds shall be accumulated and transferred from the health care
9 reform act (HCRA) resources fund as follows: for the period April first,
10 two thousand seven through March thirty-first, two thousand eight, and
11 on an annual basis for the periods April first, two thousand eight
12 through [March thirty-first] <u>June thirtieth</u>, two thousand [eleven] <u>nine</u>,
13 funds within amounts appropriated shall be transferred and deposited and
14 credited to the credit of the state special revenue funds - other, HCRA
15 transfer fund, medical assistance account, for purposes of funding the
16 state share of rate adjustments made to public and voluntary hospitals
17 in accordance with paragraphs (i) and (j) of subdivision one of section
18 twenty-eight hundred seven-c of this article.
19 § 10. Paragraph (xx) of subdivision 1 of section 2807-v of the public
20 health law, as amended by section 5 of part B of chapter 58 of the laws
21 of 2008, is amended to read as follows:
22 (xx) Funds shall be deposited by the commissioner, within amounts
23 appropriated, and the state comptroller is hereby authorized and
24 directed to receive for the deposit to the credit of the state special
25 revenue funds - other, HCRA transfer fund, medical assistance account,
26 or any successor fund or account, for purposes of funding the state
27 share of the general hospital rates increases for rural hospitals pursu-
28 ant to subdivision thirty-two of section twenty-eight hundred seven-c of
29 this article from the tobacco control and insurance initiatives pool
30 established for the following periods in the following amounts:
31 (i) three million five hundred thousand dollars for the period January
32 first, two thousand five through December thirty-first, two thousand
33 five;
34 (ii) three million five hundred thousand dollars for the period Janu-
35 ary first, two thousand six through December thirty-first, two thousand
36 six;
37 (iii) three million five hundred thousand dollars for the period Janu-
38 ary first, two thousand seven through December thirty-first, two thou-
39 sand seven;
40 (iv) three million five hundred thousand dollars for the period Janu-
41 ary first, two thousand eight through December thirty-first, two thou-
42 sand eight; <u>and</u>
43 (v) [three] <u>one</u> million [five hundred] <u>seven hundred fifty</u> thousand
44 dollars for the period January first, two thousand nine through [Decem-
45 ber thirty-first] <u>June thirtieth</u>, two thousand nine[;
46 (vi) three million five hundred thousand dollars for the period Janu-
47 ary first, two thousand ten through December thirty-first, two thousand
48 ten; and
49 (vii) eight hundred seventy-five thousand dollars for the period Janu-
50 ary first, two thousand eleven through March thirty-first, two thousand
51 eleven; and
52 (viii) provided, however, in the event federal financial participation
53 is not available with regard to rate adjustments pursuant to subdivision
54 thirty-two of section twenty-eight hundred seven-c of this article,
55 allocations pursuant to this paragraph shall, on an annualized basis be

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1 increased to seven million dollars for the period January first, two
2 thousand five through March thirty-first, two thousand eleven].
3 § 11. Paragraph (l) of subdivision 4 of section 2807-c of the public
4 health law, as added by section 15 of part C of chapter 58 of the laws
5 of 2008, is amended to read as follows:
6 (l) Notwithstanding any inconsistent provision of this section and
7 subject to the availability of federal financial participation, rates of
8 payment by governmental agencies for general hospitals which are certi-
9 fied by the office of alcoholism and substance abuse services to provide
10 inpatient detoxification and withdrawal services and, with regard to
11 inpatient services provided to patients discharged on and after December
12 first, two thousand eight and who are determined to be in diagnosis-re-
13 lated groups numbered seven hundred forty-three, seven hundred forty-
14 four, seven hundred forty-five, seven hundred forty-six, seven hundred
15 forty-seven, seven hundred forty-eight, seven hundred forty-nine, seven
16 hundred fifty, or seven hundred fifty-one, shall be made on a per diem
17 basis in accordance with the following:
18 (i) for the period December first, two thousand eight through [Decem-
19 ber thirty-first] <u>February twenty-eighth</u>, two thousand nine, seventy-
20 five percent of the operating cost component of such rates of payments
21 shall reflect the operating cost component of rates of payment effective
22 for December thirty-first, two thousand seven, as adjusted for inflation
23 pursuant to paragraph (c) of subdivision ten of this section, as other-
24 wise modified by any applicable statutes, and twenty-five percent of
25 such rates shall reflect the use of two thousand six operating costs as
26 reported by each facility to the department prior to two thousand eight
27 and as computed in accordance with the provisions of subparagraph [(v)]
28 <u>(iii)</u> of this paragraph;
29 (ii) [for the period January first, two thousand ten through December
30 thirty-first, two thousand ten, fifty percent of the operating cost
31 component of such rates of payment shall reflect the operating cost
32 component of rates of payment effective December thirty-first, two thou-
33 sand seven, as adjusted for inflation pursuant to paragraph (c) of
34 subdivision ten of this section, as otherwise modified by any applicable
35 statutes, and fifty percent of such rates of payment shall reflect the
36 use of two thousand six operating costs as reported by each facility to
37 the department prior to two thousand eight and as computed in accordance
38 with the provisions of subparagraph (v) of this paragraph;
39 (iii) for the period January first, two thousand eleven through Decem-
40 ber thirty-first, two thousand eleven, twenty-five percent of the oper-
41 ating cost component of such rates of payment shall reflect the operat-
42 ing cost component of rates of payment effective December thirty-first,
43 two thousand seven, as adjusted for inflation pursuant to paragraph (c)
44 of subdivision ten of this section, as otherwise modified by any appli-
45 cable statutes, and seventy-five percent of such rates of payment shall
46 reflect the use of two thousand six operating costs as reported by each
47 facility to the department prior to two thousand eight and as computed
48 in accordance with the provisions of subparagraph (v) of this paragraph;
49 and
50 (iv)] for periods on and after [January] <u>March</u> first, two thousand
51 [twelve] <u>nine</u>, one hundred percent of the operating cost component of
52 such rates of payment shall reflect the use of two thousand six operat-
53 ing costs as reported to the department prior to two thousand eight and
54 as computed in accordance with the provisions of subparagraph [(v)]
55 <u>(iii)</u> of this paragraph.

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1 [(v)] <u>(iii)</u> rates of payment computed in accordance with this para-
2 graph and reflecting the use of two thousand six base year operating
3 costs shall be in accord with the following, provided, however that the
4 commissioner may establish criteria under which reimbursement may be
5 provided at higher percentages and for longer periods.
6 (A) For each of the regions within the state as described in clause
7 (E) of this subparagraph the commissioner shall determine the average
8 per diem cost incurred by general hospitals in that region subject to
9 the provisions of this paragraph with regard to inpatients requiring
10 medically managed detoxification services, as defined by applicable
11 regulations promulgated by the office of alcoholism and substance abuse
12 services. In determining such costs the commissioner shall utilize two
13 thousand six costs and statistics as reported by such hospitals to the
14 department prior to two thousand eight.
15 (B) Per diem payments for inpatients requiring medically managed inpa-
16 tient detoxification services shall reflect one hundred percent of the
17 per diem amounts computed pursuant to clause (A) of this subparagraph
18 for the applicable region in which the facility is located and as trend-
19 ed forward to adjust for inflation, provided however, that such payments
20 shall be reduced by fifty percent for any such services provided on or
21 after the sixth day of services through the tenth day of services, and
22 further provided that no payments shall be made for any services
23 provided on or after the eleventh day.
24 (C) Per diem payments for inpatients requiring medically supervised
25 withdrawal services, as defined by applicable regulations promulgated by
26 the office of alcoholism and substance abuse services, shall reflect one
27 hundred percent of the per diem amounts computed pursuant to clause (A)
28 of this subparagraph for the applicable region in which the facility is
29 located for the period January first, two thousand nine through December
30 thirty-first, two thousand nine, and as trended forward to adjust for
31 inflation, and shall reflect seventy-five percent of such per diem
32 amounts for periods on and after January first, two thousand ten, as
33 trended forward to adjust for inflation, provided, however, that such
34 payments shall be reduced by fifty percent for any services provided on
35 or after the sixth day of services through the tenth day of services,
36 and further provided that no payments shall be made for any services
37 provided on and after the eleventh day.
38 (D) Per diem payments for inpatients placed in observation beds, as
39 defined by applicable regulations promulgated by the office of alcohol-
40 ism and substance abuse services, shall be at the same level as would be
41 paid pursuant to clause (A) of this [paragraph] <u>subparagraph</u>, provided,
42 however, that such payments shall not apply for more than two days of
43 care, after which payments for such inpatients shall reflect their
44 designation as requiring either medically managed detoxification
45 services or medically supervised withdrawal services, and further
46 provided that days of care provided in such observation beds shall, for
47 reimbursement purposes, be fully reflected in the computation of the
48 initial five days of care as set forth in clauses (A) and (B) of this
49 [paragraph] <u>subparagraph</u>.
50 (E) For the purposes of this paragraph, the regions of the state shall
51 be as follows:
52 (I) New York city, consisting of the counties of Bronx, New York,
53 Kings, Queens and Richmond;
54 (II) Long Island, consisting of the counties of Nassau and Suffolk;

1 (III) Northern metropolitan, consisting of the counties of Columbia,
2 Delaware, Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and West-
3 chester;
4 (IV) Northeast, consisting of the counties of Albany, Clinton, Essex,
5 Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady,
6 Schoharie, Warren and Washington;
7 (V) Utica/Watertown, consisting of the counties of Franklin, Herkimer,
8 Lewis, Oswego, Otsego, St. Lawrence, Jefferson, Chenango, Madison and
9 Oneida;
10 (VI) Central, consisting of the counties of Broome, Cayuga, Chemung,
11 Cortland, Onondaga, Schuyler, Seneca, Steuben, Tioga and Tompkins;
12 (VII) Rochester, consisting of Monroe, Ontario, Livingston, Wayne and
13 Yates; and
14 (VIII) Western, consisting of the counties of Allegany, Cattaraugus,
15 Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming.
16 (F) Capital cost reimbursement for general hospitals otherwise subject
17 to the provisions of this paragraph shall remain subject to the
18 provisions of subdivision eight of this section.
19 § 12. Subdivision 4 of section 2807-c of the public health law is
20 amended by adding a new paragraph (e-1) to read as follows:
21 (e-1) Notwithstanding any inconsistent provision of paragraph (e) of
22 this subdivision or any other contrary provision of law and subject to
23 the availability of federal financial participation, per diem rates of
24 payment by governmental agencies for a general hospital or a distinct
25 unit of a general hospital for inpatient psychiatric services that would
26 otherwise be subject to the provisions of paragraph (e) of this subdivi-
27 sion, and rates of payment for outpatient psychiatric services provided
28 by such facilities as specified in this paragraph, shall, with regard to
29 days of service and visits occurring on and after July first, two thou-
30 sand nine, be in accordance with the following:
31 (i) For the period July first, two thousand nine through December
32 thirty-first, two thousand nine, the operating cost component of such
33 inpatient rates shall reflect the use of two thousand five operating
34 costs as reported by each facility to the department prior to December
35 first, two thousand eight and as adjusted for inflation pursuant to
36 paragraph (c) of subdivision ten of this section, as otherwise modified
37 by any applicable statue, provided, however, that such two thousand five
38 reported operating costs, shall, for inpatient rate-setting purposes, be
39 held to a ceiling of one hundred ten percent of the average of such
40 reported inpatient costs by such facilities in the region in which the
41 facility is located, as determined pursuant to clause (E) of subpara-
42 graph (iii) of paragraph (l) of this subdivision.
43 (ii) For rate periods on and after January first, two thousand ten,
44 the commissioner, in consultation with the commissioner of the office of
45 mental health, shall promulgate regulations, and may promulgate emergen-
46 cy regulations, establishing methodologies for determining the operating
47 cost components of rates of payments for services described in this
48 paragraph. Such regulations shall utilize two thousand five operating
49 costs as submitted to the department prior to December first, two thou-
50 sand eight and shall provide for methodologies establishing per diem
51 inpatient rates that utilize case mix adjustment mechanisms and provide
52 for post-discharge referral to outpatient services. Such regulations
53 shall contain criteria for adjustments based on length of stay. Such
54 regulations shall also establish outpatient rates of payment for the
55 evaluation of potential inpatient psychiatric patients and the pre-ad-

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1 mission referral of such patients, when appropriate, to outpatient
2 services.
3 (iii) Rates of payment established pursuant to subparagraph (ii) of
4 this paragraph shall reflect an aggregate net statewide increase in
5 reimbursement for such services of up to thirty-four million dollars on
6 an annual basis.
7 (iv) Capital cost reimbursement for general hospitals otherwise
8 subject to the provisions of this paragraph shall remain subject to the
9 provisions of subdivision eight of this section.
10 § 13. Subdivision 4 of section 2807-c of the public health law is
11 amended by adding a new paragraph (e-2) to read as follows:
12 (e-2) Notwithstanding any inconsistent provision of paragraph (e) of
13 this subdivision or any other contrary provision of law and subject to
14 the availability of federal financial participation, per diem rates of
15 payment by governmental agencies for inpatient services provided by a
16 general hospital or a distinct unit of a general hospital for services,
17 as described below, that would otherwise be subject to the provisions of
18 paragraph (e) of this subdivision, shall, with regard to days of service
19 occurring on and after July first, two thousand nine, be in accord with
20 the following:
21 (i) For physical medical rehabilitation services and for chemical
22 dependency rehabilitation services, the operating cost component of such
23 rates shall reflect the use of two thousand five operating costs for
24 each respective category of services as reported by each facility to the
25 department prior to December first, two thousand eight and as adjusted
26 for inflation pursuant to paragraph (c) of subdivision ten of this
27 section, as otherwise modified by any applicable statute, provided,
28 however, that such two thousand five reported operating costs shall, for
29 rate-setting purposes, be held to a ceiling of one hundred ten percent
30 of the average of such reported costs in the region in which the facili-
31 ty is located, as determined pursuant to clause (E) of subparagraph
32 (iii) of paragraph (1) of this subdivision.
33 (ii) For services provided by rural hospitals designated as critical
34 access hospitals in accordance with title XVIII of the federal social
35 security act, the operating cost component of such rates shall reflect
36 the use of two thousand five operating costs as reported by each facili-
37 ty to the department prior to December first, two thousand eight and as
38 adjusted for inflation pursuant to paragraph (c) of subdivision ten of
39 this section, as otherwise modified by any applicable statutes,
40 provided, however, that such two thousand five reported operating costs
41 shall, for rate-setting purposes, be held to a ceiling of one hundred
42 ten percent of the average of such reported costs for all such desig-
43 nated hospitals statewide.
44 (iii) For inpatient services provided by specialty long term acute
45 care hospitals and for inpatient services provided by cancer hospitals
46 as so designated as of December thirty-first, two thousand eight, the
47 operating cost component of such rates shall reflect the use of two
48 thousand five operating costs for each respective category of facility
49 as reported by each facility to the department prior to December first,
50 two thousand eight and as adjusted for inflation pursuant to paragraph
51 (c) of subdivision ten of this section, as otherwise modified by any
52 applicable statutes.
53 (iv) For facilities designated by the federal department of health and
54 human services as exempt acute care children's hospitals, for which a
55 discrete institutional cost report was filed for the two thousand six
56 calendar year, and which has reported Medicaid discharges greater than

1 fifty percent of total discharges in such cost report, the operating
2 cost component of such rates shall reflect the use of two thousand six
3 operating costs as reported by each facility to the department prior to
4 December first, two thousand eight and as adjusted for inflation pursu-
5 ant to paragraph (c) of subdivision ten of this section, as otherwise
6 modified by any applicable statutes, and as determined on a per case
7 basis or per diem basis, as set forth in regulations promulgated by the
8 commissioner.
9 (v) Rates established pursuant to this paragraph shall be deemed as
10 excluding reimbursement for physician services for inpatient services
11 and claims for Medicaid fee payments for such physician services for
12 such inpatient care may be submitted separately from the rate in accord-
13 ance with otherwise applicable law.
14 (vi) Capital cost reimbursement for general hospitals otherwise
15 subject to the provisions of this paragraph shall remain subject to the
16 provisions of subdivision eight of this section.
17 (vii) The commissioner may promulgate regulations, including emergency
18 regulations, implementing the provisions of this paragraph.
19 (viii) The operating cost component of rates of payment pursuant to
20 this paragraph for a general hospital or distinct unit of a general
21 hospital without adequate cost experience shall be based on the lower of
22 the facility's or unit's inpatient budgeted operating costs per day,
23 adjusted to actual, or the applicable regional ceiling, if any.
24 § 14. Paragraphs (a) and (b) of subdivision 2-a of section 2807 of the
25 public health law, as added by section 18 of part C of chapter 58 of the
26 laws of 2008, are amended to read as follows:
27 (a)(i) for the period December first, two thousand eight through
28 [December thirty-first] June thirtieth, two thousand nine, seventy-five
29 percent of such rates of payment for each general hospital's outpatient
30 services shall reflect the average Medicaid payment per claim, as deter-
31 mined by the commissioner, for services provided by that facility in the
32 two thousand seven calendar year, but excluding any payments for
33 services covered by the facility's licensure, if any, under the mental
34 hygiene law, and twenty-five percent of such rates of payment shall, for
35 the operating cost component, reflect the utilization of the ambulatory
36 patient groups reimbursement methodology described in paragraph (e) of
37 this subdivision;
38 (ii) for the period [January] July first, two thousand [ten] nine
39 through [December thirty-first] June thirtieth, two thousand ten, fifty
40 percent of such rates for each facility shall reflect the average Medi-
41 caid payment per claim, as determined by the commissioner, for services
42 provided by that facility in the two thousand seven calendar year, but
43 excluding any payments for services covered by the facility's licensure,
44 if any, under the mental hygiene law, and fifty percent of such rates of
45 payment shall, for the operating cost component, reflect the utilization
46 of the ambulatory patient groups reimbursement methodology described in
47 paragraph (e) of this subdivision;
48 (iii) for the period [January] July first, two thousand [eleven] ten
49 through [December thirty-first] June thirtieth, two thousand eleven,
50 twenty-five percent of such rates shall reflect the average Medicaid
51 payment per claim, as determined by the commissioner, for services
52 provided by that facility for the two thousand seven calendar year, but
53 excluding any payments for services covered by the facility's licensure,
54 if any, under the mental hygiene law, and seventy-five percent of such
55 rates of payment shall, for the operating cost component, reflect the

1 utilization of the ambulatory patient groups reimbursement methodology
2 described in paragraph (e) of this subdivision; and
3 (iv) for periods on and after [January] July first, two thousand
4 [twelve] eleven, one hundred percent of such rates of payment shall
5 reflect the utilization of the ambulatory patient groups reimbursement
6 methodology described in paragraph (e) of this subdivision.
7 (v) This paragraph shall be effective the later of: (i) December
8 first, two thousand eight, or (ii) after the commissioner receives final
9 approval of federal financial participation in payments made for benefi-
10 ciaries eligible for medical assistance under title XIX of the federal
11 social security act for the rate methodology established pursuant to
12 subparagraph (i) of paragraph (a) of subdivision thirty-three of section
13 twenty-eight hundred seven-c of this article.
14 (b)(i) for the period March first, two thousand nine through [December
15 thirty-first] June thirtieth, two thousand nine, seventy-five percent of
16 such rates of payment for services provided by each diagnostic and
17 treatment center and each free-standing ambulatory surgery center shall
18 reflect the average Medicaid payment per claim, as determined by the
19 commissioner, for services provided by that facility in the two thousand
20 seven calendar year, but excluding any payments for services covered by
21 the facility's licensure, if any, under the mental hygiene law, and
22 twenty-five percent of such rates of payment shall, for the operating
23 cost component, reflect the utilization of the ambulatory patient groups
24 reimbursement methodology described in paragraph (e) of this subdivi-
25 sion;
26 (ii) for the period [January] July first, two thousand [ten] nine
27 through [December thirty-first] June thirtieth, two thousand ten, fifty
28 percent of such rates for each facility shall reflect the average Medi-
29 caid payment per claim, as determined by the commissioner, for services
30 provided by that facility in the two thousand seven calendar year, but
31 excluding any payments for services covered by the facility's licensure,
32 if any, under the mental hygiene law, and fifty percent of such rates of
33 payment shall, for the operating cost component, reflect the utilization
34 of the ambulatory patient groups reimbursement methodology described in
35 paragraph (e) of this subdivision;
36 (iii) for the period [January] July first, two thousand [eleven] ten
37 through [December thirty-first] June thirtieth, two thousand eleven,
38 twenty-five percent of such rates for each facility shall reflect the
39 average Medicaid payment per claim, as determined by the commissioner,
40 for services provided by that facility in the two thousand seven calen-
41 dar year, but excluding any payments for services covered by the facili-
42 ty's licensure, if any, under the mental hygiene law, and seventy-five
43 percent of such rates of payment shall, for the operating cost compo-
44 nent, reflect the utilization of the ambulatory patient groups
45 reimbursement methodology described in paragraph (e) of this subdivi-
46 sion; and
47 (iv) for periods on and after [January] July first, two thousand
48 [twelve] eleven, one hundred percent of such rates of payment shall
49 reflect the utilization of the ambulatory patient groups reimbursement
50 methodology described in paragraph (e) of this subdivision.
51 § 15. Paragraph (e) subdivision 2-a of section 2807 of the public
52 health law, as added by section 18 of part C of chapter 58 of the laws
53 2008, is amended to read as follows:
54 (e) (i) notwithstanding any inconsistent provisions of this subdivi-
55 sion, the commissioner shall promulgate regulations establishing,
56 subject to the approval of the state director of the budget, methodol-

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1 ogies for determining rates of payment for the services described in
2 this subdivision. Such regulations shall reflect utilization of the
3 ambulatory patient group (APG) methodology, in which patients are
4 grouped based on their diagnosis, the intensity of the services provided
5 and the medical procedures performed, and with each APG assigned a
6 weight reflecting the projected utilization of resources. Such regu-
7 lations shall provide for the development of one or more base rates and
8 the multiplication of such base rates by the assigned weight for each
9 APG to establish the appropriate payment level for each such APG. Such
10 regulations may also utilize bundling, packaging and discounting mech-
11 anisms.
12 If the commissioner determines that the use of the APG methodology is
13 not, or is not yet, appropriate or practical for specified services, the
14 commissioner may utilize existing payment methodologies for such
15 services or may promulgate regulations, and may promulgate emergency
16 regulations, establishing alternative payment methodologies for such
17 services.
18 (ii) Notwithstanding this subdivision and any other contrary provision
19 of law, the commissioner may incorporate within the payment methodology
20 described in subparagraph (i) of this paragraph payment for services
21 provided by facilities pursuant to licensure under the mental hygiene
22 law, provided, however, that such APG payment methodology may be phased
23 into effect in accordance with a schedule or schedules as jointly deter-
24 mined by the commissioner, the commissioner of mental health, the
25 commissioner of alcoholism and substance abuse services, and the commis-
26 sioner of mental retardation and developmental disabilities.
27 § 16. Paragraph (i) of subdivision 2-a of section 2807 of the public
28 health law, as added by section 19 of part OO of chapter 57 of the laws
29 of 2008, is amended to read as follows:
30 (i) Notwithstanding any provision of law to the contrary, rates of
31 payment by governmental agencies for general hospital outpatient
32 services, general hospital emergency services and ambulatory surgical
33 services provided by a general hospital established pursuant to para-
34 graphs (a), (c) and (d) of this subdivision shall result in an aggregate
35 increase in such rates of payment of fifty-six million dollars for the
36 period December first, two thousand eight through March thirty-first,
37 two thousand nine and one hundred seventy-eight million dollars for
38 periods after April first, two thousand nine, provided, however, that
39 for periods on and after April first, two thousand nine, such amounts
40 may be adjusted to reflect projected decreases in fee-for-service Medi-
41 caid utilization and changes in case-mix with regard to such services
42 from the two thousand seven calendar year to the applicable rate year,
43 and provided further, however, that funds made available as a result of
44 any such decreases may be utilized by the commissioner to increase capi-
45 tation rates paid to Medicaid managed care plans and family health plus
46 plans to cover increased payments to health care providers for ambulato-
47 ry care services and to increase such other ambulatory care payment
48 rates as the commissioner determines necessary to facilitate access to
49 quality ambulatory care services.
50 § 16-a. Subparagraph (ii) of paragraph (f) of subdivision 2-a of
51 section 2807 of the public health law, as added by section 18 of part C
52 of chapter 58 of the laws of 2008, is amended to read as follows:
53 (ii) notwithstanding the provisions of paragraphs (a) and (b) of this
54 subdivision, for periods on and after January first, two thousand nine,
55 the following services provided by general hospital outpatient depart-
56 ments and diagnostic and treatment centers shall be reimbursed with

1 rates of payment based entirely upon the ambulatory patient group meth-
2 odology as described in paragraph (e) of this subdivision, provided,
3 however, that the commissioner may utilize existing payment methodol-
4 ogies or may promulgate regulations establishing alternative payment
5 methodologies for one or more of the services specified in clauses (C)
6 and (D) of this subparagraph, effective for periods on and after March
7 first, two thousand nine:
8 (A) services provided in accordance with the provisions of paragraphs
9 (q) and (r) of subdivision two of section three hundred sixty-five-a of
10 the social services law; and
11 (B) all services, but only with regard to additional payment amounts,
12 as determined in accordance with regulations issued in accordance with
13 paragraph (e) of this subdivision, for the provision of such services
14 during times outside the facility's normal hours of operation, as deter-
15 mined in accordance with criteria set forth in such regulations; and
16 (C) individual psychotherapy services provided by licensed social
17 workers, in accordance with licensing criteria set forth in applicable
18 regulations, to persons under the age of nineteen and to persons requir-
19 ing such services as a result of or related to pregnancy or giving
20 birth[.]; and
21 (D) individual psychotherapy services provided by licensed social
22 workers, in accordance with licensing criteria set forth in applicable
23 regulations, at diagnostic and treatment centers that provided, billed
24 for, and received payment for these services between January first, two
25 thousand seven and December thirty-first, two thousand seven[.]; and
26 (E) services provided to pregnant women pursuant to paragraph (s) of
27 subdivision two of section three hundred sixty-five-a of the social
28 services law and, for periods on and after January first, two thousand
29 ten, all other services provided pursuant to such paragraph (s) and
30 services provided pursuant to paragraph (t) of subdivision two of
31 section three hundred sixty-five-a of the social services law.
32 § 17. Notwithstanding any contrary provision of law, except section
33 43.02 of the mental hygiene law, subject to availability of federal
34 financial participation, and within amounts appropriated therefore,
35 commencing on or after October 1, 2009 the commissioners of mental
36 health and health are jointly authorized to implement and enhance fund-
37 ing of the Ambulatory Patient Group (APG) reimbursement methodology, for
38 clinic services rendered by providers pursuant to their licensure under
39 article 31 of the mental hygiene law.
40 § 18. The commissioners of mental health and health, subject to the
41 approval of the state director of the budget, are jointly authorized to
42 implement and enhance funding of the Ambulatory Patient Group (APG)
43 reimbursement methodology for determining rates of payment for outpa-
44 tient clinic services rendered pursuant to providers' licensure under
45 article 31 of the mental hygiene law. The commissioner of mental health,
46 subject to the approval of the commissioner of health and the director
47 of the budget, shall promulgate regulations pursuant to article 31 of
48 the mental hygiene law which shall reflect utilization of the Ambulatory
49 Patient Group (APG) methodology, as described in subdivision 2-a of
50 section 2807 of the public health law, in which patients are grouped
51 based on their diagnosis, the intensity of the services provided and the
52 medical procedures performed, and with each APG assigned a weight
53 reflecting the projected utilization of resources. Such regulations
54 shall provide for the development of one or more base rates and the
55 multiplication of such base rates by the assigned weight for each APG to

1 establish the appropriate payment level for each such APG. Such regu-
2 lations may also utilize bundling, packaging and discounting mechanisms.
3 § 19. Notwithstanding any contrary provision of law, and within
4 amounts appropriated, commencing October 1, 2009, the commissioners of
5 mental health and health are jointly authorized to expand programs
6 including but not limited to the home-based crisis intervention program
7 and critical time intervention programs to reduce utilization of inpa-
8 tient hospital services.
9 § 20. Notwithstanding any contrary provision of law, and subject to
10 federal financial participation under Title XIX of the Social Security
11 Act, and within amounts appropriated therefore, commencing on or after
12 October 1, 2009, the commissioners of health and mental retardation and
13 developmental disabilities are jointly authorized to implement the Ambu-
14 latory Patient Group (APG) reimbursement methodology, for clinic
15 services rendered by providers pursuant to their licensure under article
16 16 of the mental hygiene law.
17 § 21. The commissioners of mental retardation and developmental disa-
18 bilities, and health, subject to the approval of the state director of
19 the budget, are jointly authorized to implement the Ambulatory Patient
20 Group (APG) reimbursement methodology for determining rates of payment
21 for clinic services rendered pursuant to providers' licensure under
22 article 16 of the mental hygiene law. The commissioner of mental retar-
23 dation and developmental disabilities, subject to the approval of the
24 commissioner of health and director of the budget, shall promulgate
25 regulations pursuant to article 16 of the mental hygiene law which shall
26 reflect utilization of the Ambulatory Patient Group (APG) methodology,
27 as described in subdivision 2-a of section 2807 of the public health
28 law, in which patients are grouped based on their diagnosis, the inten-
29 sity of the services provided and the procedures performed, and with
30 each APG assigned a weight reflecting the projected utilization of
31 resources. Such regulations shall provide for the development of one or
32 more base rates and the multiplication of such base rates by the
33 assigned weight for each APG to establish the appropriate payment level
34 for each such APG. Such regulations may also utilize bundling, packaging
35 and discounting mechanisms.
36 § 22. Notwithstanding any contrary provision of law, subject to feder-
37 al financial participation under Title XIX of the Social Security Act,
38 and within amounts appropriated therefore, commencing on or after Octo-
39 ber 1, 2009 the commissioners of health, and alcoholism and substance
40 abuse services are authorized to implement and enhance funding of the
41 Ambulatory Patient Group (APG) reimbursement methodology for clinic
42 services rendered pursuant to providers' operating certificates under
43 article 32 of the mental hygiene law.
44 § 23. The commissioners of alcoholism and substance abuse services,
45 and health, subject to the approval of the state director of the budget,
46 are jointly authorized to implement and enhance funding of the Ambulato-
47 ry Patient Group (APG) reimbursement methodology for determining rates
48 of payment for outpatient clinic services rendered pursuant to provid-
49 ers' operating certificates under article 32 of the mental hygiene law.
50 The commissioner of alcoholism and substance abuse services, subject to
51 the approval of the commissioner of health and the director of the
52 budget, shall promulgate regulations pursuant to article 32 of the
53 mental hygiene law which shall reflect utilization of the Ambulatory
54 Patient Group (APG) methodology, as described in subdivision 2-a of
55 section 2807 of the public health law, in which patients are grouped
56 based on their diagnosis, the intensity of the services provided and the

1 procedures performed, and with each APG assigned a weight reflecting the
2 projected utilization of resources. Such regulations shall provide for
3 the development of one or more base rates and the multiplication of such
4 base rates by the assigned weight for each APG to establish the appro-
5 priate payment level for each such APG. Such regulations may also
6 utilize bundling, packaging and discounting mechanisms.
7 § 23-a. Notwithstanding any contrary provision of law, and within
8 amounts appropriated, commencing April 1, 2009 the commissioners of
9 alcoholism and substance abuse services, and health are jointly author-
10 ized to increase medical assistance fees for medically supervised with-
11 drawal services.
12 § 24. Intentionally omitted.
13 § 25. The social services law is amended by adding a new section 364-m
14 to read as follows:
15 § 364-m. Statewide health care home program. 1. Notwithstanding any
16 inconsistent provision of law, the commissioner of health is authorized
17 to certify certain clinicians and clinics as health care homes in order
18 to improve health outcomes and efficiency through patient care continui-
19 ty and coordination of health services. These providers will be eligible
20 for enhanced payments for services provided to: recipients eligible for
21 medical assistance pursuant to this title ("Medicaid fee-for-service");
22 enrollees eligible for medical assistance pursuant to such title and
23 enrolled in approved managed care organizations pursuant to section
24 three hundred sixty-four-j of this title ("Medicaid managed care");
25 enrollees eligible for family health plus and enrolled in approved
26 organizations pursuant to title eleven-D of this article ("Family Health
27 Plus"); and enrollees eligible for the child health insurance program
28 and enrolled in approved organizations pursuant to title one-A of arti-
29 cle twenty-five of the public health law ("Child Health Plus Program").
30 2. By October first, two thousand nine, the commissioner of health
31 shall develop and implement standards of certification for health care
32 homes for Medicaid fee-for-service and Medicaid managed care, Family
33 Health Plus and Child Health Plus programs. In developing such stand-
34 ards, the commissioner of health shall: (a) consider existing standards
35 developed by national accrediting and professional organizations; and
36 (b) consult with national and local organizations working on medical
37 home models, physicians, hospitals, clinics, health plans and consumers
38 and their representatives.
39 3. To maintain their certification, health care homes must: (a) renew
40 their certification at a frequency determined by the commissioner of
41 health; and (b) provide data to the department of health and to health
42 plans to permit the commissioner of health, or his or her contractor or
43 designee, to evaluate the impact of health care homes on quality,
44 outcomes and cost.
45 4. Subject to the availability of funding and federal financial
46 participation, the commissioner of health is authorized:
47 (a) To pay enhanced rates of payment to clinics and clinicians that
48 are certified as health care homes under this section. Such enhancements
49 may be tiered based on the level of standard achieved by the clinician
50 or clinic; and
51 (b) To pay additional amounts for health care homes that meet specific
52 process or outcome standards specified by the commissioner of health.
53 5. By December thirty-first, two thousand twelve, the commissioner of
54 health shall report to the governor and the legislature on the impact of
55 the statewide health care home program on quality, cost and outcomes for

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1 enrollees in Medicaid fee-for-service, Medicaid managed care, Family
2 Health Plus and Child Health Plus.
3 § 26. Sections 2950 through 2958 of article 29-A of the public health
4 law are designated title 1 and a new title heading is added to read as
5 follows:
6 RURAL HEALTH CARE ACCESS
7 § 26-a. Article 29-A of the public health law is amended by adding a
8 new title 2 to read as follows:
9 TITLE 2
10 ADIRONDACK HEALTH CARE HOME MULTIPAYOR
11 DEMONSTRATION PROGRAM
12 Section 2959. Adirondack health care home multipayor demonstration
13 program.
14 § 2959. Adirondack health care home multipayor demonstration program.
15 1. Notwithstanding any inconsistent provision of law, the commissioner
16 is authorized to establish an Adirondack health care home multipayor
17 demonstration program for the purpose of certifying certain clinicians
18 and clinics in the upper northeastern region of New York as health care
19 homes eligible for enhanced payments for services provided to: recipi-
20 ents eligible for medical assistance pursuant to title eleven of article
21 five of the social services law ("Medicaid fee-for-service"); enrollees
22 eligible for medical assistance pursuant to such title and enrolled in
23 approved managed care organizations pursuant to section three hundred
24 sixty-four-j of such title ("Medicaid managed care"); enrollees eligible
25 for family health plus and enrolled in approved organizations pursuant
26 to title eleven-D of article five of the social services law ("Family
27 Health Plus"); enrollees eligible for the child health insurance program
28 and enrolled in approved organizations pursuant to title one-A of arti-
29 cle twenty-five of this chapter ("Child Health Plus Program"); enrollees
30 and subscribers of commercial managed care plans operating in accordance
31 with the provisions of article forty-four of this chapter or by health
32 maintenance organizations organized and operating in accordance with
33 article forty-three of the insurance law; enrollees and subscribers of
34 other commercial insurance products; and employees of employer-sponsored
35 self-insured plans. The purpose of this demonstration program is to
36 improve health care outcomes and efficiency through patient care conti-
37 nuity and coordination of health services.
38 2. (a) In order to promote improved quality of, and access to, health
39 care services and promote improved clinical outcomes to the residents in
40 the upper northeastern region of New York, it shall be the policy of the
41 state to encourage cooperative, collaborative and integrative arrange-
42 ments between payors of health care services and health care services
43 providers who might otherwise be competitors, under the active super-
44 vision of the commissioner. To the extent such arrangements might be
45 anti-competitive within the meaning and intent of the federal antitrust
46 laws, the intent of the state is to supplant competition with such
47 arrangement to the extent necessary to accomplish the purposes of this
48 article, and provide state action immunity under the state and federal
49 antitrust laws with respect to the planning, implementation and opera-
50 tion of the Adirondack health care home multipayor demonstration program
51 and payors of health care services and health care services providers.
52 (b) The commissioner or his or her duly authorized representative may
53 also engage in appropriate state supervision necessary to promote state
54 action immunity under the state and federal antitrust laws, and may
55 inspect or request additional documentation to verify that the demon-
56 stration is implemented in accordance with its intent and purpose.

