

4106

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. MORELLE, SCHIMMINGER, CYMBROWITZ, PERRY, CANES-
TRARI, ORTIZ, HIKIND -- Multi-Sponsored by -- M. of A. 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 (s) to read as follows:

17 (S) 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

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

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

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

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

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

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

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

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

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

21 S 6. Section 210 of the tax law is amended by adding a new subdivision
22 43 to read as follows:

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

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

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

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

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

5 S 7. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 6 of the tax law, is amended by adding a new clause (xxxii) to read as
 7 follows:

8 (XXXII) SMALL EMPLOYER HEALTH	CREDIT UNDER SUBDIVISION
9 CARE INSURANCE CREDIT	FORTY-THREE OF SECTION TWO
10 UNDER SUBSECTION (SS)	HUNDRED TEN

11 S 8. Section 606 of the tax law is amended by adding a new subsection
 12 (ss) to read as follows:

13 (SS) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT. (1) A TAXPAYER WHO
 14 IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX
 15 IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE PERCENTAGE OF THE PREMI-
 16 UMS PAID DURING THE TAXABLE YEAR FOR HEALTH INSURANCE BY SUCH EMPLOYER.
 17 THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE PERCENT FOR TAXABLE YEARS
 18 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, (B) TEN
 19 PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
 20 SAND TWELVE, (C) FIFTEEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER
 21 JANUARY FIRST, TWO THOUSAND THIRTEEN, (D) TWENTY PERCENT FOR TAXABLE
 22 YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, (E)
 23 TWENTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
 24 FIRST, TWO THOUSAND FIFTEEN, (F) THIRTY PERCENT FOR TAXABLE YEARS BEGIN-
 25 NING ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, (G) THIRTY-FIVE
 26 PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
 27 SAND SEVENTEEN, (H) FORTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR
 28 AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN, AND (I) FORTY-THREE PERCENT
 29 FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND
 30 NINETEEN. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION
 31 FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE
 32 EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE
 33 DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

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

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

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

49 (F-1)(1) A TAXPAYER WHO IS A QUALIFIED SMALL EMPLOYER SHALL BE ALLOWED
 50 A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE APPLICABLE
 51 PERCENTAGE OF THE PREMIUMS PAID DURING THE TAXABLE YEAR FOR HEALTH
 52 INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE (A) FIVE
 53 PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
 54 SAND ELEVEN, (B) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER
 55 JANUARY FIRST, TWO THOUSAND TWELVE, (C) FIFTEEN PERCENT FOR TAXABLE
 56 YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, (D)

1 TWENTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST,
2 TWO THOUSAND FOURTEEN, (E) TWENTY-FIVE PERCENT FOR TAXABLE YEARS BEGIN-
3 NING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, (F) THIRTY PERCENT
4 FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND
5 SIXTEEN, (G) THIRTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER
6 JANUARY FIRST, TWO THOUSAND SEVENTEEN, (H) FORTY PERCENT FOR TAXABLE
7 YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN, AND
8 (I) FORTY-THREE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
9 FIRST, TWO THOUSAND NINETEEN.

10 (2) IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR, AND CARRYOVERS
11 OF SUCH CREDIT, BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYA-
12 BLE TO LESS THAN THE DOLLAR AMOUNT FIXED AS A MINIMUM TAX BY SUBSECTION
13 (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. IF, HOWEVER,
14 THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWABLE
15 UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH
16 AMOUNT, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT
17 DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
18 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR
19 OR YEARS.

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

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

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

35 (AA) SMALL EMPLOYER HEALTH CARE INSURANCE CREDIT. (1) A TAXPAYER SHALL
36 BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE
37 APPLICABLE PERCENTAGE OF THE PREMIUMS PAID DURING THE TAXABLE YEAR FOR
38 HEALTH INSURANCE BY SUCH EMPLOYER. THE APPLICABLE PERCENTAGE SHALL BE
39 (A) FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST,
40 TWO THOUSAND ELEVEN, (B) TEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR
41 AFTER JANUARY FIRST, TWO THOUSAND TWELVE, (C) FIFTEEN PERCENT FOR TAXA-
42 BLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN,
43 (D) TWENTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
44 FIRST, TWO THOUSAND FOURTEEN, (E) TWENTY-FIVE PERCENT FOR TAXABLE YEARS
45 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, (F) THIRTY
46 PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-
47 SAND SIXTEEN, (G) THIRTY-FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR
48 AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN, (H) FORTY PERCENT FOR TAXA-
49 BLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN,
50 AND (I) FORTY-THREE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER
51 JANUARY FIRST, TWO THOUSAND NINETEEN.

