

# STATE OF NEW YORK

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9302

## IN ASSEMBLY

February 23, 2024

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Introduced by M. of A. JENSEN -- read once and referred to the Committee on Health

AN ACT to amend the tax law and the public health law, in relation to providing expanded enrollment through New York state of health through tax returns (Part A); to amend the public health law, in relation to allowing for enrollment through the New York state of health at any time for first-time enrollees (Part B); to amend the insurance law and the legislative law, in relation to creating the New York health benefit and cost commission (Part C); and to amend the public health law and the tax law, in relation to establishing New York health care savings accounts to expand and incentivize purchasing private health insurance (Part D)

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 "real choice health act".

3 § 2. Legislative intent. The Legislature recognizes the importance of  
4 ensuring a robust and responsive healthcare system that meets the needs  
5 and preferences of its residents. Although significant improvements have  
6 been made to reduce the number of uninsured New Yorkers and control  
7 costs, there is still substantial work to be done. However, despite the  
8 need to ensure that more New Yorkers are insured and can afford their  
9 healthcare costs, preserving individual choices in healthcare is para-  
10 mount. Although some argue that a single-payer system in the State of  
11 New York would improve access and reduce costs, doing so would eliminate  
12 important healthcare choices for many New Yorkers by creating blanket  
13 State coverage, require significant tax increases on individuals and  
14 businesses in New York, which would further perpetuate our outmigration  
15 problem, create potential domestic migration of individuals with costly  
16 adverse health issues, eliminate jobs by dismantling the health insur-  
17 ance industry and lead to voluntary unemployment without the need for  
18 employer-based coverage and require continued and expanded reliance on  
19 the Federal government for funding and waivers. The single-payer system  
20 would place the responsibility of healthcare for all New Yorkers solely

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

LBD13809-02-4

1 in the hands of the State, exposing healthcare needs to even more poli-  
2 tical pressures. New York State government has proven that it has diffi-  
3 culty administrating large programs effectively and without mismanage-  
4 ment, with both the existing Medicaid program and the roll-out of legal  
5 recreational cannabis serving as important examples.

6 Moving forward, New York should continue to improve on the positive  
7 changes in the current system that have been made thus far. Doing so  
8 would continue to enable a competitive healthcare system that encourages  
9 innovation and drives continuous improvements in care, ensuring access  
10 to cutting-edge treatments and technologies for all residents. This  
11 system would ensure that the opinions and preferences of the population  
12 would continue to shape the healthcare system.

13 Therefore, this proposal focuses on preserving individual choices by  
14 improving access to health insurance enrollment through expanded enroll-  
15 ment period and enhanced outreach, creating a State process for analyz-  
16 ing costs before significant health insurance changes are made, and  
17 incentivizing individuals to purchase health insurance and reduce out-  
18 of-pocket costs by creating a New York health care savings account.

19 § 3. This act enacts into law major components of legislation provid-  
20 ing expanded enrollment through New York state of health through tax  
21 returns, allowing for enrollment through the New York state of health at  
22 any time for first-time enrollees, expanding New York state of health  
23 navigator program, creating the New York health benefit and cost commis-  
24 sion, and establishing New York health care savings accounts to expand  
25 and incentivize purchasing private health insurance. Each component is  
26 wholly contained within a Part identified as Parts A through D. The  
27 effective date for each particular provision contained within such Part  
28 is set forth in the last section of such Part. Any provision in any  
29 section contained within a Part, including the effective date of the  
30 Part, which makes reference to a section "of this act," when used in  
31 connection with that particular component, shall be deemed to mean and  
32 refer to the corresponding section of the Part in which it is found.

