

2197

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. MORELLE, SCHIMMINGER, CYMBROWITZ, PERRY, CANES-
TRARI, KOON, WEPRIN, ORTIZ, BRADLEY, HIKIND -- Multi-Sponsored by --
M. of A. BENJAMIN, BOYLAND, COLTON, DESTITO, LATIMER, LUPARDO, MAGEE,
ROBINSON, TOWNS, WRIGHT -- read once and referred to the Committee on
Insurance

AN ACT to amend the insurance law, in relation to establishment of free-
dom health insurance plans; to amend the tax law, in relation to
providing a tax credit for the purchase of certain health insurance;
and to amend the public health law, in relation to the health mainte-
nance organization direct pay market program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (l) of section 3216 of the insurance law, as
2 added by chapter 504 of the laws of 1995, is amended to read as follows:
3 (l) On and after January first, nineteen hundred ninety-seven, no
4 insurer shall offer major medical, comprehensive or other comparable
5 individual contracts, other than for purposes of conversion, unless the
6 benefits of such contracts, including deductibles and coinsurance, are
7 identical to the out-of-plan benefits of the contracts described in
8 section four thousand three hundred twenty-two of this chapter. Such
9 contracts must include a prescription drug benefit complying with the
10 requirements of that section. THE REQUIREMENTS OF THIS SUBSECTION SHALL
11 NOT APPLY TO A POLICY INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS
12 ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION
13 DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003. SUCH POLICIES SHALL BE
14 KNOWN AS "FREEDOM POLICIES".

15 S 2. Section 3221 of the insurance law is amended by adding a new
16 subsection (r) to read as follows:

17 (R) NO GROUP OR BLANKET ACCIDENT AND HEALTH INSURANCE POLICY ISSUED OR
18 ISSUED FOR DELIVERY IN THIS STATE FOR USE IN A HEALTH SAVINGS ACCOUNT
19 PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG,

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

LBD04920-01-9

1 IMPROVEMENT, AND MODERNIZATION ACT OF 2003 SHALL BE REQUIRED TO MEET THE
2 REQUIREMENTS OF THIS SECTION, OR REGULATIONS ISSUED BY THE SUPERINTEN-
3 DENT, WITH REGARD TO COVERED HEALTH CARE SERVICES WHICH MUST BE INCLUDED
4 IN THE POLICY. SUCH POLICIES SHALL BE KNOWN AS "FREEDOM POLICIES".

5 S 3. Subsection (l) of section 4304 of the insurance law, as added by
6 chapter 504 of the laws of 1995, is amended to read as follows:

7 (l) On and after January first, nineteen hundred ninety-seven, no
8 insurer shall offer major medical, comprehensive or other comparable
9 individual contracts on a direct payment basis, other than for purposes
10 of conversion, unless the benefits of such contracts, including deduct-
11 ibles and coinsurance, are identical to the out-of-plan benefits of the
12 contracts described in section four thousand three hundred twenty-two of
13 this article. Such contracts must include a prescription drug benefit
14 complying with the requirements of such section. THE REQUIREMENTS OF
15 THIS SUBSECTION SHALL NOT APPLY TO A POLICY INTENDED TO QUALIFY FOR USE
16 IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL
17 MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.
18 SUCH POLICIES SHALL BE KNOWN AS "FREEDOM POLICIES".

19 S 4. Section 4304 of the insurance law is amended by adding a new
20 subsection (m) to read as follows:

21 (M) NO POLICY ISSUED TO A REMITTING AGENT ON BEHALF OF A GROUP PURSU-
22 ANT TO SUBSECTION (A) OF THIS SECTION, AND NO POLICY ISSUED TO A GROUP
23 PURSUANT TO SECTION FOUR THOUSAND THREE HUNDRED FIVE OF THIS ARTICLE,
24 FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE
25 FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT
26 OF 2003 SHALL BE REQUIRED TO MEET THE REQUIREMENTS OF THIS SECTION OR
27 SECTION FOUR THOUSAND THREE HUNDRED FIVE OF THIS ARTICLE, OR REGULATIONS
28 ISSUED BY THE SUPERINTENDENT, WITH REGARD TO COVERED HEALTH CARE
29 SERVICES WHICH MUST BE INCLUDED IN THE POLICY. SUCH POLICIES SHALL BE
30 KNOWN AS "FREEDOM POLICIES".

31 S 5. Subsection (a) of section 4322 of the insurance law, as amended
32 by chapter 342 of the laws of 2004, is amended to read as follows:

33 (a) On and after January first, nineteen hundred ninety-six, all
34 health maintenance organizations issued a certificate of authority under
35 article forty-four of the public health law or licensed under this arti-
36 cle shall offer to individuals, in addition to the standardized contract
37 required by section four thousand three hundred twenty-one of this arti-
38 cle, a standardized individual enrollee direct payment contract on an
39 open enrollment basis as prescribed by section four thousand three
40 hundred seventeen of this article and section four thousand four hundred
41 six of the public health law, and regulations promulgated thereunder,
42 with an out-of-plan benefit system, provided, however, that such
43 requirements shall not apply to a health maintenance organization exclu-
44 sively serving individuals enrolled pursuant to title eleven of article
45 five of the social services law, title eleven-D of article five of the
46 social services law, title one-A of article twenty-five of the public
47 health law or title eighteen of the federal Social Security Act, and,
48 further provided, that such health maintenance organization shall not
49 discontinue a contract for an individual receiving comprehensive-type
50 coverage in effect prior to January first, two thousand four who is
51 ineligible to purchase policies offered after such date pursuant to this
52 section or section four thousand three hundred [twenty-two] TWENTY-ONE
53 of this article due to the provision of 42 U.S.C. 1395ss in effect prior
54 to January first, two thousand four. The out-of-plan benefit system
55 shall either be provided by the health maintenance organization pursuant
56 to subdivision two of section four thousand four hundred six of the

