

STATE OF NEW YORK

4713

2021-2022 Regular Sessions

IN SENATE

February 9, 2021

Introduced by Sen. PALUMBO -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the military law, the state finance law, the civil practice law and rules, the tax law and the executive law, in relation to establishing the "New York's Own combat veterans healthcare choice program act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York's Own combat veterans healthcare choice program act".

3 § 2. The military law is amended by adding a new section 216-a to read
4 as follows:

5 § 216-a. Medical care when injured or disabled in combat zone. 1. Any
6 New York resident member of the organized militia who shall, when on
7 active duty in a combat zone, designated by the president of the United
8 States during Operation Enduring Freedom or Operation Iraqi Freedom, for
9 three hundred sixty days or more on orders issued by the governor, the
10 commanding general of the New York army national guard, the commanding
11 officer of the New York air national guard or the commanding officer of
12 the naval militia, receive any wound or injury, or incur or contract any
13 disability or disease, by reason of such duty, or who shall without
14 fault or neglect on his or her part be wounded or disabled while
15 performing any lawfully ordered duty while in such a combat zone, which
16 shall incapacitate him or her, and who is unable to receive timely or
17 adequate healthcare services from the federal Department of Veterans
18 Affairs within ninety days of making application for such services shall
19 receive the payment into such service member's New York combat veterans
20 healthcare choice account established pursuant to article fourteen of
21 this chapter for care and medical treatment if authority therefor is
22 granted by the adjutant general, expenses for such care and medical

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

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1 attendance as are necessary for the appropriate treatment of the wound,
2 injury, disease or disability may be paid from the New York combat
3 veterans healthcare choice account as provided in article fourteen of
4 this chapter until treatment is provided by the federal Veterans Admin-
5 istration, or the incapacity resulting from such wound, injury, disease
6 or disability cannot be materially improved by further care or treat-
7 ment. The determination of whether such injury or disease was incurred
8 while performing such lawfully ordered active duty in a combat zone,
9 designated by the president of the United States during Operation Endur-
10 ing Freedom or Operation Iraqi Freedom, shall be in accordance with this
11 section and such regulations as may be prescribed by the adjutant gener-
12 al.

13 2. If care for such a service member is approved by the adjutant
14 general and the service member shall have created a New York combat
15 veterans healthcare choice account in accordance with article fourteen
16 of this chapter, the state shall make a payment of five thousand dollars
17 into such service member's combat veterans healthcare choice account.
18 Such payment shall not exceed five thousand dollars in any calendar year
19 and shall be discontinued upon the service member receiving care from
20 the federal Department of Veterans Affairs for the injuries or disabili-
21 ties sustained while in qualified state service.

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

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

44 b. The adjutant general may appoint a medical examiner or a board of
45 three officers, at least one of whom shall be a medical officer, to
46 inquire into the merits of any claim presented under this section, and
47 to recommend the amount or amounts, if any, to be paid or allowed under
48 this section, or he or she may, in his or her discretion, determine any
49 claim without appointing a medical examiner or board and fix the amount
50 to be paid or allowed under this section. If no medical officer is
51 available, such medical examiner or medical officer on such board may be
52 a civilian physician, surgeon or dentist.

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

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

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

ARTICLE 14

NEW YORK'S OWN COMBAT VETERANS HEALTHCARE CHOICE PROGRAM

Section 400. Program established.

401. Purpose.

402. Definitions.

403. Functions of the comptroller and the division.

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

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

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

§ 401. Purpose. The purposes of the New York combat veterans healthcare choice program are to authorize the establishment of veterans healthcare choice accounts and provide guidelines for the maintenance of such accounts to:

1. Enable resident veteran members of the organized militia of this state who were on active duty in a combat zone, designated by the president of the United States during Operation Enduring Freedom or Operation Iraqi Freedom, to obtain healthcare from the provider of their choice, with funds from a New York combat veterans healthcare choice account funded by the state and the service member in accordance with this article, when after ninety days of making application to or attempting to schedule an appointment with the federal Veterans Administration for such care, the service member is unable to secure timely or adequate healthcare services for injuries and disabilities sustained in the line of active duty in such a combat zone, whenever ordered into such combat zone for three hundred sixty days or more by the governor, the commanding general of the New York army national guard, the commanding officer of the New York air national guard or the commanding officer of the naval militia;

2. Provide funding from the state for New York combat veterans healthcare choice accounts in an amount of up to five thousand dollars per calendar year for a period not to exceed three years, when in accordance with this article, a qualified state resident combat veteran is unable to secure healthcare services within ninety days of making application or scheduling an appointment to make such an application for such services from the federal Veterans Administration; and

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

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

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

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

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

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

26 5. "Eligible healthcare institution" shall mean any institution
27 licensed, certified or authorized by the state to provide healthcare
28 services.