33 PART A

34 Section 1. The tax law is amended by adding a new section 664 to read  
35 as follows:

36 § 664. Health marketplace eligibility. The commissioner shall require  
37 that all income tax returns allow the taxpayer to request, by checking a  
38 box, to be included on the return, that the department of health review  
39 relevant and necessary taxpayer data in order to provide the taxpayer  
40 with information related to their eligibility for health marketplace  
41 programs, plans, and available incentives. Adjacent to such box, there  
42 shall be a statement in prominent type, "IF YOU CHECK THIS BOX, YOU  
43 AFFIRM THAT YOU ARE UNINSURED, DO NOT HAVE EMPLOYER-SPONSORED COVERAGE  
44 AVAILABLE, AND ARE (1) REQUESTING THAT THE STATE DEPARTMENT OF HEALTH  
45 REVIEW NECESSARY PORTIONS OF YOUR TAX FILING, (2) USE SUCH DATA AS  
46 NECESSARY TO MAKE DETERMINATIONS AS TO YOUR ELIGIBILITY FOR MEDICAL  
47 ASSISTANCE (MEDICAID), THE BASIC HEALTH PLAN (ESSENTIAL PLAN), OR PLANS  
48 THROUGH THE NY STATE OF HEALTH AND AVAILABLE INCENTIVES, AND (3) CONTACT  
49 YOU TO PROVIDE SUCH ELIGIBILITY INFORMATION."

50 § 2. Section 206 of the public health law is amended by adding a new  
51 subdivision 32 to read as follows:

52 32. The commissioner shall create a program within the department to  
53 assist uninsured individuals without employer-sponsored coverage with

1 enrolling in health insurance coverage through state income tax filings.

2 This program shall:

3 (a) review relevant and necessary taxpayer data authorized under the  
4 tax law within thirty days of receiving such authorization;

5 (b) contact individuals who opt to have their tax filings reviewed  
6 within thirty days of such review;

7 (c) determine whether an individual is eligible for medical assist-  
8 ance, child health insurance plan, or basic health plan coverage;

9 (d) upon determining an individual is eligible for medical assistance,  
10 child health insurance plan, or basic health plan coverage, offer such  
11 individuals an invitation to select a plan, provided that the individual  
12 does not have employer-sponsored coverage available; and

13 (e) in the case of individuals ineligible for medical assistance,  
14 child health insurance plan, or basic health plan coverage, provide a  
15 referral to a navigator certified under subdivision fifteen of section  
16 two hundred sixty-eight-c of this chapter.

17 § 3. This act shall take effect January 1, 2025.

18 PART B

19 Section 1. Subdivisions 5 and 15 of section 268-c of the public health  
20 law, as added by section 2 of part T of chapter 57 of the laws of 2019,  
21 are amended to read as follows:

22 5. Maintain enrollment periods in the best interest of qualified indi-  
23 viduals consistent with federal and state law. Such periods shall  
24 include, but may not be limited to:

25 (a) allowing special enrollment at any time for currently uninsured  
26 individuals enrolling in the Marketplace for the first time who do not  
27 have employer-sponsored coverage available; and

28 (b) allowing special enrollment for uninsured individuals who do not  
29 have employer-sponsored coverage available enrolling through the estab-  
30 lished income tax return process.

31 15. Operate a program under which the Marketplace awards grants to  
32 entities to serve as navigators in accordance with applicable federal  
33 law and regulations adopted thereunder, and/or a program under which the  
34 Marketplace awards grants to entities to provide community based enroll-  
35 ment assistance in accordance with requirements developed by the Market-  
36 place; and/or a program under which the Marketplace certifies New York  
37 state licensed producers to provide assistance to eligible individuals  
38 and/or small employers pursuant to federal or state law. Subject to  
39 appropriation, additional grants shall be awarded on an annual basis to  
40 providers in the city of New York and counties where the rate of unin-  
41 insured individuals below four hundred percent of the federal poverty  
42 level is above the statewide average.

43 § 2. This act shall take effect January 1, 2025.

44 PART C

45 Section 1. The insurance law is amended by adding a new section 3221-a  
46 to read as follows:

47 § 3221-a. Health benefit and cost commission. (a) For the purposes of  
48 this section, "mandated health benefit" shall mean any requirement that  
49 individual, group or blanket accident and health insurance policies or  
50 contracts issued by hospital or health service corporations include:

1 (1) coverage for specific health services, treatment, tests, drugs,  
2 supplies, or equipment to diagnose or treat a particular disease or  
3 condition; and

4 (2) coverage for services of specific providers of health care  
5 services.