1 public health law or through an accompanying insurance contract provid-
2 ing out-of-plan benefits offered by a company appropriately licensed
3 pursuant to this chapter. On and after January first, nineteen hundred
4 ninety-six, the contracts issued pursuant to this section and section
5 four thousand three hundred twenty-one of this article shall be the only
6 contracts offered by health maintenance organizations to individuals;
7 PROVIDED, HOWEVER, THIS LIMITATION SHALL NOT APPLY TO ONE OR MORE POLI-
8 CIES INTENDED TO QUALIFY FOR USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO
9 SECTION 1201 OF THE FEDERAL MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND
10 MODERNIZATION ACT OF 2003. SUCH POLICIES SHALL BE KNOWN AS "FREEDOM
11 POLICIES". The enrollee contracts issued by a health maintenance organ-
12 ization under this section and section four thousand three hundred twen-
13 ty-one of this article shall also be the only contracts issued by the
14 health maintenance organization for purposes of conversion pursuant to
15 sections four thousand three hundred four and four thousand three
16 hundred five of this article. However, nothing in this section shall be
17 deemed to require health maintenance organizations to terminate individ-
18 ual direct payment contracts issued prior to January first, nineteen
19 hundred ninety-six or prohibit health maintenance organizations from
20 terminating individual direct payment contracts issued prior to January
21 first, nineteen hundred ninety-six.

22 S 6. Section 210 of the tax law is amended by adding a new subdivision
23 41 to read as follows:

24 41. (A) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED
25 A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE
26 PERCENTAGE OF PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE
27 BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (I) FIVE PERCENT
28 FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND
29 NINE, (II) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
30 FIRST, TWO THOUSAND TEN, (III) FIFTEEN PERCENT FOR TAXABLE YEARS BEGIN-
31 NING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, (IV) TWENTY PERCENT
32 FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND
33 TWELVE, (V) TWENTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER
34 JANUARY FIRST, TWO THOUSAND THIRTEEN, (VI) THIRTY PERCENT FOR TAXABLE
35 YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, (VII)
36 THIRTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
37 FIRST, TWO THOUSAND FIFTEEN, (VIII) FORTY PERCENT FOR TAXABLE YEARS
38 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, AND (IX)
39 FORTY-THREE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
40 FIRST, TWO THOUSAND SEVENTEEN.

41 (B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY YEAR SHALL NOT
42 REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS
43 PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION.
44 IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR
45 ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT
46 NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
47 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR
48 OR YEARS.

49 (C) FOR THE PURPOSES OF THIS SUBDIVISION "QUALIFIED SMALL EMPLOYER"
50 SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE
51 BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES WHO IS A
52 "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE
53 OF THIS SECTION.

54 (D) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "HEALTH INSURANCE"
55 MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS
56 OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO

1 HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND
 2 EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE
 3 PUBLIC HEALTH LAW AND SHALL INCLUDE "FREEDOM POLICIES" WHICH QUALIFY FOR
 4 USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL
 5 MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

6 S 7. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 7 of the tax law, as amended by section 2 of part ZZ1 of chapter 57 of the
 8 laws of 2008, is amended to read as follows:

9 (B) shall be treated as the owner of a new business with respect to
 10 such share if the corporation qualifies as a new business pursuant to
 11 paragraph (j) of subdivision twelve of section two hundred ten of this
 12 chapter.

13
 14
 15 With respect to the following
 16 credit under this section:

The corporation's credit base under
 section two hundred ten or section
 fourteen hundred fifty-six of this
 chapter is:

17 (I) Investment tax credit
 18 under subsection (a)
 19
 20
 21
 22

Investment credit base
 or qualified
 rehabilitation
 expenditures under
 subdivision twelve of
 section two hundred ten

23 (II) Empire zone
 24 investment tax credit
 25 under subsection (j)
 26
 27

Cost or other basis
 under subdivision
 twelve-B
 of section two hundred
 ten

28 (III) Empire zone
 29 wage tax credit
 30 under subsection (k)
 31
 32
 33

Eligible wages under
 subdivision nineteen of
 section two hundred ten
 or subsection (e) of
 section fourteen hundred
 fifty-six

34 (IV) Empire zone
 35 capital tax credit
 36 under subsection (l)
 37
 38
 39
 40

Qualified investments
 and contributions under
 subdivision twenty of
 section two hundred ten
 or subsection (d) of
 section fourteen hundred
 fifty-six

41 (V) Agricultural property tax
 42 credit under subsection (n)
 43
 44

Allowable school
 district property taxes under
 subdivision twenty-two of
 section two hundred ten

45 (VI) Credit for employment
 46 of persons with dis-
 47 abilities under
 48 subsection (o)
 49

Qualified first-year wages or
 qualified second-year wages
 under subdivision
 twenty-three of section
 two hundred ten

