§ 4304. Individual contracts. (a) Every corporation subject to the provisions of this article may issue a contract to an individual the premiums for which may be paid to the corporation directly by the individual or by a remitting agent for the group to which the individual belongs. If the premiums for a contract issued pursuant to this section are paid to the corporation by a remitting agent, such contract shall be subject to subsections (k) and (l) of section four thousand two hundred thirty-five of this chapter, and for the purposes of these subsections, the remitting agent shall be treated as the policyholder.

(b)(1) Any such contract shall be for a period not in excess of twelve months, but no contract shall be made providing for the inception of benefits at a date later than one year from the date of the contract.

(2) Any such contract shall provide that it will be automatically renewed from year to year unless there shall have been one month's prior written notice of termination by the subscriber.

(3) No corporation shall refuse to renew any such contract because of the physical or mental condition or the health of any person covered thereunder. The provisions of this subsection shall in no way diminish the rights of individuals pursuant to section four thousand three hundred seventeen of this article.

(c) Any such contract may be terminated in the following manner:

(1) At the option of the individual to whom the contract is issued, upon not less than one month's prior written notice.

(2) At the option of the corporation, for one or more of the following reasons:

(A) The individual has failed to pay premiums or contributions in accordance with the terms of the contract or the corporation has not received timely premium payments.

(B) The individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the contract, upon not less than one month's prior written notice.

(C) (i) Discontinuance of a class of contract upon not less than ninety days' prior written notice. In exercising the option to discontinue coverage pursuant to this item, the corporation must act uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage and

must offer to subscribers or group remitting agents, as may be appropriate, the option to purchase all other individual health insurance coverage currently being offered by the corporation to applicants in that market. Provided, however, the superintendent may, after giving due consideration to the public interest, approve a request made by a corporation for the corporation to satisfy the requirements of this item through the offering of contracts at each level of coverage as defined in subsection (b) of section four thousand three hundred six-h of this article that contains the essential health benefits package described in paragraph three of subsection (e) of section four thousand three hundred six-h of this article by another corporation, insurer or health maintenance organization within the corporation's same holding company system, as defined in article fifteen of this chapter.

(ii) Discontinuance of all hospital, surgical or medical expense coverage in the individual direct payment market in this state upon written notice to the superintendent and to each subscriber not less than one hundred eighty days prior to the date of the expiration of such coverage. In the event of such a withdrawal from the individual direct payment market, the corporation must also provide the superintendent with a written plan to minimize potential disruption in the marketplace occasioned by such withdrawal. In addition, the corporation may not provide for the issuance of any hospital, surgical or medical expense coverage in the individual direct payment market in this state during the five-year period beginning on the date of the discontinuance of the last health insurance coverage not so renewed.

(iii) Discontinuance of all individual hospital, surgical or medical expense insurance contracts for which the premiums are paid by a remitting agent of a group, in the small group market, or the large group market, or both markets, in this state, in conjunction with a withdrawal from the small group market, or the large group market, or both markets, in this state. Withdrawal from the small group market, or the large group market, or both markets, shall be governed by the requirements of subparagraphs (E) and (F) of paragraph three of subsection (j) of section four thousand three hundred five of this article. For purposes of this item, "withdrawal" from a market means that no coverage is offered or maintained in such market under contracts issued pursuant to this section or contracts issued pursuant to section

four thousand three hundred five of this article.

(D) In the case of a corporation that offers health insurance in the market through a network plan, the individual no longer resides, lives or works in the service area (or in an area for which the corporation is authorized to do business) but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals. For the purposes of this subparagraph, the term "network plan" means health insurance coverage of a corporation organized under this article under which the financing and delivery of health care (including items and services paid for as such care) are provided, in whole or in part, through a defined set of providers under contract either with the corporation or another entity that has contracted with the corporation.

(E) In case of a contract for which the premiums are paid by a remitting agent of a group, discontinuance of the individual's membership in such group.

(F) Such other reasons as the superintendent may approve and authorized by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any later amendments or successor provisions, or by any federal regulations or rules that implement the provisions of the Act, upon not less than one month's prior written notice.