6 (b) There is hereby created a commission within the department, to be  
7 known as the "New York health benefit and cost commission" consisting of  
8 thirteen members to be appointed as follows: three to be appointed by  
9 the governor, three to be appointed by the temporary president of the  
10 senate, three to be appointed by the speaker of the assembly, and one  
11 each to be appointed by the minority leader of the senate and the assem-  
12 bly. The superintendent and the commissioner of health, or their desig-  
13 nated representatives, shall also serve as members of the commission.  
14 The members shall elect a person to serve as chair.

15 (c) Each member shall serve for a term of four years. Vacancies shall  
16 be appointed in the same manner as original appointments. The members of  
17 the commission shall receive no compensation for their services but  
18 shall be allowed actual and necessary expenses incurred in the perform-  
19 ance of their duties. The commission may request and shall receive from  
20 any department, board, bureau, commission, office, agency, or other  
21 instrumentality of the state such facilities, assistance, and data as it  
22 deems necessary or desirable for the proper execution of its powers and  
23 duties. The commission may seek the assistance and advice of any person,  
24 organization, or entity as may be relevant or necessary and may hire or  
25 contract with any such person, organization, or entity. The commission  
26 shall have the power to hold public hearings and solicit testimony on  
27 any matter it deems relevant to carrying out its mission.

28 § 2. The legislative law is amended by adding a new section 52-a to  
29 read as follows:

30 § 52-a. Requirements with respect to bills affecting mandated health  
31 benefits. 1. For purposes of this section, the terms "mandated health  
32 benefits" shall have the same meanings that they have in section three  
33 thousand two hundred twenty-one-a of the insurance law.

34 2. In addition to any other fiscal note required, a bill that enacts  
35 or amends any law in relation to mandating health benefits shall be  
36 accompanied by an impact statement consisting of a fiscal note separate-  
37 ly stating the estimated cost of the health benefits mandate in the bill  
38 for the first year it is to be in effect and for the next succeeding  
39 year, as well as a statement of the public purpose to be served by such  
40 mandate.

41 3. The commission shall conduct a review and public comment period and  
42 issue a report relating to legislation that would enact a mandated  
43 health benefit. Such issuance shall:

44 (a) consider and summarize all public comment and all scientific,  
45 medical, and actuarial data and information provided or obtained relat-  
46 ing to the proposed mandated health benefit;

47 (b) report on public and patient health issues, including:

48 (i) the extent to which the proposed mandated health benefit is avail-  
49 able and utilized by the state's population and the level of public  
50 demand for the benefit;

51 (ii) the extent to which the proposed mandated health benefit is  
52 already a covered health benefit;

53 (iii) if coverage is not generally available, the extent to which the  
54 lack of coverage results in persons being unable to obtain necessary  
55 health care and results in financial hardship for those needing such  
56 care;

(iv) projected utilization rates and access to service that would result from the proposed mandated health benefit;

(v) whether the proposed mandated health benefit is a medical or a broader social need and whether it is consistent with the role of health insurance and managed health care; and

(vi) the extent to which the proposed mandated health benefit is generally recognized by the medical community as being effective and efficacious, including appropriate review by scientific and medical peer review literature; and

(c) report on access to coverage and economic issues, including:

(i) the impact on premiums, rates, and costs of health coverage in all affected markets;

(ii) the impact that the proposed mandated health benefit may have on the availability of other benefits;

(iii) the impact that the proposed mandated health benefit may have on the availability of health coverage in each affected market and the impact on the number of persons covered through self-insured plans; and

(iv) report on any other matter, question, or concern relating to a mandated health benefit as may be determined relevant by the commission or by the person having issued the request.

4. The commission shall allow a thirty-day public comment period and issue a report to the governor and the legislature within ninety days after receipt of a written request. The commission may extend its review period and reporting time upon the consent of the person having issued the request.

5. The commission shall review and report on utilization rates, public and patient health effects, and impact on premiums and access to health care and health coverage of all mandated health benefits existing on the effective date of this section.

§ 3. This act shall take effect immediately.

#### PART D

Section 1. Short title. This act shall be known and may be cited as the "New York health care savings act".

