S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sens. GOLDEN, JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing an alternative benefits demonstration program and creating health opportunity accounts

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

Section 1. Article 2 of the public health law is amended by adding a new title 5-B to read as follows:

TITLE 5-B
ALTERNATIVE BENEFITS DEMONSTRATION PROGRAM

SECTION 266. ALTERNATIVE BENEFITS DEMONSTRATION PROGRAM.
267. DEFINITIONS.
268. IMPLEMENTATION.
269. USE OF HEALTH OPPORTUNITY ACCOUNTS.
269-A. REPORTS.

S 266. ALTERNATIVE BENEFITS DEMONSTRATION PROGRAM. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, THE COMMISSIONER IS HEREBY AUTHORIZED AND DIRECTED TO APPLY TO THE SECRETARY OF HEALTH AND HUMAN SERVICES TO ESTABLISH A DEMONSTRATION PROGRAM FOR PROVISION OF ALTERNATE BENEFITS THROUGH A HEALTH OPPORTUNITY ACCOUNTS PROGRAM PURSUANT TO SECTION 6082 OF THE DEFICIT REDUCTION ACT OF 2005, (P. L. 109-171), AND IF APPROVED, TO ESTABLISH SUCH PROGRAM IN NOT MORE THAN TEN, NOR LESS THAN FIVE COUNTIES, FOR ELIGIBLE INDIVIDUALS AS DEFINED IN THIS TITLE, SUBJECT TO THE REQUIREMENTS AND RESTRICTIONS OF THIS TITLE. THE PROGRAM SHALL TERMINATE IF FEDERAL APPROVALS FOR THE PROGRAM SHALL CEASE OR BE WITHDRAWN, OR IF THERE IS NO FEDERAL FINANCIAL PARTICIPATION, OR IF THE COMMISSIONER SHALL DETERMINE, PURSUANT TO THE STUDY AUTHORIZED IN THIS TITLE, THAT THE PROGRAM IS NOT MEETING AND CANNOT MEET ITS GOALS.

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

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S 267. DEFINITIONS. AS USED IN THIS TITLE:

1. "ELIGIBLE INDIVIDUAL" MEANS AN INDIVIDUAL WHO IS WORKING OR LOOKING FOR WORK, OR WHO IS ENROLLED IN A JOB TRAINING PROGRAM, AND WHO IS ELIGIBLE FOR THE MEDICAL ASSISTANCE PROGRAM OR SUCH OTHER PROGRAMS AS WILL ALLOW SUCH INDIVIDUAL TO QUALIFY FOR THE DEMONSTRATION PROGRAM, AND WHO VOLUNTARILY ENROLLS IN THE DEMONSTRATION PROGRAM. SUCH ELIGIBLE INDIVIDUALS MAY INCLUDE INDIVIDUALS WHO ARE ENROLLED IN MEDICAID MANAGED CARE PLANS, IF THE COMMISSIONER, ON RECOMMENDATION OF THE ADVISORY COMMITTEE, DETERMINES TO INCLUDE THEM; PROVIDED HOWEVER THAT THE DETERMINATION TO INCLUDE SUCH INDIVIDUALS SHALL BE SUBJECT TO FEDERAL REQUIREMENTS AND LIMITATIONS CONCERNING SUCH INDIVIDUALS. AN ELIGIBLE INDIVIDUAL SHALL NOT INCLUDE INDIVIDUALS (A) WHO ARE SIXTY-FIVE YEARS OF AGE OR OLDER; OR (B) WHO ARE DISABLED; OR (C) WHO ARE ELIGIBLE FOR MEDICAL ASSISTANCE ONLY BECAUSE THEY ARE (OR WERE WITHIN THE PREVIOUS SIXTY DAYS) PREGNANT; OR (D) WHO HAVE BEEN ELIGIBLE FOR MEDICAL ASSISTANCE FOR A CONTINUOUS PERIOD OF LESS THAN THREE MONTHS; OR (E) ANY OTHERS PROHIBITED FROM ELIGIBILITY BY FEDERAL REQUIREMENTS, OR WHO ARE EXCLUDED BY THE COMMISSIONER ON RECOMMENDATION OF THE ADVISORY COMMITTEE.