(3) Every notice of termination shall be in a form satisfactory to the superintendent and shall include a statement of the conversion privileges, if any, upon such termination.

(4) In the event of termination of a contract, the corporation shall return the unearned portion of the premium.

(d) (1) (A) No contract issued pursuant to this section shall entitle more than one person to benefits except that a contract issued and marked as a "family contract" may provide that benefits will be furnished to the contract holder, spouse, dependent child or children, or other person chiefly dependent upon the contract holder provided that:

(i) A "family contract" may provide coverage to any child or children not over nineteen years of age, provided that an unmarried student at an accredited institution of learning may be considered a dependent until the child becomes twenty-three years of age, and provided also that the

coverage of any such "family contract" may include, at the option of the corporation, any unmarried child until attaining age twenty-five. However, a "family contract" of hospital, medical, surgical, or prescription drug expense insurance that provides coverage for dependent children shall provide such coverage to a married or unmarried child until attainment of age twenty-six without regard to financial dependence, residency with the contract holder, student status, or employment.

(ii) The coverage of any such "family contract" shall include any other unmarried child, regardless of age, who is incapable of self-sustaining employment by reason of mental illness, developmental disability, as defined in the mental hygiene law, or physical handicap and who became so incapable prior to attainment of the age at which coverage would otherwise terminate.

(B) In addition to the requirements of subparagraph (A) of this paragraph, every corporation issuing a contract of hospital, medical or surgical expense insurance that provides coverage for children must make available and if requested by the contractholder, extend coverage under the contract to an unmarried child through age twenty-nine, without regard to financial dependence who is not insured by or eligible for coverage under any employer health benefit plan as an employee or member, whether insured or self-insured, and who lives, works or resides in New York state or the service area of the corporation. Such coverage shall be made available at the inception of all new contracts, and for group remittance contracts at any anniversary date. Written notice of the availability of such coverage shall be delivered to the contractholder prior to the inception of such contract, and for group remittance contracts annually thereafter.

(C) Notwithstanding any rule, regulation or law to the contrary, any "family contract" shall provide that coverage of newborn infants, including newly born infants adopted by the subscriber if such subscriber takes physical custody of the infant upon such infant's release from the hospital and files a petition pursuant to section one hundred fifteen-c of the domestic relations law within thirty days of birth; and provided further that no notice of revocation to the adoption has been filed pursuant to section one hundred fifteen-b of the domestic relations law and consent to the adoption has not been revoked, shall be

effective from the moment of birth for injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities including premature birth, except that in cases of adoption, coverage of the initial hospital stay shall not be required where a birth parent has insurance coverage available for the infant's care. This provision regarding coverage of newborn infants shall not apply to two person coverage. In the case of individual or two person coverages the corporation must also permit the person to whom the contract is issued to elect such coverage of newborn infants from the moment of birth. If notification and/or payment of an additional premium or contribution is required to make coverage effective for a newborn infant, the coverage may provide that such notice and/or payment be made within no less than thirty days of the day of birth to make coverage effective from the moment of birth. This election shall not be required in the case of student insurance or where the group remitting agent's plan does not provide coverage for children.

(2) Every "family contract" under which coverage of a dependent spouse or contract holder would terminate upon such spouse or contract holder attaining the age prescribed in subchapter XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq ("Medicare"), as the age of first eligibility for the benefits provided by such law shall not so terminate, if such dependent spouse is not eligible for all of such benefits, for as long as the contract remains in force and such dependent spouse remains ineligible to receive any of such "medicare" benefits, provided proof of such ineligibility is submitted to the corporation within thirty-one days of the date notice of termination of coverage is mailed by the corporation to the last known address of the such spouse or contract holder.

(3) Coverage of an unmarried dependent child who is incapable of self-sustaining employment by reason of mental illness, developmental disability, as defined in the mental hygiene law, or physical handicap and who became so incapable prior to attainment of the age at which coverage would otherwise terminate and who is chiefly dependent upon the contract holder for support and maintenance, shall not terminate while the contract remains in force and the child remains in such condition, if the contract holder has within thirty-one days of such child's attainment of the limiting age submitted proof of such child's

incapacity as described herein.