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1 3. The commissioner is authorized to participate in, actively super-
2 vise, facilitate and approve a primary care health care home collabora-
3 tive with health care services providers, which may include hospitals,
4 diagnostic and treatment centers, and private practices, and payors of
5 health care services, including employers, health plans and insurers, to
6 establish: (a) the boundaries of the demonstration and the providers
7 eligible to participate; (b) practice standards for the health care home
8 consistent with existing standards developed by national accrediting and
9 professional organizations including the joint principles of the Ameri-
10 can College of Physicians ("ACP"), the American Academy of Family Physi-
11 cians ("AAFP"), the American Academy of Pediatrics ("AAP"), the American
12 Osteopathic Association ("AOA"), and as further defined by "Patient-Cen-
13 tered Medical Home," as represented in certification programs developed
14 by the National Committee for Quality Assurance ("NCQA"); (c) methodol-
15 ogies by which payors will provide enhanced rates of payment to certi-
16 fied health care homes; and (d) methodologies to pay additional amounts
17 for health care homes that meet specific process or outcome standards
18 established by the Adirondack health care home collaborative.
19 4. Patient and health care services provider participation in the
20 Adirondack health care home multipayor demonstration program shall be on
21 a voluntary basis.
22 5. Clinics and clinicians participating in this demonstration are not
23 eligible for additional enhancements or bonuses under the statewide
24 health care home program, established pursuant to section three hundred
25 sixty-four-m of the social services law, for services provided to
26 participants in Medicaid fee-for-service, Medicaid managed care, Family
27 Health Plus or Child Health Plus.
28 6. Subject to the availability of funding and federal financial
29 participation, the commissioner is authorized:
30 (a) To pay enhanced rates of payment under Medicaid fee-for-service,
31 Medicaid managed care, Family Health Plus and Child Health Plus to clin-
32 ics and clinicians that are certified as health care homes under this
33 title; and
34 (b) To pay additional amounts for health care homes that meet specific
35 process or outcome standards specified by the commissioner, in consulta-
36 tion with the Adirondack health care home collaborative.
37 § 27. Subdivision 2 of section 365-a of the social services law is
38 amended by adding three new paragraphs (s), (t) and (u) to read as
39 follows:
40 (s) smoking cessation counseling services for a pregnant woman on any
41 day of her pregnancy through the end of the month in which the one
42 hundred eightieth day following the end of the pregnancy occurs, and
43 children and adolescents ten to nineteen years of age, during a medical
44 visit when provided by a general hospital outpatient department or a
45 free-standing clinic, or by a physician, registered physician's assist-
46 ant, registered nurse practitioner or licensed midwife in office-based
47 settings; provided, however, that the provisions of this paragraph
48 relating to smoking cessation counseling services shall not take effect
49 unless all necessary approvals under federal law and regulation have
50 been obtained to receive federal financial participation in the costs of
51 such services.
52 (t) cardiac rehabilitation services when ordered by the attending
53 physician and provided in a hospital-based or free-standing clinic in an
54 area set aside for cardiac rehabilitation, or in a physician's office;
55 provided, however, that the provisions of this paragraph relating to
56 cardiac rehabilitation services shall not take effect unless all neces-

1 sary approvals under federal law and regulation have been obtained to
2 receive federal financial participation in the costs of such services.
3 (u) screening, brief intervention, referral and treatment in hospital
4 emergency departments of individuals at risk for substance abuse includ-
5 ing referral to the appropriate level of intervention and treatment in a
6 community setting; provided, however, that the provisions of this para-
7 graph relating to screening, brief intervention, referral and treatment
8 services shall not take effect unless all necessary approvals under
9 federal law and regulation have been obtained to receive federal finan-
10 cial participation in such costs.
11 § 28. Notwithstanding any contrary provision of law, in the event
12 sections two through ten of this act are not enacted into law then the
13 provisions of sections twenty-five through twenty-seven and section
14 twenty-nine of this act shall be deemed null and void and of no effect.
15 § 29. Section 365-h of the social services law, as added by chapter 81
16 of the laws of 1995, subdivision 3 as amended by section 26 of part B of
17 chapter 1 of the laws of 2002, is amended to read as follows:
18 § 365-h. Provision and reimbursement of transportation costs. 1. The
19 local social services official and, subject to the provisions of subdi-
20 vision four of this section, the commissioner of health, shall have
21 responsibility for prior authorizing transportation of eligible persons
22 and for limiting the provision of such transportation to those recipi-
23 ents and circumstances where such transportation is essential, medically
24 necessary and appropriate to obtain medical care, services or supplies
25 otherwise available under this title.
26 2. In exercising this responsibility, the local social services offi-
27 cial and, as appropriate, the commissioner of health shall:
28 (a) make appropriate and economical use of transportation resources
29 available in the district in meeting the anticipated demand for trans-
30 portation within the district, including, but not limited to: transpor-
31 tation generally available free-of-charge to the general public or
32 specific segments of the general public, public transportation,
33 promotion of group rides, county vehicles, coordinated transportation,
34 and direct purchase of services; and
35 (b) maintain quality assurance mechanisms in order to ensure that (i)
36 only such transportation as is essential, medically necessary and appro-
37 priate to obtain medical care, services or supplies otherwise available
38 under this title is provided and (ii) no expenditures for taxi or livery
39 transportation are made when public transportation or lower cost trans-
40 portation is reasonably available to eligible persons.
41 3. In the event that coordination or other such cost savings measures
42 are implemented, the commissioner shall assure compliance with applica-
43 ble standards governing the safety and quality of transportation of the
44 population served.
45 4. The commissioner of health is authorized to assume responsibility
46 from a local social services official for the provision and reimburse-
47 ment of transportation costs under this section. If the commissioner
48 elects to assume such responsibility, the commissioner shall notify the
49 local social services official in writing as to the election, the date
50 upon which the election shall be effective and such information as to
51 transition of responsibilities as the commissioner deems prudent. The
52 commissioner is authorized to contract with a transportation manager or
53 managers that have experience in coordinating transportation services in
54 the state to manage the provision of services under this section. Such a
55 contract or contracts may include, without limitation, responsibility
56 for: review, approval and processing of transportation orders; manage-

1 ment of the appropriate level of transportation based on documented
2 patient medical need; and development of new technologies and approaches
3 leading to efficient transportation services. Notwithstanding any incon-
4 sistent provision of sections one hundred twelve and one hundred sixty-
5 three of the state finance law, or section one hundred forty-two of the
6 economic development law, or any other law, the commissioner of health
7 is authorized to enter into a contract under this subdivision without a
8 competitive bid or request for proposal process.
9 § 30. Section 364-f of the social services law, as added by chapter
10 904 of the laws of 1984, is amended to read as follows:
11 § 364-f. [Physician] Primary care case management programs. 1. The
12 department is authorized to establish [physician] primary care case
13 management [demonstration] programs, under the medical assistance
14 program, in accordance with applicable federal law and regulations.
15 Primary care case management programs shall only be authorized in areas
16 of the state where comprehensive health services plans, as defined in
17 section forty-four hundred one of the public health law, are not yet
18 available. Subject to the approval of the director of the budget, the
19 commissioner is authorized to apply for the appropriate waivers under
20 federal law and regulation, and may waive any of the provisions of
21 sections three hundred sixty-five-a, three hundred sixty-six, three
22 hundred sixty-seven-b [and], three hundred sixty-eight-a and three
23 hundred sixty-four-j of this chapter or any regulation of the department
24 when such action would be necessary to assist in promoting the objec-
25 tives of this section.
26 2. (a) A [physician] primary care case management program shall
27 provide individuals eligible for medical assistance with the opportunity
28 to select [voluntarily] a primary care case [management provider] manag-
29 er who shall provide medical assistance services to such eligible indi-
30 viduals, either directly, or through referral [by a physician case
31 manager].
32 (b) [Physician] Primary care case managers shall be limited to quali-
33 fied, licensed primary care [physicians] practitioners, as defined in
34 paragraph (f) of subdivision one of section three hundred sixty-four-j
35 of this chapter, who meet standards established by the commissioner [of
36 health] for the purposes of this program.
37 (c) Services [for which a physician case manager will be responsible]
38 that may be covered by the primary care case management program are
39 defined by the commissioner in the benefit package. Covered services may
40 include all medical assistance services defined under section three
41 hundred sixty-five-a of this chapter, except:
42 (i) services excluded under paragraph (e) of subdivision three of
43 section three hundred sixty-four-j of this chapter shall be excluded
44 under this section;
45 (ii) services provided by residential health care facilities, long
46 term home health care programs, child care agencies, and entities offer-
47 ing comprehensive health services plans;
48 [(ii)] (iii) services provided by dentists and optometrists; and
49 [(iii)] (iv) eyeglasses, emergency care, mental health services and
50 family planning services.
51 (d) Case management services provided by [physician] primary care case
52 managers shall include, but need not be limited to:
53 (i) management of the medical and health care of each recipient to
54 assure that all services provided under paragraph (c) of this subdivi-
55 sion and which are found to be necessary, are made available in a timely
56 manner;

1 (ii) referral to, and coordination, monitoring and follow-up of,
2 appropriate providers for diagnosis and treatment, the need for which
3 has been identified by the [physician] primary care case manager but
4 which is not directly available from the [physician] primary care case
5 manager, and assisting medical assistance recipients in the prudent
6 selection of medical services;
7 (iii) arrangements for referral of recipients to appropriate provid-
8 ers; and
9 (iv) [services provided in accordance with child health assurance
10 program standards for individuals under twenty-one years of age] all
11 early periodic screening, diagnosis and treatment services, as well as
12 interperiodic screening and referral, to each participant under the age
13 of twenty-one at regular intervals.
14 3. (a) [Physician] Primary care case management programs may be
15 conducted only in accordance with [plans submitted by social services
16 districts and approved] guidelines established by the commissioner[,
17 after consultation with the commissioner of health, and only to the
18 extent and period for which such plans have been approved by the commis-
19 sioner. The commissioner shall not authorize the implementation of such
20 plans in more than ten social services districts. For the purpose of
21 implementing and administering the physician case management programs,
22 social services districts may]. Notwithstanding any inconsistent
23 provision of sections one hundred twelve and one hundred sixty-three of
24 the state finance law, or section one hundred forty-two of the economic
25 development law, or any other law, the commissioner is authorized to
26 enter into a contract with [private not-for-profit and public agencies]
27 qualified entities as defined in guidelines established by the commis-
28 sioner for the management and administration of [these plans provided,
29 however, that such contracts shall require prior approval by the commis-
30 sioner] the primary care case management program without a competitive
31 bid or request for proposal process.
32 (b) The [commissioner shall only approve plans submitted pursuant to
33 this section which: (i) identify and document the specific problems
34 which the physician case management program is designed to address with-
35 in the social services district;] primary care case management program
36 must:
37 [(ii)] (i) assure access to and delivery of high quality, appropriate
38 medical services;
39 [(iii) include a description of the quality assurance mechanisms to be
40 implemented] (ii) participate in quality assurance activities as
41 required by the commissioner, as well as other mechanisms designed to
42 protect recipient rights under such program;
43 [(iv) designate the entity to be responsible for the administration of
44 the program within the social services district and describe the respon-
45 sibilities of this entity;
46 (v) include a fiscal impact statement which describes the anticipated
47 savings to federal, state and local governments, including an estimate
48 of those costs, including both inpatient and ambulatory costs, which
49 would have been incurred in the absence of the program and the projected
50 costs under the program;
51 (vi)] (iii) ensure that persons eligible for medical assistance will
52 be provided sufficient information regarding the program to make an
53 informed and voluntary choice whether to participate; and
54 [(vii)] (iv) provide for adequate safeguards to protect recipients
55 from being misled concerning the program and from being coerced into

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1 participating in the [physician] primary care case management
2 program[;].
3 [(viii) assure adequate opportunity for public review and comment
4 prior to implementation of the program and provide adequate grievance
5 procedures for recipients who participate in the program; and
6 (ix) include any other information which the department shall deem
7 appropriate.]
8 4. (a) Individuals eligible [for medical assistance] to participate in
9 the state's managed care program, as defined in subparagraph three of
10 section three hundred [sixty-six] sixty-four-j of this chapter, may
11 [voluntarily] participate in a [physician] primary care case management
12 program, subject to the availability of such a program within the appli-
13 cable social services district, except for individuals: (i) enrolled in
14 an entity offering a comprehensive health services plan as defined in
15 paragraph (k) of subdivision two of section three hundred sixty-five-a
16 of this chapter; (ii) participating in another medical assistance reim-
17 bursed demonstration or pilot project, or (iii) receiving services as an
18 inpatient from a nursing home or intermediate care facility or residen-
19 tial services from a child care agency or services from a long term home
20 health care program.
21 (b) [All individuals eligible for medical assistance] Individuals
22 choosing to participate [voluntarily] in a [physician] primary care case
23 management program will be given thirty days from the effective date of
24 enrollment in the program to disenroll without cause. After this thirty
25 day disenrollment period, all individuals participating in the program
26 will be enrolled for a period of [six] twelve months, except that all
27 participants will be permitted to disenroll for good cause, as defined
28 in guidelines established by the commissioner [in regulation].
29 5. (a) [Physician] Primary care case management programs may include
30 provisions for innovative payment mechanisms, including, but not limited
31 to, [sharing of any savings with providers,] payment of case management
32 fees [and], capitation arrangements, and fee-for-service payments.
33 (b) Any new payment mechanisms and levels of payment implemented under
34 the [physician] primary care case management program shall be developed
35 [jointly] by the commissioner [and the commissioner of health] subject
36 to the approval of the director of the budget.
37 6. Notwithstanding any inconsistent provision of this section, partic-
38 ipation in a primary care case management program will not diminish the
39 scope of available medical services to which a recipient is entitled.
40 7. This section shall be effective if, and as long as, federal finan-
41 cial participation is available therefor.
42 § 31. Intentionally omitted.
43 § 32. Intentionally omitted.
44 § 33. Section 2818 of the public health law is amended by adding a
45 new subdivision 4 to read as follows:
46 4. (a) Notwithstanding subdivision one, two or three of this section,
47 the commissioner, with the approval of the director of the budget, may
48 expend funds for the purpose of providing cost effective increased
49 access to the capital markets, including but not limited to through the
50 use of mortgage insurance, credit enhancement, letters of credit, bond
51 insurance or other arrangements, for capital projects that are deter-
52 mined to meet one or more of the following objectives for hospitals
53 licensed under this article:
54 (i) securing financing for facilities in a manner that will improve
55 the operation and efficiency of the health care delivery system within
56 the state;

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1 (ii) securing financing for facilities in a manner consistent with the
2 objectives and determinations of the Commission on Health Care Facili-
3 ties in the Twenty-First Century, established pursuant to chapter
4 sixty-three of the laws of two thousand five;
5 (iii) securing financing for facilities in a manner that will help
6 rightsize the state's acute care infrastructure, including reducing
7 inpatient capacity, downsizing, restructuring, and closing facilities;
8 (iv) securing financing for facilities in a manner that advances the
9 reform of the long-term care system, including through rightsizing and
10 providing community-based services;
11 (v) securing financing for facilities in a manner that improves the
12 primary and ambulatory care system; and
13 (vi) such other objectives as the commissioner deems appropriate to
14 effectuate the intent of this subdivision.
15 (b) The commissioner may transfer funds to other state agencies or
16 public authorities, with the approval of the director of budget, to
17 effectuate the purposes of this subdivision.
18 § 34. Subdivision 3 of section 1680-j of the public authorities law,
19 as amended by section 7 of part B of chapter 58 of the laws of 2008, is
20 amended to read as follows:
21 3. Notwithstanding any law to the contrary, and in accordance with
22 section four of the state finance law, the comptroller is hereby author-
23 ized and directed to transfer from the health care reform act (HCRA)
24 resources fund (061) to the general fund, upon the request of the direc-
25 tor of the budget, up to $6,500,000 on or before March 31, 2006, and the
26 comptroller is further hereby authorized and directed to transfer from
27 the healthcare reform act (HCRA); Resources fund (061) to the Capital
28 Projects Fund, upon the request of the director of budget, up to
29 $139,000,000 for the period April 1, 2006 through March 31, 2007, up to
30 $171,100,000 for the period April 1, 2007 through March 31, 2008, up to
31 $208,100,000 for the period April 1, 2008 through March 31, 2009, up to
32 $151,600,000 for the period April 1, 2009 through March 31, 2010, and up
33 to [$182,000,000] $238,000,000 for the period April 1, 2010 through
34 March 31, 2011.
35 § 35. Subdivision 7 of section 367-a of the social services law is
36 amended by adding a new paragraph (e) to read as follows:
37 (e) The commissioner is authorized to negotiate directly with pharma-
38 ceutical manufacturers for rebates, and to enter into a contract or
39 contracts with qualified entities for such purpose. Notwithstanding any
40 inconsistent provision of sections one hundred twelve and one hundred
41 sixty-three of the state finance law, or section one hundred forty-two
42 of the economic development law, or any other law, the commissioner is
43 authorized to enter into a contract under this subdivision without a
44 competitive bid or request for proposal process.
45 § 36. Subdivision 4 of section 272 of the public health law is
46 REPEALED.
47 § 37. Section 3-a of part Z2 of chapter 62 of the laws of 2003, amend-
48 ing the social services law and the public health law relating to
49 expanding Medicaid coverage and rates of payment for residential health
50 care facilities is REPEALED.
51 § 38. Section 369-aa of the social services law is amended by adding a
52 new subdivision 16 to read as follows:
53 16. "Step therapy" shall mean the practice of beginning drug therapy
54 for a medical condition with the most medically appropriate and cost
55 effective therapy and progressing to other drugs as medically necessary.

1 § 39. Section 369-cc of the social services law is amended by adding a
2 new subdivision 4 to read as follows:
3 4. The commissioner, through the prospective DUR program, may require
4 step therapy when there is more than one drug appropriate to treat a
5 medical condition. The purpose of step therapy is to encourage the use
6 of medically appropriate, cost effective drugs when clinically indicated
7 and to limit use of alternative drug therapies unless certain clinical
8 requirements are met. The DUR board shall recommend guidelines for
9 specific diagnoses and therapy regimens within which practitioners may
10 prescribe drugs without the requirement for prior authorization of those
11 drugs. In establishing these guidelines, the board shall consider clin-
12 ical effectiveness, safety, and cost effectiveness.
13 § 40. Paragraph (g) of subdivision 2 of section 365-a of the social
14 services law, as amended by section 1 of part F of chapter 497 of the
15 laws of 2008, is amended to read as follows:
16 (g) sickroom supplies, eyeglasses, prosthetic appliances and dental
17 prosthetic appliances furnished in accordance with the regulations of
18 the department, provided that the commissioner of health is authorized
19 to implement a preferred diabetic supply program wherein the department
20 of health will receive enhanced rebates from preferred manufacturers of
21 glucometers and test strips, and may subject non-preferred manufactur-
22 ers' glucometers and test strips to prior authorization under section
23 two hundred seventy-three of the public health law; drugs provided on an
24 in-patient basis, those drugs contained on the list established by regu-
25 lation of the commissioner of health pursuant to subdivision four of
26 this section, and those drugs which may not be dispensed without a
27 prescription as required by section sixty-eight hundred ten of the
28 education law and which the commissioner of health shall determine to be
29 reimbursable based upon such factors as the availability of such drugs
30 or alternatives at low cost if purchased by a medicaid recipient, or the
31 essential nature of such drugs as described by such commissioner in
32 regulations, provided, however, that such drugs, exclusive of long-term
33 maintenance drugs, shall be dispensed in quantities no greater than a
34 thirty day supply or one hundred doses, whichever is greater; provided
35 further that the commissioner of health is authorized to require prior
36 authorization for any refill of a prescription when less than seventy-
37 five percent of the previously dispensed amount per fill should have
38 been used were the product used as normally indicated; provided further
39 that the commissioner of health may from time to time limit the amount,
40 frequency and duration of drug therapy through prior authorization as
41 part of the drug utilization review program established under title
42 eleven-C of this article; medical assistance shall not include any drug
43 provided on other than an in-patient basis for which a recipient is
44 charged or a claim is made in the case of a prescription drug, in excess
45 of the maximum reimbursable amounts to be established by department
46 regulations in accordance with standards established by the secretary of
47 the United States department of health and human services, or, in the
48 case of a drug not requiring a prescription, in excess of the maximum
49 reimbursable amount established by the commissioner of health pursuant
50 to paragraph (a) of subdivision four of this section;
51 § 41. Paragraph (b) of subdivision 8 of section 369-bb of the social
52 services law is amended by adding a new subparagraph (viii) to read as
53 follows:
54 (viii) The development of clinical prescribing guidelines relating to
55 quantity, frequency and duration of drug therapy for the commissioner's
56 use in determining when to require prior authorization of drugs in the

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1 DUR program pursuant to the authority of paragraph (g) of subdivision
2 two of section three hundred sixty-five-a of this article; exceptions to
3 any prior authorization imposed as a result of these guidelines shall
4 include, but need not be limited to, provision for emergency circum-
5 stances where a medical condition requires alleviation of severe pain or
6 which threatens to cause disability or to take a life if not promptly
7 treated.
8 § 42. Paragraph (g) of subdivision 4 of section 365-a of the social
9 services law, as amended by section 61 of part C of chapter 58 of the
10 laws of 2007, is amended to read as follows:
11 (g) for eligible persons who are also beneficiaries under part D of
12 title XVIII of the federal social security act, drugs which are denomi-
13 nated as "covered part D drugs" under section 1860D-2(e) of such act[;
14 provided however that, for purposes of this paragraph, "covered part D
15 drugs" shall not mean atypical anti-psychotics, anti-depressants, anti-
16 retrovirals used in the treatment of HIV/AIDS, or anti-rejection drugs
17 used for the treatment of organ and tissue transplants].
18 § 43. Subparagraph (ii) of paragraph (b) of subdivision 9 of section
19 367-a of the social services law, as amended by section 4 of part C of
20 chapter 58 of the laws of 2008, is amended to read as follows:
21 (ii) if the drug dispensed is a multiple source prescription drug or a
22 brand-name prescription drug for which no specific upper limit has been
23 set by such federal agency, the lower of the estimated acquisition cost
24 of such drug to pharmacies, or the dispensing pharmacy's usual and
25 customary price charged to the general public. For sole and multiple
26 source brand name drugs, estimated acquisition cost means the average
27 wholesale price of a prescription drug based upon the package size
28 dispensed from, as reported by the prescription drug pricing service
29 used by the department, less sixteen and twenty-five one hundredths
30 percent thereof, and updated monthly by the department[; or, for a
31 specialized HIV pharmacy, as defined in paragraph (f) of this subdivi-
32 sion, acquisition cost means the average wholesale price of a
33 prescription drug based upon the package size dispensed from, as
34 reported by the prescription drug pricing service used by the depart-
35 ment, less twelve percent thereof, and updated monthly by the depart-
36 ment]. For multiple source generic drugs, estimated acquisition cost
37 means the lower of the average wholesale price of a prescription drug
38 based on the package size dispensed from, as reported by the
39 prescription drug pricing service used by the department, less twenty-
40 five percent thereof, or the maximum acquisition cost, if any, estab-
41 lished pursuant to paragraph (e) of this subdivision[; or, for a
42 specialized HIV pharmacy, as defined in paragraph (f) of this subdivi-
43 sion, acquisition cost means the lower of the average wholesale price of
44 a prescription drug based on the package size dispensed from, as
45 reported by the prescription drug pricing service used by the depart-
46 ment, less twelve percent thereof, or the maximum acquisition cost, if
47 any, established pursuant to paragraph (e) of this subdivision].
48 § 44. Paragraph (f) of subdivision 9 of section 367-a of the social
49 services law is REPEALED.
50 § 45. Subdivision 7 of section 274 of the public health law, as added
51 by section 10 of part C of chapter 58 of the laws of 2005, is amended to
52 read as follows:
53 7. In the event that the patient does not meet the criteria for
54 approval established by the commissioner in subdivision six of this
55 section, the clinical drug review program shall provide a reasonable
56 opportunity for a prescriber to reasonably present his or her justifica-

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1 tion for prior authorization. If, after [consultation with] the
2 program[, the prescriber, in his or her reasonable professional judg-
3 ment, determines that the use of the prescription drug is warranted, the
4 prescriber's determination shall be final and prior authorization shall
5 be granted under this section; provided, however, that] provides the
6 prescriber such reasonable opportunity, the program determines that the
7 use of the drug is not medically necessary, prior authorization may be
8 denied. In addition, prior authorization may be denied in cases where
9 the department has substantial evidence that the prescriber or patient
10 is engaged in fraud or abuse relating to the drug.
11 § 46. Paragraph (a-1) of subdivision 4 of section 365-a of the social
12 services law, as amended by section 11 of part C of chapter 58 of the
13 laws of 2005, is amended to read as follows:
14 (a-1) (i) a brand name drug for which a multi-source therapeutically
15 and generically equivalent drug, as determined by the federal food and
16 drug administration, is available, unless previously authorized by the
17 department of health. The commissioner of health is authorized to
18 exempt, for good cause shown, any brand name drug from the restrictions
19 imposed by this [paragraph] subparagraph. This [paragraph] subparagraph
20 shall not apply to any drug that is in a therapeutic class included on
21 the preferred drug list under section two hundred seventy-two of the
22 public health law or is in the clinical drug review program under
23 section two hundred seventy-four of the public health law;
24 (ii) notwithstanding the provisions of subparagraph (i) of this para-
25 graph, the commissioner is authorized to deny reimbursement for a gener-
26 ic equivalent, including a generic equivalent that is on the preferred
27 drug list or the clinical drug review program, when the net cost of the
28 brand name drug, after consideration of all rebates, is less than the
29 cost of the generic equivalent;
30 § 47. Subparagraph (iii) of paragraph (c) of subdivision 6 of section
31 367-a of the social services law, as amended by section 9 of part C of
32 chapter 58 of the laws of 2008, is amended to read as follows:
33 (iii) Notwithstanding any other provision of this paragraph, co-
34 payments charged for each generic prescription drug dispensed shall be
35 one dollar and for each brand name prescription drug dispensed shall be
36 three dollars; provided, however, that the co-payments charged for each
37 brand name prescription drug on the preferred drug list established
38 pursuant to section two hundred seventy-two of the public health law and
39 the co-payments charged for each brand name prescription drug reimbursed
40 pursuant to subparagraph (ii) of paragraph (a-2) of subdivision four of
41 section three hundred sixty-five-a of this title shall be one dollar.
42 § 48. Subparagraph (ii) of paragraph (d) of subdivision 9 of section
43 367-a of the social services law, as amended by chapter 19 of the laws
44 of 1998, is amended to read as follows:
45 (ii) for prescription drugs categorized as brand-name prescription
46 [drug] drugs by the prescription drug pricing service used by the
47 department, three dollars and fifty cents per prescription, provided,
48 however, that for brand name prescription drugs reimbursed pursuant to
49 subparagraph (ii) of paragraph (a-2) of subdivision four of section
50 three hundred sixty-five-a of this title, the dispensing fee shall be
51 four dollars and fifty cents per prescription.
52 § 49. Subdivision 9 of section 367-a of the social services law is
53 amended by adding a new paragraph (i) to read as follows:
54 (i) The commissioner of health is authorized to pay financial incen-
55 tives to medical practitioners and to pharmacies for the purpose of
56 encouraging the electronic transmission of prescriptions for drugs for

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1 which payments are made under this subdivision. Such payments shall be
2 in the following amounts: for medical practitioners, eighty cents per
3 dispensed electronic prescription; for dispensing pharmacies, twenty
4 cents per dispensed electronic prescription. Electronic prescribing
5 software shall not use any means or permit any other person to use any
6 means, including, but not limited to, advertising, instant messaging,
7 and pop-up ads, to influence or attempt to influence, through economic
8 incentives or otherwise, the prescribing decision of a prescribing prac-
9 titioner at the point of care. Such means shall not be triggered or in
10 specific response to the input, selection, or act of a prescribing prac-
11 titioner or his or her agent in prescribing a certain pharmaceutical or
12 directing a patient to a certain pharmacy. The provisions of this para-
13 graph shall not take effect unless all necessary approvals under federal
14 law and regulation have been obtained to receive federal financial
15 participation in the costs of services provided under this paragraph.
16 § 50. The public health law is amended by adding a new section 279 to
17 read as follows:
18 § 279. Prohibited acts and disclosure requirements relating to drug
19 manufacturers' provision of things of value to prescribers. 1. Defi-
20 nitions. As used in this section:
21 (a) "Drug" means: (i) articles recognized in the official United
22 States pharmacopoeia, official homeopathic pharmacopoeia of the United
23 States, or official national formulary;
24 (ii) articles intended for use in the diagnosis, cure, mitigation,
25 treatment or prevention of disease in humans;
26 (iii) articles (other than food) intended to affect the structure or
27 any function of the body of humans;
28 (iv) articles intended for use as a component of any article specified
29 in subparagraph (i), (ii) or (iii) of this paragraph but does not
30 include devices or their components, parts or accessories;
31 (b) "Device" means any instrument, apparatus, or contrivance, includ-
32 ing components, parts or accessories, intended:
33 (i) for use in the diagnosis, cure, mitigation, treatment, or
34 prevention of disease in humans; or
35 (ii) to affect the structure or any function of the body of humans.
36 (c) "Manufacturer" means (i) a person or entity that fabricates,
37 makes, compounds, mixes, prepares, produces, bottles or packs drugs or
38 devices for the purpose of distributing or selling to pharmacies, health
39 care providers or other channels of distribution, or (ii) a person or
40 entity that, pursuant to an agreement with a person or entity described
41 in subparagraph (i) of this paragraph, markets a drug or device under a
42 different name or labeler code.
43 (d) "Prescriber" means a physician, dentist, physician assistant,
44 specialist's assistant, nurse practitioner, midwife, optometrist and
45 other licensed health care provider authorized under title eight of the
46 education law to prescribe drugs or devices.
47 (e) "Health care provider" means (i) a prescriber who practices in
48 this state in an individual practice, group practice, partnership,
49 professional corporation or other authorized form of association, or in
50 a hospital or other health care institution issued an operating certif-
51 icate pursuant to this chapter or the mental hygiene law; (ii) such
52 prescriber's individual practice, group practice, partnership, profes-
53 sional corporation or other authorized form of association; and (iii) an
54 employee of a person or entity described in subparagraph (i) or (ii) of
55 this paragraph.

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1 (f) "Doctor-in-training" means a person actively engaged in the state
2 in post-baccalaureate education or professional training designed to
3 prepare persons to be eligible to be licensed as a doctor of medicine or
4 doctor of osteopathy and is not authorized to prescribe drugs or
5 devices.
6 (g) "Payment" means anything with an economic value, including but not
7 limited to money, goods and services.
8 (h) "Benefit" means one or more things with an aggregated fair market
9 value for the year equal to or greater than fifty dollars, that would be
10 a payment, as defined in paragraph (g) of this subdivision, except that
11 it comes within the exception set out in paragraph (b) or (d) of subdi-
12 vision three of this section.
13 (i) "Fair market value" means the value in arms length transactions,
14 consistent with the general market value.
15 (j) "Financial relationship" means an ownership interest, investment
16 interest or compensation arrangement. An ownership interest or invest-
17 ment interest may be through equity, debt or other means; but shall not
18 include ownership of investment securities, including shares or bonds,
19 debentures, notes or other debt instruments, which were purchased on
20 terms generally available to the public and which are in a corporation
21 that is listed for trading on the New York stock exchange or on the
22 American stock exchange, or is a national market system security traded
23 under an automated interdealer quotation system operated by the national
24 association of securities dealers, and had, at the end of the corpo-
25 ration's most recent fiscal year, total assets exceeding one hundred
26 million dollars.
27 (k) "Discount" means a reduction in the amount a health care provider,
28 acting as a buyer or payer, is charged for an item or service, where the
29 reduction is offered by or on behalf of a manufacturer, and includes all
30 such reductions whenever they are given, including before or after the
31 time of sale, provided that such reductions given to a health care
32 provider have a fair market value aggregated for the calendar year equal
33 to or greater than fifty dollars. For the purpose of this paragraph,
34 "reduction" means a decrease from the amount that would be charged based
35 on an arms-length transaction or that is represented to the prescriber
36 as constituting such a decrease.
37 2. Prohibited acts. (a) A manufacturer shall not, directly or indi-
38 rectly, give or offer to give one or more payments with an aggregated
39 fair market value in excess of fifty dollars during a calendar year, to
40 any health care provider or doctor-in-training.
41 (b) A health care provider or a doctor-in-training shall not, directly
42 or indirectly, request or receive from any manufacturer one or more
43 payments with an aggregated fair market value in excess of fifty dollars
44 during a calendar year.
45 3. Exceptions. The following payments shall not be prohibited under
46 subdivision two of this section and shall be disclosed, as applicable,
47 pursuant to subdivision four of this section:
48 (a) samples of prescription drugs that the manufacturer's employee
49 provides directly to a prescriber who provides or administers such
50 sample to a patient without charge;
51 (b) any payment to support a specified and bona fide research, clin-
52 ical or educational activity in connection with which the recipient (i)
53 prior to receipt of any such payment, has submitted to the manufacturer
54 a proposal that describes the purpose and methods to be used in carrying
55 out the activity, the outcomes of the activity that will be measured and
56 the methods to be used to measure such outcomes, a procedure for

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1 accounting for such payment and a deadline for submitting to the
2 manufacturer a final report concerning the activity; (ii) has submitted
3 to the manufacturer the final report, with all required information as
4 described in its proposal as set forth in subparagraph (i) of this para-
5 graph, within the deadline set out in such proposal or as extended in
6 writing by the manufacturer; and (iii) makes such final report avail-
7 able to the department and health care providers upon request;
8 (c) a reduction in the cost to the health care provider of one or more
9 of the manufacturer's drugs or devices;
10 (d) reimbursement for travel, lodging and personal expenses or remun-
11 eration provided to a prescriber or such reimbursement provided to a
12 doctor-in-training, the amount of which remuneration or reimbursement is
13 not dependent, directly or indirectly, on the amount or volume of the
14 manufacturer's drugs or devices any person or entity prescribes, if:
15 (i) with respect to prescribers, the remuneration or reimbursement is
16 provided in connection with bona fide teaching, scientific research,
17 writing or consulting services the prescriber actually provides, the
18 nature and provision of which can be verified by documents the manufac-
19 turer maintains for not less than three years, provided that (A) the
20 amount of both the remuneration and reimbursement is consistent with the
21 fair market value of the services the prescriber provides to or on
22 behalf of the manufacturer, (B) with respect to teaching activities, the
23 prescriber is part of the faculty for an educational program and
24 provides attendees with significant scientific or clinical information,
25 and (C) with respect to writing, the prescriber is identified as an
26 author only when he or she has had unrestricted access to all data
27 pertaining to the subject of the manuscript, has given final approval of
28 the manuscript, has participated sufficiently in the work to take public
29 responsibility for at least part of the content, and has made substan-
30 tial contributions to the intellectual content of the written work in
31 either conception and design or acquisition of data and in either draft-
32 ing or critical revision of the manuscript for important intellectual
33 content; and
34 (ii) with respect to doctors-in-training, the reimbursement is
35 provided in connection with attendance at a bona fide medical confer-
36 ence, the principal purpose of which is to impart scientific or clinical
37 information, provided that (A) the amount of any reimbursement is
38 consistent with the fair market value of the travel, lodging and
39 personal expenses being reimbursed, and (B) the manufacturer transfers
40 all such funds to the doctor's-in-training medical school or profes-
41 sional employer, the medical school or professional employer selects the
42 doctors-in-training whose attendance the manufacturer will fund and the
43 medical conferences they will attend, and the school, employer and
44 manufacturer do not, directly or indirectly, inform the doctor-in-train-
45 ing of the source of such funds; and
46 (e) anything of economic value given by a person with a financial
47 relationship with a manufacturer who is related by blood, marriage or
48 adoption within three degrees of consanguinity to the recipient prescri-
49 ber.
50 4. Disclosure. (a) Annual disclosure. Annually, at a time and in a
51 manner to be determined by the department, each health care provider or
52 doctor-in-training and each manufacturer doing business with any such
53 health care provider or doctor-in-training shall provide to the depart-
54 ment a report that contains the information required by paragraphs (b),
55 (c), and (d) of this subdivision where (i) such health care provider or
56 doctor-in-training offered, gave or received a benefit; (ii) such

1 manufacturer gave a discount to a health care provider; or (iii) a
2 financial relationship existed between such a manufacturer and such a
3 provider or doctor-in-training. Access to such reports shall not be
4 denied, the reports shall not be withheld, and identifying information
5 shall not be deleted from such reports pursuant to section eighty-seven
6 or eighty-nine of the public officers law.
7 (b) Disclosure of benefits. Each report required by paragraph (a) of
8 this subdivision pertaining to a benefit transferred during the report-
9 ing period shall describe the nature and fair market value of the bene-
10 fit that was offered or transferred; the nature of any good or service
11 that was provided to the manufacturer or any other person or entity in
12 connection with the provision of the benefit; and such other information
13 as shall be required by the department by regulation.
14 (c) Disclosure of discounts. The reports required by paragraph (a) of
15 this subdivision shall not require a manufacturer to disclose discount
16 information separately for each transaction. The department shall by
17 regulation specify the manner in which the value of the discount shall
18 be reported, including a threshold for the value of discounts that must
19 be reported. The manufacturer shall report all discounts that occurred
20 during the reporting period, including those discounts the value of
21 which was realized by the purchaser during the reporting period but
22 pertain to sales that occurred at a different time.
23 (d) Disclosure of financial relationships. Each report a manufacturer,
24 health care provider or doctor-in-training is required to make by para-
25 graph (a) of this subdivision pertaining to financial relationships
26 shall contain such information as is required by the department by regu-
27 lation, which shall specify the manner in which the value of financial
28 relationships shall be reported, including the threshold value of finan-
29 cial relationships that must be reported.
30 5. Violations. The commissioner may assess a civil penalty for
31 violations of this section in an amount that is, for a manufacturer's
32 violation of paragraph (a) of subdivision two of this section or subdi-
33 vision four of this section, not less than five thousand dollars and not
34 more than fifty thousand dollars per violation, and for a health care
35 provider's violation of paragraph (b) of subdivision two of this section
36 or subdivision four of this section, not less than five thousand dollars
37 and not more than ten thousand dollars per violation.
38 § 51. Section 6509 of the education law is amended by adding a new
39 subdivision 15 to read as follows:
40 (15) A violation of section two hundred seventy-nine of the public
41 health law.
42 § 52. Section 6530 of the education law is amended by adding a new
43 subdivision 50 to read as follows:
44 50. A violation of section two hundred seventy-nine of the public
45 health law.
46 § 53. Article 29-D of the public health law is amended by adding a new
47 title 4 to read as follows:
48 TITLE 4
49 CONTINUING PROFESSIONAL EDUCATION
50 Section 2999-g. Definitions.
51 2999-h. Requirements for conducting a continuing professional
52 education program.
53 2999-i. Violations.
54 § 2999-g. Definitions. For the purpose of this title:
55 1. "Continuing professional education program" means course work or
56 training provided to physicians, dentists, physician assistants,

1 specialist assistants, nurse practitioners, midwives, optometrists or
2 other licensed health care providers authorized by law to prescribe
3 drugs or devices, which pertains to the practice of their profession and
4 for which continuing medical education or continuing professional educa-
5 tion credits may be awarded.
6 2. "Provider" means the person or entity that represents to members of
7 the relevant profession that it is the organizer of a continuing profes-
8 sional education program. A continuing professional education program
9 can have more than one provider, but every such program must have at
10 least one provider. Manufacturers and distributors are not providers.
11 3. "Manufacturer" means (i) a person or entity that fabricates, makes,
12 compounds, mixes, prepares, produces, bottles or packs drugs or devices
13 for the purpose of distributing or selling to pharmacies, health care
14 providers or other channels of distribution, or (ii) a person or entity
15 that, pursuant to an agreement with a person or entity described in
16 subparagraph (i) of this paragraph, markets a drug or device under a
17 different name or labeler code.
18 4. "Distributor" means a person or entity that delivers, other than by
19 dispensing, a drug product to any person.
20 5. "Drug" means: (i) articles recognized in the official United
21 States pharmacopoeia, official homeopathic pharmacopoeia of the United
22 States, or official national formulary;
23 (ii) articles intended for use in the diagnosis, cure, mitigation,
24 treatment or prevention of disease in humans;
25 (iii) articles (other than food) intended to affect the structure or
26 any function of the body of humans;
27 (iv) articles intended for use as a component of any article specified
28 in subparagraph (i), (ii) or (iii) of this paragraph but does not
29 include devices or their components, parts or accessories;
30 6. "Device" means any instrument, apparatus, or contrivance, including
31 components, parts or accessories, intended:
32 (i) for use in the diagnosis, cure, mitigation, treatment, or
33 prevention of disease in humans; or
34 (ii) to affect the structure or any function of the body of humans.
35 7. "Presenter" is a natural person who conducts, teaches and partic-
36 ipates, other than solely as an attendee, in any aspect of a continuing
37 professional education program, regardless of whether such program is
38 provided in person or by electronic or other means.
39 8. "Financial relationship" means an ownership interest, investment
40 interest or compensation arrangement. An ownership interest or invest-
41 ment interest may be through equity, debt or other means; but shall not
42 include ownership of investment securities, including shares or bonds,
43 debentures, notes or other debt instruments, which were purchased on
44 terms generally available to the public and which are in a corporation
45 that is listed for trading on the New York stock exchange or on the
46 American stock exchange, or is a national market system security traded
47 under an automated interdealer quotation system operated by the national
48 association of securities dealers, and had, at the end of the corpo-
49 ration's most recent fiscal year, total assets exceeding one hundred
50 million dollars.
51 9. "Continuing professional education material" means any information
52 concerning any aspect of the practice of a profession referenced in
53 subdivision one of this section which is communicated by oral, written,
54 graphic, audio, visual, electronic or other means during a continuing
55 professional education program and is not being disseminated by or on

