§ 4317. Rating of individual and small group health insurance contracts. (a) (1) No individual health insurance contract and no group health insurance contract covering between one and fifty employees or members of the group, or between one and one hundred employees or members of the group for policies issued or renewed on or after January first, two thousand sixteen exclusive of spouses and dependents, including contracts for which the premiums are paid by a remitting agent for a group, hereinafter referred to as a small group, providing hospital and/or medical benefits, including Medicare supplemental insurance, shall be issued in this state unless such contract is community rated and, notwithstanding any other provisions of law, the underwriting of such contract involves no more than the imposition of a pre-existing condition limitation if otherwise permitted by this article. (2) Any individual, and dependents of such individual, and any small group, including all employees or group members and dependents of employees or members, applying for individual or small group health insurance coverage including Medicare supplemental insurance, but not including coverage issued on or after January first, two thousand fourteen specified in subsection (l) of section four thousand three hundred four, and section four thousand three hundred twenty-eight of this chapter, must be accepted at all times throughout the year for any hospital and/or medical coverage offered by the corporation to individuals or small groups in this state. (3) Once accepted for coverage, an individual or small group cannot be terminated by the insurer due to claims experience. Termination of coverage for individuals or small groups may be based only on one or more of the reasons set forth in subsection (c) of section four thousand three hundred four or subsection (j) of section four thousand three hundred five of this article. (4) For the purposes of this section, "community rated" means a rating methodology in which the premium for all persons covered by a policy or contract form is the same, based on the experience of the entire pool of risks of all individuals or small groups covered by the corporation without regard to age, sex, health status, tobacco usage or occupation excluding those individuals of small groups covered by Medicare supplemental insurance. For medicare supplemental insurance coverage, "community rated" means a rating methodology in which the premiums for all persons covered by a policy or

contract form is the same based on the experience of the entire pool of risks covered by that policy or contract form without regard to age, sex, health status, tobacco usage or occupation.

(b) (1) The superintendent may set standard premium tiers and standard rating relativities between tiers applicable to all contracts subject to this section. The superintendent may also set a standard relativity applicable to child-only contracts issued pursuant to section 1302(f) of the affordable care act, 42 U.S.C. § 18022(f). The relativity for child-only contracts must be actuarially justifiable using the aggregate experience of corporations to prevent the charging of unjustified premiums. The superintendent may adjust such premium tiers and relativities periodically based upon the aggregate experience of corporations issuing contract forms subject to this section. (2) A corporation shall establish separate community rates for individuals as opposed to small groups. (3) If a corporation is required to issue a contract to individual proprietors pursuant to subsection (f) of this section, such contract shall be subject to the requirements of subsection (a) of this section.

(c) (1) The superintendent shall permit the use of separate community rates for reasonable geographic regions, which may, in a given case, include a single county. The regions shall be approved by the superintendent as part of the rate filing. The superintendent shall not require the inclusion of any specific geographic regions within the proposed community rated regions selected by the corporation in its rate filing so long as the corporation's proposed regions do not contain configurations designed to avoid or segregate particular areas within a county covered by the corporation's community rates. (2) Beginning on January first, two thousand fourteen, for every contract subject to this section that provides physician services, medical, major medical or similar comprehensive-type coverage, except for Medicare supplemental insurance, corporations shall use standardized regions established by the superintendent.

(d) * (1) (A) This section shall also apply to a contract issued to a group defined in subsection (c) of section four thousand two hundred thirty-five of this chapter, including but not limited to an association or trust of employers, if the group includes one or more member employers or other member groups having one hundred or fewer employees

or members exclusive of spouses and dependents. For a contract issued or renewed on or after January first, two thousand fourteen, if the group includes one or more member small group employers eligible for coverage subject to this section, then such member employers shall be classified as small groups for rating purposes and the remaining members shall be rated consistent with the rating rules applicable to such remaining members pursuant to paragraph two of this subsection. (B) Subparagraph A of this paragraph shall not apply to either the renewal of a contract issued to a group or the issuance, between January first, two thousand sixteen and December thirty-first, two thousand sixteen, of a contract, and any renewal thereof, to a group, provided that the following three requirements are met: (I) the group had been issued a contract that was in effect on July first, two thousand fifteen; (II) the group had member employers, who, on or after July first, two thousand fifteen, have between fifty-one and one hundred employees, exclusive of spouses and dependents; and (III) the group is either: (i) comprised entirely of one or more municipal corporations or districts (as such terms are defined in section one hundred nineteen-n of the general municipal law); or (ii) comprised entirely of nonpublic schools providing education in any grade from pre-kindergarten through twelfth grade.