2. "ENROLLMENT" MEANS THE VOLUNTARY ENROLLMENT BY AN ELIGIBLE INDIVIDUAL IN THE ALTERNATIVE BENEFITS PLAN AUTHORIZED BY THIS TITLE. ENROLLMENT SHALL BE FOR A PERIOD OF TWELVE MONTHS, AND MAY BE EXTENDED FOR ADDITIONAL PERIODS OF TWELVE MONTHS AT THE OPTION OF THE ELIGIBLE INDIVIDUAL. AN ELIGIBLE INDIVIDUAL WHO, FOR ANY REASON, UNENROLLS OR IS UNENROLLED FROM THE PROGRAM SHALL NOT BE PERMITTED TO REENROLL FOR A PERIOD OF TWELVE MONTHS FROM THE DATE OF SUCH UNENROLLMENT.

3. "DEDUCTIBLE" MEANS AN AMOUNT WHICH IS ONE HUNDRED TEN PERCENT OF THE ANNUALIZED AMOUNT OF STATE AND FEDERAL CONTRIBUTIONS MADE BY THE COMMISSIONER TO A HEALTH OPPORTUNITY ACCOUNT PURSUANT TO THIS SECTION. UPON RECOMMENDATION OF THE ADVISORY COMMITTEE, THE COMMISSIONER MAY ESTABLISH A TIERED SCHEDULE OF ANNUAL DEDUCTIBLES, BASED ON FAMILY OR INDIVIDUAL INCOME, CONSISTENT WITH FEDERAL REQUIREMENTS FOR SUCH TIERED SCHEDULE.

4. "HEALTH OPPORTUNITY ACCOUNT" MEANS AN ACCOUNT OPENED BY OR ON BEHALF OF AN ELIGIBLE INDIVIDUAL PURSUANT TO THE DEMONSTRATION PROGRAM AUTHORIZED BY THIS TITLE. SUCH ELIGIBLE INDIVIDUAL SHALL BE DEEMED THE OWNER OF THE ACCOUNT, SUBJECT TO THE RESTRICTIONS AND REQUIREMENTS OF THIS TITLE AND OF ANY FEDERAL REQUIREMENTS AND LIMITATIONS CONCERNING SUCH ACCOUNTS. CONTRIBUTIONS TO A HEALTH OPPORTUNITY ACCOUNT MAY BE MADE FROM THE STATE AND FEDERAL GOVERNMENTS, AND OTHER PERSONS AND ENTITIES, INCLUDING CHARITABLE ORGANIZATIONS, AS MAY BE PERMITTED BY THE SECRETARY UNDER THE TERMS OF THE DEMONSTRATION PROGRAM, PROVIDED HOWEVER THAT THE COMBINED STATE AND FEDERAL SHARE OF CONTRIBUTIONS TO A HEALTH OPPORTUNITY ACCOUNT ON BEHALF OF AN INDIVIDUAL SHALL NOT EXCEED TWENTY-FIVE HUNDRED DOLLARS ANNUALLY FOR EACH INDIVIDUAL OR FAMILY MEMBER WHO IS AN ADULT AND ONE THOUSAND DOLLARS FOR EACH INDIVIDUAL OR FAMILY MEMBER WHO IS A CHILD, AND PROVIDED FURTHER THAT THE LIMITATIONS ON SUCH CONTRIBUTIONS SHALL BE ANNUALLY ADJUSTED BY THE ANNUAL PERCENTAGE INCREASE IN THE MEDICAL CARE COMPONENT OF THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS PERMITTED BY THE SECRETARY. THE COMMISSIONER SHALL SEEK TO MAXIMIZE FEDERAL CONTRIBUTIONS TO HEALTH OPPORTUNITY ACCOUNTS ESTABLISHED PURSUANT TO THIS SECTION.

5. "SECRETARY" MEANS THE SECRETARY OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES.

6. "ADVISORY COMMITTEE" MEANS AN ADVISORY COMMITTEE APPOINTED BY THE COMMISSIONER TO AID IN THE DESIGN AND IMPLEMENTATION OF THE DEMON-

STRATION PROGRAM AUTHORIZED BY THIS TITLE. THE COMMITTEE SHALL CONSIST OF TEN PERSONS, OF WHOM FOUR SHALL BE PERSONS WITH AT LEAST FIVE YEARS EXPERIENCE AT EXECUTIVE LEVELS IN THE PROVISION OF HEALTH CARE IN THIS STATE, THREE SHALL BE EXPERTS IN THE ELECTRONIC TRANSMISSION OF FUNDS AND PAYMENT FOR SERVICES, OR PERSONS WITH EXPERTISE IN THE USE OF SAVINGS ACCOUNTS FOR THE PAYMENT OF HEALTH CARE SERVICES, AND THREE SHALL BE CONSUMERS OR ADVOCATES FOR CONSUMERS LIKELY TO BE OR BECOME ELIGIBLE INDIVIDUALS PURSUANT TO THE TERMS OF THIS DEMONSTRATION.