(e) (1) (A) If any such contract is terminated in accordance with the provisions of paragraph one of subsection (c) of this section, or any such contract is terminated because of a default by the remitting agent in the payment of premiums not cured within the grace period and the remitting agent has not replaced the contract with similar and continuous coverage for the same group whether insured or self-insured, or any such contract is terminated in accordance with the provisions of subparagraph (E) of paragraph two of subsection (c) of this section, or if an individual other than the contract holder is no longer covered under a "family contract" because the individual is no longer within the definition set forth in the contract, or a spouse is no longer covered under the contract because of divorce from the contract holder or annulment of the marriage, or any such contract is terminated because of the death of the contract holder, then such individual, former spouse, or in the case of the death of the contract holder the surviving spouse or other dependents of the deceased contract holder covered under the contract, as the case may be, shall be entitled to convert, without evidence of insurability, upon application therefor and the making of the first payment thereunder within sixty days after the date of termination of such contract, to a contract that contains the essential health benefits package described in paragraph three of subsection (e) of section four thousand three hundred six-h of this article.

(B) The corporation shall offer one contract at each level of coverage as defined in subsection (b) of section four thousand three hundred six-h of this article. The individual may choose any such contract offered by the corporation. Provided, however, the superintendent may, after giving due consideration to the public interest, approve a request made by a corporation for the corporation to satisfy the requirements of this paragraph through the offering of contracts that comply with this paragraph by another corporation, insurer or health maintenance organization within the corporation's same holding company system, as defined in article fifteen of this chapter.

(C) The effective date of the coverage provided by the converted direct payment contract shall be the date of the termination of coverage under the contract from which conversion was made.

(2) The corporation shall not be required to issue any such converted

individual direct payment contract if its issuance would result in overinsurance or duplication of benefits according to standards on file with the superintendent and approved by the superintendent with regard to such contracts.

(3) In addition to the right of conversion herein, the employee or member insured under a contract for which the premiums are paid by a remitting agent of a group shall at his option, as an alternative to conversion, be entitled to have his coverage continued under the group remittance contract in accordance with the conditions and limitations contained in subsection (k) of this section, and have issued at the end of the period of continuation an individual direct payment conversion contract subject to the terms of this subsection. The effective date for the conversion contract shall be the day following the termination of insurance under the group remittance contract, or if there is a continuation of coverage, on the day following the end of the period of continuation.

(4) For purposes of this subsection, the term "dependent" shall include a child as described in subsection (d) of this section.

(f) No such corporation shall require as a condition for renewal or for failure to cancel any individual contract any rider, endorsement or other attachment which shall limit the nature or extent of the benefits thereunder, except that a corporation may at any time upon at least thirty days' prior written notice amend such contract to provide a different level of benefits thereunder if approved by the superintendent on finding, upon application by the corporation at least four months before the proposed effective date, that such level would exceed, in the aggregate, the level of benefits theretofore provided and would be in the best interests of the corporation and the persons covered under such contracts.

(g) The provisions of this section with respect to limitations on the termination of an individual contract shall not apply to a contract or an endorsement or rider thereto which is issued by a corporation subject to the provisions of this article pursuant to a plan providing for experimentation in new forms of benefits in the field of health insurance protection, which plan shall be submitted in writing to the superintendent. The superintendent shall approve such plan if he finds that the benefits are of the type heretofore described and that the

issuance of such contract, endorsement or rider is in the public interest. Approval of such contract, rider or endorsement shall be subject to any conditions which may be prescribed by the superintendent, including, but not limited to, the maximum period during which the exemption from the provisions of this section with respect to termination shall continue. The superintendent may, for good cause shown, extend such period of exemption. Any termination of such contract, rider or endorsement during the period of exemption, other than for non-payment of premium and fraud in applying for the contract, shall be subject to the approval of the superintendent. Upon termination of such contract, or termination of a rider or endorsement providing experimental benefits, as aforesaid, the contract holder thereunder who has at the time of such termination been covered continuously immediately preceding such termination for a period of two years or more under one or more contracts of the corporation shall be entitled to have issued to him by the corporation, without evidence of insurability, upon application therefor and the making of the first payment thereunder within thirty-one days after the date of termination, an individual direct payment contract of the type and class which the superintendent shall determine provides benefits most nearly comparable to those currently provided other individuals. If the corporation does not terminate such contract or a rider or endorsement thereto providing experimental benefits as aforesaid during the period of exemption, or any extended period provided herein, such contract shall thereafter be subject to the provisions of this section with respect to termination as of the original effective date of such contract.