52 (2) IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR BE ALLOWED IN AN
53 AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE MINIMUM FIXED
54 BY SUBDIVISION (A) OF SECTION FIFTEEN HUNDRED TWO OF THIS ARTICLE. IF,
55 HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY
56 TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT

1 DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
2 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR
3 OR YEARS.

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

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

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

19 (H-1) INDIVIDUAL ENROLLEE HEALTH INSURANCE CREDIT. A TAXPAYER SHALL BE
20 ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE
21 APPLICABLE PERCENTAGE OF THE PREMIUM PAID DURING THE TAXABLE YEAR FOR
22 HEALTH INSURANCE PURCHASED PURSUANT TO SECTION FOUR THOUSAND THREE
23 HUNDRED TWENTY-ONE OR FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THE
24 INSURANCE LAW, INCLUDING "FREEDOM POLICIES" WHICH QUALIFY FOR USE IN A
25 HEALTH SAVINGS ACCOUNT PURSUANT TO SECTION 1201 OF THE FEDERAL MEDICARE
26 PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003. THE
27 APPLICABLE PERCENTAGE SHALL BE (1) FIVE PERCENT FOR TAXABLE YEARS BEGIN-
28 NING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, (2) TEN PERCENT FOR
29 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE,
30 (3) FIFTEEN PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
31 FIRST, TWO THOUSAND THIRTEEN, (4) TWENTY PERCENT FOR TAXABLE YEARS
32 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, (5) TWENTY-
33 FIVE PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO
34 THOUSAND FIFTEEN, (6) THIRTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR
35 AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, (7) THIRTY-FIVE PERCENT FOR
36 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN-
37 TEEN, (8) FORTY PERCENT FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY
38 FIRST, TWO THOUSAND EIGHTEEN, AND (9) FORTY-THREE PERCENT FOR TAXABLE
39 YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINETEEN.

40 S 12. Subsection (c) of section 4326 of the insurance law, as added by
41 chapter 1 of the laws of 1999, subparagraph (A) of paragraph 1 and
42 subparagraph (C) of paragraph 3 as amended by chapter 419 of the laws of
43 2000, is amended to read as follows:

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

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

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

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

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

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

7 (B) An employer with:

8 (i) not more than fifty eligible employees;

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

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

17 (C) The requirements set forth in item (i) of subparagraph (A) of this
18 paragraph and in item (ii) of subparagraph (B) of this paragraph shall
19 not be applicable where an individual proprietor or employer is trans-
20 ferring from a health insurance contract issued pursuant to the New York
21 state small business health insurance partnership program established by
22 section nine hundred twenty-two of the public health law or from health
23 care coverage issued pursuant to a regional pilot project for the unin-
24 sured established by section one thousand one hundred eighteen of this
25 chapter.

26 (D) The twelve month period set forth in item (i) of subparagraph (A)
27 of this paragraph and in item (ii) of subparagraph (B) of this paragraph
28 may be adjusted by the superintendent from twelve months to eighteen
29 months if he determines that the twelve month period is insufficient to
30 prevent inappropriate substitution of other health insurance contracts
31 for qualifying group health insurance contracts.

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

39 (F) The wage levels utilized in subparagraph (B) of this paragraph
40 shall be adjusted annually, beginning in two thousand two. The adjust-
41 ment shall take effect on July first of each year. For July first, two
42 thousand two, the adjustment shall be a percentage of the annual wage
43 figure specified in subparagraph (B) of this paragraph. For subsequent
44 years, the adjustment shall be a percentage of the annual wage figure
45 which took effect on July first of the prior year. The percentage
46 adjustment shall be the same percentage by which the current year's
47 non-farm federal poverty level, as defined and updated by the federal
48 department of health and human services, for a family unit of four
49 persons for the forty-eight contiguous states and Washington, D.C.,
50 changed from the same level established for the prior year.