§ 2. The public health law is amended by adding a new article 48-A to read as follows:

#### ARTICLE 48-A

#### NEW YORK STATE HEALTH CARE SAVINGS PROGRAM

#### Section 4850. Program established.

#### 4851. Purposes.

#### 4852. Definitions.

#### 4853. Functions of the comptroller and the corporation.

#### 4854. Powers of the comptroller.

#### 4855. Program requirements; New York state health care savings account.

#### 4856. Program limitations; New York state health care savings account.

§ 4850. Program established. There is hereby established the New York state health care savings program and such program shall be known and may be cited as the "New York state health care savings program".

§ 4851. Purposes. The purposes of the New York state health care savings program shall be to authorize the establishment of New York state health care savings accounts and to provide guidelines for the maintenance of such accounts.

1     § 4852. Definitions. For the purposes of this article, the following  
2 terms shall have the following meanings:

3     1. "Account" or "New York health care savings account" shall mean an  
4 individual or family savings account established in accordance with the  
5 provisions of this article.

6     2. "Account owner" shall mean a person who enters into a health care  
7 savings agreement pursuant to the provisions of this article, including  
8 a person who enters into such an agreement as a fiduciary or agent on  
9 behalf of a trust, estate, partnership, association, company or corpo-  
10 ration. The account owner may also be the designated beneficiary of the  
11 account.

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

15     4. "Financial organization" shall mean an organization authorized to  
16 do business in the state of New York and:

17     (a) which is an authorized fiduciary to act as a trustee pursuant to  
18 the provisions of an act of congress entitled "Employee Retirement  
19 Income Security Act of 1974" as such provisions may be amended from time  
20 to time, or an insurance company;

21     (b) (i) is licensed or chartered by the department of financial  
22 services;

23     (ii) is chartered by an agency of the federal government;

24     (iii) is subject to the jurisdiction and regulation of the securities  
25 and exchange commission of the federal government; or

26     (iv) is any other entity otherwise authorized to act in this state as  
27 a trustee pursuant to the provisions of an act of congress entitled  
28 "Employee Retirement Income Security Act of 1974" as such provisions may  
29 be amended from time to time.

30     5. "Member of the family" shall mean a family member as defined in  
31 section five hundred twenty-nine of the Internal Revenue Code of 1986,  
32 as amended.

33     6. "Program" shall mean the New York state health care savings program  
34 established pursuant to this article.

35     7. "Qualified health care expenses" shall mean any health care-related  
36 expense including but not limited to: premiums, deductibles, copays,  
37 long-term care, and any out-of-pocket expense incurred by the designated  
38 beneficiary or his or her member of the family eligible for such  
39 expense.

40     8. "Qualified withdrawal" shall mean a withdrawal from an account to  
41 pay the qualified health care expenses of the designated beneficiary of  
42 the account.

43     9. "Nonqualified withdrawal" shall mean a withdrawal from an account,  
44 but shall not mean:

45     (a) a qualified withdrawal; or

46     (b) a withdrawal made as the result of the death or disability of the  
47 designated beneficiary of an account.

48     10. "Department" shall mean the department of health of the state of  
49 New York.

50     11. "Comptroller" shall mean the comptroller of the state of New York.

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

54     13. "Health care savings agreement" shall mean an agreement between  
55 the comptroller or a financial organization and the account owner.



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

3 § 4853. Functions of the comptroller and the corporation. 1. The comp-  
4 troller and the department shall implement the program under the terms  
5 and conditions established by this article and a memorandum of under-  
6 standing relating to any terms or conditions not otherwise expressly  
7 provided for in this article.

8 2. In furtherance of such implementation the memorandum of understand-  
9 ing shall address the authority and responsibility of the comptroller  
10 and the department to:

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

14 (b) engage the services of consultants on a contract basis for render-  
15 ing professional and technical assistance and advice;

16 (c) seek rulings and other guidance from the United States department  
17 of treasury and the internal revenue service relating to the program;

18 (d) seek federal waivers in order for the participants in the program  
19 to obtain the federal income tax benefits or treatment provided by  
20 section two hundred twenty-three of the Internal Revenue Code of 1986,  
21 as amended, or any similar successor legislation;

22 (e) charge, impose, and collect administrative fees and service charg-  
23 es in connection with any agreement, contract or transaction relating to  
24 the program;

25 (f) develop marketing plans and promotion material;

26 (g) establish the methods by which the funds held in such accounts be  
27 dispersed;

28 (h) establish the method by which funds shall be allocated to pay for  
29 administrative costs; and

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

32 § 4854. Powers of the comptroller. 1. The comptroller may implement  
33 the program through use of financial organizations as account deposito-  
34 ries and managers. Under the program, individuals may establish accounts  
35 directly with an account depository.