7. "MEDICAID ASSISTANCE PROGRAM" MEANS MEDICAL ASSISTANCE FOR NEEDY PERSONS AS AUTHORIZED BY TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW AND OTHER APPLICABLE STATE LAW.

S 268. IMPLEMENTATION. 1. THE COMMISSIONER SHALL TAKE SUCH STEPS AS SHALL BE NECESSARY TO DEVELOP THE APPLICATION FOR THE ALTERNATIVE BENEFITS PROGRAM AUTHORIZED BY THIS SECTION AND SECTION 6082 OF THE DEFICIT REDUCTION ACT OF 2005 (P.L. 109-171), AND TO ESTABLISH AGREEMENTS WITH AT LEAST THREE BUT NOT MORE THAN TEN COUNTIES FOR THE IMPLEMENTATION OF THE PROGRAM IF APPROVED BY THE SECRETARY. IF APPROVED BY THE SECRETARY, THE COMMISSIONER IS AUTHORIZED TO AND SHALL IMPLEMENT THE PROGRAM IN COUNTIES SELECTED PURSUANT TO THIS SUBDIVISION. THE COMMISSIONER SHALL CONSULT WITH THE ADVISORY COMMITTEE IN THE DESIGN AND DEVELOPMENT OF THE APPLICATION.

2. THE COMMISSIONER MAY COORDINATE ADMINISTRATION OF HEALTH OPPORTUNITY ACCOUNTS THROUGH THE USE OF A THIRD ADMINISTRATOR, TO THE EXTENT PERMITTED BY FEDERAL REQUIREMENTS FOR THE PROGRAM. THE COMMISSIONER SHALL NOT USE A THIRD PARTY ADMINISTRATOR IF EXPENDITURES FOR THE USE OF SUCH ADMINISTRATOR ARE NOT REIMBURSABLE IN THE SAME MANNER AS OTHER ADMINISTRATIVE EXPENDITURES PURSUANT TO SECTION 1903(A)(7) OF THE SOCIAL SECURITY ACT. THE COMMISSIONER MAY USE A REQUEST FOR PROPOSALS OR REQUEST FOR QUALIFICATIONS PROCESS IN SELECTING SUCH THIRD PARTY ADMINISTRATOR, AND SHALL CONSULT WITH THE ADVISORY COMMITTEE IN THE DESIGN OF SUCH RFP AND RFQ.

3. THE COMMISSIONER SHALL REQUIRE THAT PROVIDERS OF SERVICE PROVIDE SUCH SERVICES TO THE OWNER OF A HEALTH OPPORTUNITY ACCOUNT IN THE SAME MANNER AND FOR THE SAME RATES AND PAYMENTS AS IF THE INDIVIDUAL WAS ENROLLED IN THE MEDICAL ASSISTANCE PROGRAM AND NOT THIS DEMONSTRATION PROGRAM, AND AS IF THE DEDUCTIBLE WAS NOT APPLICABLE.

4. THE COMMISSIONER, AFTER CONSULTING WITH THE SUPERINTENDENT OF BANKS, THE ADVISORY COMMITTEE, AND OTHERS THE COMMISSIONER DEEMS APPROPRIATE, SHALL PROVIDE FOR A METHOD WHEREBY WITHDRAWALS MAY BE MADE FROM A HEALTH OPPORTUNITY ACCOUNT FOR PAYMENT OF ELIGIBLE MEDICAL CARE EXPENSES USING AN ELECTRONIC SYSTEM. IN NO CASE SHALL WITHDRAWALS FROM THE ACCOUNT BE PERMITTED IN CASH.

S 269. USE OF HEALTH OPPORTUNITY ACCOUNTS. THE COMMISSIONER SHALL PRESCRIBE BY RULE AND REGULATION THE PERMITTED USES OF FUNDS IN HEALTH OPPORTUNITY ACCOUNTS. SUCH RULE AND REGULATION SHALL REQUIRE:

1. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FUNDS IN A HEALTH OPPORTUNITY ACCOUNT SHALL ONLY BE USED FOR PAYMENT OF MEDICAL CARE, AS SUCH TERM IS DEFINED IN SECTION 213(D) OF THE INTERNAL REVENUE CODE, OR FOR THE PURCHASE OF HEALTH INSURANCE COVERAGE; IN THE CASE OF AN ACCOUNT OWNER WHO HAS BEEN ENROLLED IN THE PROGRAM FOR AT LEAST ONE YEAR, SUCH FUNDS MAY ALSO BE USED FOR EDUCATIONAL EXPENDITURES FOR JOB TRAINING AND TUITION EXPENSES OR OTHER EXPENDITURES APPROVED BY THE COMMISSIONER ON RECOMMENDATION OF THE ADVISORY COMMITTEE, PROVIDED (A) THAT SUCH EXPENDITURES SHALL BE MADE ONLY TO INSTITUTIONS AND PROGRAMS APPROVED BY THE COMMISSIONER, (B) THAT THE PURPOSE OF SUCH EXPENDITURES IS TO ENABLE THE