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

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

- 1 (i) who does not have and has not had health insurance with benefits
2 on an expense reimbursed or prepaid basis during the twelve month period
3 prior to the individual's application for health insurance under the
4 program established by this section;
- 5 (ii) whose employer does not provide group health insurance and has
6 not provided group health insurance with benefits on an expense reim-
7 bursed or prepaid basis covering employees in effect during the twelve
8 month period prior to the individual's application for health insurance
9 under the program established by this section;
- 10 (iii) [resides] RESIDING in a household having a net household income
11 at or below two hundred [eight] FIFTY percent of the non-farm federal
12 poverty level (as defined and updated by the federal department of
13 health and human services) or the gross equivalent of such net income[;]
14 and
- 15 [(iv)] WHO is ineligible for Medicare.
- 16 (B) The requirements set forth in items (i) and (ii) of subparagraph
17 (A) of this paragraph shall not be applicable where an individual is
18 transferring from a health insurance contract issued pursuant to the
19 voucher insurance program established by section one thousand one
20 hundred twenty-one of this chapter, a health insurance contract issued
21 pursuant to the New York state small business health insurance partner-
22 ship program established by section nine hundred twenty-two of the
23 public health law or health care coverage issued pursuant to a regional
24 pilot project for the uninsured established by section one thousand one
25 hundred eighteen of this chapter.
- 26 (C) The requirements set forth in items (i) and (ii) of subparagraph
27 (A) of this paragraph shall not be applicable where an individual had
28 health insurance coverage during the previous twelve months and such
29 coverage terminated due to:
- 30 (i) loss of employment due to factors other than voluntary separation;
31 (ii) death of a family member which results in termination of coverage
32 under a health insurance contract under which the individual is covered;
33 (iii) change to a new employer that does not provide group health
34 insurance with benefits on an expense reimbursed or prepaid basis;
35 (iv) change of residence so that no employer-based health insurance
36 with benefits on an expense reimbursed or prepaid basis is available;
37 (v) discontinuation of a group health insurance contract with benefits
38 on an expense reimbursed or prepaid basis covering the qualifying indi-
39 vidual as an employee or dependent;
- 40 (vi) expiration of the coverage periods established by the continua-
41 tion provisions of the Employee Retirement Income Security Act, 29
42 U.S.C. section 1161 et seq. and the Public Health Service Act, 42
43 U.S.C. section 300bb-1 et seq. established by the Consolidated Omnibus
44 Budget Reconciliation Act of 1985, as amended, or the continuation
45 provisions of subsection (m) of section three thousand two hundred twen-
46 ty-one, subsection (k) of section four thousand three hundred four and
47 subsection (e) of section four thousand three hundred five of this chap-
48 ter;
- 49 (vii) legal separation, divorce or annulment which results in termi-
50 nation of coverage under a health insurance contract under which the
51 individual is covered; or
- 52 (viii) loss of eligibility under a group health plan.
- 53 (D) The twelve month period set forth in items (i) and (ii) of subpar-
54 agraph (A) of this paragraph may be adjusted by the superintendent from
55 twelve months to eighteen months if he determines that the twelve month
56 period is insufficient to prevent inappropriate substitution of other

1 health insurance contracts for qualifying individual health insurance
2 contracts.

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

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

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

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

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

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

27 (g) The superintendent shall be authorized to modify, by regulation,
28 the copayment and deductible amounts described in this section if the
29 superintendent determines such amendments are necessary to [facilitate
30 implementation of this section] MAINTAIN THE PROGRAM. On or after Janu-
31 ary first, two thousand two, the superintendent shall be authorized to
32 establish, by regulation, one or more additional standardized health
33 insurance benefit packages if the superintendent determines additional
34 benefit packages with different levels of benefits are necessary to meet
35 the needs of the public.