1 behalf of a manufacturer or distributor concerning one or more of its
2 products.
3 § 2999-h. Requirements for conducting a continuing professional educa-
4 tion program. 1. In connection with any continuing professional educa-
5 tion program conducted in the state, a presenter:
6 (a) shall not knowingly present any continuing professional education
7 materials that are false or misleading;
8 (b) shall not represent, explicitly or by not disclosing another
9 author, that he or she was the author of any continuing professional
10 education materials unless the presenter has given final approval of
11 such materials, has participated sufficiently in the development of such
12 materials to take public responsibility for the content, and has made
13 substantial contributions to the intellectual content of such materials
14 either in drafting or in critical revision of such materials for impor-
15 tant intellectual content;
16 (c) shall disclose to the provider all financial relationships he or
17 she has with any manufacturer or distributor, including the name of such
18 entities with which he or she has a financial relationship, the nature
19 of the relationship, and the fair market value of anything of economic
20 value the presenter received during the preceding twelve months in
21 connection with or as a result of such relationship; and
22 (d) shall disclose to the provider any information or written, graph-
23 ic, audio, visual or electronic materials of any kind that the presenter
24 intends to communicate at the continuing professional education program
25 which are exempted from the definition of continuing professional educa-
26 tion materials because they are being disseminated by or on behalf of a
27 manufacturer or distributor, which information or materials the presen-
28 ter shall describe with specificity.
29 2. In connection with any continuing professional education program
30 conducted in the state, a provider:
31 (a) shall inform every presenter of his or her obligations under
32 subdivision one of this section;
33 (b) shall act prudently to obtain from each presenter the information
34 he or she is required to disclose by paragraphs (c) and (d) of subdivi-
35 sion one of this section; and
36 (c) shall disclose to all persons attending a continuing professional
37 education program:
38 (i) the information required by paragraphs (c) and (d) of subdivision
39 one of this section that each presenter at such program has disclosed to
40 the provider; and
41 (ii) the nature of any support for the continuing professional educa-
42 tion program, whether monetary or in kind, provided by a manufacturer or
43 distributor, and the fair market value of all such support.
44 § 2999-i. Violations. The commissioner may assess a civil penalty for
45 violations of this section in an amount that is, for a violation of
46 subdivision one of section twenty-nine hundred ninety-nine-h of this
47 title, not more than twenty-five hundred dollars per violation and, for
48 a violation of subdivision two of section twenty-nine hundred ninety-
49 nine-h of this title, not more than ten thousand dollars per violation.
50 § 54. Section 6509 of the education law is amended by adding a new
51 subdivision 16 to read as follows:
52 (16) A violation of subdivision one of section twenty-nine hundred
53 ninety-nine-h of the public health law.
54 § 55. Section 6530 of the education law is amended by adding a new
55 subdivision 51 to read as follows:

1 51. A violation of subdivision one of section twenty-nine hundred
2 ninety-nine-h of the public health law.
3 § 56. The public health law is amended by adding a new article 44-A to
4 read as follows:
5 ARTICLE 44-A
6 PHARMACY BENEFIT MANAGERS
7 Section 4450. Definitions.
8 4451. Matters unaffected by this article.
9 4452. The pharmacy benefit manager's general obligations.
10 4453. The pharmacy benefit manager's disclosure of information
11 to the health plan.
12 4454. The pharmacy benefit manager's communication with partic-
13 ipants and prescribers in certain situations.
14 4455. Distribution of prescription data.
15 4456. Enforcement.
16 § 4450. Definitions. For the purpose of this article:
17 1. "Health plan" means a nonprofit hospital or medical service organ-
18 ization, insurer, health coverage plan or health maintenance organiza-
19 tion licensed pursuant to the insurance law; a health program adminis-
20 tered by the department of health, the state or a political subdivision
21 in the capacity of provider of health coverage; or an employer, labor
22 union or other group of persons organized in the state that provides
23 health coverage to participants who are employed or reside in the state.
24 "Health plan" does not include a health plan that provides coverage only
25 for accidental injury, specified disease, hospital indemnity, Medicare
26 supplement, disability income, long-term care or other limited benefit
27 health insurance policies and contracts.
28 2. "Participant" means a member, participant, enrollee, contract hold-
29 er, policy holder or beneficiary of a health plan who resides or is
30 employed in the state to whom the health plan provides health coverage.
31 "Participant" includes a dependent or other person provided health
32 coverage through a policy, contract or plan for a participant.
33 3. "Prescription drug" or "drug" means: (a) articles recognized in the
34 official United States pharmacopoeia, official homeopathic pharmacopoeia
35 of the United States, or official national formulary;
36 (b) articles intended for use in the diagnosis, cure, mitigation,
37 treatment or prevention of disease in humans;
38 (c) articles (other than food) intended to affect the structure or any
39 function of the body of humans;
40 (d) articles intended for use as a component of any article specified
41 in paragraph (a), (b) or (c) of this subdivision but does not include
42 devices or their components, parts or accessories;
43 for which a prescription is required under the federal food, drug and
44 cosmetic act.
45 4. "Prescriber" means a physician, dentist, physician assistant,
46 specialist's assistant, nurse practitioner, midwife, optometrist and
47 other licensed health care provider authorized under title eight of the
48 education law to prescribe drugs or devices, who is practicing in the
49 state.
50 5. "Patient" is a natural person for whom a prescriber writes a
51 prescription for a prescription drug or to whom a pharmacy dispenses
52 such a product.
53 6. "Pharmacy benefit management services" means the negotiation of the
54 amount to be paid for prescription drugs by the health plan or partic-
55 ipants in the state, the administration or management of prescription
56 drug benefits provided by a health plan for the benefit of participants,

1 or any of the services listed in paragraphs (a) through (g) of this
2 subdivision that are provided with regard to the administration of
3 participants' pharmacy benefits:
4 (a) mail service pharmacy;
5 (b) specialty pharmacy;
6 (c) claims processing, retail network management and payment of claims
7 to pharmacies for prescription drugs dispensed to participants;
8 (d) clinical formulary development and management services;
9 (e) rebate contracting and administration;
10 (f) patient compliance, therapeutic intervention and generic substi-
11 tution programs; and
12 (g) disease management programs.
13 7. "Pharmacy benefit manager" is a person or entity that provides
14 pharmacy benefit management services to a health plan.
15 8. "Affiliate" means a corporation or other business entity a majority
16 of whose shares is owned or controlled by shareholders, directors or
17 officers of another corporation or other business entity, who own or
18 control a majority of the shares of the other corporation or other busi-
19 ness entity.
20 9. "Covered" when used in connection with a drug, dispensed
21 prescription, good or service, refers to a drug, dispensed prescription,
22 good or service in connection with which the pharmacy benefit manager
23 provides or offers to provide pharmacy benefit management services to a
24 health plan.
25 10. "Payment" means anything of value a pharmacy benefit manager
26 receives from any entity, including an affiliate but excluding the
27 health plan that contracts with it for pharmacy benefit management
28 services, in connection with a covered drug, covered dispensed
29 prescription, covered good or covered service, or any other aspect of
30 the pharmacy benefit manager's business fairly attributable to the phar-
31 macy benefit management services it provides to the health plan.
32 11. "Net price" or "net cost" means the price paid after deducting all
33 discounts, rebates, chargebacks and any other price concession or
34 payment contingent on a purchase, but excludes any amount paid to a
35 pharmacy as a dispensing fee.
36 12. "Switch", as in "drug switch" or "switch a prescription", means an
37 attempt by a pharmacy benefit manager or by a pharmacy or other entity
38 at the request or on behalf of the pharmacy benefit manager to change
39 the drug prescribed for a participant when (a) such attempt is part of a
40 concerted effort by the pharmacy benefit manager to effect such a change
41 for multiple participants based either on clinical considerations that
42 are not specific to such individual participants or on the economic
43 value of the switch to the pharmacy benefit manager and (b) the attempt
44 would not substitute a lower or equally priced therapeutically equiv-
45 alent drug. "Lower or equally priced" means the participant's co-payment
46 or co-insurance amount.
47 13. "Therapeutically equivalent drugs" mean drugs identified as being
48 therapeutically equivalent to each other on the list required by para-
49 graph (o) of subdivision one of section two hundred six of this chapter.
50 14. A "brand name drug" means a drug marketed under a proprietary,
51 trademark-protected name.
52 15. A "generic drug" means the same as a brand name drug in active
53 ingredients, dosage, safety, strength, route of administration, quality,
54 performance, and intended use, but which is not marketed under a propri-
55 etary, trademark-protected name.

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1 16. "Pharmacy categories" mean chain retail pharmacies (four or more
2 stores), independent retail pharmacies (three or fewer stores), pharma-
3 cies in food stores, pharmacies in mass merchandise stores, mail-service
4 pharmacies, specialty pharmacies (retail and mail-service combined), and
5 other pharmacies.
6 17. "Drug categories" means single-source brand name drug, multi-
7 source brand name drug and generic drug.
8 § 4451. Matters unaffected by this article. 1. Nothing in this article
9 shall alter the relationship between a health plan and its participants
10 or between a health plan and any entity that, with respect to a specific
11 activity, qualifies as a fiduciary of the health plan under the federal
12 employee retirement income security act.
13 2. This article does not create any obligation for a health plan to
14 disclose any information to any of its participants.
15 3. Nothing in this article affects any civil or criminal proceedings
16 that may be brought in connection with matters within the scope of this
17 article.
18 § 4452. The pharmacy benefit manager's general obligations. A pharmacy
19 benefit manager:
20 1. shall perform its duties in connection with pharmacy benefit
21 management services it provides to a health plan or participants in the
22 state with care, skill, prudence and diligence;
23 2. shall not initiate a drug switch for the participants of a health
24 plan for which it provides pharmacy benefit management services except
25 pursuant to the health plan's written approval or agreement to switch-
26 ing the specific drugs. The health plan's agreement or approval of a
27 drug switch shall not relieve the pharmacy benefit manager of any
28 responsibilities pertaining to such drug switch under this article; and
29 3. shall not pay an affiliated entity more for any covered drug,
30 covered dispensed prescription, covered good or covered service than it
31 pays similarly situated entities for the same drug, dispensed
32 prescription, good or service on behalf of the same health plan. A simi-
33 larly situated pharmacy is a pharmacy in the same pharmacy category.
34 § 4453. The pharmacy benefit manager's disclosure of information to
35 the health plan. 1. Confidentiality. The pharmacy benefit manager may
36 designate information it discloses to a health plan as confidential, and
37 the health plan shall not re-disclose such information to other entities
38 except to agents or independent contractors with whom the health plan
39 contracts to administer the pharmacy benefit or audit such adminis-
40 tration, provided such agent or independent contractor previously certi-
41 fies that it will not disclose such confidential information to any
42 other person or entity. With respect to documents disclosed to a health
43 plan that are subject to article six of the public officers law, the
44 pharmacy benefit manager shall not designate as "confidential" any docu-
45 ment to which the public would have access under said law, and the
46 provisions of article six of the public officers law shall apply to the
47 documents disclosed to such a health plan. The applicability of article
48 six of the public officers law to a health plan's records does not
49 affect the pharmacy benefit manager's obligation under this article to
50 disclose documents to the health plan.
51 2. Disclosure in connection with contract negotiations. Prior to
52 entering into its initial contract and each subsequent contract or
53 contract amendment with a health plan, the pharmacy benefit manager
54 shall provide to the health plan in writing each category of information
55 described in paragraphs (a) through (c) of this subdivision:

1 (a) a description of all pharmacy benefit management services and
2 covered goods it offers to provide the health plan and the net cost for
3 each such service or good;
4 (b) the methodology, with clearly defined terminology, the pharmacy
5 benefit manager proposes to use to distinguish among drugs, such as a
6 methodology based on drug category, for the purpose of determining the
7 cost of a dispensed prescription to the health plan or the participant's
8 co-payment or co-insurance amount for a dispensed prescription; and
9 (c) a complete description of the design and operation of any formu-
10 lary the pharmacy benefit manager recommends that the health plan adopt.
11 3. Initial and periodic disclosure. (a) Prior to entering into its
12 initial contract with a health plan and annually thereafter until the
13 pharmacy benefit manager discontinues providing pharmacy benefit
14 management services to the health plan, the pharmacy benefit manager
15 shall fully disclose to the health plan (i) the content of all contracts
16 and other agreements it directly or indirectly has with, and all
17 payments it receives from, a drug manufacturer, labeler or other third-
18 party in connection with any pharmacy benefit management service it
19 provides to the health plan, including but not limited to covered drugs,
20 covered dispensed prescriptions, covered goods, covered services,
21 promoting or marketing any drug or drug switches and (ii) the percentage
22 of all such payments retained by the pharmacy benefit manager or
23 distributed to the health plan.
24 (b) In disclosing prior to the initial contract the value of a catego-
25 ry of payment described in subparagraph (i) of paragraph (a) of this
26 subdivision or the percentage of such payment retained by the pharmacy
27 benefit manager or distributed to the health plan as described in
28 subparagraph (ii) of paragraph (a) of this subdivision, the pharmacy
29 benefit manager shall estimate the value based on contracts the
30 execution of which is contingent on the pharmacy benefit manager
31 contracting with the health plan to which the information is being
32 disclosed and on the pharmacy benefit manager's existing contracts with
33 other health plans, and, where relevant, on the negotiating health
34 plan's past or expected drug utilization. For subsequent reporting peri-
35 ods, the pharmacy benefit manager shall disclose the actual value of
36 each payment category and the percentage of each such category that the
37 pharmacy benefit manager retained and the percentage it paid to or
38 passed through to the negotiating health plan.
39 4. Disclosure during a contract period. (a) The pharmacy benefit
40 manager shall provide to the health plan in writing the information
41 required by subparagraphs (i) through (vii) of this paragraph on a quar-
42 terly basis during the operation of the contract between the pharmacy
43 benefit manager and the health plan: (i) the health plan's participants'
44 actual utilization of drugs by National Drug Code (NDC) directory
45 number; (ii) every activity, policy or practice of the pharmacy benefit
46 manager that directly or indirectly presents any actual or potential
47 conflict of interest with the health plan; (iii) any increase in the net
48 price to the health plan for any covered drug and the reason for such
49 increase; (iv) any increase in the dispensing fee paid to any pharmacy
50 and the reason for such increase; (v) all contracts and other agreements
51 entered into during the reported quarter between the pharmacy benefit
52 manager and any pharmacy that is within the pharmacy network identified
53 by the pharmacy benefit manager at which the health plan's participants
54 may fill covered prescriptions, including pharmacies affiliated with the
55 pharmacy benefit manager; (vi) all contracts and other agreements that
56 pertain to any covered drug or covered dispensed prescription entered

1 into during the reported quarter between the pharmacy benefit manager
2 and any manufacturer, labeler, repackager or distributor of a drug or
3 any other third-party, including any entity acting on behalf of such
4 manufacturer, labeler, repackager, distributor or third-party; (vii)
5 documents sufficient for the health plan to determine whether any
6 covered dispensed prescription filled with a repackaged drug, including
7 a drug repackaged by an affiliate of the pharmacy benefit manager, had
8 either a higher net cost to the health plan or a higher co-payment or
9 co-insurance amount to the participant than any therapeutically equiv-
10 alent drug available on the date the prescription was filled. Upon the
11 health plan's request, the pharmacy benefit manager shall provide
12 documentation supporting the reason for any increase in net price or the
13 reason for any increase in dispensing fee.
14 (b) During the time a pharmacy benefit manager provides pharmacy bene-
15 fit management services to a health plan, upon the health plan's demand,
16 the pharmacy benefit manager shall promptly:
17 (i) provide the health plan with access to all financial, utilization,
18 pricing and claims information and documents pertaining to any aspect of
19 the pharmacy benefit manager's business that is fairly attributable to
20 the pharmacy benefit management services it provides to the health plan,
21 including electronic claims data for each separate claim; and
22 (ii) allow the health plan to conduct annual audits of those aspects
23 of the pharmacy benefit manager's business that are fairly attributable
24 to the pharmacy benefit management services it provides to the health
25 plan. The pharmacy benefit manager shall allow the health plan to
26 conduct such audits itself or by a certified public accounting firm of
27 the health plan's choosing that will conduct the audit in conformance
28 with accepted auditing procedures and standards.
29 5. The department may promulgate regulations that set out the nature,
30 content and format of the disclosures required by this section.
31 § 4454. The pharmacy benefit manager's communication with participants
32 and prescribers in certain situations. 1. Notifying the patient of a
33 proposed drug switch. Before a pharmacy benefit manager, or a pharmacy
34 or other entity at the request or on behalf of a pharmacy benefit manag-
35 er, requests a prescriber to switch a prescription for a participant of
36 a health plan, the pharmacy benefit manager, pharmacy or other entity
37 shall notify in writing the patient and, if relevant, the patient's
38 guardian of this intention. Such notice shall be sent to the patient
39 and, if relevant, the patient's guardian in a manner reasonably calcu-
40 lated to reach the patient and, if relevant, the patient's guardian not
41 less than two business days before the prescriber is contacted concern-
42 ing the proposed drug switch. Such notice shall not contain any false or
43 misleading information about the originally prescribed or the proposed
44 substitution drugs, including their relative cost to the participant.
45 2. Information to be provided to a prescriber when a drug switch is
46 requested. When a pharmacy benefit manager, or a pharmacy or other enti-
47 ty at the request or on behalf of a pharmacy benefit manager, requests a
48 prescriber to switch a prescription the prescriber has written for a
49 participant, it shall provide the prescriber with all of the financial
50 and clinical information the prescriber needs to determine whether the
51 drug switch is in the patient's best interests.
52 3. Continuing obligations. (a) Nothing contained in this article
53 relieves a prescriber of any obligation the prescriber may otherwise
54 have to discuss with the patient the risks and benefits of a prescribed
55 drug or to obtain the patient's consent to treatment with a specific
56 drug, or relieves a pharmacist of any obligation the pharmacist may

1 otherwise have to alert the patient or prescriber to any safety or effi-
2 cacy concerns raised by dispensing a particular drug to the individual
3 patient.
4 (b) A pharmacy benefit manager shall not take any action that would
5 render it less likely that a pharmacy will substitute a generic drug
6 when required to do so by section sixty-eight hundred sixteen-a of the
7 education law.
8 4. Record retention. A pharmacy benefit manager, or a pharmacy or
9 other entity acting at the pharmacy benefit manager's request or on its
10 behalf, which notifies a patient and, if relevant, the patient's guardi-
11 an of its intention to contact a prescriber to switch a drug or requests
12 the prescriber to switch a prescription, shall maintain for three years
13 written or electronic documentation of such contact. Upon request, the
14 pharmacy benefit manager shall make such documentation promptly avail-
15 able to the health plan or the department.
16 5. Disease or treatment information. Pharmacy benefit managers shall
17 ensure that every written or electronic document containing information
18 about a disease, condition or treatment for a disease or condition that
19 it provides directly or indirectly to any participant is not false or
20 misleading and discloses any support or involvement of a drug or device
21 manufacturer or labeler in the development, writing, or distribution of
22 such materials.
23 § 4455. Distribution of prescription data. 1. A pharmacy benefit
24 manager shall obtain a health plan's written agreement before it
25 discloses any information concerning dispensed prescriptions covered by
26 the health plan or the health plan's drug-utilization or claims data for
27 covered drugs or covered dispensed prescriptions to an entity other than
28 the health plan, an entity that qualifies in connection with the disclo-
29 sure of such information as the health plan's fiduciary under the feder-
30 al employee retirement income security act, the health plan's sponsor, a
31 participant with respect to his or her information, a prescriber with
32 the patient's consent, or a government agency authorized to receive such
33 information. Such written agreement is required regardless of whether
34 the information is aggregated or is identifiable by individual or cate-
35 gory of participant or prescriber. When the health plan's agreement to
36 the disclosure of such information is required by this section, the
37 pharmacy benefit manager's request for such approval shall include all
38 the information required by paragraphs (a) through (d) of this subdivi-
39 sion:
40 (a) the identity of the entity to which the information will be
41 provided;
42 (b) the specific, itemized categories of information that will be
43 provided;
44 (c) the specific practices actually in operation to protect the priva-
45 cy of the health plan's participants; and
46 (d) the amount of any payments paid or provided to the pharmacy bene-
47 fit manager by or on behalf of the entity that seeks such information
48 and the purpose of such payments that have been or will be paid or
49 provided to the pharmacy benefit manager.
50 2. A pharmacy benefit manager violates this article when it discloses
51 information for which this section requires the health plan's prior
52 written agreement without first obtaining such written permission.
53 3. The pharmacy benefit manager and the health plan shall retain for
54 five years the documentation of the pharmacy benefit manager's request
55 and the health plan's agreement that the information described in subdi-
56 vision one of this section may be provided.

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1 § 4456. Enforcement. 1. Any health plan that has been injured by
2 reason of a pharmacy benefit manager's violation of any provision of
3 this article may bring an action in the name of the health plan for
4 equitable relief and to recover the health plan's actual damages and a
5 civil penalty to be paid to the health plan not to exceed three times
6 such actual damages.
7 2. Any pharmacy benefit manager that is injured by the disclosure by a
8 health plan, a health plan's agent or independent contractor or a health
9 plan's certified public accounting firm, of information the pharmacy
10 benefit manager designated as confidential pursuant to subdivision one
11 of section forty-four hundred fifty-three of this article and that is
12 not subject to disclosure under article six of the public officers law,
13 shall have a cause of action in the name of the pharmacy benefit manager
14 for equitable relief and to recover the pharmacy benefit manager's actu-
15 al damages and a civil penalty not to exceed three times such actual
16 damages.
17 3. Upon demand, a pharmacy benefit manager shall provide the depart-
18 ment with access, at times and locations that are convenient to the
19 department, to the records, books and other documents of the pharmacy
20 benefit manager and its affiliates which pertain to the pharmacy benefit
21 manager's compliance with this article. The officers, agents and employ-
22 ees of the pharmacy benefit manager and its affiliates shall facilitate
23 and aid in the department's examination of such records, books and other
24 documents.
25 4. The commissioner may assess a civil penalty for violations of this
26 article in an amount of not more than fifty thousand dollars per
27 violation.
28 § 57. Intentionally omitted.
29 § 58. Clauses (ii) and (iii) of subparagraph 1 and subparagraphs 3 and
30 4 of paragraph (a) of subdivision 1 of section 366 of the social
31 services law, subparagraph 1 as amended by section 60 of part C of chap-
32 ter 58 of the laws of 2008, subparagraph 3 as amended by chapter 309 of
33 the laws of 1996, subparagraph 4 as amended by chapter 1080 of the laws
34 of 1974, are amended to read as follows:
35 (ii) such person [may have resources up to the amount specified in
36 subparagraph four of paragraph (a) of subdivision two of this section]
37 shall not be subject to a resource test;
38 (iii) a person whose income [and resources are] is within the [limits]
39 limit set forth in [clauses] clause (i) [and (ii)] of this subparagraph
40 shall be deemed to have unmet needs for purposes of the eligibility
41 requirements of the safety net program as it existed on the first day of
42 November, nineteen hundred ninety-seven;
43 (3) is a child under the age of twenty-one years receiving care (A)
44 away from his own home in accordance with title two of article six of
45 this chapter; (B) during the initial thirty days of placement with the
46 division for youth pursuant to section 353.3 of the family court act;
47 (C) in an authorized agency when placed pursuant to section seven
48 hundred fifty-six or 353.3 of the family court act; or (D) in residence
49 at a division foster family home or a division contract home, and has
50 not, according to the criteria promulgated by the department, sufficient
51 income [and resources], including available support from his parents, to
52 meet all costs of required medical care and services available under
53 this title; or
54 (4) is receiving care, in the case of and in connection with the birth
55 of an out of wedlock child, in accordance with title two of article six
56 of this chapter, and has not, according to the criteria promulgated by

1 the department, sufficient income [and resources], including available
2 support from responsible relatives, to meet all costs of required
3 medical care and services available under this title; or
4 § 59. Subparagraphs 5, 6 and 8 of paragraph (a) of subdivision 1 of
5 section 366 of the social services law, subparagraph 5 as amended by
6 section 55 of part B of chapter 436 of the laws of 1997, subparagraph 6
7 as amended by chapter 710 of the laws of 1988 and subparagraph 8 as
8 amended by section 60 of part C of chapter 58 of the laws of 2008, are
9 amended and a new subparagraph 5-a is added to read as follows:
10 (5) although not receiving public assistance or care for his or her
11 maintenance under other provisions of this chapter, has [not, according
12 to the criteria and standards established by this article or by action
13 of the department, sufficient] income and resources, including available
14 support from responsible relatives, [to meet all the costs of medical
15 care and services available under this title,] that does not exceed the
16 amounts set forth in paragraph (a) of subdivision two of this section,
17 and is (i) [under the age of twenty-one years, or] sixty-five years of
18 age or older, or certified blind or certified disabled or (ii) [a spouse
19 of a cash public assistance recipient living with him or her and essen-
20 tial or necessary to his or her welfare and whose needs are taken into
21 account in determining the amount of his or her cash payment or (iii)]
22 for reasons other than income or resources[: (A)], is eligible for
23 federal supplemental security income benefits and/or additional state
24 payments[, or (B) would meet the eligibility requirements of the aid to
25 dependent children program as it existed on the sixteenth day of July,
26 nineteen hundred ninety-six]; or
27 (5-a) although not receiving public assistance or care for his or her
28 maintenance under other provisions of this chapter, has income, includ-
29 ing available support from responsible relatives, that does not exceed
30 the amounts set forth in paragraph (a) of subdivision two of this
31 section, and is (i) under the age of twenty-one years, or (ii) a spouse
32 of a cash public assistance recipient living with him or her and essen-
33 tial or necessary to his or her welfare and whose needs are taken into
34 account in determining the amount of his or her cash payment, or (iii)
35 for reasons other than income or resources, would meet the eligibility
36 requirements of the aid to dependent children program as it existed on
37 the sixteenth day of July, nineteen hundred ninety-six; or
38 (6) is a resident of a home for adults operated by a social services
39 district or a residential care center for adults or community residence
40 operated or certified by the office of mental health, and has not,
41 according to criteria promulgated by the department consistent with this
42 title, sufficient income, or in the case of a person sixty-five years of
43 age or older, certified blind, or certified disabled, sufficient income
44 and resources, including available support from responsible relatives,
45 to meet all the costs of required medical care and services available
46 under this title; or
47 (8) is a member of a family which contains a dependent child living
48 with a caretaker relative, which has net available income not in excess
49 of one hundred thirty percent of the highest amount that ordinarily
50 would have been paid to a person without any income or resources under
51 the family assistance program as it existed on the first day of Novem-
52 ber, nineteen hundred ninety-seven, to be increased annually by the same
53 percentage as the percentage increase in the federal consumer price
54 index[, and which has net available resources not in excess of the
55 amount specified in subparagraph four of paragraph (a) of subdivision
56 two of this section]; for purposes of this subparagraph, the net avail-

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1 able income [and resources] of a family shall be determined using the
2 methodology of the family assistance program as it exists on the first
3 day of November, nineteen hundred ninety-seven, except that no part of
4 the methodology of the family assistance program will be used which is
5 more restrictive than the methodology of the aid to dependent children
6 program as it existed on the sixteenth day of July, nineteen hundred
7 ninety-six; for purposes of this subparagraph, the term dependent child
8 means a person under twenty-one years of age who is deprived of parental
9 support or care by reason of the death, continued absence, or physical
10 or mental incapacity of a parent, or by reason of the unemployment of
11 the parent, as defined by the department of health; or
12 § 59-a. Subparagraph 10 of paragraph (a) of subdivision 1 of section
13 366 of the social services law, as amended by section 1 of part E of
14 chapter 57 of the laws of 2000, is amended to read as follows:
15 (10) is a child who is under twenty-one years of age, who is not
16 living with a caretaker relative, who has net available income not in
17 excess of the income standards of the family assistance program as it
18 existed on the first day of November, nineteen hundred ninety-seven[,
19 and who has net available resources not in excess of one thousand
20 dollars]; for purposes of this subparagraph, the child's net available
21 income [and resources] shall be determined using the methodology of the
22 family assistance program as it existed on the first day of November,
23 nineteen hundred ninety-seven, except that [(i) there shall be disre-
24 garded an additional amount of resources equal to the difference between
25 the applicable resource standard of the family assistance program as it
26 exists on the first day of November, nineteen hundred ninety-seven and
27 one thousand dollars and (ii)] no part of the methodology of the family
28 assistance program will be used which is more restrictive than the meth-
29 odology of the aid to dependent children program as it existed on the
30 sixteenth day of July, nineteen hundred ninety-six; or
31 § 59-b. Paragraph (i) of subdivision 1 of section 369-ee of the social
32 services law is REPEALED.
33 § 59-c. The opening paragraph of paragraph (b) of subdivision 2 of
34 section 369-ee of the social services law, as amended by section 45-d of
35 part C of chapter 58 of the laws of 2008, is amended to read as follows:
36 Subject to the provisions of paragraph (d) of this subdivision, in
37 order to establish [income] eligibility under this subdivision, <u>which</u>
38 <u>shall be determined without regard to resources,</u> an individual shall
39 provide such documentation as is necessary and sufficient to initially,
40 and annually thereafter, determine an applicant's eligibility for cover-
41 age under this title. Such documentation shall include, but not be
42 limited to the following, if needed to verify eligibility:
43 § 59-d. Paragraph (c) of subdivision 2 of section 369-ee of the social
44 services law is REPEALED.
45 § 60. Subdivision 1 and paragraph (a) of subdivision 2 of section
46 366-a of the social services law, subdivision 1 as amended by chapter
47 532 of the laws of 1972 and paragraph (a) of subdivision 2 as added by
48 section 51 of part A of chapter 1 of the laws of 2002, are amended to
49 read as follows:
50 1. Any person requesting medical assistance may make application
51 therefor in person, through another in his behalf or by mail to the
52 social services official of the county, city or town, or to the service
53 officer of the city or town in which the applicant resides or is found.
54 In addition, in the case of a person who is sixty-five years of age or
55 older and is a patient in a state hospital for tuberculosis or for the
56 mentally disabled, applications may be made to the department or to a

1 social services official designated as the agent of the department.
2 Notwithstanding any provision of law to the contrary, [in accordance
3 with department regulations, when an application is made by mail,] a
4 personal interview [shall be conducted] with the applicant or with the
5 person who made application [in] on his or her behalf [when the appli-
6 cant cannot be interviewed due to his physical or mental condition]
7 shall not be required as part of a determination of initial or continu-
8 ing eligibility pursuant to this title.
9 (a) Upon receipt of such application, the appropriate social services
10 official, or the department of health or its agent when the applicant is
11 a patient in a state hospital for the mentally disabled, shall verify
12 the eligibility of such applicant. In accordance with the regulations of
13 the department of health, it shall be the responsibility of the appli-
14 cant to provide information and documentation necessary for the determi-
15 nation of initial and ongoing eligibility for medical assistance. If an
16 applicant or recipient is unable to provide necessary documentation, the
17 public welfare official shall promptly cause an investigation to be
18 made. Where an investigation is necessary, sources of information other
19 than public records will be consulted only with permission of the appli-
20 cant or recipient. In the event that such permission is not granted by
21 the applicant or recipient, or necessary documentation cannot be
22 obtained, the social services official or the department of health or
23 its agent may suspend or deny medical assistance until such time as it
24 may be satisfied as to the applicant's or recipient's eligibility there-
25 for. [To the extent practicable, any interview conducted as a result of
26 an application for medical assistance shall be conducted in the home of
27 the person interviewed or in the institution in which such person is
28 receiving medical assistance.]
29 § 61. Paragraph (a) of subdivision 5 of section 369-ee of the social
30 services law, as added by chapter 1 of the laws of 1999, is amended to
31 read as follows:
32 (a) [Personal interviews, pursuant to section three hundred
33 sixty-six-a of this chapter, may be required upon initial application
34 only and may be conducted in community settings.] A personal interview
35 with the applicant or with the person who made application on his or her
36 behalf shall not be required as part of a determination of initial or
37 continuing eligibility pursuant to this title. Recertification of eligi-
38 bility shall take place on no more than an annual basis [and shall not
39 require a personal interview]. Nothing herein shall abridge the partic-
40 ipant's obligation to report changes in residency, financial circum-
41 stances or household composition.
42 § 62. Section 23-a of part B of chapter 436 of the laws of 1997,
43 constituting the welfare reform act of 1997, is amended to read as
44 follows:
45 § 23-a. Notwithstanding any contrary provision thereof, section 266 of
46 chapter 83 of the laws of 1995 shall apply to applicants for or recipi-
47 ents of public assistance and care[, including medical assistance];
48 provided, however, that [with respect to medical assistance, such
49 section shall apply only to persons who are subject to the photograph
50 identification requirements established by the commissioner of health
51 for] such section shall not apply to the medical assistance program.
52 § 63. Subparagraph 8 of paragraph (a) of subdivision 1 of section 366
53 of the social services law, as amended by section 60 of part C of chap-
54 ter 58 of the laws of 2008, is amended to read as follows:
55 (8) is a member of a family which contains a dependent child living
56 with a caretaker relative, which has: (i) subject to the approval of the

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1 federal Centers for Medicare and Medicaid services, gross income not in
2 excess of one hundred percent of the federal income official poverty
3 line (as defined and annually revised by the federal office of manage-
4 ment and budget) for a family of the same size as the families that
5 include the children or (ii) in the absence of such approval, net avail-
6 able income not in excess of one hundred thirty percent of the highest
7 amount that ordinarily would have been paid to a person without any
8 income or resources under the family assistance program as it existed on
9 the first day of November, nineteen hundred ninety-seven, to be
10 increased annually by the same percentage as the percentage increase in
11 the federal consumer price index, and which has net available resources
12 not in excess of the amount specified in subparagraph four of paragraph
13 (a) of subdivision two of this section; for purposes of this subpara-
14 graph, the net available income and resources of a family shall be
15 determined using the methodology of the family assistance program as it
16 exists on the first day of November, nineteen hundred ninety-seven,
17 except that no part of the methodology of the family assistance program
18 will be used which is more restrictive than the methodology of the aid
19 to dependent children program as it existed on the sixteenth day of
20 July, nineteen hundred ninety-six; for purposes of this subparagraph,
21 the term dependent child means a person under twenty-one years of age
22 who is deprived of parental support or care by reason of the death,
23 continued absence, or physical or mental incapacity of a parent, or by
24 reason of the unemployment of the parent, as defined by the department
25 of health; or
26 § 64. Paragraph (a) of subdivision 1 of section 366 of the social
27 services law is amended by adding a new subparagraph 8-a to read as
28 follows:
29 (8-a) is an individual who is at least nineteen but under twenty-one
30 years of age and is a member of a household which has gross income not
31 in excess of one hundred percent of the federal income official poverty
32 line (as defined and annually revised by the federal office of manage-
33 ment and budget) for a household of the same size; or
34 § 65. Paragraph (p) of subdivision 4 of section 366 of the social
35 services law, as added by chapter 651 of the laws of 1990, subparagraph
36 2 as amended by section 97 of part B of chapter 436 of the laws of 1997,
37 is amended to read as follows:
38 (p) (1) Children who are at least one year of age but younger than
39 [six] nineteen years of age who are not otherwise eligible for medical
40 assistance and whose families have: (i) subject to the approval of the
41 federal Centers for Medicare and Medicaid services, gross incomes not in
42 excess of one hundred sixty percent of the federal income official
43 poverty line (as defined and annually revised by the federal office of
44 management and budget) for a family of the same size as the families
45 that include the children or (ii) in the absence of such approval, net
46 incomes equal to or less than one hundred thirty-three percent of the
47 federal income official poverty line (as defined and annually revised by
48 the federal office of management and budget) for a family of the same
49 size as the families that include the children shall be eligible for
50 medical assistance and shall remain eligible therefor as provided in
51 subparagraph three of this paragraph.
52 (2) For purposes of determining eligibility for medical assistance
53 under this paragraph, family income shall be determined by use of the
54 same methodology used to determine eligibility for the aid to dependent
55 children program as it existed on the sixteenth day of July, nineteen
56 hundred ninety-six provided, however, that costs incurred for medical or

1 remedial care shall not be considered and resources available to such
2 families shall not be considered nor required to be applied toward the
3 payment or part payment of the cost of medical care, services and
4 supplies available under this paragraph.
5 (3) An eligible child who is receiving medically necessary in-patient
6 services for which medical assistance is provided on the date the child
7 attains six years of age, and who, but for attaining such age, would
8 remain eligible for medical assistance under this paragraph, shall
9 continue to remain eligible until the end of the stay for which in-pa-
10 tient services are being furnished.
11 § 66. Paragraph (q) of subdivision 4 of section 366 of the social
12 services law is REPEALED.
13 § 67. Subparagraph (v) of paragraph (a) of subdivision 2 of section
14 369-ee of the social services law, as amended by chapter 419 of the laws
15 of 2000, is amended to read as follows:
16 (v) (A) in the case of a parent or stepparent of a child under the age
17 of twenty-one who lives with such child, has gross family income equal
18 to or less than the applicable percent of the federal income official
19 poverty line (as defined and updated by the United States Department of
20 Health and Human Services) for a family of the same size; for purposes
21 of this clause, the applicable percent effective as of:
22 (I) January first, two thousand one, is one hundred twenty percent;
23 and
24 (II) October first, two thousand one, is one hundred thirty-three
25 percent; and
26 (III) October first, two thousand two, is one hundred fifty percent;
27 [or] <u>and</u>
28 <u>(IV) April first, two thousand ten, is one hundred sixty percent; or</u>
29 (B) in the case of an individual <u>who is at least twenty-one years of</u>
30 <u>age and</u> who is not a parent or stepparent living with his or her child
31 under the age of twenty-one, has gross family income equal to or less
32 than one hundred percent of the federal income official poverty line (as
33 defined and updated by the United States Department of Health and Human
34 Services) for a family of the same size[.]<u>; or</u>
35 <u>(C) in the case of an individual who is at least nineteen but under</u>
36 <u>twenty-one years of age and who is not a parent or stepparent living</u>
37 <u>with his or her child under the age of twenty-one, has gross family</u>
38 <u>income equal to or less than one hundred sixty percent of the federal</u>
39 <u>income official poverty line (as defined and updated by the United</u>
40 <u>States Department of Health and Human Services) for a family of the same</u>
41 <u>size; or</u>
42 <u>(D) is not described in clause (A), (B) or (C) of this subparagraph</u>
43 <u>and has gross family income equal to or less than two hundred percent of</u>
44 <u>the federal income official poverty line (as defined and updated by the</u>
45 <u>United States Department of Health and Human Services) for a family of</u>
46 <u>the same size; provided, however, that eligibility under this clause is</u>
47 <u>subject to sources of federal and non-federal funding for such purpose</u>
48 <u>described in section sixty-seven-a of the chapter of the laws of two</u>
49 <u>thousand nine that added this clause or as may be available under the</u>
50 <u>waiver agreement entered into with the federal government under section</u>
51 <u>eleven hundred fifteen of the federal social security act, as jointly</u>
52 <u>determined by the commissioner and the director of the division of the</u>
53 <u>budget. In no case shall state funds be utilized to support the non-fed-</u>
54 <u>eral share of expenditures pursuant to this subparagraph, provided</u>
55 <u>however that the commissioner may demonstrate to the United States</u>
56 <u>department of health and human services the existence of non-federally</u>