1		or subsection (f)
2		of section fourteen
3		hundred fifty-six
4	(VII) Employment incentive	Applicable investment credit
5	credit under subsec-	base under subdivision
6	tion (a-1)	twelve-D of section two
7		hundred ten
8	(VIII) Empire zone	Applicable investment
9	employment	credit under sub-
10	incentive credit under	division twelve-C
11	subsection (j-1)	of section two hundred ten
12	(IX) Alternative fuels credit	Cost under subdivision
13	under subsection (p)	twenty-four of section two
14		hundred ten
15	(X) Qualified emerging	Applicable credit base
16	technology company	under subdivision twelve-E
17	employment credit	of section two hundred ten
18	under subsection (q)	
19	(XI) Qualified emerging	Qualified investments under
20	technology company	subdivision twelve-F of
21	capital tax credit	section two hundred ten
22	under subsection (r)	
23	(XII) Credit for purchase of an	Cost of an automated
24	automated external defibrillator	external defibrillator under
25	under subsection (s)	subdivision twenty-five of
26		section two hundred ten
27		or subsection (j) of section
28		fourteen hundred fifty-six
29	(XIII) Low-income housing	Credit amount under
30	credit under subsection (x)	subdivision thirty
31		of section two hundred ten or
32		subsection (l) of section
33		fourteen hundred fifty-six
34	(XIV) Credit for transportation	Amount of credit under sub-
35	improvement contributions	division thirty-two of section
36	under subsection (z)	two hundred ten or subsection
37		(n) of section fourteen
38		hundred fifty-six
39	(XV) QEZE credit for real property	Amount of credit under
40	taxes under subsection (bb)	subdivision twenty-seven of
41		section two hundred ten or
42		subsection (o) of section
43		fourteen hundred fifty-six
44	(XVI) QEZE tax reduction credit	Amount of benefit period
45	under subsection (cc)	factor, employment increase factor
46		and zone allocation

1		factor (without regard
2		to pro ration) under
3		subdivision twenty-eight of
4		section two hundred ten or
5		subsection (p) of section
6		fourteen hundred fifty-six
7		and amount of tax factor
8		as determined under
9		subdivision (f) of section sixteen
10	(XVII) Green building credit	Amount of green building credit
11	under subsection (y)	under subdivision thirty-one
12		of section two hundred ten
13		or subsection (m) of section
14		fourteen hundred fifty-six
15	(XVIII) Credit for long-term	Qualified costs under
16	care insurance premiums	subdivision twenty-five-a of
17	under subsection (aa)	section two hundred ten
18		or subsection (k) of section
19		fourteen hundred fifty-six
20	(XIX) Brownfield redevelopment	Amount of credit
21	credit under subsection	under subdivision
22	(dd)	thirty-three of section
23		two hundred ten
24		or subsection (q) of
25		section fourteen hundred
26		fifty-six
27	(XX) Remediated brownfield	Amount of credit under
28	credit for real property	subdivision thirty-four
29	taxes for qualified	of section two hundred
30	sites under subsection	ten or subsection (r) of
31	(ee)	section fourteen hundred
32		fifty-six
33	(XXI) Environmental	Amount of credit under
34	remediation	subdivision thirty-five of
35	insurance credit under	section two hundred
36	subsection (ff)	ten or subsection
37		(s) of section
38		fourteen hundred
39		fifty-six
40	(XXII) Empire state film production	Amount of credit for
41		qualified
42	credit under subsection (gg)	production costs in production
43		of a qualified film under
44		subdivision thirty-six of
45		section two hundred ten
46	(XXIII) Qualified emerging	Qualifying expenditures and
47	technology company facilities,	development activities under
48	operations and training credit	subdivision twelve-G of section
49	under subsection (nn)	two hundred ten

1	(XXIV) Security training tax	Amount of credit
2	credit under	under subdivision thirty-seven
3	subsection (ii)	of section two hundred ten or
4		under subsection (t) of
5		section fourteen hundred fifty-six
6	(XXV) Credit for qualified fuel	Amount of credit under
7	cell electric generating equipment	subdivision thirty-seven
8	expenditures under subsection (g-2)	of section two hundred ten
9		or subsection (t) of
10		section fourteen hundred
11		fifty-six
12	(XXVI) Empire state commercial	Amount of credit for
13	production credit	qualified production costs in
14	under subsection (jj)	production of a qualified commercial
15		under subdivision thirty-eight
16		of section two hundred ten
17	(XXVII) Biofuel production	Amount of credit
18	tax credit under	under subdivision
19	subsection (jj)	thirty-eight of
20		section two hundred ten
21	(XXVIII) Clean heating fuel	Amount of credit under
22	credit under subsection (mm)	subdivision thirty-nine of
23		section two hundred ten
24	(XXIX) Credit for rehabilitation	Amount of credit under
25	of historic properties	subdivision forty of
26	under subsection (oo)	[subsection] SECTION two hundred ten
27	(XXX) Credit for companies who	Amount of credit under
28	provide transportation	subdivision forty of
29	to individuals	section two hundred ten
30	with disabilities	
31	under subsection (oo)	
32	(XXXI) SMALL EMPLOYER HEALTH	CREDIT UNDER SUBDIVISION
33	CARE INSURANCE CREDIT	FORTY-ONE OF SECTION TWO
34	UNDER SUBSECTION (QQ)	HUNDRED TEN
35	S 8. Section 606 of the tax law is amended by adding a new subsection	
36	(qq) to read as follows:	
37	(QQ) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT. (1) A TAXPAYER WHO	
38	IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX	
39	IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMI-	
40	UMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER.	
41	THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE PERCENT FOR TAXABLE YEARS	
42	BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE, (B) TEN PERCENT	
43	FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN,	
44	(C) FIFTEEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY	
45	FIRST, TWO THOUSAND ELEVEN, (D) TWENTY PERCENT FOR TAXABLE YEARS BEGIN-	
46	NING ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE, (E) TWENTY-FIVE	
47	PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-	
48	SAND THIRTEEN, (F) THIRTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR	
49	AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, (G) THIRTY-FIVE PERCENT FOR	

1 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN,
2 (H) FORTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST,
3 TWO THOUSAND SIXTEEN, AND (I) FORTY-THREE PERCENT FOR TAXABLE YEARS
4 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN. IF THE
5 AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE
6 YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE
7 CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE
8 TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

9 (2) FOR THE PURPOSES OF THIS SUBSECTION "QUALIFIED SMALL EMPLOYER"
10 SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE
11 BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES WHO IS A
12 "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE
13 OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