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

38 (b) Commencing on January first, two thousand one, health maintenance
39 organizations, corporations or insurers shall be eligible to receive
40 reimbursement for ninety percent of claims paid between thirty thousand
41 and one hundred thousand dollars AND COMMENCING JANUARY FIRST, TWO THOU-
42 SAND TWELVE, HEALTH MAINTENANCE ORGANIZATIONS, CORPORATIONS OR INSURERS
43 SHALL BE ELIGIBLE FOR REIMBURSEMENT FOR NINETY PERCENT OF CLAIMS IN
44 EXCESS OF FIVE HUNDRED THOUSAND DOLLARS in a calendar year for any
45 member covered under a standardized contract issued pursuant to section
46 four thousand three hundred twenty-six of this article. Claims paid for
47 members covered under qualifying group health insurance contracts shall
48 be reimbursable from the small employer stop loss fund. Claims paid for
49 members covered under qualifying individual health insurance contracts
50 shall be reimbursable from the qualifying individual stop loss fund. For
51 the purposes of this section, claims shall include health care claims
52 paid by a health maintenance organization on behalf of a covered member
53 pursuant to such standardized contracts.

54 (e) Claims shall be reported and funds shall be distributed from the
55 small employer stop loss fund and from the qualifying individual stop
56 loss fund on a calendar year basis. Claims shall be eligible for

1 reimbursement only for the calendar year in which the claims are paid.
2 [Once claims paid on behalf of a covered member reach or exceed one
3 hundred thousand dollars in a given calendar year, no further claims
4 paid on behalf of such member in that calendar year shall be eligible
5 for reimbursement.]

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

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

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

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

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

54 (c) Claims shall be reported and funds shall be distributed on a
55 calendar year basis. Claims shall be eligible for reimbursement only for
56 the calendar year in which the claims are paid. Once claims paid on

1 behalf of a member reach or exceed one hundred thousand dollars in a
2 given calendar year, no further claims paid on behalf of such member in
3 that calendar year shall be eligible for reimbursement UNTIL THE CLAIMS
4 REACH FIVE HUNDRED THOUSAND DOLLARS.

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

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

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

21 (b) Nothing herein shall prohibit the use of premium rate structures
22 to establish different premium rates for individuals as opposed to fami-
23 ly units or separate community rates for individuals as opposed to small
24 groups. NOTHING HEREIN SHALL REQUIRE THAT ALL PRODUCTS IN THE SAME
25 COMMUNITY POOL HAVE AN IDENTICAL CHANGE IN PREMIUM; AN INSURER MAY
26 SUBSEQUENTLY INCREASE OR DECREASE THE PREMIUM OF ONE PRODUCT BY A
27 DIFFERENT PERCENTAGE THAN ANOTHER PRODUCT BASED ON DIFFERING UTILIZATION
28 OR OTHER FACTORS (AS DETERMINED BY THE INSURER), EVEN THOUGH BOTH
29 PRODUCTS ARE IN THE SAME COMMUNITY POOL. If a corporation is required to
30 issue a contract to individual proprietors pursuant to subsection (f) of
31 this section, such contract shall be subject to the requirements of
32 subsection (a) of this section.

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

35 3. "Comprehensive health services" means all those health services
36 which an enrolled population might require in order to be maintained in
37 good health, and shall include, but shall not be limited to, physician
38 services (including consultant and referral services), in-patient and
39 out-patient hospital services, diagnostic laboratory and therapeutic and
40 diagnostic radiologic services, and emergency and preventive health
41 services. Such term may be further defined by agreement with enrolled
42 populations providing additional benefits necessary, desirable or appro-
43 priate to meet their health care needs. NOTWITHSTANDING THE PRECEDING,
44 IN THE CASE OF GROUPS WITH FIFTY-ONE OR MORE EMPLOYEES, SUBSCRIBERS OR
45 MEMBERS, EXCLUSIVE OF SPOUSES AND DEPENDENTS, A HEALTH MAINTENANCE
46 ORGANIZATION MAY OFFER CONTRACTS WITH THOSE DEDUCTIBLES, COINSURANCE,
47 COPAYMENTS AND OTHER LIMITATIONS ON BENEFITS NECESSARY TO MATCH THE
48 BENEFITS OF THE OTHER HEALTH BENEFIT OFFERINGS OF SUCH GROUPS AND THERE-
49 BY ATTEMPT TO AVOID ADVERSE SELECTION.

