



1 disability or disease, by reason of such duty, or who shall without  
2 fault or neglect on his or her part be wounded or disabled while  
3 performing any lawfully ordered duty while in such a combat zone, which  
4 shall incapacitate him or her, and who is unable to receive timely or  
5 adequate healthcare services from the federal Department of Veterans  
6 Affairs within ninety days of making application for such services shall  
7 receive the payment into such service member's New York combat veterans  
8 healthcare choice account established pursuant to article fourteen of  
9 this chapter for care and medical treatment if authority therefor is  
10 granted by the adjutant general, expenses for such care and medical  
11 attendance as are necessary for the appropriate treatment of the wound,  
12 injury, disease or disability may be paid from the New York combat  
13 veterans healthcare choice account as provided in article fourteen of  
14 this chapter until treatment is provided by the federal Veterans Admin-  
15 istration, or the incapacity resulting from such wound, injury, disease  
16 or disability cannot be materially improved by further care or treat-  
17 ment. The determination of whether such injury or disease was incurred  
18 while performing such lawfully ordered active duty in a combat zone,  
19 designated by the president of the United States during Operation Endur-  
20 ing Freedom or Operation Iraqi Freedom, shall be in accordance with this  
21 section and such regulations as may be prescribed by the adjutant gener-  
22 al.

23 2. If care for such a service member is approved by the adjutant  
24 general and the service member shall have created a New York combat  
25 veterans healthcare choice account in accordance with article fourteen  
26 of this chapter, the state shall make a payment of five thousand dollars  
27 into such service member's combat veterans healthcare choice account.  
28 Such payment shall not exceed five thousand dollars in any calendar year  
29 and shall be discontinued upon the service member receiving care from  
30 the federal Department of Veterans Affairs for the injuries or disabili-  
31 ties sustained while in qualified state service.

32 3. None of the benefits provided by subdivision one of this section  
33 shall be paid or allowed unless a claim therefor has been presented to  
34 the adjutant general within three years after the date when such wound,  
35 injury, disease or disability was incurred, or from the date of discov-  
36 ery of such wound, injury, disease or disability. None of the benefits  
37 provided by subdivision one of this section shall be paid or allowed by  
38 the state for any period during which such member of the organized mili-  
39 tia is entitled to receive the same as a charge against federal funds.

40 4. a. Where a claim is made under this section the adjutant general  
41 will make a determination as to whether valid application or attempt to  
42 schedule an appointment to file an application for care was made to the  
43 federal Veterans Administration and whether ninety days shall have  
44 passed since such application or attempt was made. The adjutant general  
45 may cause examinations of the claimant to be made from time to time by a  
46 physician, surgeon or dentist designated for the purpose by the adjutant  
47 general, and he or she may direct the removal of a claimant to, and his  
48 or her treatment in, a hospital designated by the adjutant general, and  
49 if the claimant refuses to permit any such examination or if he or she  
50 refuses to go to such hospital or to follow the advice given or treat-  
51 ment prescribed for him or her therein, he or she shall thereby forfeit  
52 and be barred from all right to any claim or allowance under this  
53 section.

54 b. The adjutant general may appoint a medical examiner or a board of  
55 three officers, at least one of whom shall be a medical officer, to  
56 inquire into the merits of any claim presented under this section, and

1 to recommend the amount or amounts, if any, to be paid or allowed under  
2 this section, or he or she may, in his or her discretion, determine any  
3 claim without appointing a medical examiner or board and fix the amount  
4 to be paid or allowed under this section. If no medical officer is  
5 available, such medical examiner or medical officer on such board may be  
6 a civilian physician, surgeon or dentist.

7 c. A medical examiner or board appointed under this section shall have  
8 the same power to take evidence, administer oaths, issue subpoenas and  
9 compel witnesses to attend and testify and to produce books and papers,  
10 and to punish their failure to do so as is possessed by military courts.

11 d. The findings and recommendations of the medical examiner or board  
12 shall be submitted to the adjutant general who may return the  
13 proceedings to such examiner or board for reconsideration or for taking  
14 further testimony and who shall approve or disapprove the claim and fix  
15 the amount, if any, to be paid or allowed under this section. The amount  
16 so fixed by the adjutant general shall be a charge against and be paid  
17 in the manner provided by this section, by the state.