14 (3) FOR THE PURPOSES OF THIS SUBSECTION, THE TERM "HEALTH INSURANCE"
15 MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS
16 OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO
17 HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND
18 EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE
19 PUBLIC HEALTH LAW AND SHALL INCLUDE "FREEDOM POLICIES" WHICH QUALIFY FOR
20 USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL
21 MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

22 S 9. Section 1456 of the tax law is amended by adding a new subsection
23 (f-1) to read as follows:

24 (F-1)(1) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED
25 A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE
26 PERCENTAGE OF THE PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH
27 INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE
28 PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
29 SAND NINE, (B) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANU-
30 ARY FIRST, TWO THOUSAND TEN, (C) FIFTEEN PERCENT FOR TAXABLE YEARS
31 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, (D) TWENTY
32 PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
33 SAND TWELVE, (E) TWENTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR
34 AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, (F) THIRTY PERCENT FOR TAXA-
35 BLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN,
36 (G) THIRTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
37 FIRST, TWO THOUSAND FIFTEEN, (H) FORTY PERCENT FOR TAXABLE YEARS BEGIN-
38 NING ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, AND (I)
39 FORTY-THREE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
40 FIRST, TWO THOUSAND SEVENTEEN.

41 (2) IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR, AND CARRYOVERS
42 OF SUCH CREDIT, BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYA-
43 BLE TO LESS THAN THE DOLLAR AMOUNT FIXED AS A MINIMUM TAX BY SUBSECTION
44 (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. IF, HOWEVER,
45 THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWABLE
46 UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH
47 AMOUNT, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT
48 DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
49 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR
50 OR YEARS.

51 (3) FOR THE PURPOSES OF THIS SECTION THE TERM "QUALIFIED SMALL EMPLOY-
52 ER" SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE OF THE
53 BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES WHO IS A
54 "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE
55 OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

1 (4) FOR THE PURPOSES OF THIS SUBSECTION, THE TERM "HEALTH INSURANCE"
2 MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS
3 OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO
4 HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND
5 EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE
6 PUBLIC HEALTH LAW AND SHALL INCLUDE "FREEDOM POLICIES" WHICH QUALIFY FOR
7 USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL
8 MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

9 S 10. Section 1511 of the tax law is amended by adding a new subdivi-
10 sion (y) to read as follows:

11 (Y) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT. (1) A TAXPAYER SHALL
12 BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE
13 APPLICABLE PERCENTAGE OF THE PREMIUMS PAID DURING THE TAXABLE YEAR FOR
14 HEALTH INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE
15 (A) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST,
16 TWO THOUSAND NINE, (B) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR
17 AFTER JANUARY FIRST, TWO THOUSAND TEN, (C) FIFTEEN PERCENT FOR TAXABLE
18 YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, (D)
19 TWENTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST,
20 TWO THOUSAND TWELVE, (E) TWENTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING
21 ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, (F) THIRTY PERCENT FOR
22 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOUR-
23 TEEN, (G) THIRTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER
24 JANUARY FIRST, TWO THOUSAND FIFTEEN, (H) FORTY PERCENT FOR TAXABLE YEARS
25 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, AND (I)
26 FORTY-THREE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
27 FIRST, TWO THOUSAND SEVENTEEN.

28 (2) IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR BE ALLOWED IN AN
29 AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE MINIMUM FIXED
30 BY SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED TWO OF THIS ARTICLE. IF,
31 HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY
32 TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT
33 DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
34 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR
35 OR YEARS.

36 (3) FOR THE PURPOSES OF THIS SUBDIVISION THE TERM "QUALIFIED SMALL
37 EMPLOYER" SHALL MEAN AN INDIVIDUAL PROPRIETOR WHO IS THE SOLE EMPLOYEE
38 OF THE BUSINESS OR AN EMPLOYER WITH NOT MORE THAN FIFTY EMPLOYEES WHO IS
39 A "SMALL BUSINESS TAXPAYER" AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION
40 ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER.

41 (4) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "HEALTH INSURANCE"
42 MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS
43 OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO
44 HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND
45 EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE
46 PUBLIC HEALTH LAW AND SHALL INCLUDE "FREEDOM POLICIES" WHICH QUALIFY FOR
47 USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL
48 MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

49 S 11. Section 606 of the tax law is amended by adding a new subsection
50 (h-1) to read as follows:

51 (H-1) INDIVIDUAL ENROLLEE HEALTH INSURANCE CREDIT. A TAXPAYER SHALL BE
52 ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE
53 APPLICABLE PERCENTAGE OF THE PREMIUM PAID DURING THE TAXABLE YEAR FOR
54 HEALTH INSURANCE PURCHASED PURSUANT TO SECTION FOUR THOUSAND THREE
55 HUNDRED TWENTY-ONE OR FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THE
56 INSURANCE LAW, INCLUDING "FREEDOM POLICIES" WHICH QUALIFY FOR USE IN A

1 HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE
2 PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003. THE APPLI-
3 CABLE PERCENTAGE SHALL BE (1) FIVE PERCENT FOR TAXABLE YEARS BEGINNING
4 ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE, (2) TEN PERCENT FOR TAXA-
5 BLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN, (3)
6 FIFTEEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST,
7 TWO THOUSAND ELEVEN, (4) TWENTY PERCENT FOR TAXABLE YEARS BEGINNING ON
8 OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE, (5) TWENTY-FIVE PERCENT FOR
9 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND THIR-
10 TEEN, (6) THIRTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
11 FIRST, TWO THOUSAND FOURTEEN, (7) THIRTY-FIVE PERCENT FOR TAXABLE YEARS
12 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, (8) FORTY
13 PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
14 SAND SIXTEEN, AND (9) FORTY-THREE PERCENT FOR TAXABLE YEARS BEGINNING ON
15 OR AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN.

