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:

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

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

§ 216-a. Medical care when injured or disabled in combat zone. 1. Any New York resident member of the organized militia who shall, when on active duty in a combat zone, designated by the president of the United States during Operation Enduring Freedom or Operation Iraqi Freedom, for three hundred sixty days or more on orders issued 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, receive any wound or injury, or incur or contract any disability or disease, by reason of such duty, or who shall without fault or neglect on his or her part be wounded or disabled while performing any lawfully ordered duty while in such a combat zone, which shall incapacitate him or her, and who is unable to receive timely or adequate healthcare services from the federal Department of Veterans Affairs within ninety days of making application for such services shall receive the payment into such service member's New York combat veterans healthcare choice account established pursuant to article fourteen of this chapter for care and medical treatment if authority therefor is 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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attendance as are necessary for the appropriate treatment of the wound, injury, disease or disability may be paid from the New York combat veterans healthcare choice account as provided in article fourteen of this chapter until treatment is provided by the federal Veterans Administration, or the incapacity resulting from such wound, injury, disease or disability cannot be materially improved by further care or treatment. The determination of whether such injury or disease was incurred while performing such lawfully ordered active duty in a combat zone, designated by the president of the United States during Operation Enduring Freedom or Operation Iraqi Freedom, shall be in accordance with this section and such regulations as may be prescribed by the adjutant general.

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

3. None of the benefits provided by subdivision one of this section shall be paid or allowed unless a claim therefor has been presented to the adjutant general within three years after the date when such wound, injury, disease or disability was incurred, or from the date of discovery of such wound, injury, disease or disability. None of the benefits provided by subdivision one of this section shall be paid or allowed by the state for any period during which such member of the organized militia is entitled to receive the same as a charge against federal funds.

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

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

c. A medical examiner or board appointed under this section shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and to produce books and papers, 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. "Account" or "New York combat veterans healthcare choice account" shall mean an individual savings account established in accordance with the provisions of this article.

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

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

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

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

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

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

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

9. "Qualified state service" shall mean active duty service rendered while being ordered into a combat zone, designated by the president of the United States during Operation Enduring Freedom or Operation Iraqi Freedom, 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.

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

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

a. a qualified withdrawal; or

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

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

13. "Comptroller" shall mean the state comptroller.

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

15. "New York combat veterans healthcare choice account agreement" shall mean an agreement between the comptroller or a financial organization and an account owner.

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

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

2. In furtherance of such implementation the memorandum of understanding shall address the authority and responsibility of the comptroller and the division to:

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

b. engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

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

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

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

f. develop marketing plans and promotion material;

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

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

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

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

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

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

(i) the name, address and social security number or employer identification number of the account owner;

(ii) the designation of a designated beneficiary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. An annual fee may be imposed upon the account owner for the maintenance of the account.

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

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

b. any restrictions on the substitution of beneficiaries;

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

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

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

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

g. all other rights and obligations pursuant to New York combat veterans healthcare choice account agreements, and any other terms, conditions, and provisions deemed necessary and appropriate by the terms of the memorandum of understanding entered into pursuant to section four hundred three of this article.

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

16. Nothing in this article or in any New York combat veterans healthcare choice account agreement entered into pursuant to this article shall be construed as a guarantee by the state or any healthcare provider that a beneficiary will be admitted to an eligible healthcare institution, or, upon admission to an eligible healthcare institution will be permitted to remain in such eligible healthcare institution.

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

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

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

c. create state residency for an individual merely because the individual is a designated beneficiary; or

d. guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified healthcare expenses of a designated beneficiary.

2. a. Nothing in this article shall create or be construed to create any obligation of the comptroller, the state, or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to:

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

(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-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

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

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

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

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

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

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

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

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

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

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

(4) The commissioner may by regulation or instruction require the filing of a report annually by the comptroller or program manager of the New York combat veterans healthcare choice program, or their designee, setting forth the names and identification numbers of account owners, designated beneficiaries and distributees of New York combat veterans healthcare choice program accounts, the amounts contributed to such accounts, the amounts distributed from such accounts and the nature of such distributions as qualified withdrawals or as withdrawals other than qualified withdrawals, and any such other information as the commissioner may require regarding the taxation under this article of amounts contributed to or withdrawn from such accounts. The commissioner may require that any such report also be made to the account owner, designated beneficiary or distributee of any such account.

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

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

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

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

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

§ 10. This act shall take effect immediately and shall apply to taxable years beginning after December 31, 2022.