36 2. The comptroller may solicit proposals from financial organizations  
37 to act as depositories and managers of the program. Financial organiza-  
38 tions submitting proposals shall describe the investment instrument  
39 which will be held in accounts. The comptroller shall select as program  
40 depositories and managers the financial organization, from among the  
41 bidding financial organizations that demonstrates the most advantageous  
42 combination, both to potential program participants and this state, of  
43 the following factors:

44 (a) financial stability and integrity of the financial organization;

45 (b) the safety of the investment instrument being offered;

46 (c) the ability of the investment instrument to track increasing costs  
47 of health care;

48 (d) the ability of the financial organization to satisfy recordkeeping  
49 and reporting requirements;

50 (e) the financial organization's plan for promoting the program and  
51 the investment it is willing to make to promote the program;

52 (f) the fees, if any, proposed to be charged to persons for opening  
53 accounts;

54 (g) the minimum initial deposit and minimum contributions that the  
55 financial organization will require;

1 (h) the ability of financial organizations to accept electronic with-  
2 drawals, including payroll deduction plans; and

3 (i) other benefits to the state or its residents included in the  
4 proposal, including fees payable to the state to cover expenses of oper-  
5 ation of the program.

6 3. The comptroller may enter into a contract with a financial organ-  
7 ization. Such financial organization management may provide one or more  
8 types of investment instrument.

9 4. The comptroller may select more than one financial organization for  
10 the program.

11 5. A management contract shall include, at a minimum, terms requiring  
12 the financial organization to:

13 (a) take any action required to keep the program in compliance with  
14 requirements of section four thousand eight hundred fifty-five of this  
15 article;

16 (b) keep adequate records of each account, keep each account segre-  
17 gated from each other account, and provide the comptroller with the  
18 information necessary to prepare the statements required by section four  
19 thousand eight hundred fifty-five of this article;

20 (c) compile and total information contained in statements required to  
21 be prepared under section four thousand eight hundred fifty-five of this  
22 article and provide such compilations to the comptroller;

23 (d) if there is more than one program manager, provide the comptroller  
24 with such information necessary to determine compliance with section  
25 four thousand eight hundred fifty-five of this article;

26 (e) provide the comptroller or his or her designee access to the books  
27 and records of the program manager to the extent needed to determine  
28 compliance with the contract;

29 (f) hold all accounts for the benefit of the account owner;

30 (g) be audited at least annually by a firm of certified public  
31 accountants selected by the program manager and that the results of such  
32 audit be provided to the comptroller;

33 (h) provide the comptroller with copies of all regulatory filings and  
34 reports made by it during the term of the management contract or while  
35 it is holding any accounts, other than confidential filings or reports  
36 that will not become part of the program. The program manager shall make  
37 available for review by the comptroller the results of any periodic  
38 examination of such manager by any state or federal banking, insurance,  
39 or securities commission, except to the extent that such report or  
40 reports may not be disclosed under applicable law or the rules of such  
41 commission; and

42 (i) ensure that any description of the program, whether in writing or  
43 through the use of any media, is consistent with the marketing plan  
44 developed in the memorandum of understanding pursuant to the provisions  
45 of section four thousand eight hundred fifty-three of this article.

46 6. The comptroller may provide that an audit shall be conducted of the  
47 operations and financial position of the program depository and manager  
48 at any time if the comptroller has any reason to be concerned about the  
49 financial position, the recordkeeping practices, or the status of  
50 accounts of such program depository and manager.

51 7. During the term of any contract with a program manager, the comp-  
52 troller shall conduct an examination of such manager and its handling of  
53 accounts. Such examination shall be conducted at least biennially if  
54 such manager is not otherwise subject to periodic examination by the  
55 superintendent of financial services, the federal deposit insurance  
56 corporation or other similar entity.