18 § 3. The military law is amended by adding a new article 14 to read as  
19 follows:

#### 20 ARTICLE 14

#### 21 NEW YORK'S OWN COMBAT VETERANS HEALTHCARE CHOICE PROGRAM

#### 22 Section 400. Program established.

#### 23 401. Purpose.

#### 24 402. Definitions.

#### 25 403. Functions of the comptroller and the division.

#### 26 404. Program requirements; New York combat veterans healthcare 27 choice account.

#### 28 405. Program limitations; New York combat veterans healthcare 29 choice account.

30 § 400. Program established. There is hereby established the New York  
31 combat veterans healthcare choice program and such program shall be  
32 known and may be cited as the "New York's Own combat veterans healthcare  
33 choice program".

34 § 401. Purpose. The purposes of the New York combat veterans health-  
35 care choice program are to authorize the establishment of veterans  
36 healthcare choice accounts and provide guidelines for the maintenance of  
37 such accounts to:

38 1. Enable resident veteran members of the organized militia of this  
39 state who were on active duty in a combat zone, designated by the presi-  
40 dent of the United States during Operation Enduring Freedom or Operation  
41 Iraqi Freedom, to obtain healthcare from the provider of their choice,  
42 with funds from a New York combat veterans healthcare choice account  
43 funded by the state and the service member in accordance with this arti-  
44 cle, when after ninety days of making application to or attempting to  
45 schedule an appointment with the federal Veterans Administration for  
46 such care, the service member is unable to secure timely or adequate  
47 healthcare services for injuries and disabilities sustained in the line  
48 of active duty in such a combat zone, whenever ordered into such combat  
49 zone for three hundred sixty days or more by the governor, the comman-  
50 ding general of the New York army national guard, the commanding officer  
51 of the New York air national guard or the commanding officer of the  
52 naval militia;

53 2. Provide funding from the state for New York combat veterans health-  
54 care choice accounts in an amount of up to five thousand dollars per  
55 calendar year for a period not to exceed three years, when in accordance  
56 with this article, a qualified state resident combat veteran is unable

1 to secure healthcare services within ninety days of making application  
2 or scheduling an appointment to make such an application for such  
3 services from the federal Veterans Administration; and

4 3. To create a state personal income tax deduction for amounts  
5 contributed by qualified resident combat veterans to a New York combat  
6 veterans healthcare choice account in an amount not to exceed five thou-  
7 sand dollars per calendar year as provided in this article.

8 § 402. Definitions. As used in this article, the following terms shall  
9 have the following meanings:

10 1. "Account" or "New York combat veterans healthcare choice account"  
11 shall mean an individual savings account established in accordance with  
12 the provisions of this article.

13 2. "Account owner" shall mean a person who enters into a New York  
14 combat veterans healthcare choice account agreement pursuant to the  
15 provisions of this article, including a person who enters into such an  
16 agreement as a fiduciary or agent on behalf of a trust, estate, partner-  
17 ship, association, company or corporation. The account owner may also be  
18 the designated beneficiary of the account.

19 3. "Designated beneficiary" shall mean, with respect to an account or  
20 accounts, the individual designated as the individual whose healthcare  
21 expenses are expected to be paid from the account or accounts.

22 4. "Financial organization" shall mean an organization authorized to  
23 do business in the state of New York and (a) is an authorized fiduciary  
24 to act as a trustee pursuant to the provisions of an Act of Congress  
25 entitled "Employee Retirement Income Security Act of 1974" as such  
26 provisions may be amended from time to time, or an insurance company;  
27 and (b)(i) is licensed or chartered by the department of financial  
28 services, (ii) is chartered by an agency of the federal government,  
29 (iii) is subject to the jurisdiction and regulation of the securities  
30 and exchange commission of the federal government, or (iv) is any other  
31 entity otherwise authorized to act in this state as a trustee of a  
32 health savings account pursuant to the provisions of an act of congress  
33 entitled the "Medicare Prescription Drug, Improvement, and Modernization  
34 Act", as such provisions may be amended from time to time.