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1 participating state expenditures as necessary to secure federal funding
2 under an eleven hundred fifteen waiver for the purposes herein. Eligi-
3 bility under this clause may be provided to residents of all counties
4 or, at the joint discretion of the commissioner and the director of the
5 division of the budget, a subset of counties of the state.
6 § 67-a. Notwithstanding any contrary provision of law, the commis-
7 sioner of health is authorized to enter into an agreement with the
8 United States department of health and human services establishing a
9 waiver agreement pursuant to section 1115 of the federal social security
10 act which may include the redirection of such Medicaid payments
11 described below, or a portion thereof, and the utilization of such funds
12 to expand coverage under the family health plus program to families with
13 gross income equal to or less than 200 percent of the federal poverty
14 level, as provided in clause (D) of subparagraph (v) of paragraph (a) of
15 subdivision two of section 369-ee of the social services law. Such waiv-
16 er may include the following:
17 1. Notwithstanding any inconsistent provisions of sections 211, 212,
18 213 and 214 of chapter 474 of the laws of 1996, as amended, sections 13,
19 14, 18 and 21 of part B of chapter 1 of the laws of 2002, as amended,
20 and sections 12, 14, 15 and 22 of part A of chapter 1 of the laws of
21 2002, as amended, or any other contrary provision of law, and subject to
22 the availability of federal financial participation and the receipt of
23 all necessary federal approvals, Medicaid payments authorized pursuant
24 to section 211 and paragraph (a) of subdivision 1 of section 212 of
25 chapter 474 of the laws of 1996, but not including any payments to
26 general hospitals operated by the state of New York or the university of
27 the state of New York, sections 13 and 14 of part B of chapter 1 of the
28 laws of 2002, and sections 12 and 14 of part A of chapter 1 of the laws
29 of 2002, shall be in accord with the provisions of this section.
30 2. Social services districts which elect to participate in the program
31 for such expanded family health plus coverage may have the non-federal
32 share of the payment amounts described in subdivision one of this
33 section, or a portion thereof, redirected by the commissioner of health
34 to support the non-federal share of payments associated with such
35 expanded family health plus coverage. Such elections shall be irrev-
36 ocable and applicable to all future periods. Such elections by each
37 social services district shall be subject to the approval of the commis-
38 sioner of health and with the consent of the public hospitals which are
39 located within each such social services district and which are other-
40 wise eligible to receive such redirected payments.
41 3. The non-federal share payment obligations of social services
42 districts that elect to participate in such expanded family health plus
43 coverage shall be established at 50 percent of the amount of final
44 reconciled Medicaid payments authorized pursuant to section 211 and
45 paragraph (a) of subdivision 1 of section 212 of chapter 474 of the laws
46 of 1996, as amended, for the social services district for the year two
47 years prior to the social services district's election to participate
48 and shall not be subject to further adjustment. Further non-federal
49 share payment obligations of social services districts that elect to
50 participate in such expanded family health plus coverage shall be estab-
51 lished as follows: (a) 50 percent of the amount actually expended in
52 state fiscal year 2008-2009 for Medicaid payments authorized pursuant to
53 section 12 of part A of chapter 1 of the laws of 2002 and pursuant to
54 section 13 of part B of chapter 1 of the laws of 2002, and, (b) 50
55 percent of the amount actually expended in state fiscal year 2004-2005
56 for Medicaid payments authorized pursuant to section 14 of part A of

1 chapter 1 of the laws of 2002, and pursuant to section 14 of part B of
2 chapter 1 of the laws of 2002.
3 4. For electing social services districts, the portion of each such
4 payment obligation to be utilized for such expanded family health plus
5 coverage shall be determined by the commissioner of health.
6 5. Payments to public general hospitals, other than those operated by
7 the state of New York or the state university of New York, pursuant to
8 section 211 and paragraph (a) of subdivision 1 of section 212 of chapter
9 474 of the laws of 1996, sections 13 and 14 of part B of chapter 1 of
10 the laws of 2002 and sections 12 and 14 of part A of chapter 1 of the
11 laws of 2002, located in electing social services districts, shall be
12 reduced to an amount that can be supported by the non-federal share
13 payment obligations of such social services districts as reduced by the
14 portion of such payment obligations to be utilized for expanded family
15 health plus coverage as described above.
16 § 67-b. Notwithstanding any contrary provision of law, the commis-
17 sioner of health is authorized to enter into a waiver agreement with the
18 United States department of health and human services pursuant to
19 section 1115 of the federal social security act to utilize federal funds
20 available to the state under its federal disproportionate share hospital
21 allotment pursuant to section 1923(f) of the federal social security
22 act, that are projected to be in excess of the amounts necessary to
23 fully fund existing state authorized disproportionate share hospital
24 programs, to provide funding for expanded coverage under the family
25 health plus program as provided in clause (D) of subparagraph (v) of
26 paragraph (a) of subdivision 2 of section 369-ee of the social services
27 law.
28 § 68. Subparagraph (iii) of paragraph (a) of subdivision 2 of section
29 369-ee of the social services law, as amended by section 28 of part E of
30 chapter 63 of the laws of 2005, is amended to read as follows:
31 (iii) does not have equivalent health care coverage under insurance or
32 equivalent mechanisms, as defined by the commissioner in consultation
33 with the superintendent of insurance[, and is not a federal, state,
34 county, municipal or school district employee that is eligible for
35 health care coverage through his or her employer];
36 § 69. Intentionally omitted.
37 § 70. Intentionally omitted.
38 § 71. Intentionally omitted.
39 § 72. Intentionally omitted.
40 § 73. Subdivision 9 of section 2510 of the public health law is
41 amended by adding a new paragraph (d) to read as follows:
42 (d) for periods on or after July first, two thousand nine, amounts as
43 follows:
44 (i) no payments are required for eligible children whose family gross
45 household income is less than one hundred sixty percent of the non-farm
46 federal poverty level and for eligible children who are American Indians
47 or Alaskan Natives, as defined by the U.S. Department of Health and
48 Human Services, whose family gross household income is less than two
49 hundred fifty-one percent of the non-farm federal poverty level; and
50 (ii) fifteen dollars per month for each eligible child whose family
51 gross household income is between one hundred sixty percent and two
52 hundred twenty-two percent of the non-farm federal poverty level, but no
53 more than forty-five dollars per month per family; and
54 (iii) twenty-five dollars per month for each eligible child whose
55 family gross household income is between two hundred twenty-three

1 percent and two hundred fifty percent of the non-farm federal poverty
2 level, but no more than seventy-five dollars per month per family; and
3 (iv) thirty-five dollars per month for each eligible child whose fami-
4 ly gross household income is between two hundred fifty-one percent and
5 three hundred percent of the non-farm federal poverty level, but no more
6 than one hundred five dollars per month per family;
7 (v) fifty-five dollars per month for each eligible child whose family
8 gross household income is between three hundred one percent and three
9 hundred fifty percent of the non-farm federal poverty level, but no more
10 than one hundred sixty-five dollars per month per family; and
11 (vi) seventy-five dollars per month for each eligible child whose
12 family gross household income is between three hundred fifty-one percent
13 and four hundred percent of the non-farm federal poverty level, but no
14 more than two hundred twenty-five dollars per month per family.
15 § 74. Clause (iii) of subparagraph 2 of paragraph (b) of subdivision 2
16 of section 366 of the social services law, as added by chapter 170 of
17 the laws of 1994, subclause (B) as amended by chapter 656 of the laws of
18 1997, is amended to read as follows:
19 (iii) Notwithstanding the provisions of clauses (i) and (ii) of this
20 subparagraph, in the case of an applicant or recipient who is disabled,
21 as such term is defined in section 1614(a)(3) of the federal social
22 security act, the department must not consider as available income or
23 resources the corpus or income of the following trusts which comply with
24 the provisions of the regulations authorized by clause (iv) of this
25 subparagraph: (A) a trust containing the assets of such a disabled indi-
26 vidual which was established for the benefit of the disabled individual
27 while such individual was under sixty-five years of age by a parent,
28 grandparent, legal guardian, or court of competent jurisdiction, if upon
29 the death of such individual the state will receive all amounts remain-
30 ing in the trust up to the total value of all medical assistance paid on
31 behalf of such individual; (B) and a trust containing the assets of such
32 a disabled individual established and managed by a non-profit associ-
33 ation which maintains separate accounts for the benefit of disabled
34 individuals, but, for purposes of investment and management of trust
35 funds, pools the accounts, provided that accounts in the trust fund are
36 established solely for the benefit of individuals who are disabled as
37 such term is defined in section 1614(a)(3) of the federal social securi-
38 ty act by such disabled individual, a parent, grandparent, legal guardi-
39 an, or court of competent jurisdiction, and [to the extent that amounts
40 remaining in the individual's account are not retained by the trust]
41 provided that upon the death of the individual, the state will receive
42 all [such remaining amounts up to] amounts remaining in the individual's
43 account that are not retained by the trust or ninety percent of the
44 total amount remaining in the individual's trust account, whichever is
45 greater, but not to exceed the total value of all medical assistance
46 paid on behalf of such individual. Notwithstanding any law to the
47 contrary, a not-for-profit corporation may, in furtherance of and as an
48 adjunct to its corporate purposes, act as trustee of a trust for persons
49 with disabilities established pursuant to this subclause, provided that
50 a trust company, as defined in subdivision seven of section one
51 hundred-c of the banking law, acts as co-trustee.
52 § 75. Subdivision 12 of section 367-a of the social services law, as
53 amended by section 63-a of part C of chapter 58 of the laws of 2007, is
54 amended to read as follows:
55 12. Prior to receiving medical assistance under subparagraphs twelve
56 and thirteen of paragraph (a) of subdivision one of section three

1 hundred sixty-six of this title, a person whose net available income is
2 at least one hundred fifty percent of the applicable federal income
3 official poverty line, as defined and updated by the United States
4 department of health and human services, must pay a monthly premium, in
5 accordance with a procedure to be established by the commissioner. The
6 amount of such premium shall be [twenty-five dollars for an individual
7 who is otherwise eligible for medical assistance under such subpara-
8 graphs, and fifty dollars for a couple, both of whom are otherwise
9 eligible for medical assistance under such subparagraphs] as follows:
10 (a) for an individual or married couple who are otherwise eligible for
11 medical assistance under such subparagraphs and whose net available
12 income is at least one hundred fifty percent but does not exceed one
13 hundred eighty-five percent of the applicable federal income official
14 poverty line for a household of the same size, twenty-five dollars per
15 month for an individual and fifty dollars per month for a couple; (b)
16 for an individual or married couple who are otherwise eligible for
17 medical assistance under such subparagraphs and whose net available
18 income is greater than one hundred eighty-five percent but does not
19 exceed two hundred twenty percent of the applicable federal income offi-
20 cial poverty line for a household of the same size, fifty dollars per
21 month for an individual and one hundred dollars per month for a couple;
22 and (c) for an individual or married couple who are otherwise eligible
23 for medical assistance under such subparagraphs and whose net available
24 income is greater than two hundred twenty percent but does not exceed
25 two hundred fifty percent of the applicable federal income official
26 poverty line for a household of the same size, seventy-five dollars per
27 month for an individual and one hundred fifty dollars per month for a
28 couple. For purposes of this subdivision, household size shall be deter-
29 mined by the same methodology used for determining eligibility for
30 federal supplemental security benefits under title XVI of the federal
31 social security act. No premium shall be required from a person whose
32 net available income is less than one hundred fifty percent of the
33 applicable federal income official poverty line, as defined and updated
34 by the United States department of health and human services.
35 § 76. Subdivision 1 of section 104-b of the social services law, as
36 amended by chapter 271 of the laws of 1965 and such section as renum-
37 bered by chapter 550 of the laws of 1971, is amended to read as follows:
38 1. If a recipient of public assistance and care shall have a right of
39 action, suit, claim, counterclaim or demand against another on account
40 of any personal injuries suffered by such recipient, then the pleadings
41 in such action, suit, claim, counterclaim or demand shall contain a
42 demand for medical expenses incurred by the recipient as a direct or
43 indirect result of those personal injuries, and the [public welfare
44 official for the public welfare] social services official and social
45 services district providing such assistance and care shall have a lien
46 for such amount as may be fixed by the [public welfare] social services
47 official not exceeding, however, the total amount of such assistance and
48 care furnished by such [public welfare] social services official on and
49 after the date when such injuries were incurred. In all such cases,
50 notice of the pleadings shall be served upon the social services
51 district that has provided or is providing such assistance and care, or
52 upon the department of health.
53 The [welfare] commissioner of health shall endeavor to ascertain
54 whether such person, firm or corporation alleged to be responsible for
55 such injuries is insured with a liability insurance company, as the case
56 may be, and the name thereof.

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1 § 77. Section 104-b of the social services law is amended by adding a
2 new subdivision 1-a to read as follows:
3 1-a. No right of action, suit, claim, counterclaim or demand against
4 another on account of personal injuries suffered by a recipient of
5 public assistance and care shall be settled without the approval of the
6 social services district that has provided or is providing such assist-
7 ance and care, or the department of health. Unless waived in whole or in
8 part by the district or department, any such settlement must allocate
9 for medical expenses a sufficient amount:
10 (a) to repay the medical assistance program in full, if the total
11 amount of medical assistance provided to the recipient does not exceed
12 one-third of the gross proceeds of the settlement; or
13 (b) to repay the medical assistance program an amount equal to one-
14 third of the gross proceeds of the settlement, if the total amount of
15 medical assistance provided to the recipient exceeds such amount.
16 § 78. Subdivision 8 of section 2511 of the public health law is
17 amended by adding a new paragraph (d) to read as follows:
18 (d)(i) Effective April first, two thousand nine, payment for marketing
19 and facilitated enrollment activities set forth in subdivision nine of
20 this section and included in subsidy payments made to approved organiza-
21 tions providing such services pursuant to a contract with the state
22 shall be limited to an amount determined annually by the commissioner.
23 (ii) Such subsidy payments shall be adjusted by the commissioner to
24 remove any costs of approved organizations in excess of the amount
25 determined in accordance with subparagraph (i) of this paragraph based
26 on cost reports submitted to the department by approved organizations.
27 § 79. Subdivision 8 of section 2510 of the public health law, as
28 amended by chapter 2 of the laws of 1998, is amended to read as follows:
29 8. "Subsidy payment" means a payment made to an approved organization
30 for the cost of covered health care services coverage to an eligible
31 child or children, the amount of which shall be determined solely by the
32 commissioner.
33 § 80. Subdivision 5 of section 2511 of the public health law, as
34 amended by section 34 of part A of chapter 58 of the laws of 2007, is
35 amended to read as follows:
36 5. Notwithstanding any inconsistent provisions of subdivision two of
37 this section, an individual who meets the criteria of paragraphs (b) and
38 (c) of subdivision two of this section but not the criteria of paragraph
39 (a) of such subdivision may be enrolled for covered health care
40 services, provided however, that an approved organization shall not be
41 eligible to receive a subsidy payment for providing coverage to such
42 individuals. The cost of coverage shall be determined by the commission-
43 er[, in consultation with the superintendent] and shall be no more than
44 the cost of providing such coverage.
45 § 81. Paragraph (b) of subdivision 7 of section 2511 of the public
46 health law, as amended by chapter 923 of the laws of 1990, is amended to
47 read as follows:
48 (b) The commissioner, in consultation with the superintendent, shall
49 make a determination whether to approve, disapprove or recommend modifi-
50 cation of the proposal. In order for a proposal to be approved by the
51 commissioner, the proposal must also be approved by the superintendent
52 with respect to the provisions of subparagraphs (viii) through (x) and
53 (xii) of paragraph (a) of this subdivision.
54 § 82. Intentionally omitted.
55 § 83. Intentionally omitted.
56 § 84. Intentionally omitted.

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1 § 85. Intentionally omitted.
2 § 86. Section 2801-a of the public health law is amended by adding a
3 new subdivision 16 to read as follows:
4 16. (a) The commissioner shall charge to applicants for the establish-
5 ment of hospitals the following application fee:
6 (i) For general hospitals: $3,000
7 (ii) For nursing homes: $3,000
8 (iii) For safety net diagnostic
9 and treatment centers as
10 defined in paragraph (c) of
11 this subdivision: $1,000
12 (iv) For all other diagnostic
13 and treatment centers: $2,000
14 (b) An applicant for both establishment and construction of a hospital
15 shall not be subject to this subdivision and shall be subject to fees
16 and charges as set forth in section twenty-eight hundred two of this
17 article.
18 (c) The commissioner may designate a diagnostic and treatment center
19 or proposed diagnostic and treatment center as a "safety net diagnostic
20 and treatment center" if it is operated or proposes to be operated by a
21 not-for-profit corporation or local health department; participates or
22 intends to participate in the medical assistance program; demonstrates
23 or projects that a significant percentage of its visits, as determined
24 by the commissioner, were by uninsured individuals; and principally
25 provides primary care services as defined by the commissioner.
26 (d) The fees and charges paid by an applicant pursuant to this subdi-
27 vision for any application for establishment of a hospital approved in
28 accordance with this section shall be deemed allowable capital costs in
29 the determination of reimbursement rates established pursuant to this
30 article. The cost of such fees and charges shall not be subject to
31 reimbursement ceiling or other penalties used by the commissioner for
32 the purpose of establishing reimbursement rates pursuant to this arti-
33 cle. All fees pursuant to this section shall be payable to the depart-
34 ment of health for deposit into the special revenue funds - other,
35 miscellaneous special revenue fund - 339, certificate of need account.
36 § 87. Subdivision 7 of section 2802 of the public health law, as
37 amended by section 1 of part C of chapter 1 of the laws of 2002, is
38 amended to read as follows:
39 7. (a) The commissioner shall charge to applicants for construction of
40 hospitals the following fees and charges for administrative services so
41 as to recover departmental costs in performing these functions. Each
42 applicant for construction of a hospital shall pay to the department an
43 application fee of [one thousand two hundred fifty dollars] two thousand
44 dollars, provided, however, that diagnostic and treatment centers desig-
45 nated by the commissioner as safety net diagnostic and treatment
46 centers, as defined in paragraph (c) of subdivision sixteen of section
47 twenty-eight hundred one-a of this article, shall pay a fee of one thou-
48 sand two hundred fifty dollars.
49 (b) At such time as the commissioner's written approval of the
50 construction is granted, each applicant shall pay [an] the following
51 additional fee [of forty-five hundredths of one percent of the total
52 capital value of the application, provided that only those applications
53 requiring review by the State Hospital Review and Planning Council shall
54 be subject to such fee.]:
55 (i) for hospital, nursing home and diagnostic and treatment center
56 applications that require approval by the council, the additional fee

1 shall be fifty-five hundredths of one percent of the total capital value
2 of the application, provided however that applications for construction
3 of a safety net diagnostic and treatment center, as defined in paragraph
4 (c) of subdivision sixteen of section twenty-eight hundred one-a of this
5 article, shall be subject to a fee of forty-five hundredths of one
6 percent of the total capital value of the application; and
7 (ii) for hospital, nursing home and diagnostic and treatment center
8 applications that do not require approval by the council, the additional
9 fee shall be thirty hundredths of one percent of the total capital value
10 of the application, provided however that safety net diagnostic and
11 treatment center applications, as defined in paragraph (c) of subdivi-
12 sion sixteen of section twenty-eight hundred one-a of this article,
13 shall be subject to a fee of twenty-five hundredths of one percent of
14 the total capital value of the application.
15 (c) The commissioner is authorized to establish reduced fees for
16 applications subject to limited review, as described in regulation, that
17 do not require review by the council.
18 (d) The fees and charges paid by an applicant pursuant to this subdi-
19 vision for any application for construction of a hospital approved in
20 accordance with this section shall be deemed allowable capital costs in
21 the determination of reimbursement rates established pursuant to this
22 article. The cost of such fees and charges shall not be subject to
23 reimbursement ceiling or other penalties used by the commissioner for
24 the purpose of establishing reimbursement rates pursuant to this arti-
25 cle. All fees pursuant to this section shall be payable to the depart-
26 ment of health for deposit into the special revenue funds - other,
27 miscellaneous special revenue fund - 339, certificate of need account.
28 § 88. Section 3605 of the public health law is amended by adding a new
29 subdivision 13 to read as follows:
30 13. The commissioner shall charge to applicants for the licensure of
31 home care services agencies an application fee of two thousand dollars.
32 All fees pursuant to this section shall be payable to the department of
33 health for deposit into the special revenue funds - other, miscellaneous
34 special revenue fund - 339, certificate of need account.
35 § 89. Section 3606 of the public health law is amended by adding a new
36 subdivision 4 to read as follows:
37 4. (a) The commissioner shall charge to applicants for the establish-
38 ment of certified home health agencies an application fee of two thou-
39 sand dollars.
40 (b) An applicant for both establishment and construction of a certi-
41 fied home health agency shall not be subject to this subdivision and
42 shall be subject to fees and charges as set forth in section thirty-six
43 hundred six-a of this article.
44 (c) The fees and charges paid by an applicant pursuant to this subdi-
45 vision for any application approved in accordance with this section
46 shall be deemed allowable costs in the determination of reimbursement
47 rates established pursuant to this article. All fees pursuant to this
48 section shall be payable to the department of health for deposit into
49 the special revenue funds - other, miscellaneous special revenue fund -
50 339, certificate of need account.
51 § 90. Section 3606-a of the public health law is amended by adding a
52 new subdivision 9 to read as follows:
53 9. (a) The commissioner shall charge to applicants for construction of
54 certified home health agencies an application fee of two thousand
55 dollars. Each such applicant shall, at such time as the commissioner's
56 written approval of the construction is granted, pay an additional fee

1 of thirty hundredths of one percent of the total capital value of the
2 application.
3 (b) The fees and charges paid by an applicant pursuant to this subdi-
4 vision for any application approved in accordance with this section
5 shall be deemed allowable costs in the determination of reimbursement
6 rates established pursuant to this article. All fees pursuant to this
7 section shall be payable to the department of health for deposit into
8 the special revenue funds - other, miscellaneous special revenue fund -
9 339, certificate of need account.
10 § 91. Section 3610 of the public health law is amended by adding a
11 new subdivision 6 to read as follows:
12 6. (a) The commissioner shall charge to applicants for the authori-
13 zation or construction of long term home health care programs an appli-
14 cation fee of two thousand dollars. Each such applicant shall, at such
15 time as the commissioner's written approval of a construction applica-
16 tion is granted, pay an additional fee of thirty hundredths of one
17 percent of the total capital value of the application.
18 (b) The fees paid by an applicant pursuant to this subdivision for any
19 application approved in accordance with this section shall be deemed
20 allowable costs in the determination of reimbursement rates established
21 pursuant to this article. All fees pursuant to this section shall be
22 payable to the department of health for deposit into the special revenue
23 funds - other, miscellaneous special revenue fund - 339, certificate of
24 need account.
25 § 92. Section 3611-a of the public health law, as added by chapter 959
26 of the laws of 1984, is amended to read as follows:
27 § 3611-a. Change in the operator or owner. 1. Any change in the person
28 who, or any transfer, assignment, or other disposition of an interest or
29 voting rights of ten percent or more, or any transfer, assignment or
30 other disposition which results in the ownership or control of an inter-
31 est or voting rights of ten percent or more, in a limited liability
32 company or a partnership which is the operator of a licensed home care
33 services agency or a certified home health agency shall be approved by
34 the public health council in accordance with the provisions of subdivi-
35 sion four of section three thousand six hundred five of this [chapter]
36 article relative to licensure or subdivision two of section three thou-
37 sand six hundred six of this [chapter] article relative to certificate
38 of approval, except that:
39 (a) Public health council approval shall be required only with respect
40 to the person, or the member or partner that is acquiring the interest
41 or voting rights; and
42 (b) With respect to certified home health agencies, such change shall
43 not be subject to the public need assessment described in paragraph (a)
44 of subdivision two of section three thousand six hundred six of this
45 article.
46 (c) No prior approval of the public health council shall be required
47 with respect to a transfer, assignment or disposition of:
48 (i) an interest or voting rights to any person previously approved by
49 the public health council for that operator; or
50 (ii) an interest or voting rights of less than ten percent in the
51 operator. However, no such transaction shall be effective unless at
52 least ninety days prior to the intended effective date thereof, the
53 partner or member completes and files with the public health council
54 notice on forms to be developed by the public health council, which
55 shall disclose such information as may reasonably be necessary for the
56 public health council to determine whether it should bar the trans-

1 action. Such transaction will be final as of the intended effective date
2 unless, prior thereto, the public health council shall state specific
3 reasons for barring such transactions under this paragraph and shall
4 notify each party to the proposed transaction.
5 2. Any transfer, assignment or other disposition of ten percent or
6 more of the stock or voting rights thereunder of a corporation which is
7 the operator of a licensed home care services agency or a certified home
8 health agency, or any transfer, assignment or other disposition of the
9 stock or voting rights thereunder of such a corporation which results in
10 the ownership or control of more than ten percent of the stock or voting
11 rights thereunder of such corporation by any person shall be subject to
12 approval by the public health council in accordance with the provisions
13 of subdivision four of section three thousand six hundred five of this
14 [chapter] article relative to licensure or subdivision two of section
15 three thousand six hundred six of this [chapter] article relative to
16 certificate of approval , except that:
17 (a) Public health council approval shall be required only with respect
18 to the person or entity acquiring such stock or voting rights; and
19 (b) With respect to certified home health agencies, such change shall
20 not be subject to the public need assessment described in paragraph (a)
21 of subdivision two of section three thousand six hundred six of this
22 article. In the absence of such approval, the license or certificate of
23 approval shall be subject to revocation or suspension.
24 (c) No prior approval of the public health council shall be required
25 with respect to a transfer, assignment or disposition of an interest or
26 voting rights to any person previously approved by the public health
27 council for that operator. However, no such transaction shall be effec-
28 tive unless at least one hundred twenty days prior to the intended
29 effective date thereof, the partner or member completes and files with
30 the public health council notice on forms to be developed by the public
31 health council, which shall disclose such information as may reasonably
32 be necessary for the public health council to determine whether it
33 should bar the transaction. Such transaction will be final as of the
34 intended effective date unless, prior thereto, the public health council
35 shall state specific reasons for barring such transactions under this
36 paragraph and shall notify each party to the proposed transaction.
37 3. (a) The commissioner shall charge to applicants for a change in
38 operator or owner of a licensed home care services agency or a certified
39 home health agency an application fee in the amount of two thousand
40 dollars.
41 (b) The fees paid by certified home health agencies pursuant to this
42 subdivision for any application approved in accordance with this section
43 shall be deemed allowable costs in the determination of reimbursement
44 rates established pursuant to this article. All fees pursuant to this
45 section shall be payable to the department of health for deposit into
46 the special revenue funds - other, miscellaneous special revenue fund -
47 339, certificate of need account.
48 § 93. Section 4004 of the public health law is amended by adding a new
49 subdivision 5 to read as follows:
50 5. (a) The commissioner shall charge to applicants for the establish-
51 ment of a hospice an application fee in the amount of two thousand
52 dollars.
53 (b) An applicant for both establishment and construction of a hospice
54 shall not be subject to this subdivision and shall be subject to fees
55 and charges as set forth in section four thousand six of this article.

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1 (c) All fees pursuant to this section shall be payable to the depart-
2 ment of health for deposit into the special revenue funds - other,
3 miscellaneous special revenue fund - 339, certificate of need account.
4 § 94. Section 4006 of the public health law is amended by adding a new
5 subdivision 9 to read as follows:
6 9. (a) The commissioner shall charge to applicants for construction of
7 a hospice an application fee of two thousand dollars.
8 (b) At such time as the commissioner's written approval of the
9 construction is granted, each such applicant shall pay an additional fee
10 of thirty hundredths of one percent of the total capital value of the
11 application.
12 (c) All fees pursuant to this section shall be payable to the depart-
13 ment of health for deposit into the special revenue fund - other,
14 miscellaneous special revenue fund - 339, certificate of need account.
15 § 95. The opening paragraph of paragraph (s) of subdivision 1 of
16 section 2807-m of the public health law, as amended by section 16 of
17 part B of chapter 58 of the laws of 2008, is amended to read as follows:
18 "Adjustment amount" means an amount determined for each teaching
19 hospital for periods prior to January first, two thousand nine by:
20 § 96. Paragraph (b) of subdivision 2 of section 2807-m of the public
21 health law, as amended by chapter 1 of the laws of 1999, is amended to
22 read as follows:
23 (b) [Each] For periods prior to January first, two thousand nine, each
24 regional pool shall be distributed on a monthly basis to teaching gener-
25 al hospitals for costs associated with graduate medical education
26 provided by such teaching general hospitals in accordance with the
27 distribution methodology set forth in subdivision three of this section;
28 provided however, teaching general hospitals with a resident count of
29 zero as of July first of the year preceding the distribution period
30 shall not be eligible for distributions pursuant to this section.
31 General hospitals may elect to have their distribution paid through the
32 consortium.
33 § 97. Paragraphs (a), (c), (e) and (f) and the opening paragraphs of
34 paragraphs (b) and (d) of subdivision 3 of section 2807-m of the public
35 health law, paragraph (a) and the opening paragraph of paragraph (b) as
36 added by chapter 639 of the laws of 1996, paragraph (c) as amended by
37 chapter 419 of the laws of 2000, the opening paragraph of paragraph (d)
38 as amended by section 17 of part B of chapter 58 of the laws of 2008,
39 paragraph (e) as amended by section 11 of part OO of chapter 57 of the
40 laws of 2008 and paragraph (f) as amended by section 13 of part E of
41 chapter 63 of the laws of 2005, are amended to read as follows:
42 (a) Distributions to teaching general hospitals shall be made from the
43 regional pools described in subdivision two of this section for each
44 period prior to January first, two thousand nine, less amounts set aside
45 pursuant to subdivision five of this section. To be eligible to partic-
46 ipate in distributions pursuant to this section, a teaching general
47 hospital and consortium must be in compliance with graduate medical
48 education reporting requirements set forth in subdivision four of this
49 section.
50 [Each] For periods prior to January first, two thousand nine, each
51 teaching general hospital in a region shall have a proxy calculated for
52 its graduate medical education costs as follows:
53 (c) [A] For periods prior to January first, two thousand nine, a
54 distribution amount for each teaching general hospital shall be calcu-
55 lated from the applicable regional pool described in subdivision two of
56 this section as adjusted pursuant to paragraph (d) of this subdivision

1 based upon its percentage of the regional total of the graduate medical
2 education proxies, except that for purposes of this paragraph the state-
3 wide amount used to compute such distribution amounts shall be four
4 hundred ninety million dollars on an annual basis for the periods Janu-
5 ary first, two thousand through December thirty-first, two thousand two
6 and two hundred forty-five million dollars for the period January first,
7 two thousand three through June thirtieth, two thousand three, less
8 amounts set aside each period pursuant to subdivision seven of this
9 section.
10 [Each] For periods prior to January first, two thousand nine, each
11 teaching general hospital shall receive a distribution from the applica-
12 ble regional pool based on its distribution amount determined under
13 paragraph (c) of this subdivision adjusted by a reduction amount that is
14 determined as follows:
15 (e) Effective April first, two thousand four through December thirty-
16 first, two thousand eight, the distribution amount calculated pursuant
17 to paragraphs (c) and (d) of this subdivision for each non-public teach-
18 ing general hospital shall be reduced by the amount calculated and
19 included in rates pursuant to paragraph (d) of subdivision twenty-five
20 of section twenty-eight hundred seven-c of this article.
21 (f) Effective January first, two thousand five through December thir-
22 ty-first, two thousand eight, each teaching general hospital shall
23 receive a distribution from the applicable regional pool based on its
24 distribution amount determined under paragraphs (c), (d) and (e) of this
25 subdivision and reduced by its adjustment amount calculated pursuant to
26 paragraph [(l)] (s) of subdivision one of this section and, for distrib-
27 utions for the period January first, two thousand five through December
28 thirty-first, two thousand five, further reduced by its extra reduction
29 amount calculated pursuant to paragraph [(m)] (t) of subdivision one of
30 this section.
31 § 98. The opening paragraph of paragraph (b), paragraph (c), the open-
32 ing paragraphs of paragraphs (d) and (e) and paragraphs (f) and (g) of
33 subdivision 5-a of section 2807-m of the public health law, the opening
34 paragraph of paragraph (b), paragraph (c), the opening paragraph of
35 paragraph (e), and paragraphs (f) and (g) as added by section 75-c of
36 part C of chapter 58 of the laws of 2008 and the opening paragraph of
37 paragraph (d) as amended by section 15 of part OO of chapter 57 of the
38 laws of 2008, are amended to read as follows:
39 Empire clinical research investigator program (ECRIP) and other gradu-
40 ate medical education reforms. [Thirty-one] Thirty million four hundred
41 thousand dollars annually for the period January first, two thousand
42 nine through December thirty-first, two thousand ten, and seven million
43 [seven hundred fifty] six hundred thousand dollars for the period Janu-
44 ary first, two thousand eleven through March thirty-first, two thousand
45 eleven, shall be set aside and reserved by the commissioner from the
46 regional pools established pursuant to subdivision two of this section
47 to be allocated regionally with two-thirds of the available funding
48 going to New York city and one-third of the available funding going to
49 the rest of the state and shall be available for distribution as
50 follows:
51 (c) Ambulatory care training. [Five] Four million nine hundred thou-
52 sand dollars for the period January first, two thousand eight through
53 December thirty-first, two thousand eight, [five] four million nine
54 hundred thousand dollars for the period January first, two thousand nine
55 through December thirty-first, two thousand nine, [five] four million
56 nine hundred thousand dollars for the period January first, two thousand

1 ten through December thirty-first, two thousand ten, and one million two
2 hundred [fifty] twenty-five thousand dollars for the period January
3 first, two thousand eleven through March thirty-first, two thousand
4 eleven, shall be set aside and reserved by the commissioner from the
5 regional pools established pursuant to subdivision two of this section
6 and shall be available for distributions to sponsoring institutions to
7 be directed to support clinical training of medical students and resi-
8 dents in free-standing ambulatory care settings, including community
9 health centers and private practices. Such funding shall be allocated
10 regionally with two-thirds of the available funding going to New York
11 city and one-third of the available funding going to the rest of the
12 state and shall be distributed to sponsoring institutions in each region
13 pursuant to a request for application or request for proposal process
14 with preference being given to sponsoring institutions which provide
15 training in sites located in underserved rural or inner-city areas and
16 those that include medical students in such training.
17 [Two] One million nine hundred sixty thousand dollars for the period
18 January first, two thousand eight through December thirty-first, two
19 thousand eight, [two] one million nine hundred sixty thousand dollars
20 for the period January first, two thousand nine through December thir-
21 ty-first, two thousand nine, [two] one million nine hundred sixty thou-
22 sand dollars for the period January first, two thousand ten through
23 December thirty-first, two thousand ten, and [five] four hundred ninety
24 thousand dollars for the period January first, two thousand eleven
25 through March thirty-first, two thousand eleven, shall be set aside and
26 reserved by the commissioner from the regional pools established pursu-
27 ant to subdivision two of this section and shall be available for
28 purposes of physician loan repayment in accordance with subdivision ten
29 of this section. Such funding shall be allocated regionally with one-
30 third of available funds going to New York city and two-thirds of avail-
31 able funds going to the rest of the state and shall be distributed in a
32 manner to be determined by the commissioner as follows:
33 [Five] Four million nine hundred thousand dollars for the period Janu-
34 ary first, two thousand eight through December thirty-first, two thou-
35 sand eight, [five] four million nine hundred thousand dollars annually
36 for the period January first, two thousand nine through December thir-
37 ty-first, two thousand ten, and one million two hundred [fifty] twenty-
38 five thousand dollars for the period January first, two thousand eleven
39 through March thirty-first, two thousand eleven, shall be set aside and
40 reserved by the commissioner from the regional pools established pursu-
41 ant to subdivision two of this section and shall be available for
42 purposes of physician practice support. Such funding shall be allocated
43 regionally with one-third of available funds going to New York city and
44 two-thirds of available funds going to the rest of the state and shall
45 be distributed in a manner to be determined by the commissioner as
46 follows:
47 (f) Study on physician workforce. [Six] Five hundred ninety thousand
48 dollars annually for the period January first, two thousand eight
49 through December thirty-first, two thousand ten, and one hundred [fifty]
50 forty-eight thousand dollars for the period January first, two thousand
51 eleven through March thirty-first, two thousand eleven, shall be set
52 aside and reserved by the commissioner from the regional pools estab-
53 lished pursuant to subdivision two of this section and shall be avail-
54 able to fund a study of physician workforce needs and solutions includ-
55 ing, but not limited to, an analysis of residency programs and projected
56 physician workforce and community needs. The commissioner shall enter

1 into agreements with one or more organizations to conduct such study
2 based on a request for proposal process.
3 (g) Diversity in medicine/post-baccalaureate program. Notwithstanding
4 any inconsistent provision of section one hundred twelve or one hundred
5 sixty-three of the state finance law or any other law, [two] one million
6 nine hundred sixty thousand dollars annually for the period January
7 first, two thousand eight through December thirty-first, two thousand
8 ten, and [five] four hundred ninety thousand dollars for the period
9 January first, two thousand eleven through March thirty-first, two thou-
10 sand eleven shall be set aside and reserved by the commissioner from the
11 regional pools established pursuant to subdivision two of this section
12 and shall be available for distributions to the Associated Medical
13 Schools of New York to fund its diversity program including existing and
14 new post-baccalaureate programs for minority and economically disadvan-
15 taged students and encourage participation from all medical schools in
16 New York. The associated medical schools of New York shall report to the
17 commissioner on an annual basis regarding the use of funds for such
18 purpose in such form and manner as specified by the commissioner.
19 § 99. Subdivision 7 of section 2807-m of the public health law, as
20 amended by section 75-d of part C of chapter 58 of the laws of 2008, is
21 amended to read as follows:
22 7. Notwithstanding any inconsistent provision of section one hundred
23 twelve or one hundred sixty-three of the state finance law or any other
24 law, up to one million dollars for the period January first, two thou-
25 sand through December thirty-first, two thousand, one million six
26 hundred thousand dollars annually for the periods January first, two
27 thousand one through December thirty-first, two thousand [ten,] eight,
28 one million five hundred thousand dollars annually for the periods Janu-
29 ary first, two thousand nine through December thirty-first, two thousand
30 ten, and [four] three hundred seventy-five thousand dollars for the
31 period January first, two thousand eleven through March thirty-first,
32 two thousand eleven, shall be set aside and reserved by the commissioner
33 from the regional pools established pursuant to subdivision two of this
34 section and shall be available for distributions to the New York state
35 area health education center program for the purpose of expanding commu-
36 nity-based training of medical students. In addition, one million
37 dollars annually for the period January first, two thousand eight
38 through December thirty-first, two thousand ten, and two hundred fifty
39 thousand dollars for the period January first, two thousand eleven
40 through March thirty-first, two thousand eleven, shall be set aside and
41 reserved by the commissioner from the regional pools established pursu-
42 ant to subdivision two of this section and shall be available for
43 distributions to the New York state area health education center program
44 for the purpose of post-secondary training of health care professionals
45 who will achieve specific program outcomes within the New York state
46 area health education center program. The New York state area health
47 education center program shall report to the commissioner on an annual
48 basis regarding the use of funds for each purpose in such form and
49 manner as specified by the commissioner.
50 § 100. Paragraph (a) of subdivision 7 of section 2807-s of the public
51 health law, as amended by section 22 of part A of chapter 58 of the laws
52 of 2007, subparagraphs (viii), (ix) and (xii) as amended by section 14
53 of part B of chapter 58 of the laws of 2008, is amended to read as
54 follows:
55 (a) funds shall be accumulated in regional professional education
56 pools established by the commissioner or the healthcare reform act

1 (HCRA) resources fund established pursuant to section ninety-two-dd of
2 the state finance law, whichever is applicable, for distribution in
3 accordance with section twenty-eight hundred seven-m of this article, in
4 the following amounts:
5 (i) ninety-two and forty-five-hundredths percent of the funds accumu-
6 lated less seventy-six million dollars for the period January first,
7 nineteen hundred ninety-seven through December thirty-first, nineteen
8 hundred ninety-seven,
9 (ii) ninety-two and forty-five-hundredths percent of the funds accumu-
10 lated less seventy-six million dollars for the period January first,
11 nineteen hundred ninety-eight through December thirty-first, nineteen
12 hundred ninety-eight,
13 (iii) ninety-two and forty-five-hundredths percent of the funds accu-
14 mulated less one hundred one million dollars for the period January
15 first, nineteen hundred ninety-nine through December thirty-first, nine-
16 teen hundred ninety-nine,
17 (iv) four hundred ninety-four million dollars on an annual basis for
18 the periods January first, two thousand through December thirty-first,
19 two thousand three,
20 (v) four hundred sixty-three million dollars for the period January
21 first, two thousand four through December thirty-first, two thousand
22 four,
23 (vi) four hundred eighty-eight million dollars for the period January
24 first, two thousand five through December thirty-first, two thousand
25 five,
26 (vii) four hundred ninety-four million dollars for the period January
27 first, two thousand six through December thirty-first, two thousand six,
28 (viii) four hundred seventy million dollars [annually] for the period
29 January first, two thousand seven through December thirty-first, two
30 thousand [ten] seven, [and]
31 (ix) [one hundred seventeen] four hundred forty-six million six
32 hundred thousand dollars for the period January first, two thousand
33 eight through December thirty-first, two thousand eight,
34 (x) forty-seven million two hundred ten thousand dollars for the peri-
35 od January first, two thousand nine through December thirty-first, two
36 thousand ten; and
37 (xi) eleven million [five] eight hundred thousand dollars for the
38 period January first, two thousand eleven through March thirty-first,
39 two thousand eleven;
40 [(x)] (xii) provided, however, for periods prior to January first, two
41 thousand nine, amounts set forth in this paragraph may be reduced by the
42 commissioner in an amount to be approved by the director of the budget
43 to reflect the amount received from the federal government under the
44 state's 1115 waiver which is directed under its terms and conditions to
45 the graduate medical education program established pursuant to section
46 twenty-eight hundred seven-m of this article;
47 [(xi)] (xiii) provided further, however, for periods prior to July
48 first, two thousand nine, amounts set forth in this paragraph shall be
49 reduced by an amount equal to the total actual distribution reductions
50 for all facilities pursuant to paragraph (e) of subdivision three of
51 section twenty-eight hundred seven-m of this article; and
52 [(xii)] (xiv) provided further, however, for periods prior to July
53 first, two thousand nine, amounts set forth in this paragraph shall be
54 reduced by an amount equal to the actual distribution reductions for all
55 facilities pursuant to paragraph (s) of subdivision one of section twen-
56 ty-eight hundred seven-m of this article.