1 8. (a) If selection of a financial organization as a program manager  
2 or depository is not renewed, after the end of its term:

3 (i) accounts previously established and held in an investment instru-  
4 ment at such financial organization may be terminated;

5 (ii) additional contributions may be made to such accounts;

6 (iii) no new accounts may be placed with such financial organization;  
7 and

8 (iv) existing accounts held by such depository shall remain subject to  
9 all oversight and reporting requirements established by the comptroller.

10 (b) If the comptroller terminates a financial organization as a  
11 program manager or depository, he or she shall take custody of accounts  
12 held by such financial organization and shall seek to promptly transfer  
13 such accounts to another financial organization that is selected as a  
14 program manager or depository and into investment instruments as similar  
15 to the original instruments as possible.

16 9. The comptroller may enter into such contracts as necessary and  
17 proper for the implementation of the program.

18 § 4855. Program requirements; New York state health care savings  
19 account. 1. New York health care savings accounts established pursuant  
20 to the provisions of this article shall be governed by the provisions of  
21 this section.

22 2. A New York health care savings account may be opened by any person  
23 who desires to save money for the payment of the qualified health care-  
24 related expenses of the designated beneficiary or his or her member of  
25 the family. An account owner may designate another person as successor  
26 owner of the account in the event of the death of the original account  
27 owner. Such person who opens an account or any successor owner shall be  
28 considered the account owner as defined in section four thousand eight  
29 hundred fifty-two of this article.

30 (a) An application for such account shall be in the form prescribed by  
31 the program and contain the following:

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

34 (ii) the designation of a designated beneficiary;

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

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

38 (b) The comptroller and the department may establish a nominal fee for  
39 such application.

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

42 4. Contributions to accounts may be made in cash or may be deposited  
43 by a taxpayer who has elected to contribute all or a portion of a refund  
44 of personal income tax to an account that has been established under  
45 this article.

46 (a) Taxpayer contributions shall be made by direct deposit to the  
47 designated account. The amount elected to be contributed by the taxpayer  
48 must be at least twenty-five dollars and may be applied as a contrib-  
49 ution only for the tax year in which the refund is issued.

50 (b) The election shall be made on a form prescribed by the department  
51 of taxation and finance and filed with the taxpayer's tax return for the  
52 tax year or at such other time and in such other manner as the depart-  
53 ment may prescribe. The department shall prescribe the maximum number of  
54 accounts to which a taxpayer may elect to contribute a portion of the  
55 refund.

1 (c) The election to contribute all or a portion of a refund shall not  
2 be revocable.

3 (d) All or a portion of a refund may not be contributed to an account  
4 that has been established under this article if the amount of the  
5 taxpayer's elected refund for such tax year is reduced by any other  
6 sections of the tax law to the amount less than the minimum amount of  
7 contribution authorized under this section.

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

13 6. (a) An account owner may change the designated beneficiary of an  
14 account to an individual who is a member of the family of the prior  
15 designated beneficiary in accordance with procedures established by the  
16 memorandum of understanding pursuant to the provisions of section four  
17 thousand eight hundred fifty-three of this article.

18 (b) An account owner may transfer all or a portion of an account to  
19 another New York health care savings account, the subsequent designated  
20 beneficiary of which is a member of the family.

21 (c) Changes in designated beneficiaries and transfers under this  
22 subdivision shall not be permitted to the extent that they would cause  
23 all accounts for the same beneficiary to exceed the permitted aggregate  
24 maximum account balance.

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

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

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

33 10. The comptroller shall promulgate rules or regulations to prevent  
34 contributions on behalf of a designated beneficiary in excess of an  
35 amount that would cause the aggregate account balance for all accounts  
36 for a designated beneficiary to exceed a maximum account balance, as  
37 established from time to time by the comptroller and the department on  
38 the basis of health care costs in the state, with adequate safeguards to  
39 prevent more contributions than necessary to provide for qualified  
40 health care expenses of the beneficiary or his or her member of the  
41 family.

