

3092

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishment of freedom 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 maintenance organization direct pay market program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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,  
20 IMPROVEMENT, AND MODERNIZATION ACT OF 2003 SHALL BE REQUIRED TO MEET THE  
21 REQUIREMENTS OF THIS SECTION, OR REGULATIONS ISSUED BY THE SUPERINTEN-

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

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1 DENT, WITH REGARD TO COVERED HEALTH CARE SERVICES WHICH MUST BE INCLUDED  
2 IN THE POLICY. SUCH POLICIES SHALL BE KNOWN AS "FREEDOM POLICIES".

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

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

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

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

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

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

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

20 S 6. Section 210 of the tax law is amended by adding a new subdivision  
21 41 to read as follows:

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

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

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

52 (D) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "HEALTH INSURANCE"  
53 MEANS AN ACCIDENT AND HEALTH INSURANCE POLICY SUBJECT TO THE PROVISIONS  
54 OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN, THREE THOUSAND TWO  
55 HUNDRED TWENTY-ONE, FOUR THOUSAND THREE HUNDRED THREE OR FOUR THOUSAND  
56 EIGHT HUNDRED ONE OF THE INSURANCE LAW, AND ARTICLE FORTY-FOUR OF THE

1 PUBLIC HEALTH LAW AND SHALL INCLUDE "FREEDOM POLICIES" WHICH QUALIFY FOR  
 2 USE IN A HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL  
 3 MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003.

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

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

11 The corporation's credit base under  
 12 section two hundred ten or section  
 13 With respect to the following fourteen hundred fifty-six of this  
 14 credit under this section: chapter is:

15 (I) Investment tax credit Investment credit base  
 16 under subsection (a) or qualified  
 17 rehabilitation  
 18 expenditures under  
 19 subdivision twelve of  
 20 section two hundred ten

21 (II) Empire zone Cost or other basis  
 22 investment tax credit under subdivision  
 23 under subsection (j) twelve-B  
 24 of section two hundred  
 25 ten

26 (III) Empire zone Eligible wages under  
 27 wage tax credit subdivision nineteen of  
 28 under subsection (k) section two hundred ten  
 29 or subsection (e) of  
 30 section fourteen hundred  
 31 fifty-six

32 (IV) Empire zone Qualified investments  
 33 capital tax credit and contributions under  
 34 under subsection (l) subdivision twenty of  
 35 section two hundred ten  
 36 or subsection (d) of  
 37 section fourteen hundred  
 38 fifty-six

39 (V) Agricultural property tax Allowable school  
 40 credit under subsection (n) district property taxes under  
 41 subdivision twenty-two of  
 42 section two hundred ten

43 (VI) Credit for employment Qualified first-year wages or  
 44 of persons with dis- qualified second-year wages  
 45 abilities under under subdivision  
 46 subsection (o) twenty-three of section  
 47 two hundred ten  
 48 or subsection (f)  
 49 of section fourteen

1		hundred fifty-six
2	(VII) Employment incentive	Applicable investment credit
3	credit under subsec-	base under subdivision
4	tion (a-1)	twelve-D of section two
5		hundred ten
6	(VIII) Empire zone	Applicable investment
7	employment	credit under sub-
8	incentive credit under	division twelve-C
9	subsection (j-1)	of section two hundred ten
10	(IX) Alternative fuels credit	Cost under subdivision
11	under subsection (p)	twenty-four of section two
12		hundred ten
13	(X) Qualified emerging	Applicable credit base
14	technology company	under subdivision twelve-E
15	employment credit	of section two hundred ten
16	under subsection (q)	
17	(XI) Qualified emerging	Qualified investments under
18	technology company	subdivision twelve-F of
19	capital tax credit	section two hundred ten
20	under subsection (r)	
21	(XII) Credit for purchase of an	Cost of an automated
22	automated external defibrillator	external defibrillator under
23	under subsection (s)	subdivision twenty-five of
24		section two hundred ten
25		or subsection (j) of section
26		fourteen hundred fifty-six
27	(XIII) Low-income housing	Credit amount under
28	credit under subsection (x)	subdivision thirty
29		of section two hundred ten or
30		subsection (l) of section
31		fourteen hundred fifty-six
32	(XIV) Credit for transportation	Amount of credit under sub-
33	improvement contributions	division thirty-two of section
34	under subsection (z)	two hundred ten or subsection
35		(n) of section fourteen
36		hundred fifty-six
37	(XV) QEZE credit for real property	Amount of credit under
38	taxes under subsection (bb)	subdivision twenty-seven of
39		section two hundred ten or
40		subsection (o) of section
41		fourteen hundred fifty-six
42	(XVI) QEZE tax reduction credit	Amount of benefit period
43	under subsection (cc)	factor, employment increase factor
44		and zone allocation
45		factor (without regard
46		to pro ration) under

1		subdivision twenty-eight of
2		section two hundred ten or
3		subsection (p) of section
4		fourteen hundred fifty-six
5		and amount of tax factor
6		as determined under
7		subdivision (f) of section sixteen
8	(XVII) Green building credit	Amount of green building credit
9	under subsection (y)	under subdivision thirty-one
10		of section two hundred ten
11		or subsection (m) of section
12		fourteen hundred fifty-six
13	(XVIII) Credit for long-term	Qualified costs under
14	care insurance premiums	subdivision twenty-five-a of
15	under subsection (aa)	section two hundred ten
16		or subsection (k) of section
17		fourteen hundred fifty-six
18	(XIX) Brownfield redevelopment	Amount of credit
19	credit under subsection	under subdivision
20	(dd)	thirty-three of section
21		two hundred ten
22		or subsection (q) of
23		section fourteen hundred
24		fifty-six
25	(XX) Remediated brownfield	Amount of credit under
26	credit for real property	subdivision thirty-four
27	taxes for qualified	of section two hundred
28	sites under subsection	ten or subsection (r) of
29	(ee)	section fourteen hundred
30		fifty-six
31	(XXI) Environmental	Amount of credit under
32	remediation	subdivision thirty-five of
33	insurance credit under	section two hundred
34	subsection (ff)	ten or subsection
35		(s) of section
36		fourteen hundred
37		fifty-six
38	(XXII) Empire state film production	Amount of credit for
39	credit under subsection (gg)	qualified
40		production costs in production
41		of a qualified film under
42		subdivision thirty-six of
43		section two hundred ten
44	(XXIII) Qualified emerging	Qualifying expenditures and
45	technology company facilities,	development activities under
46	operations and training credit	subdivision twelve-G of section
47	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.