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1 § 101. Section 2807-k of the public health law is amended by adding a
2 new subdivision 5-b to read as follows:
3 5-b. Notwithstanding any inconsistent provision of this section,
4 section twenty-eight hundred seven-w of this article or any other
5 contrary provision of law and subject to the availability of federal
6 financial participation, for periods on and after January first, two
7 thousand nine, funds available pursuant to paragraph (a-1) of subdivi-
8 sion four of this section and an additional two hundred eighty-three
9 million dollars as is otherwise available for distribution pursuant to
10 this section, shall be reserved and set aside and distributed on an
11 annual basis in accordance with the following:
12 (a) Distributions pursuant to this subdivision shall be limited to
13 general hospitals which are teaching hospitals as defined in applicable
14 regulations.
15 (b) For the purposes of distributions in accordance with this subdivi-
16 sion, each eligible facility's relative uncompensated care need amount
17 shall be determined utilizing the methodology set forth in paragraph (c)
18 of subdivision five-a of this section.
19 (c) Distributions made pursuant to this subdivision remain subject to
20 the provisions of paragraph (d) of subdivision five-a of this section.
21 § 102. Paragraph (c) of subdivision 5-a of section 2807-k of the
22 public health law, as added by section 28-b of part B of chapter 58 of
23 the laws of 2008, is amended to read as follows:
24 (c) For the purposes of distributions in accordance with paragraphs
25 (a) and (b) of this subdivision, each facility's relative uncompensated
26 care need amount shall be determined [by multiplying reported inpatient
27 and outpatient units of service from the calendar year two years prior
28 to the distribution year, but excluding referred ambulatory services
29 units of service, for all uninsured patients by the applicable Medicaid
30 rates, but not including prospective rate adjustments and rate add-ons,
31 in effect for the calendar year two years prior to the distribution year
32 for such services, provided, however, that for distributions on and
33 after January first, two thousand ten, each facility's uncompensated
34 need amount shall be reduced by the sum of all payment amounts collected
35 from such patients. The total uncompensated care need for each facility
36 subject to paragraph (a) or (b) of this subdivision shall then be
37 adjusted by application of the nominal need scale set forth in subdivi-
38 sion five of this section.] in accordance with the following:
39 (i) inpatient units of services for all uninsured patients from the
40 calendar year two years prior to the distribution year, but excluding
41 referred ambulatory units of services, shall be multiplied by the appli-
42 cable Medicaid inpatient rates in effect for such prior year, but not
43 including prospective rate adjustments and rate add-ons, provided,
44 however, that for distributions on and after January first, two thousand
45 ten, the uncompensated amount for inpatient services shall utilize the
46 inpatient rates in effect as of July first of the prior year;
47 (ii) outpatient units of service for all uninsured patients from the
48 calendar year two years prior to the distribution year, including emer-
49 gency department services and ambulatory surgery services, but excluding
50 referred ambulatory services units of service, shall be multiplied by
51 Medicaid outpatient rates that reflect the exclusive utilization of the
52 ambulatory patient groups (APG) rate-setting methodology as set forth in
53 regulations promulgated pursuant to subdivision two-a of section twen-
54 ty-eight hundred seven of this article, as in effect for the distrib-
55 ution year, provided further, however, that for those services for which
56 APG rates are not available the applicable Medicaid outpatient rate

1 shall be the rate in effect for the calendar year two years prior to the
2 distribution year;
3 (iii) the uncompensated care need for each facility for periods on and
4 after January first, two thousand ten shall be reduced by the sum of all
5 payment amounts collected from such patients; and
6 (iv) the total uncompensated care need for each facility subject to
7 this subdivision shall then be adjusted by application of the nominal
8 need scale set forth in subdivision five of this section.
9 § 103. Section 2807-p of the public health law is amended by adding a
10 new subdivision 10 to read as follows:
11 10. (a) Notwithstanding any inconsistent provision of this section or
12 any other contrary provision of law, the commissioner is authorized to
13 seek a waiver from the federal department of health and human services
14 pursuant to section eleven hundred fifteen of the federal social securi-
15 ty act, or such other federal law provision as may be deemed appropri-
16 ate, seeking federal financial participation in payments made pursuant
17 to this section, in which case the state funding made available pursuant
18 to this section shall be utilized as the non-federal share of such
19 payments. To the extent as may be required, payments made pursuant to
20 this section and in accordance with this subdivision, may be deemed to
21 be disproportionate share hospital payments in accordance with the
22 provisions of the federal social security act.
23 (b) If federal financial participation in payments made pursuant to
24 this section are made available in accordance with the provisions of
25 this subdivision, free-standing clinics licensed solely pursuant to
26 article thirty-one of the mental hygiene law shall also be deemed eligi-
27 ble for participation in such payments to the same degree and in accord-
28 ance with the same distribution methodology otherwise provided in this
29 section, provided, however, that only those units of service provided by
30 such free-standing clinics that constitute medical services that are
31 otherwise eligible for consideration for Medicaid payments shall be
32 reflected in distributions made pursuant to this section, and further
33 provided, however, that the commissioner may, in consultation with the
34 commissioner of the office of mental health, require such clinics, as a
35 condition of receiving such distributions, to provide reports and data
36 to the department as the commissioner deems necessary to adequately
37 implement the provisions of this subdivision with regard to such clin-
38 ics.
39 § 104. Subdivision 3 of section 241 of the elder law is amended to
40 read as follows:
41 3. "Income" shall mean "household gross income" as defined in the real
42 property tax circuit breaker credit program, pursuant to subparagraph
43 (C) of paragraph one of subsection (e) of section six hundred six of the
44 tax law, but only shall include the income of program applicants and
45 spouses and shall exclude the income of other members of the household;
46 provided, however, that the panel may adopt policies to exclude from
47 income certain non-recurring items that would act to artificially
48 inflate the availability of funds to meet current needs including, but
49 not limited to, a retiree's previous year's wages, and non-recurring
50 distributions from an individual retirement account.
51 § 105. Subdivision 1 of section 241 of the elder law, as amended by
52 section 29 of part A of chapter 58 of the laws of 2008, is amended to
53 read as follows:
54 1. "Covered drug" shall mean a drug dispensed subject to a legally
55 authorized prescription pursuant to section sixty-eight hundred ten of
56 the education law, and insulin, an insulin syringe, or an insulin

1 needle. Such term shall not include: (a) any drug determined by the
2 commissioner of the federal food and drug administration to be ineffec-
3 tive or unsafe; (b) any drug dispensed in a package, or form of dosage
4 or administration, as to which the commissioner of health finally deter-
5 mines in accordance with the provisions of section two hundred fifty-two
6 of this title that a less expensive package, or form of dosage or admin-
7 istration, is available that is pharmaceutically equivalent and equiv-
8 alent in its therapeutic effect for the general health characteristics
9 of the eligible program participant population; (c) any device for the
10 aid or correction of vision; (d) any drug, including vitamins, which is
11 generally available without a physician's prescription; [and] (e) drugs
12 for the treatment of sexual or erectile dysfunction, unless such drugs
13 are used to treat a condition, other than sexual or erectile dysfunc-
14 tion, for which the drugs have been approved by the federal food and
15 drug administration; [and] (f) a brand name drug for which a multi-
16 source therapeutically and generically equivalent drug, as determined by
17 the federal food and drug administration, is available, unless previous-
18 ly authorized by the elderly pharmaceutical insurance coverage program,
19 provided, however, that the elderly pharmaceutical insurance coverage
20 panel is authorized to exempt, for good cause shown, any brand name drug
21 from such restriction, and provided further that such restriction shall
22 not apply to any drug that is included on the preferred drug list under
23 section two hundred seventy-two of the public health law or is in the
24 clinical drug review program under section two hundred seventy-four of
25 the public health law to the extent that the preferred drug program and
26 the clinical drug review program are applied to the elderly pharmaceu-
27 tical insurance coverage program pursuant to section two hundred seven-
28 ty-five of the public health law, or to any drug covered under a program
29 participant's Medicare part D or other primary insurance plan<u>; and (g)</u>
30 <u>any drug excluded from coverage by the medical assistance program estab-</u>
31 <u>lished under title eleven of article five of the social services law</u>.
32 Any of the drugs enumerated in the preceding sentence shall be consid-
33 ered a covered drug or a prescription drug for purposes of this article
34 if it is added to the preferred drug list under article two-A of the
35 public health law. For the purpose of this title, except as otherwise
36 provided in this section, a covered drug shall be dispensed in quanti-
37 ties no greater than a thirty day supply or one hundred units, whichever
38 is greater. In the case of a drug dispensed in a form of administration
39 other than a tablet or capsule, the maximum allowed quantity shall be a
40 thirty day supply; the panel is authorized to approve exceptions to
41 these limits for specific products following consideration of recommen-
42 dations from pharmaceutical or medical experts regarding commonly pack-
43 aged quantities, unusual forms of administration, length of treatment or
44 cost effectiveness. In the case of a drug prescribed pursuant to section
45 thirty-three hundred thirty-two of the public health law to treat one of
46 the conditions that have been enumerated by the commissioner of health
47 pursuant to regulation as warranting the prescribing of greater than a
48 thirty day supply, such drug shall be dispensed in quantities not to
49 exceed a three month supply.
50 § 106. The opening paragraph of paragraph (f) and paragraph (h) of
51 subdivision 3 of section 242 of the elder law, as added by section 3 of
52 part B of chapter 58 of the laws of 2007, are amended to read as
53 follows:
54 As a condition of continued eligibility for benefits under this title,
55 if a program participant is eligible for Medicare part D drug coverage
56 under section 1860D of the federal social security act, the participant

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1 is required to enroll in Medicare part D at the first available enroll-
2 ment period and to maintain such enrollment. This requirement shall be
3 waived if such enrollment would result [in significant additional finan-
4 cial liability by the participant, including, but not limited to, indi-
5 viduals in a Medicare advantage plan whose cost sharing would be
6 increased, or if such enrollment would result] in the loss of any health
7 coverage through a union or employer plan for the participant, the
8 participant's spouse or other dependent. The elderly pharmaceutical
9 insurance coverage program shall provide premium assistance for all
10 participants enrolled in Medicare part D as follows:
11 (h) In order to maximize prescription drug coverage under Medicare
12 part D, the elderly pharmaceutical insurance coverage program is author-
13 ized to represent program participants under this title in the pursuit
14 of such coverage. Such representation [shall not result in any addi-
15 tional financial liability on behalf of such program participants and]
16 shall include, but not be limited to, the following actions:
17 (i) application for the premium and cost-sharing subsidies, and the
18 medicare savings programs, on behalf of eligible program participants;
19 (ii) enrollment in a prescription drug plan or MA-PD plan; the elderly
20 pharmaceutical insurance coverage program shall provide program partic-
21 ipants with prior written notice of, and the opportunity to decline such
22 facilitated enrollment subject, however, to the provisions of paragraph
23 (f) of this subdivision;
24 (iii) pursuit of appeals, grievances, or coverage determinations.
25 § 107. Paragraph (c) of subdivision 3 of section 242 of the elder law,
26 as amended by section 4 of part A of chapter 58 of the laws of 2005, is
27 amended to read as follows:
28 (c) The fact that some of an individual's prescription drug expenses
29 are paid or reimbursable under the provisions of the medicare program
30 shall not disqualify an individual, if he or she is otherwise eligible,
31 from receiving assistance under this title. [In such cases, the state
32 shall pay the portion of the cost of those prescriptions for qualified
33 drugs for which no payment or reimbursement is made by the medicare
34 program or any federally funded prescription drug benefit, less the
35 participant's co-payment required on the amount not paid by the medicare
36 program.] However, except for drugs excluded from medicare coverage in
37 accordance with section eighteen hundred sixty-D-2 of the federal social
38 security act, such assistance shall be limited to prescription drugs
39 covered by the individual's medicare plan. In such cases, the state
40 shall cover the amount that is the responsibility of the individual
41 under the medicare plan benefit, subject to the individual's cost-shar-
42 ing responsibility under sections two hundred forty-seven or two hundred
43 forty-eight of this title on such amount. In addition, the participant
44 registration fee charged to eligible program participants for comprehen-
45 sive coverage pursuant to section two hundred forty-seven of this title
46 shall be waived for the portion of the annual coverage period that the
47 participant is also enrolled as a transitional assistance beneficiary in
48 the medicare prescription drug discount card program, authorized pursu-
49 ant to title XVIII of the federal social security act, provided that:
50 (i) any sponsor of such drug discount card program has signed an agree-
51 ment to complete coordination of benefit functions with EPIC, and has
52 been endorsed by the EPIC panel; or (ii) any exclusive sponsor of such
53 drug discount card program authorized pursuant to title XVIII of the
54 federal social security act that limits the participants to the medicare
55 prescription drug discount card program sponsored by such exclusive
56 sponsor, shall coordinate benefits available under such discount card

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1 program with EPIC. [The participant registration fee charged to eligible
2 program participants for comprehensive coverage pursuant to section two
3 hundred forty-seven of this title shall be waived for the portion of the
4 annual coverage period that the participant is also enrolled as a full
5 subsidy individual in a prescription drug or MA-PD plan under Part D of
6 title XVIII of the federal social security act.]
7 § 107-a. Paragraph (g) of subdivision 3 of section 242 of the elder
8 law, as added by section 3 of part B of chapter 58 of the laws of 2007,
9 is amended to read as follows:
10 (g) The elderly pharmaceutical insurance coverage program is author-
11 ized and directed to conduct an enrollment program to facilitate, in as
12 prompt and streamlined a fashion as possible, the enrollment into Medi-
13 care part D of program participants who are required by the provisions
14 of this section to enroll in part D. [Provided, however, that a partic-
15 ipant shall not be prevented from receiving his or her drugs immediately
16 at the pharmacy under the elderly pharmaceutical insurance coverage
17 program as a result of such participant's enrollment in Medicare part
18 D.]
19 § 108. Subdivision 6 of section 250 of the elder law is REPEALED.
20 § 109. The opening paragraph of subdivision 2 and paragraph (b) of
21 subdivision 3 of section 247 of the elder law are amended to read as
22 follows:
23 Eligible individuals electing to meet the requirements of this subdi-
24 vision shall pay a quarterly registration fee in a manner and form
25 determined by the executive director; at the option of the participant,
26 the registration fee may be paid annually in a lump sum upon the begin-
27 ning of the annual coverage period. No eligible individual electing to
28 meet the requirements of this subdivision shall have his <u>or her</u> partic-
29 ipation in the program lapse by virtue of non-payment of the applicable
30 registration fee unless the contractor has provided notification of the
31 amount and due date thereof, and more than thirty days have elapsed
32 since the due date of the individual's registration fee. The registra-
33 tion fee to be charged to eligible program participants for comprehen-
34 sive coverage under this option shall be in accordance with the follow-
35 ing schedule<u>, except that such fee shall be waived for participants with</u>
36 <u>income at or below one hundred fifty percent of the official poverty</u>
37 <u>line maintained by the federal secretary of health and human services</u>:
38 (b) The point of sale co-payment amounts which are to be charged
39 eligible program participants shall be in accordance with the following
40 schedule:
41 For each prescription of covered drugs costing $15.00 or less.....$3.00
42 For each prescription of covered drugs costing $15.01 to $35.00...$7.00
43 For each prescription of covered drugs costing $35.01 [to $55.00..$15.00
44 For each prescription of covered drugs costing $55.01] or
45 more....[$20.00] <u>$15.00</u>
46 § 110. Subdivision 2 of section 241 of the elder law, as amended by
47 section 13 of part B of chapter 57 of the laws of 2006, is amended to
48 read as follows:
49 2. "Provider pharmacy" shall mean a pharmacy registered in the state
50 of New York pursuant to section sixty-eight hundred eight of the educa-
51 tion law<u>, a non-resident establishment registered pursuant to section</u>
52 <u>sixty-eight hundred eight-b of the education law,</u> or a pharmacy regis-
53 tered in a state bordering the state of New York when certified as
54 necessary by the executive director pursuant to section two hundred
55 fifty-three of this title, for which an agreement to provide pharmacy

1 services for purposes of this program pursuant to section two hundred
2 forty-nine of this title is in effect.
3 § 111. Subdivision 1 of section 249 of the elder law is amended to
4 read as follows:
5 1. The state shall offer an opportunity to participate in this program
6 to all provider pharmacies as defined in section two hundred forty-one
7 of this title, provided, however, that the participation of pharmacies
8 registered in the state pursuant to section sixty-eight hundred eight-b
9 of the education law shall be limited to state assistance provided under
10 this title for prescription drugs covered by a program participant's
11 medicare or other drug plan.
12 § 112. Paragraph (e) of subdivision 3 of section 242 of the elder law,
13 as amended by section 3 of part B of chapter 58 of the laws of 2007, is
14 amended to read as follows:
15 (e) As a condition of continued eligibility for benefits under this
16 title, if a program participant's income indicates that the participant
17 could be eligible for an income-related subsidy under section 1860D-14
18 of the federal social security act by either applying for such subsidy
19 or by enrolling in a medicare savings program as a qualified medicare
20 beneficiary (QMB), a specified low-income medicare beneficiary (SLMB),
21 or a qualifying individual (QI), a program participant is required to
22 provide[, and to authorize the elderly pharmaceutical insurance coverage
23 program to obtain,] any information or documentation required to estab-
24 lish the participant's eligibility for such subsidy, and to authorize
25 the elderly pharmaceutical insurance coverage program to apply on behalf
26 of the participant for the subsidy or the medicare savings program. The
27 elderly pharmaceutical insurance coverage program shall make a reason-
28 able effort to notify the program participant of his or her need to
29 provide any of the above required information. After a reasonable effort
30 has been made to contact the participant, a participant shall be noti-
31 fied in writing that he or she has sixty days to provide such required
32 information. If such information is not provided within the sixty day
33 period, the participant's coverage may be terminated.
34 § 113. Section 2807-j of the public health law is amended by adding a
35 new subdivision 13 to read as follows:
36 13. (a) Notwithstanding any inconsistent provisions of this section or
37 any other contrary provision of law, for periods on and after July
38 first, two thousand nine, each third party payor which has entered into
39 an election agreement with the commissioner pursuant to subdivision five
40 of this section shall, as a condition of such election, pay to the
41 commissioner or the commissioner's designee, a percentage surcharge
42 equal to the surcharge percent set forth in paragraph (c) of subdivision
43 two of this section for the same period and applied to all payments made
44 by such third party payors for patient care services provided within the
45 state by physicians in physician offices or in urgent care facilities
46 that are not otherwise licensed pursuant to this article and which are
47 billed as surgery or radiology services in accordance with the Current
48 Procedure Terminology, fourth edition, as published by the American
49 Medical Association.
50 (b) Such payments shall be made and reported at the same time and in
51 the same manner as the payments and reports which are otherwise submit-
52 ted by each third party payor to the commissioner or the commissioner's
53 designee in accordance with this section. Such payments shall be subject
54 to audit by the commissioner in the same manner as the other payments
55 otherwise submitted and reported pursuant to this section. The commis-
56 sioner may take all measures to collect delinquent payments due pursuant

1 to this subdivision as are otherwise permitted with regard to delinquent
2 payments due pursuant to other subdivisions of this section.
3 (c) Surcharges pursuant to this subdivision shall not apply to
4 payments made by third party payors for services provided to patients
5 insured by Medicaid or by the child health plus program or to any
6 patient in a category that is exempt from surcharge obligations assessed
7 pursuant to subdivisions one through twelve of this section.
8 § 114. Paragraph (b) of subdivision 1-a of section 2807-s of the
9 public health law, as added by chapter 639 of the laws of 1996, is
10 amended to read as follows:
11 (b) "Specified third-party payors", for purposes of this section and
12 sections twenty-eight hundred seven-j and twenty-eight hundred seven-t
13 of this article, shall include corporations organized and operating in
14 accordance with article forty-three of the insurance law, organizations
15 operating in accordance with the provisions of article forty-four of
16 this chapter, self-insured funds and administrators acting on behalf of
17 self-insured funds, and commercial insurers [licensed to do business in
18 this state and] authorized to write accident and health insurance and
19 whose policy provides coverage on an expense incurred basis. Specified
20 third-party payors, for purposes of this section, shall not include
21 governmental agencies or providers of coverage pursuant to the compre-
22 hensive motor vehicle insurance reparations act, the workers' compen-
23 sation law, the volunteer firefighters' benefit law, or the volunteer
24 ambulance workers' benefit law.
25 § 115. Paragraph (j) of subdivision 1 of section 2807-v of the public
26 health law, as amended by section 5 of part B of chapter 58 of the laws
27 of 2008, is amended to read as follows:
28 (j) Funds shall be reserved and accumulated from year to year and
29 shall be available, including income from invested funds, for purposes
30 of services and expenses related to the tobacco use prevention and
31 control program established pursuant to sections thirteen hundred nine-
32 ty-nine-ii and thirteen hundred ninety-nine-jj of this chapter, from the
33 tobacco control and insurance initiatives pool established for the
34 following periods in the following amounts:
35 (i) up to thirty million dollars for the period January first, two
36 thousand through December thirty-first, two thousand;
37 (ii) up to forty million dollars for the period January first, two
38 thousand one through December thirty-first, two thousand one;
39 (iii) up to forty million dollars for the period January first, two
40 thousand two through December thirty-first, two thousand two;
41 (iv) up to thirty-six million nine hundred fifty thousand dollars for
42 the period January first, two thousand three through December thirty-
43 first, two thousand three;
44 (v) up to thirty-six million nine hundred fifty thousand dollars for
45 the period January first, two thousand four through December thirty-
46 first, two thousand four;
47 (vi) up to forty million six hundred thousand dollars for the period
48 January first, two thousand five through December thirty-first, two
49 thousand five;
50 (vii) up to eighty-one million nine hundred thousand dollars for the
51 period January first, two thousand six through December thirty-first,
52 two thousand six, provided, however, that within amounts appropriated, a
53 portion of such funds may be transferred to the Roswell Park Cancer
54 Institute Corporation to support costs associated with cancer research;
55 (viii) up to ninety-four million one hundred fifty thousand dollars
56 for the period January first, two thousand seven through December thir-

1 ty-first, two thousand seven, provided, however, that within amounts
2 appropriated, a portion of such funds may be transferred to the Roswell
3 Park Cancer Institute Corporation to support costs associated with
4 cancer research; and
5 (ix) up to ninety-four million one hundred fifty thousand dollars for
6 the period January first, two thousand eight through December thirty-
7 first, two thousand eight[;
8 (x) up to ninety-four million one hundred fifty thousand dollars for
9 the period January first, two thousand nine through December thirty-
10 first, two thousand nine;
11 (xi) up to ninety-four million one hundred fifty thousand dollars for
12 the period January first, two thousand ten through December thirty-
13 first, two thousand ten; and
14 (xii) up to twenty-three million five hundred thirty-seven thousand
15 dollars for the period January first, two thousand eleven through March
16 thirty-first, two thousand eleven].
17 § 116. Paragraph (b) of subdivision 2 of section 367-a of the social
18 services law, as amended by section 58 of part C of chapter 58 of the
19 laws of 2007, is amended to read as follows:
20 (b) Any inconsistent provision of this chapter or other law notwith-
21 standing, upon furnishing assistance under this title to any applicant
22 or recipient of medical assistance, the local social services district
23 or the department shall be subrogated, to the extent of the expenditures
24 by such district or department for medical care furnished, to any rights
25 such person may have to medical support or [third party reimbursement]
26 reimbursement from liable third parties, including but not limited to
27 health insurers, self-insured plans, group health plans, service benefit
28 plans, managed care organizations, pharmacy benefit managers, or other
29 parties that are, by statute, contract, or agreement, legally responsi-
30 ble for payment of a claim for a health care item or service. For
31 purposes of this section, the term medical support shall mean the right
32 to support specified as support for the purpose of medical care by a
33 court or administrative order. The right of subrogation does not attach
34 to insurance benefits paid or provided under any health insurance policy
35 prior to the receipt of written notice of the exercise of subrogation
36 rights by the carrier issuing such insurance, nor shall such right of
37 subrogation attach to any benefits which may be claimed by a social
38 services official or the department, by agreement or other established
39 procedure, directly from an insurance carrier. No right of subrogation
40 to insurance benefits available under any health insurance policy shall
41 be enforceable unless written notice of the exercise of such subrogation
42 right is received by the carrier within three years from the date
43 services for which benefits are provided under the policy or contract
44 are rendered. The local social services district or the department shall
45 also notify the carrier when the exercise of subrogation rights has
46 terminated because a person is no longer receiving assistance under this
47 title. Such carrier shall establish mechanisms to maintain the confiden-
48 tiality of all individually identifiable information or records. Such
49 carrier shall limit the use of such information or record to the specif-
50 ic purpose for which such disclosure is made, and shall not further
51 disclose such information or records.
52 § 117. Paragraph (a) of subdivision 11 of section 367-a of the social
53 services law, as amended by chapter 170 of the laws of 1994, is amended
54 to read as follows:
55 (a) Any inconsistent provisions of this title or other law notwith-
56 standing, no health insurer, [health maintenance organization] self-in-

1 sured plan, managed care organization, pharmacy benefit manager, or
2 other [entity providing medical benefits] party that is, by statute,
3 contract, or agreement, legally responsible for payment of a claim for a
4 health care item or service, employer or organization who has a plan,
5 including an employee retirement income security act or service benefit
6 plan, providing care and other medical benefits for persons, whether by
7 insurance or otherwise, shall exclude a person from eligibility, cover-
8 age or entitlement to medical benefits by reason of the eligibility of
9 such person for medical assistance under this title, or by reason of the
10 fact that such person would, except for such plan, be eligible for bene-
11 fits under this title.
12 § 118. Paragraph 2 of subsection (b) of section 313 of the insurance
13 law is amended to read as follows:
14 (2) Notwithstanding any provisions of this section to the contrary, in
15 case of an examination or appraisal of [a domestic] an authorized insur-
16 er made within this state, the traveling and living expense of the
17 person or persons making the examination shall be considered a cost of
18 operation, as referred to in section three hundred thirty-two of this
19 article and not an expense of examination.
20 § 119. Section 332 of the insurance law, subsection (a) as amended by
21 chapter 61 of the laws of 1989, is amended to read as follows:
22 § 332. Assessments to defray [operating] expenses of department. (a)
23 [The] For purposes of this section, the expenses of the department,
24 excluding the expenses of the supervision of employee welfare funds,
25 shall include all appropriations whether administered by the department
26 or suballocated to another state department, board, or agency, for any
27 fiscal year, including all direct and indirect costs, as approved by the
28 director of the budget and audited by the comptroller, except as other-
29 wise provided by sections one hundred fifty-one and two hundred twenty-
30 eight of the workers' compensation law and by section sixty of the
31 volunteer firefighters' benefit law, shall be assessed by the super-
32 intendent pro rata upon all [domestic] authorized insurers [and all
33 licensed United States branches of alien insurers domiciled in this
34 state within the meaning of paragraph four of subsection (b) of section
35 seven thousand four hundred eight of this chapter], in proportion to the
36 gross direct premiums and other considerations, written or received by
37 them in this state during the calendar year ending December thirty-first
38 immediately preceding the end of the fiscal year for which the assess-
39 ment is made (less return premiums and considerations thereon) for poli-
40 cies or contracts of insurance covering property or risks resident or
41 located in this state the issuance of which policies or contracts
42 requires a license from the superintendent; and the superintendent shall
43 levy and collect such assessments and pay the same into the state treas-
44 ury, subject to the provisions of section one hundred twenty-one of the
45 state finance law and subsection (b) [hereof] of this section.
46 (b) For each fiscal year commencing on or after April first, nineteen
47 hundred eighty-three, a partial payment shall be made by each insurer
48 subject to this section in a sum equal to twenty-five per centum of the
49 annual expenses assessed upon it for the fiscal year as estimated by the
50 superintendent. Such payment shall be made on March tenth of the preced-
51 ing fiscal year and on June tenth, September tenth and December tenth of
52 each year, or at such other dates as the director of the budget may
53 prescribe. [Provided, however, that the payment due March tenth, nine-
54 teen hundred eighty-three for the fiscal year beginning April first,
55 nineteen hundred eighty-three shall not be required to be paid until
56 June tenth, nineteen hundred eighty-three.] The balance of assessments

1 for the fiscal year shall be paid upon determination of the actual
2 amount due in accordance with the provisions of this section. Any over-
3 payment of annual assessment resulting from complying with the require-
4 ments of this subsection shall be refunded or at the option of the
5 assessed applied as a credit against the assessment for the succeeding
6 fiscal year. The partial payment schedule provided for herein shall not
7 be applicable to any insurer whose annual assessment pursuant to this
8 section for the fiscal year is estimated to be less than one hundred
9 dollars and such insurers shall make a single annual payment on or
10 before September thirtieth of the fiscal year.
11 § 120. Subparagraphs (vi), (vii) and (viii) of paragraph (uu) of
12 subdivision 1 of section 2807-v of the public health law, as amended by
13 section 5 of part B of chapter 58 of the laws of 2008, are amended to
14 read as follows:
15 (vi) [nine] seven million [five] eight hundred thirty-three thousand
16 three hundred thirty-three dollars for the period January first, two
17 thousand nine through December thirty-first, two thousand nine, of which
18 seven million five hundred thousand dollars shall be available for
19 disease management demonstration programs and [two million] three
20 hundred thirty-three thousand three hundred thirty-three dollars shall
21 be available for telemedicine demonstration programs for the period
22 January first, two thousand nine through March first, two thousand nine;
23 (vii) [nine] seven million five hundred thousand dollars for the peri-
24 od January first, two thousand ten through December thirty-first, two
25 thousand ten[, of which seven million five hundred thousand dollars]
26 shall be available for disease management demonstration programs [and
27 two million dollars shall be available for telemedicine demonstration
28 programs]; and
29 (viii) [two] one million [three] eight hundred seventy-five thousand
30 dollars for the period January first, two thousand eleven through March
31 thirty-first, two thousand eleven[, of which one million eight hundred
32 seventy-five thousand dollars] shall be available for disease management
33 demonstration programs [and five hundred thousand dollars shall be
34 available for telemedicine demonstration programs].
35 § 121. Section 3621 of the public health law is REPEALED.
36 § 122. Paragraph 1 of subsection (g) of section 2101 of the insurance
37 law, as amended by chapter 301 of the laws of 2008, is amended to read
38 as follows:
39 (1) The term "independent adjuster" means any person, firm, associ-
40 ation or corporation who[,] or [which,] that for money, commission or
41 any other thing of value, acts [in this state] on behalf of an insurer
42 in the work of investigating and adjusting claims arising under insur-
43 ance contracts issued by such insurer and who performs such duties
44 required by such insurer as are incidental to such claims; any person,
45 firm, association or corporation who or that for money, commission or
46 any other thing of value, pays claims on behalf of an insurer; and [also
47 includes] any person who for compensation or anything of value investi-
48 gates and adjusts claims on behalf of any independent adjuster, except
49 that such term shall not include:
50 (A) any officer, director or regular salaried employee of an author-
51 ized insurer or entity licensed pursuant to article forty-four of the
52 public health law providing comprehensive health service plans (as used
53 in this paragraph, a "health maintenance organization"), or any manager
54 thereof, individual or corporate, or the manager, agent or general agent
55 of any department thereof, individual or corporate, or attorney in fact
56 of any reciprocal insurer or Lloyds underwriter, or marine underwriting

1 office, unless acting as an auto body repair estimator as defined in
2 subsection (j) of this section;
3 (B) any officer, director or regular salaried employee of an insurer
4 authorized to write accident and health insurance, a corporation
5 licensed under article forty-three of this chapter (collectively, as
6 used in this paragraph, a "health insurer") or a health maintenance
7 organization, or any manager thereof, individual or corporate, when the
8 claim to be adjusted is issued [or administered] by another health
9 insurer or health maintenance organization within the same holding
10 company system as the health insurer or health maintenance organization
11 adjusting the claim;
12 (C) [any officer, director or regular salaried employee of an article
13 fifteen holding company or a controlled person within such holding
14 company system providing administrative services within that holding
15 company, or any manager thereof, individual or corporate, when the claim
16 to be adjusted is submitted for payment under a health benefit plan that
17 is issued or administered by a health insurer or health maintenance
18 organization within that same holding company system;
19 (D)] any officer, director or regular salaried employee of an author-
20 ized insurer that is licensed to write the kind of insurance to be
21 adjusted, or any manager thereof, individual or corporate, when the
22 claim to be adjusted is pursuant to a policy that is issued [or adminis-
23 tered] by another insurer within the same holding company system as the
24 authorized insurer adjusting the claim, unless acting as an auto body
25 repair estimator as defined in subsection (j) of this section;
26 [(E)] <u>(D)</u> any officer, director or regular salaried employee of an
27 authorized life insurance company, or any manager thereof, individual or
28 corporate, or the manager, agent or general agent of any department
29 thereof, individual or corporate, when the claim to be adjusted is
30 submitted under an insurance contract issued by another insurer and the
31 claim: (i) is within the scope of a contract of reinsurance between the
32 two insurers for all of the underlying risks and none of the underlying
33 risks are later reinsured back to the ceding insurer <u>or an affiliate,</u>
34 <u>parent or subsidiary of the ceding insurer</u>; and (ii) relates to a kind
35 of insurance that the authorized life insurance company adjusting the
36 claim is licensed to write;
37 <u>(E) any officer, director or regular salaried employee of a licensed</u>
38 <u>independent adjuster who does not investigate or adjust claims;</u>
39 (F) any adjustment bureau or association owned and maintained by
40 insurers to adjust or investigate losses, or any regular salaried
41 employee or manager thereof who devotes substantially all of his time to
42 the business of such bureau or association, unless acting as an auto
43 body repair estimator as defined in subsection (j) of this section;
44 (G) any licensed agent of an authorized insurer who adjusts losses for
45 such insurer solely under policies issued through his or its agency,
46 provided the agent receives no compensation for such services in excess
47 of fifty dollars per loss adjusted;
48 (H) any licensed attorney at law of this state;
49 (I) any average adjuster or adjuster of maritime losses; or
50 (J) any agent or other representative of an insurer authorized to
51 issue life and annuity contracts, provided he receives no compensation
52 for such services.
53 § 123. The insurance law is amended by adding a new section 9112 to
54 read as follows:
55 <u>§ 9112. Fee on insurance claims processed by an independent adjuster.</u>
56 <u>(a) An independent adjuster shall pay a fee of one dollar per claim for</u>

1 each insurance claim over twenty dollars in value that it investigates,
2 adjusts or pays in this state. The fee shall be paid on a monthly basis
3 to the commissioner of health or the commissioner of health's designee
4 for deposit into the health care reform act resources fund authorized by
5 section ninety-two-dd of the state finance law. The commissioner of
6 health may permit an independent adjuster that has at least twelve full
7 months of payment experience to make annual, rather than monthly
8 payments, based on an annual demonstration by the independent adjuster
9 through the adjusters prior years' payments under this section that its
10 payments are not expected to exceed twenty-five thousand dollars annual-
11 ly.
12 (b) Fees paid pursuant to this section shall be subject to audit and
13 collection by the commissioner of health in accordance with the
14 provisions of subdivision eight-a of section twenty-eight hundred
15 seven-j of the public health law.
16 (c) If more than one independent adjuster is involved in investigat-
17 ing, adjusting or paying a claim on behalf of an insurer, the adjusters
18 may enter into an apportionment agreement to satisfy the payment obli-
19 gations of this section. Aggregate payments must total one hundred
20 percent of the amount due. Apportionment agreements and any modifica-
21 tions, amendments or terminations thereof must be in writing, signed by
22 all parties and retained for a period of not less than six years after
23 termination of the agreement. The independent adjuster shall make the
24 agreement available to the commissioner of health upon request for audit
25 verification purposes.
26 (d) The fee required by subsection (a) of this section shall not be
27 assessed upon insurance claims investigated, adjusted or paid in
28 conjunction with:
29 (1) Part A or B of title XVIII of the Social Security Act;
30 (2) Title XIX of the Social Security Act;
31 (3) the Federal Employee Health Benefits Act, Chapter 5 U.S. Code,
32 section 8901-8913;
33 (4) the Child Health Insurance Program authorized by section twenty-
34 five hundred eleven of the public health law;
35 (5) the Family Health Plus Program authorized by section three hundred
36 sixty-nine-ee of the social services law;
37 (6) claims arising under an insurance contract issued by an insurer
38 subject to the franchise tax on gross direct premiums pursuant to arti-
39 cle thirty-three of the tax law;
40 (7) claims arising under an insurance contract issued by an insurer
41 licensed under article forty-three, forty-five, forty-seven or sixty-
42 seven of this chapter or the state insurance fund;
43 (8) claims arising under a contract issued by a licensed health main-
44 tenance organization pursuant to article forty-four of the public health
45 law;
46 (9) claims arising under a contract issued by a charitable annuity
47 society that complies with the requirements of section one thousand one
48 hundred ten of this chapter; or
49 (10) claims arising under an insurance policy, where the gross premium
50 is taxable pursuant to subsection (d) of section two thousand one
51 hundred eighteen of this chapter.
52 § 123-a. Subdivision 1 of section 2807-y of the public health law, as
53 added by section 67 of part B of chapter 58 of the laws of 2005, is
54 amended to read as follows:
55 1. For periods on and after January first, two thousand five, the
56 commissioner is authorized to contract with the article forty-three