42 11. (a) If there is any distribution from an account to any individual  
43 or for the benefit of any individual during a calendar year, such  
44 distribution shall be reported to the internal revenue service and the  
45 account owner, the designated beneficiary, or the distributee to the  
46 extent required by federal law or regulation.

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

55 (c) Statements and information relating to accounts shall be prepared  
56 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 health care 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 health care expense 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 health care savings account:

(a) the terms and conditions for purchasing a New York health care savings account;

(b) any restrictions on the substitution of beneficiaries;

(c) the person or entity entitled to terminate the New York health care savings account;

(d) the period of time during which a beneficiary may receive benefits under the health care savings 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 health care savings 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 thousand eight hundred fifty-three of this article.

15. Health care savings agreements shall be subject to section fourteen-c of the banking law and the "truth-in-savings" regulations promulgated thereunder.

§ 4856. Program limitations; New York state health care savings 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) create state residency for an individual merely because the individual is a designated beneficiary or his or her member of the family; or

(c) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified health care expenses of a designated beneficiary or his or her member of the family.

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 department 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

1 account clearly indicate that the account is not insured by the state  
2 and neither the principal deposited nor the investment return is guaran-  
3 teed by the state.

4 § 3. Subsection (b) of section 612 of the tax law is amended by adding  
5 a new paragraph 44 to read as follows:

6 (44) (A) Excess distributions received during the taxable year by a  
7 distributee of a New York health care savings account established under  
8 the New York health care savings program provided for under article  
9 forty-eight-A of the public health law, to the extent such excess  
10 distributions are deemed attributable to deductible contributions under  
11 paragraph forty-eight of subsection (c) of this section.

12 (B) (i) The term "excess distributions" means distributions which are  
13 not:

14 (I) qualified withdrawals within the meaning of subdivision eight of  
15 section four thousand eight hundred fifty-two of the public health law;

16 (II) withdrawals made as a result of the death or disability of the  
17 designated beneficiary within the meaning of subdivision nine of section  
18 four thousand eight hundred fifty-four of the public health law; or

19 (III) transfers described in paragraph b of subdivision six of section  
20 four thousand eight hundred fifty-five of the public health law.

21 (ii) Excess distributions shall be deemed attributable to deductible  
22 contributions to the extent the amount of any such excess distribution,  
23 when added to all previous excess distributions from the account,  
24 exceeds the aggregate of all nondeductible contributions to the account.

25 § 4. Subsection (c) of section 612 of the tax law is amended by adding  
26 two new paragraphs 48 and 49 to read as follows:

27 (48) Contributions made during the taxable year by an account owner to  
28 one or more New York health care savings accounts established under the  
29 New York health savings program provided for under article forty-eight-A  
30 of the public health law, to the extent not deductible or eligible for  
31 credit for federal income tax purposes; provided, however, the exclusion  
32 provided for in this paragraph shall not exceed five thousand dollars  
33 for an individual or head of household, and for married couples who file  
34 joint tax returns, shall not exceed ten thousand dollars; provided,  
35 further, that such exclusion shall be available only to the account  
36 owner and not to any other person.

37 (49) Distributions from a New York health care savings account estab-  
38 lished under the New York state health care savings program provided for  
39 under article forty-eight-A of the public health law, to the extent  
40 includible in gross income for federal income tax purposes.

41 § 5. This act shall take effect immediately and shall apply to taxable  
42 years beginning on or after the first of January next succeeding the  
43 date on which it shall have become a law.

44 § 4. Severability clause. If any clause, sentence, paragraph, subdivi-  
45 sion, section or part of this act shall be adjudged by a court of compe-  
46 tent jurisdiction to be invalid, such judgment shall not affect, impair  
47 or invalidate the remainder thereof, but shall be confined in its opera-  
48 tion to the clause, sentence, paragraph, subdivision, section or part  
49 thereof directly involved in the controversy in which such judgment  
50 shall have been rendered. It is hereby declared to be the intent of the  
51 legislature that this act would have been enacted even if such invalid  
52 provisions had not been included herein.

53 § 5. This act shall take effect immediately provided, however, that  
54 the applicable effective date of Parts A through D of this act shall be  
55 as specifically set forth in the last section of such Parts.