35 5. "Eligible healthcare institution" shall mean any institution  
36 licensed, certified or authorized by the state to provide healthcare  
37 services.

38 6. "Member of family" shall mean a family member as defined in section  
39 529 of the Internal Revenue Code of 1986, as amended.

40 7. "Program" shall mean the New York combat veterans healthcare choice  
41 account program established pursuant to this article.

42 8. "Qualified healthcare expenses" shall mean any medical expense  
43 deductible on federal income taxes.

44 9. "Qualified state service" shall mean active duty service rendered  
45 while being ordered into a combat zone, designated by the president of  
46 the United States during Operation Enduring Freedom or Operation Iraqi  
47 Freedom, for three hundred sixty days or more by the governor, the  
48 commanding general of the New York army national guard, the commanding  
49 officer of the New York air national guard or the commanding officer of  
50 the naval militia.

51 10. "Qualified withdrawal" shall mean a withdrawal from an account to  
52 pay the qualified healthcare expenses of a service member or designated  
53 beneficiary of an account at an eligible healthcare institution.

54 11. "Nonqualified withdrawal" shall mean a withdrawal from an account  
55 which is not:

56 a. a qualified withdrawal; or

1 b. a withdrawal made as the result of the death or disability of the  
2 designated beneficiary of the account.

3 12. "Division" shall mean the division of military and naval affairs.

4 13. "Comptroller" shall mean the state comptroller.

5 14. "Management contract" shall mean the contract executed by the  
6 comptroller and a financial organization selected to act as a depository  
7 and manager of the program.

8 15. "New York combat veterans healthcare choice account agreement"  
9 shall mean an agreement between the comptroller or a financial organiza-  
10 tion and an account owner.

11 16. "Program manager" shall mean a financial organization selected by  
12 the comptroller to act as depository and manager of the program.

13 § 403. Functions of the comptroller and the division. 1. The comp-  
14 troller and the division shall implement the program under the terms and  
15 conditions established by this article and a memorandum of understanding  
16 relating to any terms or conditions not otherwise expressly provided for  
17 in this article.

18 2. In furtherance of such implementation the memorandum of understand-  
19 ing shall address the authority and responsibility of the comptroller  
20 and the division to:

21 a. develop and implement the program in a manner consistent with the  
22 provisions of this article through rules and regulations established in  
23 accordance with the state administrative procedure act;

24 b. engage the services of consultants on a contract basis for render-  
25 ing professional and technical assistance and advice;

26 c. seek rulings and other guidance from the United States Department  
27 of Treasury and the Internal Revenue Service relating to the program;

28 d. make changes to the program required for the participants in the  
29 program to obtain the federal income tax benefits or treatment provided  
30 for health savings accounts;

31 e. charge, impose and collect administrative fees and service charges  
32 in connection with any agreement, contract or transaction relating to  
33 the program;

34 f. develop marketing plans and promotion material;

35 g. establish the methods by which the funds held in such accounts be  
36 dispersed;

37 h. establish the method by which funds shall be allocated to pay for  
38 administrative costs; and

39 i. do all things necessary and proper to carry out the purposes of  
40 this article.

41 § 404. Program requirements; New York combat veterans healthcare  
42 choice account. 1. New York combat veterans healthcare choice accounts  
43 established pursuant to the provisions of this article shall be governed  
44 by the provisions of this section.

45 2. A New York combat veterans healthcare choice account may be opened  
46 by any person who desires to save money for the payment of the qualified  
47 healthcare expenses of the designated beneficiary. An account owner may  
48 designate another qualified service member as successor owner of the  
49 account in the event of the death of the original account owner. Such  
50 person who opens an account or any successor owner shall be considered  
51 the account owner.

52 a. An application for such account shall be in the form prescribed by  
53 the program and contain the following:

54 (i) the name, address and social security number or employer identifi-  
55 cation number of the account owner;

56 (ii) the designation of a designated beneficiary;



1 (iii) the name, address, and social security number of the designated  
2 beneficiary; and

3 (iv) such other information as the program may require.