16 S 12. Subsection (c) of section 4326 of the insurance law, as added by
17 chapter 1 of the laws of 1999, subparagraph (A) of paragraph 1 and
18 subparagraph (C) of paragraph 3 as amended by chapter 419 of the laws of
19 2000, is amended to read as follows:

20 (c) The following definitions shall be applicable to the insurance
21 contracts offered under the program established by this section:

22 (1) A qualifying small employer is an employer that is either:

23 (A) An individual proprietor who is the only employee of the business:

24 (i) without health insurance which provides benefits on an expense
25 reimbursed or prepaid basis in effect during the twelve month period
26 prior to application for a qualifying group health insurance contract
27 under the program established by this section; and

28 (ii) resides in a household having a net household income at or below
29 two hundred [eight] FIFTY percent of the non-farm federal poverty level
30 (as defined and updated by the federal department of health and human
31 services) or the gross equivalent of such net income;

32 (iii) except that the requirements set forth in item (i) of this
33 subparagraph shall not be applicable where an individual proprietor had
34 health insurance coverage during the previous twelve months and such
35 coverage terminated due to one of the reasons set forth in items (i)
36 through (viii) of subparagraph (C) of paragraph three of THIS subsection
37 [(c) of this section]; or

38 (B) An employer with:

39 (i) not more than fifty eligible employees;

40 (ii) no group health insurance which provides benefits on an expense
41 reimbursed or prepaid basis covering employees in effect during the
42 twelve month period prior to application for a qualifying group health
43 insurance contract under the program established by this section; and

44 (iii) at least thirty percent of its eligible employees receiving
45 annual wages from the employer at a level equal to or less than thirty
46 thousand dollars. The thirty thousand dollar figure shall be adjusted
47 periodically pursuant to subparagraph (F) of this paragraph.

48 (C) The requirements set forth in item (i) of subparagraph (A) of this
49 paragraph and in item (ii) of subparagraph (B) of this paragraph shall
50 not be applicable where an individual proprietor or employer is trans-
51 ferring from a health insurance contract issued pursuant to the New York
52 state small business health insurance partnership program established by
53 section nine hundred twenty-two of the public health law or from health
54 care coverage issued pursuant to a regional pilot project for the unin-
55 sured established by section one thousand one hundred eighteen of this
56 chapter.

1 (D) The twelve month period set forth in item (i) of subparagraph (A)
2 of this paragraph and in item (ii) of subparagraph (B) of this paragraph
3 may be adjusted by the superintendent from twelve months to eighteen
4 months if he determines that the twelve month period is insufficient to
5 prevent inappropriate substitution of other health insurance contracts
6 for qualifying group health insurance contracts.

7 (E) An individual proprietor or employer shall cease to be a qualify-
8 ing small employer if any health insurance which provides benefits on an
9 expense reimbursed or prepaid basis covering the individual proprietor
10 or an employer's employees, other than qualifying group health insurance
11 purchased pursuant to this section, is purchased or otherwise takes
12 effect subsequent to purchase of qualifying group health insurance under
13 the program established by this section.

14 (F) The wage levels utilized in subparagraph (B) of this paragraph
15 shall be adjusted annually, beginning in two thousand two. The adjust-
16 ment shall take effect on July first of each year. For July first, two
17 thousand two, the adjustment shall be a percentage of the annual wage
18 figure specified in subparagraph (B) of this paragraph. For subsequent
19 years, the adjustment shall be a percentage of the annual wage figure
20 which took effect on July first of the prior year. The percentage
21 adjustment shall be the same percentage by which the current year's
22 non-farm federal poverty level, as defined and updated by the federal
23 department of health and human services, for a family unit of four
24 persons for the forty-eight contiguous states and Washington, D.C.,
25 changed from the same level established for the prior year.

26 (2) A qualifying group health insurance contract is a group contract
27 purchased from a health maintenance organization, corporation or insurer
28 by a qualifying small employer which provides the benefits set forth in
29 subsection (d) of this section. The contract must insure not less than
30 fifty percent of the employees eligible for coverage.

31 (3) (A) A qualifying individual is an employed person:

32 (i) who does not have and has not had health insurance with benefits
33 on an expense reimbursed or prepaid basis during the twelve month period
34 prior to the individual's application for health insurance under the
35 program established by this section;

36 (ii) whose employer does not provide group health insurance and has
37 not provided group health insurance with benefits on an expense reim-
38 bursed or prepaid basis covering employees in effect during the twelve
39 month period prior to the individual's application for health insurance
40 under the program established by this section;

41 (iii) [resides] RESIDING in a household having a net household income
42 at or below two hundred [eight] FIFTY percent of the non-farm federal
43 poverty level (as defined and updated by the federal department of
44 health and human services) or the gross equivalent of such net income[;]
45 and

46 [(iv)] WHO is ineligible for Medicare.

47 (B) The requirements set forth in items (i) and (ii) of subparagraph
48 (A) of this paragraph shall not be applicable where an individual is
49 transferring from a health insurance contract issued pursuant to the
50 voucher insurance program established by section one thousand one
51 hundred twenty-one of this chapter, a health insurance contract issued
52 pursuant to the New York state small business health insurance partner-
53 ship program established by section nine hundred twenty-two of the
54 public health law or health care coverage issued pursuant to a regional
55 pilot project for the uninsured established by section one thousand one
56 hundred eighteen of this chapter.