29 6. "Member of family" shall mean a family member as defined in section
30 529 of the Internal Revenue Code of 1986, as amended.

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

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

35 9. "Qualified state service" shall mean active duty service rendered
36 while being ordered into a combat zone, designated by the president of
37 the United States during Operation Enduring Freedom or Operation Iraqi
38 Freedom, for three hundred sixty days or more by the governor, the
39 commanding general of the New York army national guard, the commanding
40 officer of the New York air national guard or the commanding officer of
41 the naval militia.

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

45 11. "Nonqualified withdrawal" shall mean a withdrawal from an account
46 which is not:

47 a. a qualified withdrawal; or
48 b. a withdrawal made as the result of the death or disability of the
49 designated beneficiary of the account.

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

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

52 14. "Management contract" shall mean the contract executed by the
53 comptroller and a financial organization selected to act as a depository
54 and manager of the program.

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

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

6 § 403. Functions of the comptroller and the division. 1. The comp-
7 troller and the division shall implement the program under the terms and
8 conditions established by this article and a memorandum of understanding
9 relating to any terms or conditions not otherwise expressly provided for
10 in this article.

11 2. In furtherance of such implementation the memorandum of understand-
12 ing shall address the authority and responsibility of the comptroller
13 and the division to:

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

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

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

21 d. make changes to the program required for the participants in the
22 program to obtain the federal income tax benefits or treatment provided
23 for health savings accounts;

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

27 f. develop marketing plans and promotion material;

28 g. establish the methods by which the funds held in such accounts be
29 dispersed;

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

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

34 § 404. Program requirements; New York combat veterans healthcare
35 choice account. 1. New York combat veterans healthcare choice accounts
36 established pursuant to the provisions of this article shall be governed
37 by the provisions of this section.

38 2. A New York combat veterans healthcare choice account may be opened
39 by any person who desires to save money for the payment of the qualified
40 healthcare expenses of the designated beneficiary. An account owner may
41 designate another qualified service member as successor owner of the
42 account in the event of the death of the original account owner. Such
43 person who opens an account or any successor owner shall be considered
44 the account owner.

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

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

49 (ii) the designation of a designated beneficiary;

50 (iii) the name, address, and social security number of the designated
51 beneficiary; and

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

53 b. The comptroller and the division may establish a nominal fee for
54 such application.

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

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

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

8 6. An account owner may change the designated beneficiary of an
9 account to a service member who is a member of the family of the prior
10 designated beneficiary in accordance with procedures established by the
11 memorandum of understanding pursuant to the provisions of section four
12 hundred three of this article.

13 7. The program shall provide separate accounting for each designated
14 beneficiary.

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

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

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

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

35 b. Statements shall be provided to each account owner at least once
36 each year within sixty days after the end of the twelve month period to
37 which they relate. The statement shall identify the contributions made
38 during a preceding twelve month period, the total contributions made to
39 the account through the end of the period, the value of the account at
40 the end of such period, distributions made during such period and any
41 other information that the comptroller shall require to be reported to
42 the account owner.

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

45 12. a. A local government or organization described in section
46 501(c)(3) of the Internal Revenue Code of 1986, as amended, may open and
47 become the account owner of an account to fund qualified healthcare
48 expenses for persons whose identity will be determined upon disburse-
49 ment.

50 b. In the case of any account opened pursuant to paragraph a of this
51 subdivision the requirement set forth in subdivision two of this section
52 that a designated beneficiary be designated when an account is opened
53 shall not apply and each individual who receives an interest in such
54 account as a qualified healthcare expense grant shall be treated as a
55 designated beneficiary with respect to such interest.

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

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

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

8 b. any restrictions on the substitution of beneficiaries;

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

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

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

16 f. the probable tax consequences associated with contributions to and
17 distributions from accounts; and

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

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

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

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

34 a. give any designated beneficiary any rights or legal interest with
35 respect to an account unless the designated beneficiary is the account
36 owner;

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

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

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

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

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

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

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

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

§ 82-a. 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 services or by one nationally recognized rating service in the event that only one such service rates such obligations.

(b) Trust fund assets shall be kept separate and shall not be commingled with other assets, except as provided in this section. The comptroller may enter into contracts to provide for investment advice and management, custodial services, and other professional services for the

1 administration and investment of the program. Administrative fees, costs
2 and expenses, including investment fees and expenses, shall be paid from
3 the assets of the fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 § 10. This act shall take effect immediately and shall apply to taxa-
9 ble years beginning after December 31, 2022.