4 b. The comptroller and the division may establish a nominal fee for  
5 such application.

6 3. Any person, including the account owner, may make contributions to  
7 the account after the account is opened.

8 4. Contributions to accounts may be made only in cash.

9 5. An account owner may make a qualified withdrawal of all or part of  
10 the balance from an account on sixty days notice or such shorter period  
11 as may be authorized under rules governing the program. Such rules shall  
12 include provisions that will generally enable the determination as to  
13 whether a withdrawal is a nonqualified withdrawal or a qualified with-  
14 drawal.

15 6. An account owner may change the designated beneficiary of an  
16 account to a service member who is a member of the family of the prior  
17 designated beneficiary in accordance with procedures established by the  
18 memorandum of understanding pursuant to the provisions of section four  
19 hundred three of this article.

20 7. The program shall provide separate accounting for each designated  
21 beneficiary.

22 8. No account owner or designated beneficiary of any account shall be  
23 permitted to direct the investment of any contributions to an account or  
24 the earnings thereon more than two times in any calendar year.

25 9. Neither an account owner nor a designated beneficiary may use an  
26 interest in an account as security for a loan. Any pledge of an interest  
27 in an account shall be of no force and effect.

28 10. The comptroller shall promulgate rules or regulations to prevent  
29 contributions on behalf of a designated beneficiary in excess of an  
30 amount that would cause the aggregate account balance for all accounts  
31 for a designated beneficiary to exceed a maximum account balance, as  
32 established from time to time by the comptroller and the division on the  
33 basis of healthcare costs in the state, with adequate safeguards to  
34 prevent more contributions than necessary to provide for the qualified  
35 healthcare costs of the beneficiary, as required to maintain the program  
36 as a "qualified health savings program" pursuant to federal law.

37 11. a. If there is any distribution from an account to any individual  
38 or for the benefit of any individual during a calendar year, such  
39 distribution shall be reported to the Internal Revenue Service and the  
40 account owner, the designated beneficiary, or the distributee to the  
41 extent required by federal law or regulation.

42 b. Statements shall be provided to each account owner at least once  
43 each year within sixty days after the end of the twelve month period to  
44 which they relate. The statement shall identify the contributions made  
45 during a preceding twelve month period, the total contributions made to  
46 the account through the end of the period, the value of the account at  
47 the end of such period, distributions made during such period and any  
48 other information that the comptroller shall require to be reported to  
49 the account owner.

50 c. Statements and information relating to accounts shall be prepared  
51 and filed to the extent required by federal and state tax law.

52 12. a. A local government or organization described in section  
53 501(c)(3) of the Internal Revenue Code of 1986, as amended, may open and  
54 become the account owner of an account to fund qualified healthcare  
55 expenses for persons whose identity will be determined upon disburse-  
56 ment.

1 b. In the case of any account opened pursuant to paragraph a of this  
2 subdivision the requirement set forth in subdivision two of this section  
3 that a designated beneficiary be designated when an account is opened  
4 shall not apply and each individual who receives an interest in such  
5 account as a qualified healthcare expense grant shall be treated as a  
6 designated beneficiary with respect to such interest.

7 13. An annual fee may be imposed upon the account owner for the main-  
8 tenance of the account.

9 14. The program shall disclose the following information in writing to  
10 each account owner and prospective account owner of a New York combat  
11 veterans healthcare choice account:

12 a. the terms and conditions for purchasing a New York combat veterans  
13 healthcare choice account;

14 b. any restrictions on the substitution of beneficiaries;

15 c. the person or entity entitled to terminate the New York combat  
16 veterans healthcare choice account agreement;

17 d. the period of time during which a beneficiary may receive benefits  
18 under the New York combat veterans healthcare choice account agreement;

19 e. the terms and conditions under which money may be wholly or  
20 partially withdrawn from the program, including, but not limited to, any  
21 reasonable charges and fees that may be imposed for withdrawal;

22 f. the probable tax consequences associated with contributions to and  
23 distributions from accounts; and

24 g. all other rights and obligations pursuant to New York combat veter-  
25 ans healthcare choice account agreements, and any other terms, condi-  
26 tions, and provisions deemed necessary and appropriate by the terms of  
27 the memorandum of understanding entered into pursuant to section four  
28 hundred three of this article.