(h) Any contract, other than one issued in fulfillment of the continuing care responsibilities of an operator of a continuing care retirement community in accordance with article forty-six of the public health law, made available because of residence in a particular facility, housing development, or community shall contain the following notice in twelve point type in bold face on the first page:

"NOTICE - THIS CONTRACT DOES NOT MEET THE REQUIREMENTS OF A CONTINUING CARE RETIREMENT CONTRACT. AVAILABILITY OF THIS COVERAGE WILL NOT QUALIFY A RESIDENTIAL FACILITY AS A CONTINUING CARE RETIREMENT COMMUNITY."

(i) Any persons covered by the contract who are also members of a reserve component of the armed forces of the United States, including

the National Guard, shall be entitled, upon written request, to have their coverage suspended during a period of active duty as described herein. The contract shall provide that the insurer will refund any unearned premiums for the period of such suspension. Persons covered by the contract shall be entitled to resumption of coverage, upon written application and payment of the required premium within sixty days after the date of termination of the period of active duty, with no limitations or conditions imposed as a result of such period of active duty except as set forth in paragraphs one and two herein. Coverage shall be retroactive to the date of termination of the period of active duty. Such right of resumption provided for herein shall be in addition to other existing rights granted pursuant to state and federal laws and regulations and shall not be deemed to qualify or limit such rights in any way. No exclusion or waiting period may be imposed in connection with coverage of a health or physical condition of a person entitled to such right of resumption, or a health or physical condition of any other person who is covered by the contract unless:

(1) the condition arose during the period of active duty and the condition has been determined by the secretary of veterans affairs to be a condition incurred in the line of duty; or

(2) a waiting period was imposed and had not been completed prior to the period of suspension; in no event, however, shall the sum of the waiting periods imposed prior to and subsequent to the period of suspension exceed the length of the waiting period originally imposed.

(j) To be entitled to the right defined in subsection (i) of this section a person must be a member of a reserve component of the armed forces of the United States, including the National Guard, who either:

(1) voluntarily or involuntarily enters upon active duty (other than for the purpose of determining his or her physical fitness and other than for training), or

(2) has his or her active duty voluntarily or involuntarily extended during a period when the president is authorized to order units of the ready reserve or members of a reserve component to active duty, provided that such additional active duty is at the request and for the convenience of the federal government, and

(3) serves no more than four years of active duty.

(k) A contract for which the premiums are paid by a remitting agent of

a group issued by a hospital service, health service or medical expense indemnity corporation shall provide that if all or any portion of the insurance on an employee or member insured under the contract ceases because of termination of employment or membership in the class or classes eligible for coverage under the contract, such employee or member shall be entitled without evidence of insurability upon application to continue his or her insurance for himself or herself and his or her eligible dependents, subject to all of the group remittance contract's terms and conditions applicable to those forms of benefits and to the following conditions:

(1) Continuation shall not be available for: (A) any person who is covered, becomes covered or could be covered by title XVIII of the United States Social Security Act (Medicare) as amended or superseded; or (B) an employee, member or dependent who is covered, becomes covered or could become covered as an employee, member or dependent by any other insured or uninsured arrangement which provides hospital, surgical or medical coverage for individuals in a group which does not contain any exclusion or limitation with respect to any pre-existing condition of such employee, member or dependent, except the group insurance or group remittance contract conversion option of this section shall not be considered as such an arrangement under which an employee, member or dependent could become covered.

(2) (A) An employee or member who wishes continuation of coverage must request such continuation in writing within the sixty day period following the later of: (i) the date of such termination; or (ii) the date the employee is given notice of the right of continuation by either his employer or the group remitting agent.