1 insurance law plans, or such other contractors as the commissioner shall
2 designate, to receive and distribute funds from the allowances [and],
3 assessments and fees established pursuant to:
4 (a) subdivision eighteen of section twenty-eight hundred seven-c of
5 this article;
6 (b) section twenty-eight hundred seven-j of this article;
7 (c) section twenty-eight hundred seven-s of this article;
8 (d) section twenty-eight hundred seven-t of this article;
9 (e) section twenty-eight hundred seven-v of this article;
10 (f) section twenty-eight hundred seven-d of this article;
11 (g) section thirty-six hundred fourteen-a of this chapter; [and]
12 (h) section three hundred sixty-seven-i of the social services law[.];
13 and
14 (i) section nine thousand one hundred twelve of the insurance law.
15 § 123-b. Subdivision 8-a of section 2807-j of the public health law is
16 amended by adding a new paragraph (g) to read as follows:
17 (g) Notwithstanding any inconsistent provision of section one hundred
18 twelve or one hundred sixty-three of the state finance law or any other
19 law, at the discretion of the commissioner without a competitive bid or
20 request for proposal process, contracts in effect as of April first, two
21 thousand nine for the purpose of conducting audits of payor and provider
22 compliance with the requirements of this section and sections twenty-
23 eight hundred seven-s and twenty-eight hundred seven-t of this article
24 may be amended as necessary for the purpose of conducting payor compli-
25 ance audits with regard to the requirements of subdivision thirteen of
26 this section and section nine thousand one hundred twelve of the insur-
27 ance law.
28 § 124. Paragraph (kk) of subdivision 1 of section 2807-v of the public
29 health law, as amended by section 5 of part B of chapter 58 of the laws
30 of 2008, is amended to read as follows:
31 (kk) Funds shall be deposited by the commissioner, within amounts
32 appropriated, and the state comptroller is hereby authorized and
33 directed to receive for deposit to the credit of the state special
34 revenue funds -- other, HCRA transfer fund, medical assistance account,
35 or any successor fund or account, for purposes of funding the state
36 share of [Medicaid] Medical Assistance Program expenditures [for pharma-
37 cy services] from the tobacco control and insurance initiatives pool
38 established for the following periods in the following amounts:
39 (i) thirty-eight million eight hundred thousand dollars for the period
40 January first, two thousand two through December thirty-first, two thou-
41 sand two;
42 (ii) up to two hundred ninety-five million dollars for the period
43 January first, two thousand three through December thirty-first, two
44 thousand three;
45 (iii) up to four hundred seventy-two million dollars for the period
46 January first, two thousand four through December thirty-first, two
47 thousand four;
48 (iv) up to nine hundred million dollars for the period January first,
49 two thousand five through December thirty-first, two thousand five;
50 (v) up to eight hundred sixty-six million three hundred thousand
51 dollars for the period January first, two thousand six through December
52 thirty-first, two thousand six;
53 (vi) up to six hundred sixteen million seven hundred thousand dollars
54 for the period January first, two thousand seven through December thir-
55 ty-first, two thousand seven;

1 (vii) up to five hundred seventy-eight million nine hundred twenty-
2 five thousand dollars for the period January first, two thousand eight
3 through December thirty-first, two thousand eight; <u>and</u>
4 (viii) [up to five hundred fifty-one million dollars for the period]
5 <u>within amounts appropriated on and after</u> January first, two thousand
6 nine [through December thirty-first, two thousand nine;
7 (ix) up to three hundred twenty million six hundred twenty-five thou-
8 sand dollars for the period January first, two thousand ten through
9 December thirty-first, two thousand ten; and
10 (x) up to sixty-one million one hundred twenty-five thousand dollars
11 for the period January first, two thousand eleven through March thirty-
12 first, two thousand eleven].
13 § 125. Paragraphs (a) and (b) of subdivision 2 of section 480-a of the
14 tax law, as added by chapter 190 of the laws of 1990, are amended to
15 read as follows:
16 (a) <u>(i)</u> Every retail dealer and every person owning or, if the owner
17 is not the operator, then any person operating one or more vending
18 machines through which cigarettes or tobacco products are sold in this
19 state, who is required under section eleven hundred thirty-six of this
20 chapter to file a return for the quarterly period ending on the last day
21 of August, nineteen hundred ninety or for the quarterly period ending on
22 the last day of August in any year thereafter, [shall] <u>must</u> file an
23 application for registration under this section with [such] <u>that</u> quar-
24 terly return, in such form as shall be prescribed by the commissioner
25 [of taxation and finance].
26 <u>(ii)</u> Each retail dealer [shall] <u>must</u> pay an application fee with
27 [such] <u>the</u> quarterly return [of one hundred dollars] <u>described by</u>
28 <u>subparagraph (i) of this paragraph</u> for each retail place of business in
29 this state through which it sells cigarettes or tobacco products<u>, which</u>
30 <u>is based on gross sales of that place of business during the previous</u>
31 <u>calendar year. The application fee is: one thousand dollars for each</u>
32 <u>retail location with gross sales totaling less than one million dollars;</u>
33 <u>two thousand five hundred dollars for each retail location with gross</u>
34 <u>sales totaling at least one million dollars but less than ten million</u>
35 <u>dollars; and five thousand dollars for each retail location with gross</u>
36 <u>sales totaling at least ten million dollars</u>.
37 <u>(iii)</u> Every person who owns or, if the owner is not the operator, then
38 any person who operates one or more vending machines through which ciga-
39 rettes or tobacco products are sold in this state, regardless of whether
40 located on the premises of the vending machine owner or, if the owner is
41 not the operator, then the premises of the operator or the premises of
42 any other person, [shall] <u>must</u> pay an application fee with [such] <u>the</u>
43 quarterly return [of twenty-five dollars] <u>described by subparagraph (i)</u>
44 <u>of this paragraph</u> for each [such] vending machine<u>, which is based on</u>
45 <u>gross sales of that vending machine during the previous calendar year.</u>
46 <u>The application fee is: two hundred fifty dollars for each vending</u>
47 <u>machine with gross sales totaling less than one hundred thousand</u>
48 <u>dollars; six hundred twenty-five dollars for each vending machine with</u>
49 <u>gross sales totaling at least one hundred thousand dollars but less than</u>
50 <u>one million dollars; and one thousand two hundred fifty dollars for each</u>
51 <u>vending machine with gross sales totaling at least one million dollars</u>.
52 The department [shall] <u>will</u> issue a registration certificate, as
53 prescribed by the commissioner [of taxation and finance], after receipt
54 of a registration application and the appropriate registration fee,
55 prior to the next succeeding January first.

1 (b) Every retail dealer and every person who owns or, if the owner is
2 not the operator, then any person who operates one or more vending
3 machines through which cigarettes or tobacco products are sold in this
4 state who commences business after the last day of August, nineteen
5 hundred ninety, or who commences selling cigarettes or tobacco products
6 at retail through a new or different place of business in this state
7 after such date, or who commences selling cigarettes or tobacco products
8 through new or different vending machines after such date, [shall] must
9 file with the commissioner [of taxation and finance] an application for
10 registration, in a form prescribed by him or her, at least thirty days
11 prior to commencing [such] business or commencing [such] sales. Each
12 [such] application [shall] must be accompanied by an application fee [of
13 one hundred dollars] for each retail place of business [to be regis-
14 tered] and [twenty-five dollars for] each vending machine to be regis-
15 tered. The amount of the application fee is determined by subparagraphs
16 (ii) and (iii) of paragraph (a) of this subdivision, except that any
17 retail location or vending machine with zero dollars in gross sales
18 during the previous calendar year is subject to the lowest application
19 fee required by such subparagraphs. The department, within ten days
20 after receipt of an application for registration under this paragraph
21 and payment of the proper fee for application for registration, [shall]
22 will issue a registration certificate, as prescribed by the commission-
23 er, for each retail place of business or cigarette or tobacco products
24 vending machine registered.
25 § 125-a. Subdivision 3 of section 480-a of the tax law, as amended by
26 chapter 262 of the laws of 2000, is amended to read as follows:
27 3. In addition to any other penalty imposed by this chapter: (a) Any
28 retail dealer who violates the provisions of this section [shall], after
29 due notice and an opportunity for a hearing, for a first violation [be]
30 is liable for a civil fine not less than five [hundred] thousand dollars
31 but not to exceed [two] twenty-five thousand dollars and for a second or
32 subsequent violation within three years following a prior finding of
33 violation [be] is liable for a civil fine not less than [one] ten thou-
34 sand dollars but not to exceed [three thousand five hundred] thirty-five
35 thousand dollars; or
36 (b) Any person who owns or, if the owner is not the operator, then any
37 person who operates one or more vending machines through which ciga-
38 rettes or tobacco products are sold in this state and who violates the
39 provisions of this section [shall], after due notice and an opportunity
40 for a hearing, for a first violation [be] is liable for a civil fine not
41 less than [seventy-five] seven hundred fifty dollars but not to exceed
42 two [hundred] thousand dollars and for a second or subsequent violation
43 within three years following a prior finding of violation be liable for
44 a civil fine not less than two [hundred] thousand dollars but not to
45 exceed six [hundred] thousand dollars.
46 § 125-b. Section 482 of the tax law, as amended by section 3 of part
47 RR-1 of chapter 57 of the laws of 2008, is amended to read as follows:
48 § 482. Deposit and disposition of revenue. (a) All taxes, fees, inter-
49 est and penalties collected or received by the commissioner under this
50 article and article twenty-A of this chapter shall be deposited and
51 disposed of pursuant to the provisions of section one hundred seventy-
52 one-a of this chapter. (b) From the taxes, interest and penalties
53 collected or received by the commissioner under sections four hundred
54 seventy-one and four hundred seventy-one-a of this article, effective on
55 and after March first, two thousand, forty-nine and fifty-five
56 hundredths, and effective on and after February first, two thousand two,

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1 forty-three and seventy hundredths; and effective on and after May
2 first, two thousand two, sixty-four and fifty-five hundredths; and
3 effective on and after April first, two thousand three, sixty-one and
4 twenty-two hundredths percent; and effective on and after June third,
5 two thousand eight, seventy and sixty-three hundredths percent collected
6 or received under [such] those sections [shall] must be deposited to the
7 credit of the tobacco control and insurance initiatives pool to be
8 established and distributed by the commissioner of health in accordance
9 with section twenty-eight hundred seven-v of the public health law. (c)
10 From the fees collected or received by the commissioner under subdivi-
11 sion two of section four hundred eighty-a of this article, effective on
12 or after September first, two thousand nine, any monies collected or
13 received under that section in excess of three million dollars must be
14 deposited to the credit of the tobacco control and insurance initiatives
15 pool to be distributed by the commissioner of health in accordance with
16 section twenty-eight hundred seven-v of the public health law.
17 § 125-c. Subdivisions (a) and (b) of section 92-dd of the state
18 finance law, as added by section 89 of part B of chapter 58 of the laws
19 of 2005, are amended to read as follows:
20 (a) On and after April first, two thousand five, such fund shall
21 consist of the revenues heretofore and hereafter collected or required
22 to be deposited pursuant to paragraph (a) of subdivision eighteen of
23 section twenty-eight hundred seven-c, and sections twenty-eight hundred
24 seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t
25 of the public health law, subdivisions (b) and (c) of section four
26 hundred eighty-two of the tax law and required to be credited to the
27 tobacco control and insurance initiatives pool, subparagraph (O) of
28 paragraph four of subsection (j) of section four thousand three hundred
29 one of the insurance law, section twenty-seven of part A of chapter one
30 of the laws of two thousand two and all other moneys credited or trans-
31 ferred thereto from any other fund or source pursuant to law.
32 (b) The pool administrator under contract with the commissioner of
33 health pursuant to section twenty-eight hundred seven-y of the public
34 health law shall continue to collect moneys required to be collected or
35 deposited pursuant to paragraph (a) of subdivision eighteen of section
36 twenty-eight hundred seven-c, and sections twenty-eight hundred seven-j,
37 twenty-eight hundred seven-s and twenty-eight hundred seven-t of the
38 public health law, and shall deposit such moneys in the HCRA resources
39 fund. The comptroller shall deposit moneys collected or required to be
40 deposited pursuant to subdivisions (b) and (c) of section four hundred
41 eighty-two of the tax law and required to be credited to the tobacco
42 control and insurance initiatives pool, subparagraph (O) of paragraph
43 four of subsection (j) of section four thousand three hundred one of the
44 insurance law, section twenty-seven of part A of chapter one of the laws
45 of two thousand two and all other moneys credited or transferred thereto
46 from any other fund or source pursuant to law in the HCRA resources
47 fund.
48 § 126. Notwithstanding any inconsistent provision of law, rule or
49 regulation, for purposes of implementing the provisions of the public
50 health law and the social services law, references to titles XIX and XXI
51 of the federal social security act in the public health law and the
52 social services law shall be deemed to include and also to mean any
53 successor titles thereto under the federal social security act.
54 § 127. Notwithstanding any inconsistent provision of law, rule or
55 regulation, the effectiveness of subdivisions 4, 7, 7-a and 7-b of
56 section 2807 of the public health law and section 18 of chapter 2 of the

1 laws of 1988, as they relate to time frames for notice, approval or
2 certification of rates of payment, are hereby suspended and shall, for
3 purposes of implementing the provisions of this act, be deemed to have
4 been without any force or effect from and after October 1, 2008 for such
5 rates effective for the period January 1, 2008 through December 31,
6 2008.
7 § 128. Severability clause. If any clause, sentence, paragraph, subdi-
8 vision, section or part of this act shall be adjudged by any court of
9 competent jurisdiction to be invalid, such judgment shall not affect,
10 impair or invalidate the remainder thereof, but shall be confined in its
11 operation to the clause, sentence, paragraph, subdivision, section or
12 part thereof directly involved in the controversy in which such judgment
13 shall have been rendered. It is hereby declared to be the intent of the
14 legislature that this act would have been enacted even if such invalid
15 provisions had not been included herein.
16 § 129. This act shall take effect immediately and shall be deemed to
17 have been in full force and effect on and after March 1, 2009; provided
18 that:
19 (a) sections forty-three, forty-four, seventy-four and seventy-eight
20 through eighty-one of this act shall take effect April 1, 2009;
21 (b) sections forty-five and seventy-three of this act shall take
22 effect June 1, 2009;
23 (c) sections two through ten, twelve through twenty-three, twenty-five
24 through twenty-seven, sixty-two and one hundred four through one hundred
25 twelve of this act shall take effect July 1, 2009;
26 (d) sections twenty-nine, thirty-eight through forty-two, forty-six,
27 forty-seven, forty-eight and seventy-five of this act shall take effect
28 September 1, 2009;
29 (e) sections fifty through fifty-nine, one hundred twenty-two and one
30 hundred twenty-three of this act shall take effect October 1, 2009;
31 (f) sections sixty, sixty-one, sixty-three through sixty-seven,
32 sixty-seven-a, seventy-seven-b, one hundred eighteen and one hundred
33 nineteen of this act shall take effect April 1, 2010;
34 (g) section twenty-five of this act shall expire and be deemed
35 repealed April 1, 2013;
36 (h) section twenty-six of this act shall expire and be deemed repealed
37 April 1, 2014;
38 (h-1) section one hundred twenty-five of this act applies only to fees
39 related to applications for registration for the 2010 calendar year and
40 thereafter;
41 (h-2) sections one hundred twenty-five-a, one hundred twenty-five-b,
42 and one hundred twenty-five-c of this act shall take effect September 1,
43 2009.
44 (i) any rules or regulations necessary to implement the provisions of
45 this act may be promulgated and any procedures, forms, or instructions
46 necessary for such implementation may be adopted and issued on or after
47 the date this act shall have become a law;
48 (j) this act shall not be construed to alter, change, affect, impair
49 or defeat any rights, obligations, duties or interests accrued, incurred
50 or conferred prior to the effective date of this act;
51 (k) the commissioner of health and the superintendent of insurance and
52 any appropriate council may take any steps necessary to implement this
53 act prior to its effect date;
54 (l) notwithstanding any inconsistent provision of the state adminis-
55 trative procedure act or any other provision of law, rule or regulation,
56 the commissioner of health and the superintendent of insurance and any

1 appropriate council is authorized to adopt or amend or promulgate on an
2 emergency basis any regulation he or she or such council determines
3 necessary to implement any provision of this act on its effective date;
4 (m) the provisions of this act shall become effective notwithstanding
5 the failure of the commissioner of health or the superintendent of
6 insurance or any council to adopt or amend or promulgate regulations
7 implementing this act;
8 (n) the amendments to section 364-f of the social services law made by
9 section thirty of this act shall not affect the expiration of such
10 section and shall be deemed to expire therewith;
11 (o) the amendments to subdivision 7 of section 274 of the public
12 health law made by section forty-five of this act shall not affect the
13 repeal of such section and shall be deemed repealed therewith;
14 (p) the amendments to paragraph (a-1) of subdivision 4 of section
15 365-a of the social services law made by section forty-six of this act
16 shall not affect the expiration of such paragraph and shall be deemed to
17 expire therewith;
18 (q) the amendments to subparagraph (iii) of paragraph (c) of subdivi-
19 sion 6 of section 367-a of the social services law made by section
20 forty-seven of this act shall not affect the expiration of such para-
21 graph and shall be deemed to expire therewith;
22 (r) the amendments to subdivision 9 of section 367-a of the social
23 services law made by sections forty-eight and forty-nine of this act
24 shall not affect the expiration of such subdivision and shall be deemed
25 to expire therewith;
26 (s) section 279 of the public health law as added by section fifty of
27 this act shall not affect the repeal of article 2-A of such law and
28 shall be deemed repealed therewith;
29 (t) section sixty-eight of this act shall take effect on the same date
30 and in the same manner as the amendments made to subparagraph (iii) of
31 paragraph (a) of subdivision 2 of section 369-ee of the social services
32 law by section 28 of part E of chapter 63 of the laws of 2005, takes
33 effect;
34 (u) the amendments to subdivision 8 of section 2510 of the public
35 health law made by section seventy-nine of this act shall not affect the
36 expiration of such subdivision and shall be deemed to expire therewith;
37 (v) the amendments to subdivision 5 of section 2511 of the public
38 health law made by section eighty of this act shall not affect the expi-
39 ration of such subdivision and shall be deemed to expire therewith;
40 (w) the amendments to section 2807-s of the public health law made by
41 sections one hundred and one hundred fourteen of this act shall not
42 affect the expiration of such section and shall be deemed to expire
43 therewith;
44 (x) the amendments to paragraph (c) of subdivision 5-a of section
45 2807-k of the public health law made by section one hundred two of this
46 act shall not affect the expiration of such subdivision and shall be
47 deemed to expire therewith;
48 (y) the amendments to subdivision one of section 241 of the elder law
49 made by section one hundred five of this act shall not affect the expi-
50 ration of such subdivision and shall be deemed to expire therewith; and
51 (z) the amendments to section 2807-j of the public health law made by
52 sections one hundred thirteen and one hundred twenty-three-b of this act
53 shall not affect the expiration of such section and shall be deemed to
54 expire therewith.

55 PART D

1 Section 1. The legislature finds that New York leads the nation in
2 Medicaid spending on long-term care services and that Medicaid spending
3 on home and personal care services are among the fastest growing areas
4 of Medicaid expenditure despite the fact that the number of benefici-
5 aries receiving these services has not increased. Current processes for
6 assessing the service needs of elderly and disabled beneficiaries do not
7 consistently result in appropriate placement and services and show wide
8 variation across the state. Current reimbursement levels and methodol-
9 ogies do not ensure quality or efficiency, with providers in the same
10 community serving comparable populations receiving markedly different
11 Medicaid payments. It is the intent of this legislation to ensure that
12 elderly and disabled beneficiaries have access to the right level of
13 care in the most appropriate setting; to implement transparent and accu-
14 rate reimbursement systems for nursing and home care services; and to
15 reward quality and efficiency as well as to make targeted investments to
16 improve long-term care services.
17 § 1-a. Short title. This act shall be known and may be cited as "The
18 Long-Term Care Reform Act".
19 § 2. Subdivision 2-b of section 2808 of the public health law is
20 amended by adding a new paragraph (h) to read as follows:
21 (h) Notwithstanding any other provision of this section or any other
22 contrary provision of law or regulation, this subdivision shall be null
23 and void as of March first, two thousand nine.
24 § 3. Section 2808 of the public health law is amended by adding a new
25 subdivision 2-c to read as follows:
26 2-c. (a) Notwithstanding any inconsistent provision of this section
27 or any other contrary provision of law and subject to the availability
28 of federal financial participation, the operating costs of rates of
29 payment by governmental agencies for inpatient services provided on and
30 after March first, two thousand nine shall be determined in accordance
31 with the following:
32 (i) The operating cost component of facilities' rates will be computed
33 on a regional basis, using allowable operating costs, as determined by
34 the commissioner, from the two thousand five certified cost reports from
35 facilities on file with the department as of December first, two thou-
36 sand eight, as adjusted for inflation in accordance with paragraph (c)
37 of subdivision ten of section twenty-eight hundred seven-c of this arti-
38 cle. For the purpose of this paragraph, the regions of the state shall
39 be as follows:
40 (A) New York city, consisting of the counties of Bronx, New York,
41 Kings, Queens and Richmond;
42 (B) Long Island, consisting of the counties of Nassau and Suffolk;
43 (C) Northern Metropolitan, consisting of the counties of Columbia,
44 Delaware, Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and West-
45 chester;
46 (D) Northeast consisting of the counties of Albany, Clinton, Essex,
47 Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schohar-
48 ie, Warren and Washington;
49 (E) Utica/Watertown, consisting of the counties of Franklin, Hamilton,
50 Herkimer, Lewis, Oswego, Otsego, St. Lawrence, Jefferson, Chenango,
51 Madison and Oneida;
52 (F) Central, consisting of the counties of Broome, Cayuga, Chemung,
53 Cortland, Onondaga, Schuyler, Steuben, Tioga and Tompkins;
54 (G) Rochester, consisting of Monroe, Ontario, Livingston, Seneca,
55 Wayne and Yates; and

1 (H) Western, consisting of the counties of Allegany, Cattaraugus,
2 Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming.
3 (ii) The capital component of rates on and after January first, two
4 thousand nine shall fully reflect the cost of local property taxes and
5 payments made in lieu of local property taxes, as reported in each
6 facility's cost report submitted for the year two years prior to the
7 rate year.
8 (iii) The direct component of the operating component of rates shall
9 be subject to case mix adjustment through application of the minimum
10 data set (MDS) classification employed by the federal government with
11 regard to payments to skilled nursing facilities pursuant to title XVIII
12 of the federal social security act (Medicare) to reflect patient service
13 intensity, as may be adjusted by the commissioner. Such adjustments
14 shall be made semi-annually in each calendar year, and both the adjust-
15 ments and the related patient classifications in each facility shall be
16 subject to audit review in accordance with regulations promulgated by
17 the commissioner.
18 (iv) Notwithstanding any contrary provision of this section or any
19 other contrary provision of law, rule or regulation, rates of payment
20 for inpatient services provided on and after March first, two thousand
21 nine by residential health care facilities shall, except for the estab-
22 lishment of any regional prices, be calculated utilizing only the number
23 of patients properly assessed and reported in each patient classifica-
24 tion group and eligible for medical assistance pursuant to title eleven
25 of article five of the social services law.
26 (v) Notwithstanding subparagraph (i) of paragraph (a) of this subdivi-
27 sion, the operating cost component of the rates, effective March first,
28 two thousand nine for the following categories of facilities, as estab-
29 lished pursuant to applicable regulations, shall reflect the rates in
30 effect for such facilities on December thirty-first, two thousand six,
31 as adjusted for inflation in accordance with paragraph (c) of subdivi-
32 sion ten of section twenty-eight hundred seven-c of this article: (A)
33 AIDS facilities or discrete AIDS units within facilities, (B) discrete
34 units for residents receiving care in a long-term inpatient rehabili-
35 tation program for traumatic brain injured persons, (C) discrete units
36 providing specialized programs for residents requiring behavioral inter-
37 ventions, (D) discrete units for long-term ventilator dependent resi-
38 dents, and (E) facilities or discrete units within facilities that
39 provide extensive nursing, medical, psychological and counseling support
40 services solely to children. Such rate shall remain in effect until the
41 department, in consultation with representatives of the nursing home
42 industry, as selected by the commissioner, develops a regional pricing
43 or alternative methodology for determining such rates.
44 (b) The operating component of rates of payment, as adjusted for
45 inflation in accordance with subparagraph (i) of paragraph (a) of this
46 subdivision, shall, by no later than the two thousand twelve rate peri-
47 od, be based on allowable costs, as reported on annual facility cost
48 reports submitted as required by the commissioner, from a base year
49 period no earlier than three years prior to the initial rate year.
50 Thereafter, the base year utilized for rate-setting purposes shall be
51 updated to be current no less frequently than every six years; provided,
52 however, that for the purposes of this paragraph, current shall mean
53 that the operating components of the initial rate year, utilizing such
54 updated base year, shall reflect allowable costs as reported in annual
55 facility cost reports for periods no earlier than three years prior to

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1 such initial rate year, as adjusted for inflation in accordance with
2 subparagraph (i) of paragraph (a) of this subdivision.
3 (c) The operating component of rates may be adjusted to reflect a per
4 diem add-on, as determined by the commissioner, for the following
5 patients: (i) each patient whose body mass index is greater than thir-
6 ty-five; (ii) each patient who qualifies under the RUG-III impaired
7 cognition and behavioral problems categories, or has been diagnosed with
8 Alzheimer's disease or dementia, and is classified in the reduced phys-
9 ical functions A, B, or C, or in behavioral problems A or B categories,
10 and has an activities of daily living index score of less than ten;
11 (iii) each patient who qualifies for extended care as a result of trau-
12 matic brain injury as defined by applicable regulations.
13 (d) Notwithstanding any inconsistent provision of this subdivision or
14 any other contrary provision of law, the commissioner may, subject to
15 the availability of federal financial participation, make additional
16 transition adjustments to rates of payment for residential health care
17 facilities for the periods beginning March first, two thousand nine
18 through December thirty-first, two thousand thirteen to facilitate
19 improvements in residential health care facilities operations and
20 finances in accordance with the following:
21 (i) Residential health care facilities eligible for distributions
22 pursuant to this paragraph shall be those non-public facilities and
23 state operated public residential health care facilities, which have an
24 average annual Medicaid utilization percentage of fifty percent or
25 greater, for the period two years prior to the rate year and which, as
26 determined by the commissioner, experience a reduction in their Medicaid
27 revenue of a percentage as determined by the commissioner as a result of
28 the application of regional pricing as described in this subdivision.
29 (ii) Transition funds distributed pursuant to this paragraph shall be
30 allocated based on each eligible facility's relative need as determined
31 by the commissioner.
32 (iii) Transition funding pursuant to this paragraph shall be available
33 for the following periods and in the following amounts:
34 (A) for the period March first, two thousand nine through March thir-
35 ty-first, two thousand ten, up to seventy-five million dollars;
36 (B) for the period April first, two thousand ten through March thir-
37 ty-first, two thousand eleven, up to seventy-five million dollars;
38 (C) for the period April first, two thousand eleven through March
39 thirty-first, two thousand twelve, up to fifty million dollars;
40 (D) for the period April first, two thousand twelve through March
41 thirty-first, two thousand thirteen, up to twenty-five million dollars.
42 (iv) Payments made pursuant to this paragraph shall not be subject to
43 retroactive adjustment or reconciliation and may be added to rates of
44 payment or made as lump sum payments.
45 (v) Each residential health care facility receiving funds pursuant to
46 this paragraph shall, as a condition for eligibility for such funds,
47 adopt a resolution of the board of directors or submit a report by the
48 owner acceptable to the commissioner setting forth its current financial
49 condition and a plan for reforming and improving such financial condi-
50 tion, including ongoing board or owner oversight, and shall, after two
51 years, issue a report as adopted by each such board or issue a further
52 report by the owner acceptable to the commissioner setting forth what
53 progress has been achieved regarding such improvement, provided, howev-
54 er, if such further report is not submitted to the commissioner, or if
55 such further report fails to set forth adequate progress, as determined
56 by the commissioner, the commissioner may deem such facility ineligible

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1 for further distributions pursuant to this paragraph and may redistrib-
2 ute such further distributions to other eligible facilities in accord-
3 ance with the provisions of this paragraph. The commissioner shall be
4 provided with copies of all such resolutions and reports.
5 (e) The commissioner may promulgate regulations, including emergency
6 regulations, to implement the provisions of this subdivision.
7 § 4. Subdivision 11 of section 2808 of the public health law, as
8 amended by chapter 474 of the laws of 1996, is amended to read as
9 follows:
10 11. Residential health care facility reimbursement rate promulgation.
11 With regard to a residential health care facility, the provisions of
12 [paragraph (a) of] subdivision seven of section twenty-eight hundred
13 seven of this article relating to advance notification of rates shall
14 not apply to prospective or retroactive adjustments to rates that are
15 based on rate appeals filed by such facility, audits, changes in patient
16 conditions or acuity levels, the correction of errors or omissions of
17 data or errors in the computations of such rates, the submission of cost
18 report data from facilities without an established cost basis, the judi-
19 cial annulment or invalidation of existing rates or changes in the meth-
20 odology used to compute rates which changes are promulgated following
21 the judicial annulment or invalidation of existing rates or as otherwise
22 authorized by law. Notwithstanding any inconsistent provision of law or
23 regulation, as of March first, two thousand nine, with regard to admin-
24 istrative rate appeals, the department will only review such appeals for
25 (a) the correction of computational errors or omissions of data by the
26 department in determining the operating rate based upon the information
27 provided to the department prior to the computation of the rate, (b)
28 capital cost reimbursement, or (c) such reasons as the commissioner
29 determines are appropriate. The department will not consider any
30 revisions made to a facility's annual cost report for operating rate
31 adjustment purposes later than the due date established by the commis-
32 sioner.
33 § 5. Paragraph d of subdivision 20 of section 2808 of the public
34 health law is relettered paragraph e and a new paragraph d is added to
35 read as follows:
36 d. (i) Capital cost reimbursement for proprietary residential health
37 care facilities. Any proprietary facility which otherwise would be enti-
38 tled to residual reimbursement as provided under applicable regulation,
39 may have the capital cost component of its rate recalculated by the
40 department to take into account any capital improvements and/or reno-
41 vations made to the facility's existing infrastructure for the purpose
42 of converting beds to alternative long-term care uses or protecting the
43 health and safety of patients, subject to the approval of the commis-
44 sioner and all applicable certificate of need requirements.
45 (ii) The department shall evaluate the adequacy of current capital
46 cost reimbursement for voluntary residential health care facilities.
47 § 6. Notwithstanding any contrary provision of law, if the commission-
48 er of health determines that federal financial participation will not be
49 available with regard to the provisions of subparagraph (ii) of para-
50 graph (d) of subdivision 2-c of section 2808 of the public health law,
51 the commissioner of health may deem such provision null and void and
52 instead may allocate funds pursuant to such subparagraph (ii) propor-
53 tionally, based on each eligible facility's relative share of Medicaid
54 days in the year two years prior to the distribution year.
55 § 7. Subdivision 21 of section 2808 of the public health law, as added
56 by section 27 of part C of chapter 58 of the laws of 2004 and paragraphs

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1 (a), (b), (f), (g) and (h) as amended by chapter 746 of the laws of
2 2004, is amended to read as follows:
3 21. (a) Notwithstanding any inconsistent provision of law or regu-
4 lation to the contrary, for the purposes specified in subdivision nine-
5 teen of this section, the commissioner shall adjust medical assistance
6 rates of payment established pursuant to this article for services
7 provided on and after October first, two thousand four through December
8 thirty-first, two thousand four and annually thereafter for services
9 provided on and after January first, two thousand five, to include a
10 rate adjustment to assist qualifying facilities pursuant to this subdi-
11 vision, provided, however, that public residential health care facili-
12 ties shall not be eligible for rate adjustments pursuant to this subdi-
13 vision for rate periods on and after April first, two thousand nine.
14 (b) Eligibility for such rate adjustments shall be determined on the
15 basis of each residential health care facility's operating margin over
16 the most recent three-year period for which financial data are available
17 from the RHCF-4 cost report or the institutional cost report. For
18 purposes of the adjustments made for the period October first, two thou-
19 sand four through December thirty-first, two thousand four, financial
20 information for the calendar years two thousand through two thousand two
21 shall be utilized. For each subsequent rate year, the financial data for
22 the three-year period ending two years prior to the applicable rate year
23 shall be utilized for this purpose.
24 (c) Each facility's operating margin for the three-year period shall
25 be calculated by subtracting total operating expenses for the three-year
26 period from total operating revenues for the three-year period, and
27 dividing the result by the total operating revenues for the three-year
28 period, with the result expressed as a percentage. For hospital-based
29 residential health care facilities for which an operating margin cannot
30 be calculated on the basis of the submitted cost reports, the sponsoring
31 hospital's overall three-year operating margin, as reported in the
32 institutional cost report, shall be utilized for this purpose. All
33 facilities with negative operating margins calculated in this way over
34 the three-year period shall be arrayed into quartiles based on the
35 magnitude of the operating margin. Any facility with a positive operat-
36 ing margin for the most recent three-year period, a negative operating
37 margin that places the facility in the quartile of facilities with the
38 smallest negative operating margins, a positive total margin in the most
39 recent year of the three year period, or an average Medicaid utilization
40 percentage of fifty percent or less during the most recent year of the
41 three-year period shall be disqualified from receiving an adjustment
42 pursuant to this subdivision, provided, however, that for rate periods
43 on and after April first, two thousand nine, such disqualification:
44 (i) shall not be applied solely on the basis of a facility's having a
45 positive total margin in the most recent year of such three-year period;
46 (ii) shall be extended to those facilities in the quartile of facili-
47 ties with the second smallest negative operating margins; and
48 (iii) shall also be extended to those facilities with an average Medi-
49 caid utilization percentage of less than seventy percent during the most
50 recent year of the three-year period.
51 (d) For each facility remaining after the exclusions made pursuant to
52 paragraph (c) of this subdivision, the commissioner shall calculate the
53 average annual operating loss for the three-year period by subtracting
54 total operating expenses for the three-year period from total operating
55 revenues for the three-year period, and dividing the result by three,
56 provided, however, that for periods on and after April first, two thou-

1 sand nine, the amount of such average annual operating loss shall be
2 reduced by an amount equal to the amount received by such facility
3 pursuant to subparagraph (ii) of paragraph (a) of subdivision two-b of
4 this section. For this purpose, for hospital-based residential health
5 care facilities for which the average annual operating loss cannot be
6 calculated on the basis of the submitted cost reports, the sponsoring
7 hospital's overall average annual operating loss for the three-year
8 period shall be apportioned to the residential health care facility
9 based on the proportion the residential health care facility's total
10 revenues for the period bears to the total revenues reported by the
11 sponsoring hospital, and such apportioned average annual operating loss
12 shall then be reduced by an amount equal to the amount received by such
13 facility pursuant to subparagraph (ii) of paragraph (a) of subdivision
14 two-b of this section.
15 (e) [Each] For periods prior to April first, two thousand nine, each
16 such facility's qualifying operating loss shall be determined by multi-
17 plying the facility's average annual operating loss for the three-year
18 period as calculated pursuant to paragraph (d) of this subdivision by
19 the applicable percentage shown in the tables below for the quartile
20 within which the facility's negative operating margin for the three-year
21 period is assigned.
22 i. For a facility located in a county with a total population of two
23 hundred thousand or more as determined by the two thousand U.S. Census:

24 First Quartile (lowest operating margins): 30 percent
25 Second Quartile: 15 percent
26 Third Quartile: 7.5 percent

27 ii. For a facility located in a county with a total population of fewer
28 than two hundred thousand as determined by the two thousand U.S. Census:

29 First Quartile (lowest operating margins): 35 percent
30 Second Quartile: 20 percent
31 Third Quartile: 12.5 percent

32 (f) The amount of any facility's financially disadvantaged residential
33 health care facility distribution calculated in accordance with this
34 subdivision shall be reduced by the facility's estimated rate year bene-
35 fit of the two thousand one update to the regional input price adjust-
36 ment factors authorized pursuant to former subdivision seventeen of this
37 section as amended by section 24 of part C of chapter 58 of the laws of
38 2004, or as authorized by subdivision seventeen-a of this section, as
39 added by section 56 of part C of chapter 58 of the laws of 2007, if any,
40 provided, however, that such reduction shall not be applied with regard
41 to rate periods on and after April first, two thousand nine. After all
42 other adjustments to a facility's financially disadvantaged residential
43 health care facility distribution have been made in accordance with this
44 subdivision, the amount of each facility's distribution shall be limited
45 to no more than four hundred thousand dollars during the period October
46 first, two thousand four through December thirty-first, two thousand
47 four and [during any subsequent annual rate period], on an annualized
48 basis, for rate periods through March thirty-first, two thousand nine,
49 and no more than one million dollars for the period April first, two
50 thousand nine through December thirty-first, two thousand nine and for
51 each annual rate period thereafter.