1 (C) The requirements set forth in items (i) and (ii) of subparagraph
2 (A) of this paragraph shall not be applicable where an individual had
3 health insurance coverage during the previous twelve months and such
4 coverage terminated due to:

5 (i) loss of employment due to factors other than voluntary separation;

6 (ii) death of a family member which results in termination of coverage
7 under a health insurance contract under which the individual is covered;

8 (iii) change to a new employer that does not provide group health
9 insurance with benefits on an expense reimbursed or prepaid basis;

10 (iv) change of residence so that no employer-based health insurance
11 with benefits on an expense reimbursed or prepaid basis is available;

12 (v) discontinuation of a group health insurance contract with benefits
13 on an expense reimbursed or prepaid basis covering the qualifying indi-
14 vidual as an employee or dependent;

15 (vi) expiration of the coverage periods established by the continua-
16 tion provisions of the Employee Retirement Income Security Act, 29
17 U.S.C. section 1161 et seq. and the Public Health Service Act, 42
18 U.S.C. section 300bb-1 et seq. established by the Consolidated Omnibus
19 Budget Reconciliation Act of 1985, as amended, or the continuation
20 provisions of subsection (m) of section three thousand two hundred twen-
21 ty-one, subsection (k) of section four thousand three hundred four and
22 subsection (e) of section four thousand three hundred five of this chap-
23 ter;

24 (vii) legal separation, divorce or annulment which results in termi-
25 nation of coverage under a health insurance contract under which the
26 individual is covered; or

27 (viii) loss of eligibility under a group health plan.

28 (D) The twelve month period set forth in items (i) and (ii) of subpar-
29 agraph (A) of this paragraph may be adjusted by the superintendent from
30 twelve months to eighteen months if he determines that the twelve month
31 period is insufficient to prevent inappropriate substitution of other
32 health insurance contracts for qualifying individual health insurance
33 contracts.

34 (4) A qualifying individual health insurance contract is an individual
35 contract issued directly to a qualifying individual and which provides
36 the benefits set forth in subsection (d) of this section. At the option
37 of the qualifying individual, such contract may include coverage for
38 dependents of the qualifying individual.

39 (5) A QUALIFYING INDIVIDUAL RESIDING IN A HOUSEHOLD HAVING A NET
40 INCOME ABOVE TWO HUNDRED FIFTY PERCENT OF THE NON-FARM POVERTY LEVEL (AS
41 DEFINED AND UPDATED BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN
42 SERVICES) OR THE GROSS EQUIVALENT OF SUCH NET INCOME SHALL BE ELIGIBLE
43 TO PURCHASE A QUALIFYING INDIVIDUAL HEALTH INSURANCE CONTRACT.
44 PROVIDED, HOWEVER, PREMIUMS SHALL BE PAID TO THE INSURER OR HEALTH MAIN-
45 TENANCE ORGANIZATION AT A RATE WHICH DOES NOT INCLUDE ACTUARIAL
46 REDUCTIONS DERIVED FROM THE MARKET STABILIZATION POOLS CREATED PURSUANT
47 TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER.

48 S 13. Paragraphs 4 and 6 of subsection (e) of section 4326 of the
49 insurance law, as added by chapter 1 of the laws of 1999, are amended to
50 read as follows:

51 (4) emergency services shall have a [fifty] ONE HUNDRED dollar copay-
52 ment which must be waived if hospital admission results from the emer-
53 gency room visit;

54 (6) the maximum coverage for prescription drugs shall be [three] FIVE
55 thousand dollars per individual in a calendar year; and

1 S 14. Subsection (g) of section 4326 of the insurance law, as added by
2 chapter 1 of the laws of 1999, is amended to read as follows:

3 (g) The superintendent shall be authorized to modify, by regulation,
4 the copayment and deductible amounts described in this section if the
5 superintendent determines such amendments are necessary to [facilitate
6 implementation of this section] MAINTAIN THE PROGRAM. On or after Janu-
7 ary first, two thousand two, the superintendent shall be authorized to
8 establish, by regulation, one or more additional standardized health
9 insurance benefit packages if the superintendent determines additional
10 benefit packages with different levels of benefits are necessary to meet
11 the needs of the public.

12 S 15. Subsections (b) and (e) of section 4327 of the insurance law, as
13 added by chapter 1 of the laws of 1999, are amended to read as follows:

14 (b) Commencing on January first, two thousand one, health maintenance
15 organizations, corporations or insurers shall be eligible to receive
16 reimbursement for ninety percent of claims paid between thirty thousand
17 and one hundred thousand dollars AND COMMENCING JANUARY FIRST, TWO THOU-
18 SAND TEN, HEALTH MAINTENANCE ORGANIZATIONS, CORPORATIONS OR INSURERS
19 SHALL BE ELIGIBLE FOR REIMBURSEMENT FOR NINETY PERCENT OF CLAIMS IN
20 EXCESS OF FIVE HUNDRED THOUSAND DOLLARS in a calendar year for any
21 member covered under a standardized contract issued pursuant to section
22 four thousand three hundred twenty-six of this article. Claims paid for
23 members covered under qualifying group health insurance contracts shall
24 be reimbursable from the small employer stop loss fund. Claims paid for
25 members covered under qualifying individual health insurance contracts
26 shall be reimbursable from the qualifying individual stop loss fund. For
27 the purposes of this section, claims shall include health care claims
28 paid by a health maintenance organization on behalf of a covered member
29 pursuant to such standardized contracts.

30 (e) Claims shall be reported and funds shall be distributed from the
31 small employer stop loss fund and from the qualifying individual stop
32 loss fund on a calendar year basis. Claims shall be eligible for
33 reimbursement only for the calendar year in which the claims are paid.
34 [Once claims paid on behalf of a covered member reach or exceed one
35 hundred thousand dollars in a given calendar year, no further claims
36 paid on behalf of such member in that calendar year shall be eligible
37 for reimbursement.]