29 15. New York combat veterans healthcare choice account agreements  
30 shall be subject to section fourteen-c of the banking law and the  
31 "truth-in-savings" regulations promulgated thereunder.

32 16. Nothing in this article or in any New York combat veterans health-  
33 care choice account agreement entered into pursuant to this article  
34 shall be construed as a guarantee by the state or any healthcare provid-  
35 er that a beneficiary will be admitted to an eligible healthcare insti-  
36 tution, or, upon admission to an eligible healthcare institution will be  
37 permitted to remain in such eligible healthcare institution.

38 § 405. Program limitations; New York combat veterans healthcare choice  
39 account. 1. Nothing in this article shall be construed to:

40 a. give any designated beneficiary any rights or legal interest with  
41 respect to an account unless the designated beneficiary is the account  
42 owner;

43 b. guarantee that a designated beneficiary will be admitted to an  
44 eligible healthcare institution;

45 c. create state residency for an individual merely because the indi-  
46 vidual is a designated beneficiary; or

47 d. guarantee that amounts saved pursuant to the program will be suffi-  
48 cient to cover the qualified healthcare expenses of a designated benefi-  
49 ciary.

50 2. a. Nothing in this article shall create or be construed to create  
51 any obligation of the comptroller, the state, or any agency or instru-  
52 mentality of the state to guarantee for the benefit of any account owner  
53 or designated beneficiary with respect to:

54 (i) the rate of interest or other return on any account; and

55 (ii) the payment of interest or other return on any account.

b. The comptroller and the division by rule or regulation shall provide that every contract, application, deposit slip, or other similar document that may be used in connection with a contribution to an account clearly indicate that the account is not insured by the state and neither the principal deposited nor the investment return is guaranteed by the state.

§ 4. The state finance law is amended by adding a new section 82 to read as follows:

§ 82. New York combat veterans healthcare choice program trust fund.

1. There is hereby established in the sole custody of the state comptroller a special fund to be known as the New York combat veterans healthcare choice program trust fund. All payments from such fund shall be made in accordance with article fourteen of the military law and the memorandum of understanding entered into pursuant thereto on the audit of the state comptroller.

2. The fund shall be a trust fund and shall consist of a trust account and an operating account. The trust account shall include amounts received by the New York combat veterans healthcare choice program pursuant to New York combat veterans healthcare choice account agreements, administrative charges, fees, and all other amounts received by the program from other sources, and interest and investment income earned by the trust fund. The comptroller shall, from time to time, make transfers from the trust account to the operating account for the immediate payment of obligations under New York combat veterans healthcare choice account agreements, operating expenses and administrative costs of the New York combat veterans healthcare choice account. Administrative costs shall be paid out of the operating account according to the terms and conditions established pursuant to the provisions of section four hundred three of the military law.

3. (a) The comptroller, as trustee, shall invest the assets of the trust fund in investments authorized by article four-A of the retirement and social security law, provided however, that:

(i) the provisions of paragraph (a) of subdivision two of section one hundred seventy-seven of the retirement and social security law shall not apply except for the first clause of subparagraph (ii) of such paragraph; and

(ii) notwithstanding the provisions of subdivision seven of section one hundred seventy-seven of the retirement and social security law or any other law to the contrary, the assets of the trust fund may be invested in any funding agreement issued in accordance with section three thousand two hundred twenty-two of the insurance law by a domestic life insurance company or a foreign life insurance company doing business in this state, subject to the following:

(1) such a funding agreement may provide for a guaranteed minimum rate of return;

(2) such a funding agreement may be allocated as either a separate account or a general account of the issuer, as the comptroller may decide;

(3) total investments of the trust fund pursuant to this paragraph in any funding agreements issued by a single life insurance company which are allocated as a general account of the issuer shall not, in the aggregate, exceed three hundred fifty million dollars; and

(4) no assets of the trust fund shall be invested in any such funding agreement unless, at the time of such investment, the general obligations or financial strength of the issuer have received either the highest or second highest rating by two nationally recognized rating



1 services or by one nationally recognized rating service in the event  
2 that only one such service rates such obligations.