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1 (g) The adjustment made to each qualifying facility's medical assist-
2 ance rate of payment determined pursuant to this article shall be calcu-
3 lated by dividing the facility's financially disadvantaged residential
4 health care facility distribution calculated in accordance with this
5 subdivision by the facility's total medical assistance patient days
6 reported in the cost report submitted two years prior to the rate year,
7 provided however, that such rate adjustments for the period October
8 first, two thousand four through December thirty-first, two thousand
9 four shall be calculated based on twenty-five percent of each facility's
10 reported total medical assistance patient days as reported in the appli-
11 cable two thousand two cost report. Such amounts shall not be reconciled
12 to reflect changes in medical assistance utilization between the year
13 two years prior to the rate year and the rate year.
14 (h) The total amount of funds to be allocated and distributed as
15 medical assistance for financially disadvantaged residential health care
16 facility rate adjustments to eligible facilities for a rate period in
17 accordance with this subdivision shall be thirty million dollars for the
18 period October first, two thousand four through December thirty-first,
19 two thousand four and thirty million dollars [for annual] on an annual-
20 ized basis for rate periods on and after January first, two thousand
21 five through December thirty-first, two thousand eight and forty million
22 dollars on an annualized basis on and after January first, two thousand
23 nine. The nonfederal share of such [total shall be fifteen million
24 dollars which] rate adjustments shall be paid by the state, with no
25 local share, from allocations made pursuant to paragraph (hh) of subdi-
26 vision one of section twenty-eight hundred seven-v of this chapter. In
27 the event the statewide total of the annual rate adjustments determined
28 pursuant to paragraph (g) of this subdivision varies from [thirty
29 million dollars] the amounts set forth in this paragraph, each qualify-
30 ing facility's rate adjustment shall be proportionately increased or
31 decreased such that the total of the annual rate adjustments made pursu-
32 ant to this subdivision is equal to [thirty million dollars] the amounts
33 set forth in this paragraph on a statewide basis.
34 (i) This subdivision shall be effective if, and as long as, federal
35 financial participation is available for expenditures made for benefici-
36 aries eligible for medical assistance under title XIX of the federal
37 social security act for the rate adjustments determined in accordance
38 with this subdivision.
39 (j) For periods on and after April first, two thousand nine, residen-
40 tial health care facilities which are otherwise eligible for rate
41 adjustments pursuant to this subdivision shall also, as a condition for
42 receipt of such rate adjustments, submit to the commissioner a written
43 restructuring plan that is acceptable to the commissioner and which is
44 in accord with the following:
45 (i) such an acceptable plan shall be submitted to the commissioner
46 within sixty days of the facility's receipt of rate adjustments pursuant
47 to this subdivision for a rate period subsequent to March thirty-first,
48 two thousand eight, provided, however, that facilities which are allo-
49 cated four hundred thousand dollars or less on an annualized basis shall
50 be required to submit such plans within one hundred twenty days, and
51 further provided that these periods may be extended by the commissioner
52 by no more than thirty days, for good cause shown; and
53 (ii) such plan shall provide a detailed description of the steps the
54 facility will take to improve operational efficiency and align its
55 expenditures with its revenues, and shall include a projected schedule

1 of quantifiable benchmarks to be achieved in the implementation of the
2 plan; and
3 (iii) such plan shall require periodic reports to the commissioner, in
4 accordance with a schedule acceptable to the commissioner, setting forth
5 the progress the facility has made in implementing its plan; and
6 (iv) such plan may include the facility's retention of a qualified
7 chief restructuring officer to assist in the implementation of the plan,
8 provided, however, that this requirement may be waived by the commis-
9 sioner, for good cause shown, upon written application by the facility.
10 (k) If a residential health care facility fails to submit an accepta-
11 ble restructuring plan in accordance with the provisions of paragraph
12 (j) of this subdivision, the facility shall, from that time forward, be
13 precluded from receipt of all further rate adjustments made pursuant to
14 this subdivision and shall be deemed ineligible from any future re-ap-
15 plication for such adjustments. Further, if the commissioner determines
16 that a facility has failed to make substantial progress in implementing
17 its plan or in achieving the benchmarks set forth in such plan, then the
18 commissioner may, upon thirty days notice to that facility, disqualify
19 the facility from further participation in the rate adjustments author-
20 ized by this subdivision and the commissioner may require the facility
21 to repay some or all of the previous rate adjustments.
22 § 8. Clause (A) of subparagraph (i) of paragraph (a) of subdivision 18
23 of section 2808 of the public health law, as amended by section 73-b of
24 part C of chapter 58 of the laws of 2008, is amended to read as follows:
25 (A) fifty-three million five hundred thousand dollars on an annualized
26 basis for the period April first, two thousand two through December
27 thirty-first, two thousand two; eighty-three million three hundred thou-
28 sand dollars on an annualized basis for the period January first, two
29 thousand three through December thirty-first, two thousand three; one
30 hundred fifteen million eight hundred thousand dollars on an annualized
31 basis for the period January first, two thousand four through December
32 thirty-first, two thousand six; fifty-seven million nine hundred thou-
33 sand dollars for the period January first, two thousand seven through
34 June thirtieth, two thousand seven, fifty-seven million nine hundred
35 thousand dollars for the period July first, two thousand seven through
36 March thirty-first, two thousand eight, and [sixty-four] fifty-nine
37 million [eight] four hundred thousand dollars for the period April
38 first, two thousand eight through March [thirty-first] first, two thou-
39 sand nine [and twenty-six million two hundred thousand dollars for the
40 period April first, two thousand nine through March thirty-first, two
41 thousand ten and each state fiscal year thereafter].
42 § 9. Clause (A) of subparagraph (i) of paragraph (b) of subdivision 18
43 of section 2808 of the public health law, as amended by section 73-a of
44 part C of chapter 58 of the laws of 2008, is amended to read as follows:
45 (A) seven million five hundred thousand dollars on an annualized basis
46 for the period April first, two thousand two through December thirty-
47 first, two thousand two; eleven million seven hundred thousand dollars
48 on an annualized basis for the period January first, two thousand three
49 through December thirty-first, two thousand three; sixteen million two
50 hundred thousand dollars on an annualized basis for the period January
51 first, two thousand four through December thirty-first, two thousand
52 six; and eight million one hundred thousand dollars for the period Janu-
53 ary first, two thousand seven through June thirtieth, two thousand
54 seven, eight million one hundred thousand dollars for the period July
55 first, two thousand seven through March thirty-first, two thousand
56 eight, [seven] six million [three] six hundred ninety thousand dollars

1 for the period April first, two thousand eight through March [thirty-
2 first] first, two thousand nine [and one million nine hundred thousand
3 dollars for the period April first, two thousand nine through March
4 thirty-first, two thousand ten and each state fiscal year thereafter].
5 § 9-a. Subdivision 5 of section 2808 of the public health law is
6 amended by adding a new paragraph (c) to read as follows:
7 (c) Notwithstanding any inconsistent provision of this subdivision, on
8 and after March first, two thousand nine, no non-public residential
9 health care facility, whether operated as a for-profit facility or as a
10 not-for-profit facility, may withdraw equity or transfer assets which in
11 the aggregate exceed three percent of such facility's total Medicaid
12 revenue in the prior calendar year, without the prior written approval
13 of the commissioner. The commissioner shall make a determination to
14 approve or disapprove a request for withdrawal of equity or assets under
15 this subdivision within sixty days of the date of the receipt of a writ-
16 ten request from the facility. Requests shall be made in a form accept-
17 able to the department by certified or registered mail. In addition to
18 any other remedy or penalty available under this chapter, and after
19 opportunity for a hearing, the commissioner may require replacement of
20 the withdrawn equity or assets and may impose a penalty for violation of
21 the provisions of this subdivision in an amount not to exceed ten
22 percent of any amount withdrawn without prior approval.
23 § 10. Notwithstanding any inconsistent provision of law or regulation,
24 effective March 1, 2009, for rates of payment by government agencies for
25 impatient services provided by residential health care facilities, in
26 determining the operating component of a facility's rate for care
27 provided for an AIDS patient in a residential health care facility
28 designated as an AIDS facility or having a discrete AIDS unit, the oper-
29 ating component shall not reflect an occupancy factor increase.
30 § 11. Paragraph (a) of subdivision 1 of section 461-l of the social
31 services law, as amended by chapter 597 of the laws of 2005, is amended
32 to read as follows:
33 (a) "Assisted living program" means an entity or entities with identi-
34 cal ownership, which are approved to operate pursuant to subdivision
35 three of this section and possesses a valid operating certificate as a
36 residential health care facility issued pursuant to article twenty-eight
37 of the public health law or an adult care facility, other than a shelter
38 for adults, a residence for adults or a family type home for adults,
39 issued pursuant to this article and which possesses either: (i) a valid
40 license as a home care services agency issued pursuant to section thir-
41 ty-six hundred five of the public health law; or (ii) a valid certif-
42 icate of approval as a certified home health agency issued pursuant to
43 section thirty-six hundred six of the public health law; or (iii) valid
44 authorization as a long term home health care program issued pursuant to
45 section thirty-six hundred ten of the public health law.
46 § 12. Paragraph (c) of subdivision 1 of section 461-l of the social
47 services law, as amended by chapter 597 of the laws of 2005, is amended
48 to read as follows:
49 (c) "Eligible applicant" means:
50 (i) A single entity [that is]:
51 (A) that is only: (1) a natural person [or]; (2) a partnership
52 composed only of natural persons[,]; (3) a not-for-profit
53 corporation[,]; (4) a public corporation[,]; (5) a business corporation
54 other than a corporation whose shares are traded on a national securi-
55 ties exchange or are regularly quoted on a national over-the-counter
56 market or a subsidiary of such a corporation or a corporation any of the

1 stock of which is owned by another corporation[,]; (6) a limited liabil-
2 ity company provided that if a limited liability company has a member
3 that is a corporation, a limited liability company or a partnership, the
4 shareholders of the member corporation, the members of the member limit-
5 ed liability company, or the partners of the member partnership must be
6 natural persons[,]; (7) a social services district; or (8) other govern-
7 mental agency [which possesses or is eligible pursuant to this article
8 to apply for an adult care facility operating certificate]; [and]
9 (B) that (1) possesses or is eligible pursuant to this article to
10 apply for an adult care facility operating certificate; or (2) possesses
11 a nursing home operating certificate issued pursuant to article twenty-
12 eight of the public health law; and
13 (C) that is either: (1) an entity which possesses or is eligible
14 pursuant to article thirty-six of the public health law to apply for
15 licensure as a home care services agency; (2) an entity which possesses
16 valid authorization as a long term home health care program; or (3) an
17 entity which possesses a valid certificate of approval as a certified
18 home health agency pursuant to article thirty-six of the public health
19 law; or
20 (ii) One or more entities listed in subparagraph (i) of this paragraph
21 with identical owners that, in combination, meet each of the criteria
22 set forth by subparagraph (i) of this paragraph.
23 § 13. Subdivision 4 of section 461-l of the social services law, as
24 added by chapter 165 of the laws of 1991, is amended to read as follows:
25 4. Revocation, suspension, limitation or annulment. Authorization to
26 operate an assisted living program may be revoked, suspended, limited or
27 annulled by the commissioner:
28 (a) in accordance with the provisions of this article if the adult
29 care facility fails to comply with applicable provisions of this chapter
30 or rules or regulations promulgated hereunder or if the nursing home
31 fails to comply with such provisions or the provisions of article twen-
32 ty-eight of the public health law or rules or regulations promulgated
33 thereunder; or [by the commissioner of health]
34 (b) in accordance with the provisions of article thirty-six of the
35 public health law if the licensed home care service agency, certified
36 home health agency or long term home health care program fails to comply
37 with the provisions of article thirty-six of the public health law or
38 rules or regulations promulgated thereunder.
39 § 14. Subdivision 3 of section 461-l of the social services law is
40 amended by adding a new paragraph (i) to read as follows:
41 (i) The commissioner of health is authorized to add up to six thousand
42 assisted living program beds to the gross number of assisted living
43 program beds having been determined to be available as of April first,
44 two thousand nine, provided that, for each assisted living program bed
45 so added, a nursing home bed has been decertified upon the application
46 of the nursing home operator or that the commissioner of health has
47 found pursuant to subdivision six of section twenty-eight hundred six of
48 the public health law that any assisted living program bed so added
49 would serve as a more appropriate alternative to a certified nursing
50 home bed and has accordingly limited or revoked the operating certif-
51 icate of the nursing home providing that certified nursing home bed. The
52 commissioner of health shall not be required to review on a comparative
53 basis applications submitted for assisted living program beds made
54 available under this paragraph. The commissioner of health shall only
55 authorize the addition of six thousand beds pursuant to a five year
56 plan.

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1 § 15. Section 21 of chapter 1 of the laws of 1999 amending the public
2 health law and other laws relating to enacting the New York Health Care
3 Reform Act of 2000, as amended by section 8 of part A of chapter 57 of
4 the laws of 2000, is amended to read as follows:
5 § 21. Notwithstanding any inconsistent provision of law, effective
6 April 1, 2000, in determining rates of payment for residential health
7 care facilities pursuant to section 2808 of the public health law,
8 hospital outpatient services and diagnostic and treatment centers pursu-
9 ant to section 2807 of the public health law, unless otherwise subject
10 to the limits set forth in section 4 of chapter 81 of the laws of 1995,
11 as amended by this act, certified home health agencies and long term
12 home health care programs pursuant to section 3614-a of the public
13 health law and personal care services pursuant to section 367-i of the
14 social services law, and for periods on and after March 1, 2009, adult
15 day health care services provided to patients diagnosed with AIDS as
16 defined by applicable regulations, the commissioner of health shall
17 apply trend factors using the methodology described in paragraph (c) of
18 subdivision 10 of section 2807-c of the public health law, except that
19 such trend factors shall not be applied to services for which rates of
20 payment are established by the commissioners of the department of mental
21 hygiene. Nothing in this section is intended to reduce a change in any
22 existing provision of law establishing maximum reimbursement rates.
23 § 16. Intentionally omitted.
24 § 17. Section 3614 of the public health law is amended by adding a new
25 subdivision 12 to read as follows:
26 12. (a) Notwithstanding any inconsistent provision of law or regu-
27 lation and subject to the availability of federal financial partic-
28 ipation, effective January first, two thousand ten, payments by govern-
29 ment agencies for services provided by certified home health agencies
30 shall be based on episodic payments. In establishing such payments, a
31 statewide base price shall be established for each sixty day episode of
32 care and adjusted by a provider regional wage index factor and an indi-
33 vidual patient case mix index. Such episodic payments may be further
34 adjusted for low utilization cases and to reflect a percentage of the
35 cost for high-utilization cases that exceed outlier thresholds of such
36 payments. Base year episodic payments shall be further adjusted to the
37 applicable rate year in accordance with paragraph c of subdivision ten
38 of section two thousand eight hundred seven-c of this chapter.
39 (b) Initial base year episodic payments shall be based on Medicaid
40 paid claims, as determined by the commissioner, for service provided by
41 all certified home health agencies in the base year two thousand seven.
42 Subsequent base year episodic payments may be based on Medicaid paid
43 claims for services provided by all certified home health agencies in a
44 base year subsequent to two thousand seven and as determined by the
45 commissioner. In determining case mix, each patient shall be classified
46 using a system based on measures including, but not limited to, clinical
47 and functional measures, as reported on the federal Outcome and Assess-
48 ment Information Set (OASIS).
49 (c) As determined by the commissioner, agencies will be required to
50 collect and submit any data required to implement this section. The
51 commissioner may adopt regulations, including emergency regulations, to
52 implement the provisions of this section.
53 § 18. Paragraph (a) of subdivision 5 of section 3614 of the public
54 health law, as added by chapter 884 of the laws of 1990, is amended to
55 read as follows:

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1 (a) During the period July first, nineteen hundred ninety through
2 December thirty-first, nineteen hundred ninety, the period January
3 first, nineteen hundred ninety-one through December thirty-first, nine-
4 teen hundred ninety-one and for each calendar year period commencing on
5 January first thereafter, rates of payment by governmental agencies
6 established in accordance with subdivision three of this section appli-
7 cable for services provided by certified home health agencies to indi-
8 viduals eligible for medical assistance pursuant to title eleven of
9 article five of the social services law for certified home health agen-
10 cies which can demonstrate, on forms provided by the commissioner, loss-
11 es from a disproportionate share of bad debt and charity care during the
12 base year period as used in determining such rates may include an allow-
13 ance determined in accordance with this subdivision to reflect the needs
14 of the certified home health agency for the financing of losses result-
15 ing from bad debt and the cost of charity care. Losses resulting from
16 bad debt and the delivery of charity care shall be determined by the
17 commissioner considering, but not limited to, such factors as the losses
18 resulting from bad debt and the costs of charity care provided by the
19 certified home health agency and the availability of other financial
20 support, including state local assistance public health aid, to meet the
21 losses resulting from bad debt and the costs of charity care of the
22 certified home health agency. The bad debt and charity care allowance
23 for a certified home health agency for a rate period shall be determined
24 by the commissioner in accordance with rules and regulations adopted by
25 the state hospital review and planning council and approved by the
26 commissioner, and shall be consistent with the purposes for which such
27 allowances are authorized for general hospitals pursuant to the
28 provisions of article twenty-eight of this chapter and rules and regu-
29 lations promulgated by the commissioner. For purposes of distribution of
30 bad debt and charity care allowances to eligible certified home health
31 agencies, the commissioner, in accordance with rules and regulations
32 adopted by the state hospital review and planning council and approved
33 by the commissioner, may limit application of a bad debt and charity
34 care allowance to a particular home care services unit or units of
35 service, such as nursing service. A certified home health agency apply-
36 ing for a bad debt and charity care allowance pursuant to this subdivi-
37 sion shall provide assurances satisfactory to the commissioner that it
38 shall undertake reasonable efforts to maintain financial support from
39 community and public funding sources and reasonable efforts to collect
40 payments for services from third party insurance payors, governmental
41 payors and self-paying patients. To be eligible for an allowance pursu-
42 ant to this subdivision, a certified home health agency shall<u>:</u> have
43 professional assistance available on a seven day per week, twenty-four
44 hour per day basis to all registered clients [and must]<u>;</u> demonstrate
45 compliance with minimum charity care certification obligation levels
46 established pursuant to rules and regulations adopted by the state
47 hospital review and planning council and approved by the commissioner<u>;</u>
48 <u>and provide to the commissioner and maintain a community service plan</u>
49 <u>which outlines the agency's organizational mission and commitment to</u>
50 <u>meet the home care needs of the community, in accordance with paragraph</u>
51 <u>(h) of this subdivision.</u>
52 § 19. Paragraph (h) of subdivision 5 of section 3614 of the public
53 health law is relettered paragraph (i) and a new paragraph (h) is added
54 to read as follows:
55 <u>(h) Community service plans. (i) The governing body of a certified</u>
56 <u>home health agency shall issue an organizational mission statement iden-</u>

1 tifying at a minimum the populations and communities served by the agen-
2 cy and the agency's commitment to meeting the home care needs of the
3 community. The commissioner shall take into consideration the limita-
4 tions of agency size and resources, and allow flexibility in complying
5 with the provisions of this section.
6 (ii) The governing body of the certified home health agency shall at
7 least once every three years:
8 (A) review and amend as necessary the agency's mission statement;
9 (B) solicit the views of the communities served by the agency on such
10 issues as the agency's performance and service priorities;
11 (C) demonstrate the agency's operational and financial commitment to
12 meeting community home care needs, to provide charity care service and
13 to improve access to home care services by the underserved; and
14 (D) prepare and make available to the public a statement showing the
15 provision of free, reduced charge and/or other services of a charitable
16 or community nature.
17 (iii) The governing body of the certified home health agency shall
18 annually make available to the public a review of the agency's perform-
19 ance in meeting the home care needs of the community, providing charity
20 care services, and improving access to home care services by the under-
21 served.
22 (iv) The governing body of the certified home health agency shall file
23 with the commissioner its mission statement, its annual performance
24 review, and at least every three years a report detailing amendments to
25 the statement reflecting changes in the agency's operational and finan-
26 cial commitment to meeting the home care needs of the community, provid-
27 ing charity care services, and improving access to home care services by
28 the underserved.
29 (v) The commissioner shall promulgate regulations establishing a
30 revised percentage for the charity care requirement.
31 § 20. Subdivision 3 of section 367-e of the social services law, as
32 added by chapter 622 of the laws of 1988, is amended to read as follows:
33 3. The commissioner shall apply for any waivers, including home and
34 community based services waivers pursuant to section nineteen hundred
35 fifteen-c of the social security act, necessary to implement AIDS home
36 care programs. Notwithstanding any inconsistent provision of law but
37 subject to expenditure limitations of this section, the commissioner,
38 subject to the approval of the state director of the budget, may author-
39 ize the utilization of medical assistance funds to pay for services
40 provided by AIDS home care programs in addition to those services
41 included in the medical assistance program under section three hundred
42 sixty-five-a of this [chapter] title, so long as federal financial
43 participation is available for such services. Total monthly expendi-
44 tures made under this title for a person receiving AIDS home care
45 program services shall not exceed one hundred percent of the average of
46 the current monthly rates payable under this title for nursing home
47 services within the applicable social services district. However, if a
48 continuing assessment of such person's needs demonstrates that he or she
49 requires increased services, the social services official may authorize
50 the expenditure of any amount accrued under this section during the past
51 twelve months as the result of the expenditures for that person not
52 having exceeded such maximum amount. If the assessment of such person's
53 needs demonstrates that he or she requires increased services the
54 payment for which would exceed such monthly maximum, but it can be
55 reasonably anticipated that total expenditures for required services for
56 such person will not exceed such maximum calculated over a one year

1 period, the social services official may authorize payment for such
2 services. Expenditures made under this subdivision shall be deemed
3 payments for medical assistance for needy persons and shall be subject
4 to reimbursement by the state in accordance with the provisions of
5 section three hundred sixty-eight-a of this [chapter] title.
6 § 21. Paragraph (k) of subdivision 2 of section 365-a of the social
7 services law, as amended by chapter 659 of the laws of 1997, is amended
8 to read as follows:
9 (k) care and services furnished by an entity offering a comprehensive
10 health services plan, including an entity that has received a certif-
11 icate of authority pursuant to sections forty-four hundred three,
12 forty-four hundred three-a or forty-four hundred eight-a of the public
13 health law (as added by chapter six hundred thirty-nine of the laws of
14 nineteen hundred ninety-six) or a health maintenance organization
15 authorized under article forty-three of the insurance law, to eligible
16 individuals residing in the geographic area served by such entity, when
17 such services are furnished in accordance with an agreement approved by
18 the department which meets the requirements of federal law and regu-
19 lations provided, that no such agreement shall allow for medical assist-
20 ance payments on a capitated basis for nursing facility[, home care or
21 other long term care] services of a duration and scope defined in regu-
22 lations of the department of health promulgated pursuant to section
23 forty-four hundred three-f of the public health law, unless such entity
24 has received a certificate of authority as a managed long term care plan
25 or is an operating demonstration or is an approved managed long term
26 care demonstration, pursuant to such section.
27 § 22. Subdivision 4 of section 4403-f of the public health law is
28 REPEALED and two new subdivisions 4 and 4-a are added to read as
29 follows:
30 4. Solvency. (a) The commissioner, with regard to fiscal solvency,
31 shall be responsible for evaluating, approving and regulating all
32 matters relating to fiscal solvency, including reserves, surplus and
33 provider contracts. The commissioner may promulgate regulations to
34 implement this section. The commissioner, in the administration of this
35 subdivision:
36 (i) shall be guided by the standards which govern the fiscal solvency
37 of a health maintenance organization, provided, however, that the
38 commissioner shall recognize the specific delivery components, opera-
39 tional capacity and financial capability of the eligible applicant for a
40 certificate of authority;
41 (ii) shall not apply financial solvency standards that exceed those
42 required for a health maintenance organization; and
43 (iii) shall establish reasonable capitalization and contingent reserve
44 requirements.
45 (b) Standards established pursuant to this subdivision shall be
46 adequate to protect the interests of enrollees in managed long term care
47 plans. The commissioner shall be satisfied that the eligible applicant
48 is financially sound, and has made adequate provisions to pay for
49 services.
50 4-a. Role of the superintendent of insurance. (a) The superintendent
51 of insurance shall determine and approve premiums in accordance with the
52 insurance law whenever any population of enrollees not eligible under
53 title XIX of the federal social security act is to be covered. The
54 determination and approval of the superintendent of insurance shall
55 relate to premiums charged to those enrollees not eligible under title
56 XIX of the federal social security act.

1 (b) The superintendent of insurance shall evaluate and approve any
2 enrollee contracts whenever those enrollee contracts are to cover any
3 population of enrollees not eligible under title XIX of the federal
4 social security act.
5 § 22-a. Subdivision 6 of section 4403-f of the public health law, as
6 added by chapter 659 of the laws of 1997, paragraph (a) as added by
7 section 16 and paragraph (d) as amended by section 17 of part C of chap-
8 ter 58 of the laws of 2007, is amended to read as follows:
9 6. Approval authority. (a) An applicant shall be issued a certificate
10 of authority as a managed long term care plan upon a determination by
11 the commissioner[, subject to any applicable evaluations, approvals, and
12 regulations of the superintendent of insurance as stated in this
13 section,] that the applicant complies with the operating requirements
14 for a managed long term care plan under this section. The commissioner
15 shall issue no more than fifty certificates of authority to managed long
16 term care plans pursuant to this section. For purposes of issuance of no
17 more than fifty certificates of authority, such certificates shall
18 include those certificates issued pursuant to paragraphs (b) and (c) of
19 this subdivision.
20 (b) An operating demonstration shall be issued a certificate of
21 authority as a managed long term care plan upon a determination by the
22 commissioner[, subject to the necessary evaluations, approvals and regu-
23 lations of the superintendent of insurance as stated in this section,]
24 that such demonstration complies with the operating requirements for a
25 managed long term care plan under this section. Except as otherwise
26 expressly provided in paragraphs (d) and (e) of subdivision seven of
27 this section, nothing in this section shall be construed to affect the
28 continued legal authority of an operating demonstration to operate its
29 previously approved program.
30 (c) An approved managed long term care demonstration shall be issued a
31 certificate of authority as a managed long term care plan upon a deter-
32 mination by the commissioner[, subject to the necessary evaluations,
33 approvals and regulations of the superintendent of insurance set forth
34 in this section,] that such demonstration complies with the operating
35 requirements for a managed long term care plan under this section.
36 Notwithstanding any inconsistent provision of law to the contrary, all
37 authority for the operation of approved managed long term care demon-
38 strations which have not been issued a certificate of authority as a
39 managed long term care plan, shall expire one year after the adoption of
40 regulations implementing managed long term care plans.
41 (d) The majority leader of the senate and the speaker of the assembly
42 may each designate in writing up to fifteen eligible applicants to apply
43 to be approved managed long term care demonstrations or plans. The
44 commissioner may designate in writing up to eleven eligible applicants
45 to apply to be approved managed long term care demonstrations or plans.
46 § 22-b. Paragraph (f) of subdivision 7 of section 4403-f of the public
47 health law, as added by chapter 659 of the laws of 1997 and as relet-
48 tered by section 20 of part C of chapter 58 of the laws of 2007, is
49 amended to read as follows:
50 (f) Continuation of a certificate of authority issued under this
51 section[, subject to the necessary evaluations, approvals and regu-
52 lations of the superintendent of insurance,] shall be contingent upon
53 satisfactory performance by the managed long term care plan in the
54 delivery, continuity, accessibility, cost effectiveness and quality of
55 the services to enrolled members; compliance with applicable provisions
56 of this section and rules and regulations promulgated thereunder; the

1 continuing fiscal solvency of the organization; and, federal financial
2 participation in payments on behalf [on] of enrollees who are eligible
3 to receive services under title XIX of the federal social security act.
4 § 22-c. Subdivision 9 of section 4403-f of the public health law, as
5 added by chapter 659 of the laws of 1997, is amended to read as follows:
6 9. Reports. The department shall provide an interim report to the
7 governor, temporary president of the senate and the speaker of the
8 assembly on or before April first, two thousand three and a final report
9 on or before April first, two thousand six on the results of the managed
10 long term care plans under this section. Such results shall be based on
11 data provided by the managed long term care plans and shall include but
12 not be limited to the quality, accessibility and appropriateness of
13 services; consumer satisfaction; the mean and distribution of impairment
14 measures of the enrollees by payor for each plan; the current method of
15 calculating premiums and the cost of comparable health and long term
16 care services provided on a fee-for-service basis for enrollees eligible
17 for services under title XIX of the federal social security act; and the
18 results of periodic reviews of enrollment levels and practices. [Such
19 reports shall contain a section prepared by the superintendent of insur-
20 ance as to the results of the plans approved in accordance with this
21 section concerning the matters regulated by the superintendent of insur-
22 ance.] Such reports shall [also] provide data on the demographic and
23 clinical characteristics of enrollees, voluntary and involuntary disen-
24 rollments from plans, utilization of services and shall examine the
25 feasibility of increasing the number of plans that may be approved. Data
26 collected pursuant to this section shall be available to the public in
27 an aggregated format to protect individual confidentiality, however
28 under no circumstance will data be released on items with cells with
29 smaller than statistically acceptable standards.
30 § 23. The social services law is amended by adding a new section 367-w
31 to read as follows:
32 § 367-w. Regional long-term care assessment centers. 1. Notwithstand-
33 ing any provision of law to the contrary, the department of health is
34 authorized to establish long-term care assessment centers to serve
35 regions of the state as may be established by the department of health,
36 including the city of New York, for the purpose of transferring from the
37 social services district to the regional long-term care assessment
38 centers responsibility for activities related to the assessment of a
39 person's need for, and the authorization of, long-term care services and
40 programs identified in subdivisions two, three and four of this section.
41 The department is authorized to contract with one or more entities to
42 operate regional long-term care assessment centers.
43 2. The regional long-term care assessment center shall have responsi-
44 bility for assessment of long-term care needs of an applicant for, or
45 recipient of, medical assistance and for authorization of services and
46 participation in programs including: personal care services, including
47 personal emergency response services, under paragraph (e) of subdivision
48 two of section three hundred sixty-five-a of this title; consumer-di-
49 rected personal assistance services under section three hundred sixty-
50 five-f of this title; the cash and counseling demonstration program
51 under section three hundred sixty-seven-v of this title; the assisted
52 living program under section four hundred sixty-one-l of this chapter;
53 and participation in the long-term home health care program under
54 section three hundred sixty-seven-c of this title and section thirty-six
55 hundred sixteen of the public health law, including the AIDS home care
56 program under the provisions of section three hundred sixty-seven-e of

1 this title and section thirty-six hundred twenty of the public health
2 law.
3 3. Notwithstanding any provision of section forty-four hundred three-f
4 of the public health law to the contrary, the regional long-term care
5 assessment center shall have responsibility for reviewing assessments to
6 verify that an individual requires a nursing home level of care and,
7 after confirming that an enrollment is voluntary, for authorizing
8 participation in a managed long-term care plan or an approved managed
9 long-term care demonstration under paragraph (o) of subdivision two of
10 section three hundred sixty-five-a of this title.
11 4. The regional long-term care assessment center shall have responsi-
12 bility for reviewing documentation from a person's physician and a
13 certified home health agency and for making the determination as to the
14 continuing need for home health services beyond sixty days provided by a
15 certified home health agency under paragraph (d) of subdivision two of
16 section three hundred sixty-five-a of this title.
17 5. This section shall apply to those consumers who apply for the
18 services specified in this section on and after the later of January
19 first, two thousand ten or the date specified in the contract between
20 the department and the entity selected to be a regional long-term care
21 assessment center, and shall apply to those consumers who are in receipt
22 of such services on such later date, and whose authorization for
23 services is uninterrupted after such later date, on and after January
24 first, two thousand twelve.
25 6. The commissioner of health shall submit a report to the governor,
26 temporary president of the senate and speaker of the assembly no later
27 than January first, two thousand twelve, on the implementation of this
28 section. Such report shall include an assessment of the project, an
29 analysis of the level and costs of services managed under the contracts,
30 any recommendations for changes to personal care services assessment and
31 delivery protocols, any recommendations for legislative action, and such
32 other matters as may be pertinent.
33 § 23-a. Section 3614 of the public health law is amended by adding a
34 new subdivision 14 to read as follows:
35 14. (a) Notwithstanding any contrary provision of this section or any
36 other contrary provision of law, and subject to the availability of
37 federal financial participation, for rate periods on and after March
38 first, two thousand nine, the rates of payment paid by governmental
39 agencies for home health care services to each certified home health
40 agency shall, after application of any applicable adjustments to the
41 trend factors affecting such rates, be subject to a uniform reduction of
42 three and one-half percent.
43 (b) Notwithstanding any contrary provision of this section or any
44 other contrary provision of law, and subject to the availability of
45 federal financial participation, for rate periods on and after March
46 first, two thousand nine, the rates of payment paid by governmental
47 agencies for home health care services to each long term home health
48 care program and each AIDS home care program shall, after application of
49 any applicable adjustments to the trend factors affecting such rates, be
50 subject to a uniform reduction of one and one-half percent.
51 (c) Notwithstanding any contrary provision of this section or any
52 other contrary provision of law, and subject to the availability of
53 federal financial participation, for rate periods on and after March
54 first, two thousand nine, the rates of payment paid by governmental
55 agencies for personal care services, including personal care services
56 provided in those social service districts whose rates of payment for

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1 such services are established by such social service districts pursuant
2 to a rate-setting exemption issued by the commissioner to such social
3 service districts in accordance with applicable regulations, shall,
4 after application of any applicable adjustments to the trend factors
5 affecting such rates, be subject to a uniform reduction of one and one-
6 half percent.
7 (d) Upon the implementation of the provisions of subdivision twelve of
8 this section on January first, two thousand ten, the provisions of para-
9 graph (a) of this subdivision shall be deemed null and void for periods
10 on and after January first, two thousand ten.
11 § 24. Section 2808 of the public health law is amended by adding a new
12 subdivision 25 to read as follows:
13 25. (a) The commissioner is authorized to establish a quality of care
14 incentive pool for eligible residential health care facilities and
15 increase Medicaid rates of payment for such eligible facilities from
16 this pool. Up to fifty million dollars in such increased Medicaid
17 payments will be made available for distribution for the state fiscal
18 year beginning April first, two thousand nine and up to one hundred
19 twenty-five million dollars will be available for state fiscal year
20 beginning April first, two thousand ten. Payments will be determined by
21 the commissioner by applying criteria, including, but not limited to,
22 the quality components of the minimum data set required under federal
23 law, staffing and survey information and other facility data.
24 (b) Facilities that fall within one or more of the categories below
25 during a review period will be excluded from award eligibility:
26 (i) any residential health care facility that is currently designated
27 by the centers for medicare and medicaid services as a "special focus
28 facility";
29 (ii) any residential health care facility for which the department has
30 issued a finding of immediate jeopardy during the most recently
31 completed federal fiscal year;
32 (iii) any residential health care facility that has received a cita-
33 tion for substandard quality of care in the areas of quality of life,
34 quality of care, resident behavior, and/or facility practices during the
35 most recently completed federal fiscal year;
36 (iv) any residential health care facility that is part of a continuing
37 care retirement community;
38 (v) any residential health care facility that operates as a transi-
39 tional care unit; and
40 (vi) any other exclusions as deemed appropriate by the commissioner.
41 (c) Notwithstanding any inconsistent provision of any law or regu-
42 lation to the contrary, in the event that the total amount of funding
43 allocated for a particular fiscal year is not distributed, funds shall
44 be reserved and accumulated from year to year so that any funds remain-
45 ing at the end of a particular fiscal year will be available for
46 distribution during the following fiscal year.
47 (d) The commissioner may promulgate any regulations, including emer-
48 gency regulations, necessary to implement the provisions of this
49 section.
50 § 25. Section 3614 of the public health law is amended by adding a new
51 subdivision 13 to read as follows:
52 13. (a) Subject to the availability of funds, the commissioner shall
53 establish a quality of care incentive pool of up to twenty million
54 dollars for the period April first, two thousand nine through March
55 thirty-first, two thousand ten and up to twenty million dollars for the
56 period April first, two thousand ten through March thirty-first, two

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1 thousand eleven for payments to eligible certified home health agencies
2 that meet quality measures, as established by the commissioner. Such
3 payments shall be made in the form of adjustments to medical assistance
4 rates of payment for services provided by eligible certified home health
5 agencies meeting such quality measures.
6 (b) To be eligible for such rate adjustments, a certified home health
7 agency must have, during a fifteen month period prior to payment,
8 provided services to Medicaid recipients, as reported on the agency's
9 cost reports; provided, however, that an agency that has changed owner-
10 ship during this same period shall not be eligible. An eligible certi-
11 fied home health agency must submit such reports and data as the commis-
12 sioner may require and must not have received a condition level
13 deficiency of non-compliance during the most recently completed recer-
14 tification survey. The commissioner may exclude any agency from eligi-
15 bility for such rate adjustments on such other basis as the commissioner
16 deems appropriate.
17 (c) The commissioner may adopt regulations, including emergency regu-
18 lations, to implement the provisions of this subdivision.
19 § 26. The public health law is amended by adding a new article 28-C-1
20 to read as follows:
21 ARTICLE 28-C-1
22 LONG-TERM CARE NURSING INITIATIVE DEMONSTRATION
23 PROJECTS
24 Section 2893. Long-term nursing initiative demonstration projects.
25 § 2893. Long-term care nursing initiative demonstration projects. 1.
26 Scholarship demonstration project. (a) On or after April first, two
27 thousand nine, the commissioner, in consultation with the president of
28 the higher education services corporation, is authorized to establish
29 scholarship awards for the professional study of nursing by New York
30 state residents at schools approved by the commissioner. Each recipient
31 of a scholarship award shall be entitled to a yearly payment not to
32 exceed eight thousand dollars or the actual cost of tuition and other
33 related educational expenses, whichever is lower, for a maximum of two
34 years, while in attendance at an approved nursing school. Awards shall
35 be conditioned upon the agreement of the scholarship holder to practice
36 nursing in the field of long-term care in New York for a period of one
37 year for each year an award is received, up to a maximum of two years.
38 The commissioner shall define eligibility criteria for the awards,
39 including but not limited to the type of long-term care service
40 required.
41 (b) If a recipient fails to comply fully with the conditions in para-
42 graph (a) of this subdivision, the recipient shall be responsible for
43 repayment of one hundred percent of the yearly payment received for each
44 year or part thereof that the recipient fails to practice in the field
45 of long-term care, plus interest at a rate to be determined by the
46 commissioner but not less than the rate of interest set by the commis-
47 sioner of taxation and finance with respect to underpayments of personal
48 income tax pursuant to section six hundred eighty-four of the tax law.
49 Any amount which is required to be repaid under this subdivision shall
50 be paid within the five-year period beginning on the date that the
51 recipient fails to comply with the conditions in paragraph (a) of this
52 subdivision. Any repayment obligation shall be canceled upon the death
53 of the recipient.
54 (c) The commissioner may postpone, change or waive the service obli-
55 gation and repayment amounts set forth in paragraphs (a) and (b) of this

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1 subdivision in individual circumstances where there is compelling need
2 or hardship.
3 (d) A recipient of an award shall report annually, on prescribed
4 forms, as to the performance of the required services, commencing with
5 the calendar year in which the recipient begins to practice nursing in
6 the field of long-term care and continuing until the recipient shall
7 have completed, or until it is determined that he or she shall not be
8 obligated to complete, the required services. If the recipient shall
9 fail to file any report required hereunder within thirty days of written
10 notice to the recipient, mailed to the address shown on the last appli-
11 cation for an award or last report filed, whichever is later, a fine of
12 up to one thousand dollars may be imposed. The reporting requirement may
13 be waived or excused, and/or any fine reduced or waived, for good cause
14 shown.
15 2. Loan repayment demonstration project. (a) On or after April first,
16 two thousand nine, the commissioner, in consultation with the president
17 of the higher education services corporation, is authorized to make loan
18 repayment awards to individuals who practice nursing in the field of
19 long-term care in New York state. Such nurses shall be eligible for a
20 yearly loan repayment award of up to eight thousand dollars for each
21 year of practice in the field of long-term care, for a maximum of two
22 years. The commissioner shall define eligibility criteria for the
23 awards, including but not limited to the type of long-term care service
24 required.
25 (b) Loan repayment awards made pursuant to paragraph (a) of this
26 subdivision shall not exceed the total qualifying outstanding student
27 loan debt of the nurse for tuition and related educational expenses
28 incurred at schools approved by the commissioner, made by or guaranteed
29 by the federal or state government, or made by a lending or educational
30 institution approved under title IV of the federal higher education act.
31 Loan repayment awards shall be used solely to repay such outstanding
32 debt.
33 (c) A recipient of an award shall report annually, on prescribed
34 forms, the performance of the required services, commencing with the
35 calendar year in which the recipient begins to practice nursing in the
36 field of long-term care until the recipient shall have completed, or
37 until it is determined that he or she shall not be obligated to
38 complete, the required services. Loan repayment awards shall be made
39 yearly, after the recipient has completed each year of qualifying prac-
40 tice and filed the performance report described herein. The reporting
41 requirement may be waived or excused for good cause shown.
42 § 27. The education law is amended by adding a new section 679-f to
43 read as follows:
44 § 679-f. Long-term care nursing initiative demonstration projects. 1.
45 Long-term care nursing initiative scholarship and loan-repayment awards
46 may be made in accordance with the standards enumerated in section twen-
47 ty-eight hundred ninety-three of the public health law.
48 2. The president shall be responsible for the administration of the
49 awards to the extent determined in consultation with the commissioner of
50 health.
51 § 28. The social services law is amended by adding a new section 367-v
52 to read as follows:
53 § 367-v. Cash and counseling demonstration program. 1. The commission-
54 er is authorized to establish a cash and counseling demonstration
55 program for the provision to up to one thousand persons of self-directed
56 personal assistance services in up to ten counties chosen by the commis-