(B) An employee or member who wishes continuation of coverage under subparagraph (D) of paragraph four of this subsection must give notice to the employer or group remitting agent within sixty days of the determination under title II or title XVI of the United States Social Security Act that such employee or member was disabled at the time of termination of employment or membership or at any time during the first sixty days of continuation of coverage.

(3) An employee or member electing continuation must pay to the group remitting agent or his employer, but not more frequently than on a monthly basis in advance, the amount of the required premium payment,

but not more than one hundred two percent of the group rate for the benefits being continued under the group remittance contract on the due date of each payment. The employee's or member's written election of continuation, together with the first premium payment required to establish premium payment on a monthly basis in advance, must be given to the group remitting agent or employer within sixty days of the date the employee's or member's benefits would otherwise terminate.

(4) Subject to paragraph one of this subsection, continuation of benefits under the group remittance contract for any person shall terminate at the first to occur of the following:

(A) The date thirty-six months after the date the employee's or member's benefits under the contract would otherwise have terminated because of termination of employment or membership; or

(B) The end of the period for which premium payments were made, if the employee or member fails to make timely payment of a required premium payment; or

(C) In the case of an eligible dependent of an employee or member, the date thirty-six months after the date such person's benefits under the contract would otherwise have terminated by reason of:

(i) the death of the employee or member;

(ii) the divorce or legal separation of the employee or member from his or her spouse;

(iii) the employee or member becoming entitled to benefits under title XVIII of the United States Social Security Act (Medicare); or

(iv) a dependent child ceasing to be a dependent child under the generally applicable requirements of the contract; or

(D) The date on which the group remittance contract with that remitting agent is terminated or, in the case of an employee, the date his employer terminates participation under the group remittance contract. However, if this clause applies and the coverage ceasing by reason of such termination is replaced by similar coverage under another group or group remittance contract, the following shall apply:

(i) The employee or member shall have the right to become covered under that other group or group remittance contract, for the balance of the period that he would have remained covered under the prior group remittance contract in accordance with this subparagraph had a termination described in this subparagraph not occurred, and

(ii) The minimum level of benefits to be provided by the other group or group remittance contract shall be the applicable level of benefits of the prior group remittance contract reduced by any benefits payable under that prior group remittance contract, and

(iii) The prior group remittance contract shall continue to provide benefits to the extent of its accrued liabilities and extension of benefits as if the replacement had not occurred.

(5)(A) Special enrollment period. An individual who does not have an election of continuation coverage as described in this subsection in effect on the effective date of the American Recovery and Reinvestment act of 2009, but who would be an assistance eligible individual under Title III of such act if such election were in effect, may elect continuation coverage pursuant to this subsection. Such election must be made no later than sixty days after the date the administrator of the group health plan (or other entity involved) provides the notice required by section 3001(a)(7) of the American Recovery and Reinvestment act of 2009. The administrator of the group health plan (or other entity involved) shall provide such individuals with additional notice of the right to elect coverage pursuant to this paragraph within sixty days of the date of enactment of the American Recovery and Reinvestment act of 2009.

(B) Continuation coverage elected pursuant to subparagraph (A) of this paragraph shall commence with the first period of coverage beginning on or after the date of the enactment of the American Recovery and Reinvestment act of 2009 and shall not extend beyond the period of continuation coverage that would have been required if the coverage had instead been elected pursuant to paragraph two of this subsection.

(C) With respect to an individual who elects continuation coverage pursuant to subparagraph (A) of this paragraph, the period beginning on the date of the qualifying event and ending on the date of the first period of coverage on or after the enactment of the American Recovery and Reinvestment act of 2009 shall be disregarded for purposes of determining the sixty-three day period referred to in section four thousand three hundred eighteen of this article.

(6) A contract for which premiums are paid by a remitting agent for a group issued by a hospital service, health service or medical expense indemnity corporation shall offer an employee or member who has

exhausted continuation coverage pursuant to Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. § 1161 et seq. or Chapter 6A of the Public Health Service Act, 42 U.S.C. § 300 bb - 1 et seq. the opportunity to continue coverage for up to thirty-six months from the date the employee's or member's continuation coverage began if the employee or member is entitled to less than thirty-six months of continuation benefits.