38 S 16. Subsections (a) and (c) of section 4321-a of the insurance law,
39 as added by chapter 1 of the laws of 1999, are amended to read as
40 follows:

41 (a) The superintendent shall establish a fund from which health main-
42 tenance organizations may receive reimbursement, to the extent of funds
43 available therefor, for claims paid by such health maintenance organiza-
44 tions for members covered under standardized individual enrollee direct
45 payment contracts issued pursuant to section four thousand three hundred
46 twenty-one of this article. The fund established by the superintendent
47 pursuant to this section shall be known as the direct payment stop loss
48 fund. Commencing in calendar year two thousand, health maintenance
49 organizations shall be eligible to receive reimbursement from the direct
50 payment stop loss fund for ninety percent of claims paid between twenty
51 thousand and one hundred thousand dollars, AS WELL AS CLAIMS IN EXCESS
52 OF FIVE HUNDRED THOUSAND DOLLARS, in a calendar year for any member
53 covered under a contract issued pursuant to section four thousand three
54 hundred twenty-one of this article. For the purposes of this section,
55 claims shall include health care claims paid by a health maintenance

1 organization on behalf of a covered member pursuant to such standardized
2 direct payment contracts.

3 (c) Claims shall be reported and funds shall be distributed on a
4 calendar year basis. Claims shall be eligible for reimbursement only for
5 the calendar year in which the claims are paid. Once claims paid on
6 behalf of a member reach or exceed one hundred thousand dollars in a
7 given calendar year, no further claims paid on behalf of such member in
8 such calendar year shall be eligible for reimbursement UNTIL THE CLAIMS
9 REACH FIVE HUNDRED THOUSAND DOLLARS.

10 S 17. Subsections (a) and (c) of section 4322-a of the insurance law,
11 as added by chapter 1 of the laws of 1999, are amended to read as
12 follows:

13 (a) The superintendent shall establish a fund from which health main-
14 tenance organizations may receive reimbursement, to the extent of funds
15 available therefor, for claims paid by such health maintenance organiza-
16 tions for members covered under standardized individual enrollee direct
17 payment contracts which provide out-of-plan benefits issued pursuant to
18 section four thousand three hundred twenty-two of this article. The fund
19 established by the superintendent pursuant to this section shall be
20 known as "the direct payment out-of-plan stop loss fund". Commencing in
21 calendar year two thousand, health maintenance organizations shall be
22 eligible to receive reimbursement from the direct payment out-of-plan
23 stop loss fund for ninety percent of claims paid between twenty thousand
24 and one hundred thousand dollars, AS WELL AS CLAIMS IN EXCESS OF FIVE
25 HUNDRED THOUSAND DOLLARS, in a calendar year for any member covered
26 under a contract issued pursuant to section four thousand three hundred
27 twenty-two of this article. For the purposes of this section, claims
28 shall include health care claims paid by a health maintenance organiza-
29 tion on behalf of a covered member pursuant to contracts issued pursuant
30 to section four thousand three hundred twenty-two of this article.

31 (c) Claims shall be reported and funds shall be distributed on a
32 calendar year basis. Claims shall be eligible for reimbursement only for
33 the calendar year in which the claims are paid. Once claims paid on
34 behalf of a member reach or exceed one hundred thousand dollars in a
35 given calendar year, no further claims paid on behalf of such member in
36 that calendar year shall be eligible for reimbursement UNTIL THE CLAIMS
37 REACH FIVE HUNDRED THOUSAND DOLLARS.

38 S 18. Subsection (b) of section 3231 of the insurance law, as amended
39 by chapter 557 of the laws of 2002, is amended to read as follows:

40 (b) Nothing herein shall prohibit the use of premium rate structures
41 to establish different premium rates for individuals as opposed to fami-
42 ly units or separate community rates for individuals as opposed to small
43 groups. NOTHING HEREIN SHALL REQUIRE THAT ALL PRODUCTS IN THE SAME
44 COMMUNITY POOL HAVE AN IDENTICAL CHANGE IN PREMIUM; AN INSURER MAY
45 SUBSEQUENTLY INCREASE OR DECREASE THE PREMIUM OF ONE PRODUCT BY A
46 DIFFERENT PERCENTAGE THAN ANOTHER PRODUCT BASED ON DIFFERING UTILIZATION
47 OR OTHER FACTORS (AS DETERMINED BY THE INSURER), EVEN THOUGH BOTH
48 PRODUCTS ARE IN THE SAME COMMUNITY POOL. If an insurer is required to
49 issue a contract to individual proprietors pursuant to subsection (i) of
50 this section, such policy shall be subject to subsection (a) of this
51 section.

52 S 19. Subsection (b) of section 4317 of the insurance law, as amended
53 by chapter 557 of the laws of 2002, is amended to read as follows:

54 (b) Nothing herein shall prohibit the use of premium rate structures
55 to establish different premium rates for individuals as opposed to fami-
56 ly units or separate community rates for individuals as opposed to small

1 groups. NOTHING HEREIN SHALL REQUIRE THAT ALL PRODUCTS IN THE SAME
2 COMMUNITY POOL HAVE AN IDENTICAL CHANGE IN PREMIUM; AN INSURER MAY
3 SUBSEQUENTLY INCREASE OR DECREASE THE PREMIUM OF ONE PRODUCT BY A
4 DIFFERENT PERCENTAGE THAN ANOTHER PRODUCT BASED ON DIFFERING UTILIZATION
5 OR OTHER FACTORS (AS DETERMINED BY THE INSURER), EVEN THOUGH BOTH
6 PRODUCTS ARE IN THE SAME COMMUNITY POOL. If a corporation is required to
7 issue a contract to individual proprietors pursuant to subsection (f) of
8 this section, such contract shall be subject to the requirements of
9 subsection (a) of this section.