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

53 1. The contract between a health maintenance organization and an
54 enrollee shall be subject to regulation by the superintendent as if it
55 were a health insurance subscriber contract, and shall include, but not
56 be limited to, all mandated benefits required by article forty-three of

1 the insurance law. Such contract shall fully and clearly state the bene-
2 fits and limitations therein provided or imposed, so as to facilitate
3 understanding and comparisons, and to exclude provisions which may be
4 misleading or unreasonably confusing. Such contract shall be issued to
5 any individual and dependents of such individual and any group of fifty
6 or fewer employees or members, exclusive of spouses and dependents, or
7 any employee or member of the group, including dependents, applying for
8 such contract at any time throughout the year, and may include a pre-ex-
9 isting condition provision as provided for in section four thousand
10 three hundred eighteen of the insurance law, provided, however, that
11 such requirements shall not apply to a health maintenance organization
12 exclusively serving individuals enrolled pursuant to title eleven of
13 article five of the social services law, title eleven-D of article five
14 of the social services law, title one-A of article twenty-five of the
15 public health law or title eighteen of the federal Social Security Act,
16 and, further provided, that such health maintenance organization shall
17 not discontinue a contract for an individual receiving comprehensive-
18 type coverage in effect prior to January first, two thousand four who is
19 ineligible to purchase policies offered after such date pursuant to this
20 section or section four thousand three hundred twenty-two of [this arti-
21 cle] THE INSURANCE LAW due to the provision of 42 U.S.C. 1395ss in
22 effect prior to January first, two thousand four; AND PROVIDED FURTHER,
23 HOWEVER, THAT IN THE CASE OF LARGE GROUPS NOT SUBJECT TO SECTION FOUR
24 THOUSAND THREE HUNDRED SEVENTEEN OF THE INSURANCE LAW THE HEALTH MAINTE-
25 NANCE ORGANIZATION MAY APPLY THE SAME MINIMUM PARTICIPATION AND OTHER
26 ENROLLMENT STANDARDS AS AN INSURER IS PERMITTED TO APPLY PURSUANT TO THE
27 INSURANCE LAW. Subject to the creditable coverage requirements of
28 subsection (a) of section four thousand three hundred eighteen of the
29 insurance law, the organization may, as an alternative to the use of a
30 pre-existing condition provision, elect to offer contracts without a
31 pre-existing condition provision to such groups but may require that
32 coverage shall not become effective until after a specified affiliation
33 period of not more than sixty days after the application for coverage is
34 submitted. The organization is not required to provide health care
35 services or benefits during such period and no premium shall be charged
36 for any coverage during the period. After January first, nineteen
37 hundred ninety-six, all individual direct payment contracts shall be
38 issued only pursuant to sections four thousand three hundred twenty-one
39 and four thousand three hundred twenty-two of the insurance law. Such
40 contracts may not, with respect to an eligible individual (as defined in
41 section 2741(b) of the federal Public Health Service Act, 42 U.S.C. S
42 300gg-41(b)), impose any pre-existing condition exclusion.

43 S 22. Section 4406 of the public health law is amended by adding a new
44 subdivision 6 to read as follows:

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

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

54 (F) ALL FINES AND PENALTIES PAID AND COLLECTED PURSUANT TO THIS
55 SECTION SHALL BE DEPOSITED IN AND DISTRIBUTED THROUGH POOLS CREATED
56 PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS

1 CHAPTER ESTABLISHED AND OPERATED FOR THE PURPOSE OF MARKET STABILIZATION
2 MECHANISMS FOR INDIVIDUAL, SMALL GROUP AND MEDICARE SUPPLEMENTAL INSUR-
3 ANCE.
4 S 24. This act shall take effect January 1, 2012.