1 sioner based upon the demographic and geographic features of such coun-
2 ties. For purposes of this section, the term "self-directed personal
3 assistance services" means personal care and related services as defined
4 in this section that are provided to an eligible person under such
5 program. The program permits participants receiving self-directed
6 personal assistance services to plan and manage the services with coun-
7 seling and management support and to use the funds in his or her indi-
8 vidualized budget to acquire items that increase independence or substi-
9 tute for human assistance with personal care. The commissioner is
10 authorized to file such state plan amendments and waivers of the federal
11 social security act as may be needed to obtain federal financial partic-
12 ipation in the costs of such program.
13 2. (a) All eligible persons, residing in the counties identified in
14 subdivision one of this section, receiving personal care shall be
15 provided notice of the availability of the program and shall have the
16 opportunity to apply for participation in the program. For purposes of
17 this section, an "eligible person" is a person eighteen years of age or
18 older who:
19 (i) is eligible for medical assistance under this title;
20 (ii) is eligible for personal care services under this title;
21 (iii) is determined by the social services district, pursuant to an
22 assessment, as being self-directing in regard to participation in coun-
23 seling and fiscal management of their plan and budget and as being capa-
24 ble to exercise choice and control over the budget, planning and
25 purchase of self-directed personal assistance services; and
26 (iv) meets such other criteria, as may be established by the commis-
27 sioner, which the commissioner deems necessary to effectively implement
28 the objectives of this section.
29 (b) A person shall be ineligible for participation in this program
30 while he or she is receiving personal care services, other than personal
31 emergency response services, under paragraph (e) of subdivision two of
32 section three hundred sixty-five-a of this title; or is a participant in
33 either the consumer-directed personal assistance program under section
34 three hundred sixty-five-f of this title or a home and community-based
35 waiver program established under paragraph (c) of section nineteen
36 hundred fifteen of the federal social security act; or is an enrollee in
37 a managed long-term care plan or an approved managed long-term care
38 demonstration under paragraph (o) of subdivision two of section three
39 hundred sixty-five-a of this title.
40 3. The department is authorized to contract with an entity to provide
41 program participants with assistance in developing a service plan and an
42 individualized budget, and to assume responsibility for all tasks
43 related to processing timesheets and payroll functions.
44 4. (a) The local departments of social services in the ten counties
45 chosen by the commissioner pursuant to subdivision one of this section
46 shall inform each eligible person of other feasible alternatives includ-
47 ing personal care under paragraph (e) of subdivision two of section
48 three hundred sixty-five-a of this title or the consumer-directed
49 personal assistance program under section three hundred sixty-five-f of
50 this title. The responsibilities of the local departments of social
51 services shall include, but are not limited to, determining whether the
52 individual is an eligible person; assessing each eligible person's func-
53 tional needs; approving the number of hours of personal care services;
54 and, upon disenrollment of a participant from this program, assisting
55 with transition to the personal care services available under paragraph
56 (e) of subdivision two of section three hundred sixty-five-a of this

1 title or the consumer-directed personal assistance program under section
2 three hundred sixty-five-f of this title if the person is determined to
3 continue to need personal care services.
4 (b) The entity with which the department has contracted for the admin-
5 istration of this program shall be responsible for the performance of
6 certain activities supporting program participants which may include,
7 but shall not be limited to: assisting the eligible person with the
8 development of his or her service plan; providing training and ongoing
9 technical support to the eligible person with regard to the performance
10 of his or her responsibilities as a participant in the program; provid-
11 ing recordkeeping services; retaining the funds for the individualized
12 budgets established for each eligible person; processing employment and
13 tax information; reviewing records to ensure correctness; writing and
14 delivering paychecks; and assisting eligible persons in obtaining
15 required insurance policies.
16 (c) The participant shall be responsible for: developing a service
17 plan with the assistance of a budget counselor employed by the entity
18 with which the department has contracted to administer this program,
19 which service plan shall be subject to the approval of the budget coun-
20 selor; developing a job description for his or her providers; selecting
21 and employing providers; training providers; ending the employment of an
22 unsatisfactory provider; and submitting to the fiscal agent employed by
23 the contractor any information necessary for provider payments, tax
24 requirements and any background screening that may be requested by the
25 participant. A participant may employ family members, except for a
26 spouse, parent or step-parent, to provide personal care or related
27 services.
28 5. This section shall be effective if, to the extent that, and as long
29 as, federal financial participation is available for expenditures
30 incurred under this section.
31 § 29. Section 3614 of the public health law is amended by adding a new
32 subdivision 1-a to read as follows:
33 1-a. Notwithstanding subdivision one of this section, on and after
34 January first, two thousand ten, home health services under section
35 three hundred sixty-five-a of the social services law provided by home
36 health aides as defined in subdivision four of section thirty-six
37 hundred two of this article shall be provided directly by the certified
38 home health agency provider, long-term home health care program provider
39 or AIDS home care program provider through such providers' employees.
40 § 30. Paragraph (a) of subdivision 1 of section 367-f of the social
41 services law, as amended by section 51 of part C of chapter 58 of the
42 laws of 2005, is amended to read as follows:
43 (a) "Medicaid extended coverage" shall mean eligibility for medical
44 assistance (i) without regard to the resource requirements of section
45 three hundred sixty-six of this title, or in the case of an individual
46 covered under an insurance policy or certificate described in subdivi-
47 sion two of this section that provided a residential health care facili-
48 ty benefit less than three years in duration, without consideration of
49 an amount of resources equivalent to the value of benefits received by
50 the individual under such policy or certificate, as determined under the
51 rules of the partnership for long-term care program[, and]; (ii) without
52 regard to the recovery of medical assistance from the estates of indi-
53 viduals and the imposition of liens on the homes of persons pursuant to
54 section three hundred sixty-nine of this title, with respect to
55 resources exempt from consideration pursuant to subparagraph (i) of this
56 paragraph; provided, however, that nothing [herein] in this section

1 shall prevent the imposition of a lien or recovery against property of
2 an individual on account of medical assistance incorrectly paid; and
3 (iii) based on an income eligibility standard for married couples equal
4 to the amount of the minimum monthly maintenance needs allowance defined
5 in paragraph (h) of subdivision two of section three hundred sixty-six-c
6 of this title, and for single individuals equal to one-half of such
7 amount; provided, however, that the commissioner of health shall not be
8 required to implement the provisions of this subparagraph if the use of
9 such income eligibility standards will result in a loss of federal
10 financial participation in the costs of Medicaid extended coverage
11 furnished in accordance with subparagraphs (i) and (ii) of this para-
12 graph.
13 § 31. Notwithstanding any inconsistent provision of law, rule or
14 regulation, for purposes of implementing the provisions of the public
15 health law and the social services law, references to titles XIX and XXI
16 of the federal social security act in the public health law and the
17 social services law shall be deemed to include and also to mean any
18 successor titles thereto under the federal social security act.
19 § 32. Notwithstanding any inconsistent provision of law, rule or regu-
20 lation, the effectiveness of subdivisions 4, 7, 7-a and 7-b of section
21 2807 of the public health law and section 18 of chapter 2 of the laws of
22 1988, as they relate to time frames for notice, approval or certif-
23 ication of rates of payment, are hereby suspended and shall, for
24 purposes of implementing the provisions of this act, be deemed to have
25 been without any force or effect from and after November 1, 2007 for
26 such rates effective for the period January 1, 2008 through December 31,
27 2008.
28 § 33. Severability clause. If any clause, sentence, paragraph, subdi-
29 vision, section or part of this act shall be adjudged by any court of
30 competent jurisdiction to be invalid, such judgment shall not affect,
31 impair or invalidate the remainder thereof, but shall be confined in its
32 operation to the clause, sentence, paragraph, subdivision, section or
33 part thereof directly involved in the controversy in which such judgment
34 shall have been rendered. It is hereby declared to be the intent of the
35 legislature that this act would have been enacted even if such invalid
36 provisions had not been included herein.
37 § 34. This act shall take effect on March 1, 2009; provided, however,
38 that:
39 1. section twenty-one of this act shall take effect October 1, 2009;
40 2. any rules or regulations necessary to implement the provisions of
41 this act may be promulgated and any procedures, forms, or instructions
42 necessary for such implementation may be adopted and issued on or after
43 the date this act shall have become a law;
44 3. this act shall not be construed to alter, change, affect, impair or
45 defeat any rights, obligations, duties or interests accrued, incurred or
46 conferred prior to the effective date of this act;
47 4. the commissioner of health and the superintendent of insurance and
48 any appropriate council may take any steps necessary to implement this
49 act prior to its effective date;
50 5. notwithstanding any inconsistent provision of the state administra-
51 tive procedure act or any other provision of law, rule or regulation,
52 the commissioner of health and the superintendent of insurance and any
53 appropriate council is authorized to adopt or amend or promulgate on an
54 emergency basis any regulation he or she or such council determines
55 necessary to implement any provision of this act on its effective date;

1 6. the provisions of this act shall become effective notwithstanding
2 the failure of the commissioner of health or the superintendent of
3 insurance or any council to adopt or amend or promulgate regulations
4 implementing this act;
5 7. the amendments to section 4403-f of the public health law made by
6 sections twenty-two, twenty-two-a, twenty-two-b and twenty-two-c of this
7 act shall not affect the repeal of such section and shall expire and be
8 deemed repealed therewith;
9 8. a. notwithstanding any contrary provision of law, in the event
10 sections two and ten of this act are not enacted into law then the
11 provisions of sections three through six, seven, eleven through four-
12 teen, twenty-four, and twenty-six through twenty-eight of this act shall
13 be deemed null and void and of no effect; and
14 b. notwithstanding any contrary provision of law, in the event
15 sections seventeen, twenty-three and twenty-three-a of this act are not
16 enacted into law then the provisions of sections twenty-five, and twen-
17 ty-eight of this act shall be deemed null and void and of no effect;
18 9. the amendments to subdivision 5 of section 3614 of the public
19 health law made by section eighteen of this act shall not affect the
20 expiration of such subdivision and shall expire therewith;
21 10. the amendments to paragraph (k) of subdivision 2 of section 365-a
22 of the social services law made by section twenty-one of this act shall
23 not affect the expiration of such paragraph and shall expire therewith;
24 and
25 11. article 28-C-1 of the public health law and section 679-f of the
26 education law added by sections twenty-six and twenty-seven of this act
27 shall expire April 1, 2012.

28 PART E

29 Section 1. Section 31 of part E of chapter 58 of the laws of 1998,
30 relating to the determination of state aid for the long-term sheltered
31 employment program, is amended to read as follows:
32 § 31. Notwithstanding any other provision of law to the contrary, for
33 each state fiscal year commencing on or after April 1, 1998, up to one
34 thousand dollars of income as determined by the commissioner of the
35 office of mental retardation and developmental disabilities and approved
36 by the director of the budget, provided through the long term sheltered
37 employment program, pursuant to subdivision 2 of section 1004-a of the
38 education law, on behalf of eligible clients, [shall] may be regarded as
39 exempt income and not recognized or included in the determination of
40 state aid granted to local governments, and the local government share
41 of operating costs pursuant to article 41 of the mental hygiene law,
42 provided that state funding is available for this purpose as certified
43 by the director of the budget or his or her designee.
44 § 2. This act shall take effect immediately and shall be deemed to
45 have been in full force and effect on and after March 1, 2009.

46 PART F

47 Section 1. Notwithstanding the provisions of subdivision (e) of
48 section 7.17 or section 41.55 of the mental hygiene law, or any other
49 law to the contrary, the office of mental health is authorized to imple-
50 ment measures designed to ensure the efficient operation of hospitals
51 operated by the office of mental health which may include the closure of
52 wards, and to develop one or more transitional placement programs to

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1 provide supervised housing, and necessary outpatient and support
2 services to individuals with mental illness, who have been discharged
3 from hospitals operated by the office of mental health, and who have
4 been determined by the office of mental health to be able to be appro-
5 priately served in such less restrictive setting.
6 § 2. This act shall take effect immediately and shall be deemed to
7 have been in full force and effect on and after March 1, 2009.

8 PART G

9 Section 1. Section 9 of chapter 420 of the laws of 2002 amending the
10 education law relating to the profession of social work, as amended by
11 chapter 433 of the laws of 2003, is amended to read as follows:
12 § 9. Nothing in this act shall prohibit or limit the activities or
13 services on the part of any person in the employ of a program or service
14 operated, regulated, funded, or approved by the department of mental
15 hygiene or the office of children and family services, or a local
16 [government] governmental unit as that term is defined in article 41 of
17 the mental hygiene law or a social services district as defined in
18 section 61 of the social services law, provided, however, this section
19 shall not authorize the use of any title authorized pursuant to article
20 154 of the education law, except that this section shall be deemed
21 repealed on [January 1, 2010] January 1, 2014.
22 § 2. Section 17-a of chapter 676 of the laws of 2002 amending the
23 education law relating to defining the practice of psychology, as
24 amended by chapter 419 of the laws of 2003, is amended to read as
25 follows:
26 § 17-a. Nothing in this act shall prohibit or limit the activities or
27 services on the part of any person in the employ of a program or service
28 operated, regulated, funded, or approved by the department of mental
29 hygiene or the office of children and family services, or a local
30 [government] governmental unit as that term is defined in article 41 of
31 the mental hygiene law or a social services district as defined in
32 section 61 of the social services law, provided, however, this section
33 shall not authorize the use of any title authorized pursuant to article
34 153 or 163 of the education law, except as otherwise provided by such
35 articles, except that this section shall be deemed repealed on [January
36 1, 2010] January 1, 2014.
37 § 3. This act shall take effect on March 1, 2009.

38 PART H

39 Section 1. Subdivision (k) of section 10.06 of the mental hygiene law,
40 as added by chapter 7 of the laws of 2007, is amended to read as
41 follows:
42 (k) At the conclusion of the hearing, the court shall determine wheth-
43 er there is probable cause to believe that the respondent is a sex
44 offender requiring civil management. If the court determines that proba-
45 ble cause has not been established, the court shall issue an order
46 dismissing the petition, and the respondent's release shall be in
47 accordance with other applicable provisions of law. If the court deter-
48 mines that probable cause has been established: (i) the court shall
49 order that the respondent be committed to a secure treatment facility
50 designated by the commissioner for care, treatment and control upon his
51 or her release, provided, however, that a respondent whose release date
52 has passed may consent to remain in and be confined at a facility main-

1 tained by the department of correctional services pending the outcome of
2 the proceedings under this article, and provided further that a respond-
3 ent who is under the supervision of the division of parole at the time
4 of the probable cause determination may, at the discretion of the court,
5 be continued on parole supervision under the same or modified conditions
6 of supervision; (ii) the court shall set a date for trial in accordance
7 with subdivision (a) of section 10.07 of this article; [and] (iii) the
8 respondent shall not be released from custody or parole supervision
9 pending the completion of such trial; and (iv) where the respondent has
10 been placed under the jurisdiction of the division of parole, he or she
11 may be retaken and temporarily detained in accordance with subdivision
12 three of section two hundred fifty-nine-i of the executive law. Where a
13 respondent is retaken and temporarily detained pursuant to subdivision
14 three of section two hundred fifty-nine-i of the executive law and such
15 respondent has satisfied the full term of his or her sentence or aggre-
16 gated sentences, the court may thereafter direct that the respondent
17 remain in local custody or be returned to the jurisdiction of the divi-
18 sion of parole pending completion of the trial. Where appropriate, the
19 court may order that the respondent be committed to a secure treatment
20 facility designated by the commissioner for care, treatment and control
21 pending completion of the trial.
22 § 2. 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, the respond-
25 ent or any witness shall be permitted, upon good cause shown, to make an
26 electronic appearance in the court by means of an independent audio-vi-
27 sual system, as that term is defined in subdivision one of section
28 182.10 of the criminal procedure law, for purposes of a court appearance
29 or for giving testimony. Good cause shall include, but not be limited
30 to, the fact that a witness is currently employed by the state at a
31 secure treatment facility or another work location, unless there are
32 compelling circumstances requiring the witness's personal presence at
33 the court proceeding. For purposes of this subdivision, an "electronic
34 appearance" means an appearance at which a participant is not present in
35 the court, but in which (i) all of the participants are able to see and
36 hear the simultaneous reproductions of the voices and images of the
37 judge, counsel, respondent or any other appropriate participant, and
38 (ii) counsel is present with the respondent or the respondent and coun-
39 sel are able to see and hear each other and engage in private conversa-
40 tion. When a respondent or a witness makes an electronic appearance, the
41 court stenographer shall record any statements in the same manner as if
42 the respondent or witness had made a personal appearance.
43 § 3. This act shall take effect immediately and shall be deemed to
44 have been in full force and effect on and after March 1, 2009.

45 PART I

46 Section 1. Section 29.23 of the mental hygiene law is amended to read
47 as follows:
48 § 29.23 Powers with respect to property of patients.
49 The commissioner may authorize the directors of department facilities,
50 to receive or obtain funds or other personal property, excepting jewel-
51 ry, due or belonging to a patient who has no [committee] guardian
52 authorized to receive such funds or property, up to an amount or value
53 not exceeding five thousand dollars excepting federal or state benefits
54 paid to the director as representative payee; and also from [a commit-

1 tee] such guardian upon his discharge when the final order so provides
2 where the balance remaining in the hands of such [committee] guardian
3 does not exceed such amount. Such personal property, excepting jewelry,
4 other than moneys shall be retained by the director for the benefit of
5 the patient for whom received until sold as hereinafter provided.
6 Federal benefits, including benefits for which there is a state share,
7 paid to the director as representative payee, shall be retained by the
8 director and used in accordance with applicable federal law and regu-
9 lations. Such funds and the proceeds of the sale of other personal prop-
10 erty so received shall be placed to the credit of the patient for whom
11 received and disbursed on the order of the director, to provide, in the
12 first instance, for luxuries, comforts, and necessities for such
13 patient, including burial expenses, and, if funds are thereafter avail-
14 able, for the support of such patient. The commissioner may authorize
15 directors, on behalf of any such patient, to give receipts, execute
16 releases and other documents required by law or court order, to endorse
17 checks and drafts, and to convert personal property excepting jewelry
18 into money by sale for an adequate consideration, and to execute bills
19 of sale or to permit such patient to do so, in order that the proceeds
20 may be deposited to the credit of such patient in accordance with the
21 provisions of this section.
22 Whenever, under the provisions of this section, the commissioner shall
23 authorize the director of a facility in the department to receive moneys
24 or other personal property excluding jewelry belonging to a patient
25 which are on deposit in any bank or other institution or which are due
26 to the person from any person or agency, such bank, institution, person,
27 or agency shall, upon the written request of the director, forthwith
28 turn over to such director from such moneys or personal property the
29 amount or value hereinbefore specified. Any moneys received by the
30 director of such facility shall be deposited by him in such bank or
31 trust company as shall be designated by the comptroller, except that the
32 commissioner may, in his discretion, invest so much thereof as he may
33 deem advisable in bonds issued by the United States government or any of
34 its agencies.
35 Moneys belonging to a patient received by the director of such facili-
36 ty pursuant to law shall be received by him in his official capacity as
37 such director and such receipt shall be deemed an exercise or perform-
38 ance by him of a power and duty duly conferred by this section.
39 § 2. Subdivision (e) of section 33.07 of the mental hygiene law, as
40 added by chapter 709 of the laws of 1986, is amended as follows:
41 (e) A mental hygiene facility which is a representative payee for a
42 patient pursuant to designation by the social security administration or
43 which assumes management responsibility over the funds of a patient,
44 shall maintain such funds in [a fiduciary capacity to the patient]
45 accordance with applicable federal law and regulations. The commission-
46 ers of mental health and mental retardation and developmental disabili-
47 ties [shall] are authorized to develop standards regarding the manage-
48 ment of patient funds.
49 § 3. This act shall take effect immediately, and shall be deemed to
50 have been in full force and effect on and after January 1, 2002.

51 PART J

52 Section 1. Subdivision (b) of section 13.17 of the mental hygiene law,
53 as amended by section 1 of part N of chapter 57 of the laws of 2000, is
54 amended to read as follows:

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1 (b) There shall be in the office the developmental disabilities
2 services offices named below serving the areas either currently or
3 previously served by a school, for the care and treatment of the mental-
4 ly retarded and developmentally disabled and for research and teaching
5 in the science and skills required for the care and treatment of such
6 mentally retarded and developmentally disabled:
7 Bernard M. Fineson Developmental Disabilities Services Office
8 Brooklyn Developmental Disabilities Services Office
9 Broome Developmental Disabilities Services Office
10 Capital District Developmental Disabilities Services Office
11 Central New York Developmental Disabilities Services Office
12 Finger Lakes Developmental Disabilities Services Office
13 Institute for Basic Research in Developmental Disabilities
14 Hudson Valley Developmental Disabilities Services Office
15 Metro New York Developmental Disabilities Services Office
16 Long Island Developmental Disabilities Services Office
17 Sunmount Developmental Disabilities Services Office
18 Taconic Developmental Disabilities Services Office
19 Western New York Developmental Disabilities Services Office
20 Staten Island Developmental Disabilities Services Office
21 [Valley Ridge Center for Intensive Treatment]
22 The New York State Institute for Basic Research in Developmental Disa-
23 bilities is designated as an institute for the conduct of medical
24 research and other scientific investigation directed towards furthering
25 knowledge of the etiology, diagnosis, treatment and prevention of mental
26 retardation and developmental disabilities.
27 § 2. Notwithstanding any other provision of law to the contrary, the
28 head of the office of mental retardation and developmental disabilities
29 is authorized to consolidate the Valley Ridge Center for Intensive
30 Treatment and the Broome Developmental Disabilities Services Office. The
31 consolidated entity shall be known as the Broome Developmental Disabili-
32 ties Services Office.
33 § 3. This act shall take effect immediately and shall be deemed to
34 have been in full force and effect on and after March 1, 2009.

35 PART K

36 Section 1. Subdivision (f) of section 19.17 of the mental hygiene law,
37 as amended by section 3 of part E of chapter 405 of the laws of 1999, is
38 amended to read as follows:
39 (f) There shall be in the office the facilities named below for the
40 care, treatment and rehabilitation of the mentally disabled and for
41 clinical research and teaching in the science and skills required for
42 the care, treatment and rehabilitation of such mentally disabled.
43 R.E. Blaisdell Addiction Treatment Center
44 Bronx Addiction Treatment Center
45 C.K. Post Addiction Treatment Center
46 Creedmoor Addiction Treatment Center
47 Dick Van Dyke Addiction Treatment Center
48 Kingsboro Addiction Treatment Center
49 [Manhattan Addiction Treatment Center]
50 McPike Addiction Treatment Center
51 Richard C. Ward Addiction Treatment Center
52 J.L. Norris Addiction Treatment Center
53 South Beach Addiction Treatment Center
54 St. Lawrence Addiction Treatment Center

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1 Stutzman Addiction Treatment Center
2 § 2. This act shall take effect immediately and shall be deemed to
3 have been in full force and effect on and after March 1, 2009.

4 PART L

5 Section 1. Subdivision 3-b of section 1 of part C of chapter 57 of the
6 laws of 2006, as added by section 2 of part I of chapter 58 of the laws
7 of 2008, establishing a cost of living adjustment for designated human
8 services programs, is amended and a new subdivision 3-b is added to read
9 as follows:
10 3-b. Notwithstanding any inconsistent provision of law, beginning
11 April 1, 2009 and ending March 31, 2010, the commissioners shall not
12 include a COLA for the purpose of establishing rates of payments,
13 contracts or any other form of reimbursement.
14 [3-b] 3-c. Notwithstanding any inconsistent provision of law, begin-
15 ning April 1, [2009] 2010 and ending March 31, [2012] 2013, the commis-
16 sioners shall develop the COLA under this section using the actual U.S.
17 consumer price index for all urban consumers (CPI-U) published by the
18 United States department of labor, bureau of labor statistics for the
19 twelve month period ending in July of the budget year prior to such
20 state fiscal year, for the purpose of establishing rates of payments,
21 contracts or any other form of reimbursement.
22 § 2. This act shall take effect immediately and shall be deemed to
23 have been in full force and effect on and after April 1, 2009; provided,
24 however, that the amendments to section 1 of part C of chapter 57 of the
25 laws of 2006, made by section one of this act shall not affect the
26 repeal of such section and shall be deemed repealed therewith.

27 PART M

28 Section 1. Section 1 of chapter 119 of the laws of 2007, relating to
29 directing the commissioner of mental health to study, evaluate and
30 report on the unmet mental health service needs of traditionally under-
31 served populations, is amended to read as follows:
32 Section 1. The commissioner of mental health shall [study, evaluate
33 and report on the unmet] identify mental health service needs and prob-
34 lems of traditionally underserved populations in a manner consistent
35 with the requirements of subdivision (b) of section 5.07 of the mental
36 hygiene law and shall also include the following:
37 a. identifying needs and problems which must be addressed during the
38 ensuing five years;
39 b. recommendations on the provision of state and local mental health
40 services based on the development of best practices by programs promot-
41 ing culturally and linguistically competent mental health services,
42 including services to racial and ethnic minorities;
43 c. review of efforts undertaken by the office of mental health to
44 address mental health service needs of these populations; and
45 d. a description of the involvement of local government mental health
46 authorities in planning and developing mental health services for these
47 populations.
48 [Such study and evaluation shall identify those populations with high
49 rates of unmet mental health service needs, including but not limited
50 to: racial and ethnic minorities, persons with limited English profi-
51 ciency, persons with unmet housing needs, high-risk demographic popu-
52 lations (children, adolescents, young adults and the elderly), persons

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1 with criminal justice contact, and those lacking sufficient mental
2 health care coverage.] Such commissioner shall report, on or before
3 October 1, 2010 and annually thereafter, his or her findings and recom-
4 mendations [to improve service delivery to these populations, including
5 an analysis of promising practices that support cultural and linguistic
6 competence in the provision of mental health services in the state. Such
7 report shall be submitted] required by this act, to the governor, the
8 temporary president of the senate, the speaker of the assembly, the
9 chair of the senate committee on mental health and developmental disa-
10 bilities and the chair of the assembly committee on mental health. Such
11 report shall be consistent with the requirements of subdivision (b) of
12 section 5.07 of the mental hygiene law, either as a part of the state-
13 wide comprehensive five-year plan for the provision of state and local
14 services for persons with mental illness, required under that section,
15 or as a separate document, at the discretion of the commissioner.
16 § 2. Subdivision (e) of section 41.55 of the mental hygiene law, as
17 amended by section 1 of part N-1 of chapter 63 of the laws of 2003, is
18 amended to read as follows:
19 (e) The amount of community mental health support and workforce rein-
20 vestment funds for the office of mental health shall be determined in
21 the annual budget and shall include the amount of actual state oper-
22 ations general fund appropriation reductions, including personal service
23 savings and other than personal service savings directly attributed to
24 each child and adult non-geriatric inpatient bed closure. For the
25 purposes of this section a bed shall be considered to be closed upon the
26 elimination of funding for such beds in the executive budget. The
27 appropriation reductions as a result of inpatient bed closures shall be
28 no less than seventy thousand dollars per bed on a full annual basis, as
29 annually recommended by the commissioner, subject to the approval of the
30 director of the budget, in the executive budget request prior to the
31 fiscal year for which the executive budget is being submitted. [The
32 commissioner shall report to the governor, the temporary president of
33 the senate and the speaker of the assembly no later than October first,
34 two thousand three, and annually thereafter, with an explanation of the
35 methodologies used to calculate the per bed closure savings.] The meth-
36 odologies shall be developed by the commissioner and the director of the
37 budget. In no event shall the full annual value of community mental
38 health support and workforce reinvestment programs attributable to beds
39 closed as a result of net inpatient census decline exceed the twelve
40 month value of the office of mental health state operations general fund
41 reductions resulting from such census decline. Such reinvestment amount
42 shall be made available in the same proportion by which the office of
43 mental health's state operations general fund appropriations are reduced
44 each year as a result of child and adult non-geriatric inpatient bed
45 closures due to census decline.
46 § 3. Subdivisions (h) and (1) of section 41.55 of the mental hygiene
47 law are REPEALED.
48 § 4. Section 20 of chapter 723 of the laws of 1989, amending the
49 mental hygiene law and other laws relating to the establishment of
50 comprehensive psychiatric emergency programs, is REPEALED.
51 § 5. Subdivision (c) of section 7.15 of the mental hygiene law is
52 REPEALED.
53 § 6. This act shall take effect immediately and shall be deemed to
54 have been in full force and effect on and after March 1, 2009; provided,
55 however, that the amendments to section 41.55 of the mental hygiene law,

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1 made by section two of this act, shall not affect the repeal of such
2 section and shall be deemed repealed therewith.

3 PART N

4 Section 1. Section 3 of chapter 119 of the laws of 1997 authorizing
5 the department of health to establish certain payments to general hospi-
6 tals, as amended by section 1 of part H of chapter 57 of the laws of
7 2006, is amended to read as follows:
8 § 3. This act shall take effect immediately and shall be deemed to
9 have been in full force and effect on and after April 1, 1997. This act
10 shall expire April 1, [2009] 2012.
11 § 2. This act shall take effect immediately and shall be deemed to
12 have been in full force and effect on and after April 1, 2009.

13 PART O

14 Section 1. The commissioner of mental health and the city of New York
15 are hereby authorized to extend for a period not exceeding fifty years
16 the lease of certain portions of Ward's Island authorized by chapter 2
17 of the laws of 1896, as amended by chapter 380 of the laws of 1900,
18 chapter 139 of the laws of 1908, chapter 696 of the laws of 1913, chap-
19 ter 101 of the laws of 1952, chapter 491 of the laws of 1952, and chap-
20 ter 524 of the laws of 1962 for the purposes of the Manhattan psychiat-
21 ric center, the Kirby forensic psychiatric center and the promotion of
22 the public health, welfare and safety.
23 § 2. Section 18-130 of the administrative code of the city of New York
24 is amended by adding a new subdivision g to read as follows:
25 g. Notwithstanding the provisions of subdivisions b, c, d, e, and f of
26 this section, or of any other law, general, special, or local, in order
27 that the state may reconstruct, modernize and rebuild some or all of the
28 buildings and facilities of the Manhattan psychiatric center and the
29 Kirby forensic psychiatric center on Ward's Island, and continue to
30 maintain said hospitals, so as to furnish modern facilities for treat-
31 ment and care of mental patients of the metropolitan district and to
32 benefit the health, welfare and safety of its residents, the city of New
33 York, acting by the mayor alone, is hereby authorized to enter into an
34 agreement for the renewal or further extension of the lease executed
35 between the city of New York and the state of New York pursuant to the
36 provisions of chapter one hundred one of the laws of nineteen hundred
37 sixty-two, for a period not exceeding fifty years beyond its present
38 termination date with respect to any of the lands now occupied by or
39 used in connection with the Manhattan psychiatric center, the Kirby
40 forensic psychiatric center and related programs. Neither the provisions
41 of section one hundred ninety-seven-c of the New York city charter,
42 relating to a uniform land use procedure, nor the provisions of any
43 other local law of like or similar import shall apply to the renewal or
44 extension of said lease.
45 § 3. This act shall take effect immediately and shall be deemed to
46 have been in full force and effect on and after March 1, 2009.

47 PART P

48 Section 1. Section 19.07 of the mental hygiene law is amended by
49 adding a new subdivision (h) to read as follows:

1 (h) The office of alcoholism and substance abuse services shall devel-
2 op an alcohol and drug rehabilitation program, consistent with the
3 provisions of section eleven hundred ninety-six of the vehicle and traf-
4 fic law for the provision of chemical dependency prevention, education,
5 evaluation and treatment to persons referred as a result of a violation
6 of sections eleven hundred ninety-two and eleven hundred ninety-two-a of
7 the vehicle and traffic law. The commissioner of the office of alcohol-
8 ism and substance abuse services shall adopt standards, rules and regu-
9 lations, and establish fees necessary to implement the provisions of
10 this subdivision.
11 § 2. Subdivisions 1, 2, 3, 4 and 6 of section 1196 of the vehicle and
12 traffic law, subdivisions 1, 2, 3 and 6 as added by chapter 47 of the
13 laws of 1988, subdivision 4 as amended by chapter 196 of the laws of
14 1996, are amended to read as follows:
15 1. Program establishment. There is hereby established an alcohol and
16 drug rehabilitation program within the [department of motor vehicles]
17 office of alcoholism and substance abuse services. The commissioner of
18 the office of alcoholism and substance abuse services shall establish,
19 by regulation or contract, the instructional and rehabilitative aspects
20 of the program. Such program shall [consist of at least fifteen hours
21 and] include, but need not be limited to, classroom instruction in areas
22 deemed suitable by the commissioner of the office of alcoholism and
23 substance abuse services. [No person shall be required to attend or
24 participate in such program or any aspect thereof for a period exceeding
25 eight months except upon the recommendation of the department of mental
26 hygiene or appropriate health officials administering the program on
27 behalf of a municipality.]
28 2. Curriculum. The form, content and method of presentation of the
29 various aspects of such program shall be established by the commissioner
30 of the office of alcoholism and substance abuse services. In the devel-
31 opment of the form, curriculum and content of such program, the commis-
32 sioner of the office of alcoholism and substance abuse services may
33 consult with the commissioner of mental health, [the director of the
34 division of alcoholism and alcohol abuse, the director of the division
35 of substance abuse services] the commissioner and any other state
36 department or agency and request and receive assistance from them. The
37 commissioner of the office of alcoholism and substance abuse services is
38 also authorized to develop more than one curriculum and course content
39 for such program in order to meet the varying rehabilitative needs of
40 the participants.
41 3. Where available. A course in such program shall be available in at
42 least every county in the state, except where the commissioner of the
43 office of alcoholism and substance abuse services determines that there
44 is not a sufficient number of alcohol or drug-related traffic offenses
45 in a county to mandate the establishment of said course, and that
46 provisions be made for the residents of said county to attend a course
47 in another county where a course exists.
48 4. Eligibility. Participation in the program shall be limited to those
49 persons convicted of alcohol or drug-related traffic offenses or persons
50 who have been adjudicated youthful offenders for alcohol or drug-related
51 traffic offenses, or persons found to have been operating a motor vehi-
52 cle after having consumed alcohol in violation of section eleven hundred
53 ninety-two-a of this article, who choose to participate and who satisfy
54 the criteria and meet the requirements for participation as established
55 by this section and the regulations promulgated thereunder; provided,
56 however, in the exercise of discretion, the judge imposing sentence may

1 prohibit the defendant from enrolling in such program. The commissioner
2 [or deputy] of the office of alcoholism and substance abuse services may
3 exercise discretion, to reject any person from participation referred to
4 such program and nothing herein contained shall be construed as creating
5 a right to be included in any course or program established under this
6 section. In addition, no person shall be permitted to take part in such
7 program if, during the five years immediately preceding commission of an
8 alcohol or drug-related traffic offense or a finding of a violation of
9 section eleven hundred ninety-two-a of this article, such person has
10 participated in a program established pursuant to this article or been
11 convicted of a violation of any subdivision of section eleven hundred
12 ninety-two of this article other than a violation committed prior to
13 November first, nineteen hundred eighty-eight, for which such person did
14 not participate in such program. In the exercise of discretion, the
15 commissioner [or a deputy] of the office of alcoholism and substance
16 abuse services shall have the right to expel any participant from the
17 program who fails to satisfy the requirements for participation in such
18 program or who fails to satisfactorily participate in or attend any
19 aspect of such program. Notwithstanding any contrary provisions of this
20 chapter, satisfactory participation in and completion of a course in
21 such program shall result in the termination of any sentence of impri-
22 sonment that may have been imposed by reason of a conviction therefor;
23 provided, however, that nothing contained in this section shall delay
24 the commencement of such sentence.
25 6. Fees. The commissioner of the office of alcoholism and substance
26 abuse services shall establish a schedule of fees to be paid by or on
27 behalf of each participant in the program, and may, from time to time,
28 modify same. Such fees shall defray the ongoing expenses of the program.
29 Provided, however, that pursuant to an agreement with the [department]
30 office of alcoholism and substance abuse services, a municipality,
31 department thereof, or other agency may conduct a course in such program
32 with all or part of the expense of such course and program being borne
33 by such municipality, department or agency. In no event shall such fee
34 be refundable, either for reasons of the participant's withdrawal or
35 expulsion from such program or otherwise.
36 § 3. Paragraph (d) of subdivision 7 of section 1196 of the vehicle and
37 traffic law, as amended by chapter 309 of the laws of 1996, is amended
38 to read as follows:
39 (d) The commissioner shall require applicants for a conditional
40 license to pay a fee of seventy-five dollars for processing costs. Such
41 fees assessed under this subdivision shall be paid to the commissioner
42 for deposit to the general fund and shall be in addition to any fees
43 established by the commissioner of alcoholism and substance abuse
44 services pursuant to subdivision six of this section to defray the costs
45 of the alcohol and drug rehabilitation program.
46 § 4. Notwithstanding any other provision of this act, the commissioner
47 of motor vehicles and the commissioner of the office of alcoholism and
48 substance abuse services shall enter into an agreement whereby the
49 department of motor vehicles will continue to operate the alcohol and
50 drug rehabilitation program pursuant to section eleven hundred ninety-
51 six of the vehicle and traffic law until October 1, 2009 whereupon the
52 commissioner of alcoholism and substance abuse services shall have
53 promulgated all rules and regulations necessary to implement the
54 provisions of this act.
55 § 5. This act shall take effect immediately and shall be deemed to
56 have been in full force and effect on and after March 1, 2009.

1 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
2 sion, section or part of this act shall be adjudged by any court of
3 competent jurisdiction to be invalid, such judgment shall not affect,
4 impair, or invalidate the remainder thereof, but shall be confined in
5 its operation to the clause, sentence, paragraph, subdivision, section
6 or part thereof directly involved in the controversy in which such judg-
7 ment shall have been rendered. It is hereby declared to be the intent of
8 the legislature that this act would have been enacted even if such
9 invalid provisions had not been included herein.
10 § 3. This act shall take effect immediately provided, however, that
11 the applicable effective date of Parts A through P of this act shall be
12 as specifically set forth in the last section of such Parts.

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