3 (b) Trust fund assets shall be kept separate and shall not be commin-  
4 gled with other assets, except as provided in this section. The comp-  
5 troller may enter into contracts to provide for investment advice and  
6 management, custodial services, and other professional services for the  
7 administration and investment of the program. Administrative fees, costs  
8 and expenses, including investment fees and expenses, shall be paid from  
9 the assets of the fund.

10 4. The comptroller shall provide for the administration of the trust  
11 fund, including maintaining participant records and accounts, and  
12 providing annual audited reports. The comptroller may enter into  
13 contracts to provide administrative services and reporting.

14 § 5. Section 5205 of the civil practice law and rules is amended by  
15 adding a new subdivision (p) to read as follows:

16 (p) Exemption for New York combat veterans healthcare choice program  
17 trust fund payment monies. Monies in an account created pursuant to  
18 article fourteen of the military law are exempt from application to the  
19 satisfaction of a money judgment.

20 § 6. Subsection (b) of section 612 of the tax law is amended by adding  
21 a new paragraph 43 to read as follows:

22 (43) Distributions received during the taxable year by a distribution  
23 of a New York combat veterans healthcare choice account established  
24 pursuant to article fourteen of the military law, to the extent such  
25 distributions are not qualified withdrawals within the meaning of subdi-  
26 vision ten of section four hundred two of the military law.

27 § 7. Subsection (c) of section 612 of the tax law is amended by adding  
28 two new paragraphs 44 and 45 to read as follows:

29 (44) Contributions made during the taxable year by an account owner to  
30 one or more New York combat veterans healthcare choice accounts estab-  
31 lished pursuant to article fourteen of the military law, to the extent  
32 not deductible or eligible for credit for federal income tax purposes,  
33 provided, however, the exclusion provided for in this paragraph shall  
34 not exceed five thousand dollars for an individual or head of household,  
35 and for married couples who file joint tax returns, shall not exceed ten  
36 thousand dollars; provided, further, that such exclusion shall be avail-  
37 able only to the account owner and not to any other person.

38 (45) Distributions from a New York combat veterans healthcare choice  
39 account established pursuant to article fourteen of the military law, to  
40 the extent includible in gross income for federal income tax purposes.

41 § 8. Subsection (d) of section 658 of the tax law is amended by adding  
42 a new paragraph 4 to read as follows:

43 (4) The commissioner may by regulation or instruction require the  
44 filing of a report annually by the comptroller or program manager of the  
45 New York combat veterans healthcare choice program, or their designee,  
46 setting forth the names and identification numbers of account owners,  
47 designated beneficiaries and distributees of New York combat veterans  
48 healthcare choice program accounts, the amounts contributed to such  
49 accounts, the amounts distributed from such accounts and the nature of  
50 such distributions as qualified withdrawals or as withdrawals other than  
51 qualified withdrawals, and any such other information as the commission-  
52 er may require regarding the taxation under this article of amounts  
53 contributed to or withdrawn from such accounts. The commissioner may  
54 require that any such report also be made to the account owner, desig-  
55 nated beneficiary or distributee of any such account.

1     § 9. Section 190 of the executive law is amended by adding a new  
2 subdivision 6 to read as follows:

3     6. The division of military and naval affairs shall establish and  
4 maintain a voluntary registry of state residents who are honorably  
5 discharged veterans of the armed forces of the United States, and who  
6 served on regular active duty (other than for training) during part of  
7 one of the following periods:

8       (a) from September eighteenth, two thousand one until the end of the  
9 United States military efforts in Afghanistan; or

10      (b) from October sixteenth, two thousand two until the end of the  
11 United States military efforts in Iraq.

12     The information in such registry shall be deemed confidential, and may  
13 only be accessed by such veteran for purposes of proof of his or her  
14 military service.

15     § 10. This act shall take effect immediately and shall apply to taxa-  
16 ble years beginning after December 31, 2018.