INDIVIDUAL TO ACQUIRE SKILLS AND TRAINING, AND (C) THAT ANY SUCH EXPENDITURES FOR ITEMS OTHER THAN MEDICAL CARE ARE APPROVED BY THE SECRETARY.

2. IF THE OWNER OF A HEALTH OPPORTUNITY ACCOUNT BECOMES INELIGIBLE TO CONTINUE AS AN ELIGIBLE INDIVIDUAL UNDER THIS SECTION BECAUSE OF AN INCREASE IN INCOME OR ASSETS, (A) NO ADDITIONAL CONTRIBUTION SHALL BE MADE TO THE ACCOUNT BY THE COMMISSIONER, (B) THE BALANCE IN THE ACCOUNT SHALL BE REDUCED BY TWENTY-FIVE PERCENT OF THE AMOUNT OF STATE AND FEDERAL FUNDS DEPOSITED INTO THE ACCOUNT BY THE COMMISSIONER, EXCEPT AS OTHERWISE PROVIDED HEREIN; PROVIDED HOWEVER THAT (C) THE ACCOUNT SHALL REMAIN AVAILABLE TO THE ACCOUNT HOLDER FOR THREE YEARS AFTER THE DATE ON WHICH SUCH OWNER BECOMES INELIGIBLE FOR WITHDRAWALS UNDER THE SAME TERMS AND CONDITIONS AS IF SUCH OWNER REMAINED ELIGIBLE, AND SUCH WITHDRAWALS SHALL BE TREATED AS MEDICAL ASSISTANCE IN ACCORDANCE WITH THIS DEMONSTRATION PROGRAM. FOR PURPOSES OF COMPUTING THE REDUCTION OF TWENTY-FIVE PERCENT REQUIRED BY PARAGRAPH (B) OF THIS SUBDIVISION, ANY WITHDRAWALS FROM THE ACCOUNT FOR PAYMENT OF ELIGIBLE EXPENSES SHALL FIRST BE CREDITED TO STATE AND FEDERAL CONTRIBUTIONS, AND NOT TO CONTRIBUTIONS BY OTHER INDIVIDUALS AND ENTITIES.

3. THE OWNER OF A HEALTH OPPORTUNITY ACCOUNT WHO BECOMES INELIGIBLE TO CONTINUE AS AN ELIGIBLE INDIVIDUAL UNDER THIS SECTION SHALL NOT BE REQUIRED TO PURCHASE INSURANCE AS A CONDITION OF CONTINUING TO USE OR MAINTAIN THE ACCOUNT.

4. AMOUNTS CONTAINED IN OR CONTRIBUTED TO A HEALTH OPPORTUNITY ACCOUNT SHALL NOT BE COUNTED AS INCOME OR ASSETS FOR PURPOSES OF DETERMINING ELIGIBILITY FOR BENEFITS UNDER MEDICAL ASSISTANCE.

5. THE COMMISSIONER, UPON RECOMMENDATION OF THE ADVISORY COMMITTEE, SHALL ESTABLISH PROCEDURES TO PENALIZE AN INDIVIDUAL WHO MAKES UNQUALIFIED WITHDRAWALS FROM A HEALTH OPPORTUNITY ACCOUNT, INCLUDING DISQUALIFYING SUCH PERSON FROM CONTINUING ENROLLMENT IN THE PROGRAM AND CLOSING THE ACCOUNT, RECOUPING COSTS FROM SUCH NONQUALIFIED WITHDRAWALS, AND OTHER APPROPRIATE ACTIONS.

6. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, THE COMMISSIONER MAY, UPON RECOMMENDATION OF THE ADVISORY COMMITTEE AND IF THE SECRETARY SHALL APPROVE, PROVIDE APPROPRIATE INCENTIVES FOR THE USE OF PREVENTATIVE CARE BY THE OWNER OF THE ACCOUNT, INCLUDING WAIVING THE DEDUCTIBLE FOR USE OF PREVENTATIVE CARE AND REDUCING THE REDUCTION REQUIRED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION FOR AN OWNER WHO BECOMES INELIGIBLE TO CONTINUE AS AN ELIGIBLE INDIVIDUAL, OR WAIVING OF CO-PAYS FOR SUCH CARE. FOR PURPOSES OF THIS SUBDIVISION, PREVENTATIVE CARE IS ANY CARE THAT QUALIFIES AS PREVENTATIVE CARE FOR PURPOSES OF SECTION 223(C)(2)(C) OF THE INTERNAL REVENUE CODE, INCLUDING BUT NOT LIMITED TO, PERIODIC HEALTH EVALUATIONS, INCLUDING TESTS AND DIAGNOSTIC PROCEDURES ORDERED IN CONNECTION WITH ROUTINE EXAMINATIONS, SUCH AS ANNUAL PHYSICALS; ROUTINE PRENATAL AND WELL-CHILD CARE; CHILD AND ADULT IMMUNIZATIONS; TOBACCO CESSATION PROGRAMS; OBESITY WEIGHT-LOSS PROGRAMS; SCREENING SERVICES; AND OTHER CARE WHICH QUALIFIES UNDER SUCH SECTION.

7. THE COMMISSIONER SHALL ESTABLISH ACCESS TO NEGOTIATED PROVIDER PAYMENT RATES. IN THE CASE OF AN ELIGIBLE INDIVIDUAL PARTICIPATING IN THIS DEMONSTRATION PROGRAM WHO (A) IS NOT ENROLLED WITH A MEDICAID MANAGED CARE ORGANIZATION, THE COMMISSIONER SHALL PROVIDE THAT THE INDIVIDUAL MAY OBTAIN SERVICES FROM (I) ANY PARTICIPATING PROVIDER UNDER THIS TITLE AT THE SAME PAYMENT RATES THAT WOULD BE APPLICABLE TO SUCH SERVICES IF THE DEDUCTIBLE WAS NOT APPLICABLE; OR (II) ANY OTHER PROVIDER AT PAYMENT RATES THAT DO NOT EXCEED ONE HUNDRED TWENTY-FIVE PERCENT OF THE PAYMENT RATE THAT WOULD BE APPLICABLE TO SUCH SERVICES FURNISHED

BY A PARTICIPATING PROVIDER UNDER THIS TITLE IF THE DEDUCTIBLE WAS NOT APPLICABLE; OR (B) WHO IS ENROLLED WITH A MEDICAID MANAGED CARE ORGANIZATION, THE COMMISSIONER SHALL ENTER INTO AN ARRANGEMENT WITH THE ORGANIZATION UNDER WHICH THE INDIVIDUAL MAY OBTAIN SERVICES FROM ANY OTHER PROVIDER AT PAYMENT RATES THAT DO NOT EXCEED ONE HUNDRED TWENTY-FIVE PERCENT OF THE PAYMENT RATE THAT WOULD BE APPLICABLE TO SUCH SERVICES FURNISHED BY A PARTICIPATING PROVIDER UNDER THIS TITLE IF THE DEDUCTIBLE WAS NOT APPLICABLE. SUCH PAYMENT RATES SHALL BE COMPUTED WITHOUT REGARD TO ANY COST SHARING THAT WOULD BE OTHERWISE APPLICABLE.

8. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS PREVENTING AN EMPLOYER FROM PROVIDING HEALTH BENEFITS COVERAGE TO AN ELIGIBLE INDIVIDUAL UNDER THE DEMONSTRATION PROJECT AUTHORIZED BY THIS SECTION, AND THE COMMISSIONER SHALL MAKE APPROPRIATE EFFORTS TO PARTNER WITH EMPLOYERS FOR THE PROVISION OF HEALTH CARE TO SUCH ELIGIBLE INDIVIDUALS.

S 269-A. REPORTS. THE COMMISSIONER SHALL REPORT TO THE GOVERNOR AND THE LEGISLATURE FROM TIME TO TIME ON THE IMPLEMENTATION OF THE DEMONSTRATION PROGRAM, AND SHALL PROVIDE AN INTERIM REPORT NOT LATER THAN THE THIRD YEAR OF THE PROGRAM, AND A FINAL REPORT NOT LATER THAN MAY FIRST OF THE FIFTH YEAR OF THE PROGRAM. THE INTERIM AND FINAL REPORTS SHALL PROVE STATISTICAL NARRATIVES OF THE LEVELS OF ENROLLMENT IN THE PROGRAM, THE COSTS AND SAVINGS ASSOCIATED WITH THE PROGRAM, AND AN EVALUATION OF THE SUCCESS OF THE PROGRAM IN ATTAINING ITS GOALS.

S 2. This act shall take effect immediately.