(7) For purposes of this subsection, the term "dependent" shall include a child as described in subsection (d) of this section.

(l) A corporation shall not offer individual hospital, medical, or surgical expense insurance contracts unless the contracts meet the requirements of subsection (b) of section four thousand three hundred twenty-eight of this article. Such contracts that are offered within the health benefit exchange established by this state also shall meet any requirements established by the health benefit exchange. To the extent that a holder of a special purpose certificate of authority issued pursuant to section four thousand four hundred three-a of the public health law offers individual hospital, medical, or surgical expense insurance contracts, the contracts shall meet the requirements of subsection (b) of section four thousand three hundred twenty-eight of this article.

(m) (1) As used in this subsection, "child" means an unmarried child through age twenty-nine of an employee or member insured under a group remittance contract of hospital, medical or surgical expense insurance, regardless of financial dependence, who is not insured by or eligible for coverage under any employer health benefit plan as an employee or member, whether insured or self-insured, and who lives, works or resides in New York state or the service area of the corporation and who is not covered under title XVIII of the United States Social Security Act (Medicare).

(2) In addition to the conversion privilege afforded by subsection (e) of this section and the continuation privilege afforded by subsections (e) and (k) of this section, a hospital service, health service or medical expense corporation or health maintenance organization that provides hospital, medical or surgical expense insurance coverage for which the premiums are paid by the remitting agent of a group that provides coverage of a child that terminates at a specified age shall,

upon application of the employee, member or child, as set forth in subparagraph (B) of this paragraph, provide coverage to the child after that specified age and through age twenty-nine without evidence of insurability, subject to all of the terms and conditions of the group remittance contract and the following:

(A) An employer shall not be required to pay all or part of the cost of coverage for a child provided pursuant to this subsection;

(B) An employee, member or child who wishes to elect continuation of coverage pursuant to this subsection shall request the continuation in writing:

(i) within sixty days following the date coverage would otherwise terminate due to reaching the specified age set forth in the group contract;

(ii) within sixty days after meeting the requirements for child status set forth in paragraph one of this subsection when coverage for the child previously terminated; or

(iii) during an annual thirty-day open enrollment period as described in the contract.

(C) An employee, member or child electing continuation as described in this subsection shall pay to the group remitting agent or employer, but not more frequently than on a monthly basis in advance, the amount of the required premium payment on the due date of each payment. The written election of continuation, together with the first premium payment required to establish premium payment on a monthly basis in advance, shall be given to the group remitting agent or employer within the time periods set forth in subparagraph (B) of this paragraph. Any premium received within the thirty-day period after the due date shall be considered timely;

(D) For any child electing coverage within sixty days of the date the child would otherwise lose coverage due to reaching a specified age, the effective date of the continuation coverage shall be the date coverage would have otherwise terminated. For any child electing to resume coverage during an annual open enrollment period, the effective date of the continuation coverage shall be prospective no later than thirty days after the election and payment of first premium;

(E) Coverage for a child pursuant to this subsection shall consist of coverage that is identical to the coverage provided to the employee or

member parent. If coverage is modified under the contract for any group of similarly situated employees or members, then the coverage shall also be modified in the same manner for any child;

(F) Coverage shall terminate on the first to occur of the following:

(i) the date the child no longer meets the requirements of paragraph one of this subsection;

(ii) the end of the period for which premium payments were made, if there is a failure to make payment of a required premium payment within the period of grace described in subparagraph (C) of this paragraph; or

(iii) the date on which the group remittance contract is terminated and not replaced by coverage under another group or group remittance contract; and

(G) The corporation or health maintenance organization shall provide written notification of the continuation privilege described in this subsection and the time period in which to request continuation to the employee or member:

(i) in each certificate of coverage; and

(ii) at least sixty days prior to termination at the specified age as provided in the contract.

(3)(A) Corporations and health maintenance organizations shall submit such reports as may be requested by the superintendent to evaluate the effectiveness of coverage pursuant to this subsection including, but not limited to, quarterly enrollment reports.

(B) The superintendent may promulgate regulations to ensure the orderly implementation and operation of the continuation coverage provided pursuant to this subsection, including premium rate adjustments.