10 S 20. Subdivision 3 of section 4401 of the public health law, as added
11 by chapter 938 of the laws of 1976, is amended to read as follows:

12 3. "Comprehensive health services" means all those health services
13 which an enrolled population might require in order to be maintained in
14 good health, and shall include, but shall not be limited to, physician
15 services (including consultant and referral services), in-patient and
16 out-patient hospital services, diagnostic laboratory and therapeutic and
17 diagnostic radiologic services, and emergency and preventive health
18 services. Such term may be further defined by agreement with enrolled
19 populations providing additional benefits necessary, desirable or appro-
20 priate to meet their health care needs. NOTWITHSTANDING THE PRECEDING,
21 IN THE CASE OF GROUPS WITH FIFTY-ONE OR MORE EMPLOYEES, SUBSCRIBERS OR
22 MEMBERS, EXCLUSIVE OF SPOUSES AND DEPENDENTS, A HEALTH MAINTENANCE
23 ORGANIZATION MAY OFFER CONTRACTS WITH THOSE DEDUCTIBLES, COINSURANCE,
24 COPAYMENTS AND OTHER LIMITATIONS ON BENEFITS NECESSARY TO MATCH THE
25 BENEFITS OF THE OTHER HEALTH BENEFIT OFFERINGS OF SUCH GROUPS AND THERE-
26 BY ATTEMPT TO AVOID ADVERSE SELECTION.

27 S 21. Subdivision 1 of section 4406 of the public health law, as
28 amended by chapter 342 of the laws of 2004, is amended to read as
29 follows:

30 1. The contract between a health maintenance organization and an
31 enrollee shall be subject to regulation by the superintendent as if it
32 were a health insurance subscriber contract, and shall include, but not
33 be limited to, all mandated benefits required by article forty-three of
34 the insurance law. Such contract shall fully and clearly state the bene-
35 fits and limitations therein provided or imposed, so as to facilitate
36 understanding and comparisons, and to exclude provisions which may be
37 misleading or unreasonably confusing. Such contract shall be issued to
38 any individual and dependents of such individual and any group of fifty
39 or fewer employees or members, exclusive of spouses and dependents, or
40 any employee or member of the group, including dependents, applying for
41 such contract at any time throughout the year, and may include a pre-ex-
42 isting condition provision as provided for in section four thousand
43 three hundred eighteen of the insurance law, provided, however, that
44 such requirements shall not apply to a health maintenance organization
45 exclusively serving individuals enrolled pursuant to title eleven of
46 article five of the social services law, title eleven-D of article five
47 of the social services law, title one-A of article twenty-five of the
48 public health law or title eighteen of the federal Social Security Act,
49 and, further provided, that such health maintenance organization shall
50 not discontinue a contract for an individual receiving comprehensive-
51 type coverage in effect prior to January first, two thousand four who is
52 ineligible to purchase policies offered after such date pursuant to this
53 section or section four thousand three hundred twenty-two of [this arti-
54 cle] THE INSURANCE LAW due to the provision of 42 U.S.C. 1395ss in
55 effect prior to January first, two thousand four; AND PROVIDED FURTHER,
56 HOWEVER, THAT IN THE CASE OF LARGE GROUPS NOT SUBJECT TO SECTION FOUR

1 THOUSAND THREE HUNDRED SEVENTEEN OF THE INSURANCE LAW THE HEALTH MAINTENANCE ORGANIZATION MAY APPLY THE SAME MINIMUM PARTICIPATION AND OTHER ENROLLMENT STANDARDS AS AN INSURER IS PERMITTED TO APPLY PURSUANT TO THE INSURANCE LAW. Subject to the creditable coverage requirements of subsection (a) of section four thousand three hundred eighteen of the insurance law, the organization may, as an alternative to the use of a pre-existing condition provision, elect to offer contracts without a pre-existing condition provision to such groups but may require that coverage shall not become effective until after a specified affiliation period of not more than sixty days after the application for coverage is submitted. The organization is not required to provide health care services or benefits during such period and no premium shall be charged for any coverage during the period. After January first, nineteen hundred ninety-six, all individual direct payment contracts shall be issued only pursuant to sections four thousand three hundred twenty-one and four thousand three hundred twenty-two of the insurance law. Such contracts may not, with respect to an eligible individual (as defined in section 2741(b) of the federal Public Health Service Act, 42 U.S.C. S 300gg-41(b)), impose any pre-existing condition exclusion.

20 S 22. Section 4406 of the public health law is amended by adding a new subdivision 5 to read as follows:

22 5. NOTWITHSTANDING ANY OTHER LAW, REGULATION OR DEPARTMENTAL POLICY, IN THE CASE OF OFFERINGS TO GROUPS WITH FIFTY-ONE OR MORE EMPLOYEES, SUBSCRIBERS OR MEMBERS, EXCLUSIVE OF SPOUSES AND DEPENDENTS, A HEALTH MAINTENANCE ORGANIZATION MAY ELECT NOT TO OFFER COVERAGE TO THE GROUP AS A WHOLE IF THE BENEFIT PACKAGES OF THE OTHER PLANS OFFERED BY THE GROUP, OR THE AMOUNTS CONTRIBUTED BY THE GROUP TOWARDS THE PREMIUMS, ARE LIKELY TO PROMOTE ADVERSE SELECTION.

29 S 23. Section 2406 of the insurance law is amended by adding a new subsection (f) to read as follows:

31 (F) ALL FINES AND PENALTIES PAID AND COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN AND DISTRIBUTED THROUGH POOLS CREATED PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER ESTABLISHED AND OPERATED FOR THE PURPOSE OF MARKET STABILIZATION MECHANISMS FOR INDIVIDUAL, SMALL GROUP AND MEDICARE SUPPLEMENTAL INSURANCE.

37 S 24. This act shall take effect January 1, 2010; provided, however that the empire state film production credit under subsection (gg) , the empire state commercial production credit under subsection (jj) and the credit for companies who provide transportation to individuals with disabilities under subsection (oo) of section 606 of the tax law contained in section seven of this act shall expire on the same date as provided in section 9 of part P of chapter 60 of the laws of 2004, as amended, section 10 of part V of chapter 62 of the laws of 2006, as amended and section 5 of chapter 522 of the laws of 2006, as amended, 46 respectively.