* NB Effective until December 28, 2028

* (1) This section shall also apply to a contract issued to a group defined in subsection (c) of section four thousand two hundred thirty-five of this chapter, including but not limited to an association or trust of employers, if the group includes one or more member employers or other member groups which have one hundred or fewer employees or members exclusive of spouses and dependents. For contracts issued or renewed on or after January first, two thousand fourteen, if the group includes one or more member small group employers eligible for coverage subject to this section, then such member employers shall be classified as small groups for rating purposes and the remaining members shall be rated consistent with the rating rules applicable to such remaining members pursuant to paragraph two of this subsection.

* NB Effective December 28, 2028

(2) If a contract is issued to a group defined in subsection (c) of section four thousand two hundred thirty-five of this chapter including association groups, that includes one or more individual or individual

proprietor members, then for rating purposes the corporation shall include such members in its individual pool of risks in establishing premium rates for such members.

(3) A corporation shall provide specific claims experience to a municipal corporation, as defined in subsection (f) of section four thousand seven hundred two of this chapter, covered by the corporation under a community rated contract when the municipal corporation requests its claims experience for purposes of forming or joining a municipal cooperative health benefit plan certified pursuant to article forty-seven of this chapter. Notwithstanding the foregoing provisions, no corporation shall be required to provide more than three years' claims experience to a municipal corporation making this request.

(e) * (1) Notwithstanding any other provision of this chapter, no insurer, subsidiary of an insurer, or controlled person of a holding company system may act as an administrator or claims paying agent, as opposed to an insurer, on behalf of small groups which, if they purchased insurance, would be subject to this section. No insurer may provide stop loss, catastrophic or reinsurance coverage to small groups which, if they purchased insurance, would be subject to this section. Provided, however, the provisions of this paragraph shall not apply to: (A) the renewal of stop loss, catastrophic or reinsurance coverage issued and in effect on January first, two thousand fifteen to small groups covering between fifty-one and one hundred employees or members of the group; and (B) the issuance between January first, two thousand sixteen, and December thirty-first, two thousand sixteen, of stop loss, catastrophic or reinsurance coverage, and any renewal thereof, to a small group covering between fifty-one and one hundred employees or members of the group, provided that such group had stop loss, catastrophic or reinsurance coverage issued and in effect on January first, two thousand fifteen.

* NB Effective until December 28, 2028

* (1) Notwithstanding any other provision of this chapter, no insurer, subsidiary of an insurer, or controlled person of a holding company system may act as an administrator or claims paying agent, as opposed to an insurer, on behalf of small groups which, if they purchased insurance, would be subject to this section. No insurer, subsidiary of an insurer, or controlled person of a holding company may provide stop

loss, catastrophic or reinsurance coverage to small groups which, if they purchased insurance, would be subject to this section.

* NB Effective December 28, 2028

(2) This subsection shall not apply to coverage insuring a plan that was in effect on or before December thirty-first, nineteen hundred ninety-one and was issued to a group that includes member small employers or other member small groups, including but not limited to association groups, provided that (A) acceptance of additional small member employers (or other member groups comprised of fifty or fewer employees or members, exclusive of spouses and dependents) into the group on or after June first, nineteen hundred ninety-two and before April first, nineteen hundred ninety-four does not exceed an amount equal to ten percent per year of the total number of persons covered under the group as of June first, nineteen hundred ninety-two, but nothing in this subparagraph shall limit the addition of larger member employers; (B) (i) after April first, nineteen hundred ninety-four, the group thereafter accepts member small employers and member small groups without underwriting by any more than the imposition of a pre-existing condition limitation as permitted by this article and the cost for participation in the group for all persons covered shall be the same based on the experience of the entire pool of risks covered under the entire group, without regard to age, sex, health status or occupation; and; (ii) once accepted for coverage, an individual or small group cannot be terminated due to claims experience; (C) the corporation has registered the names of such groups, including the total number of persons covered as of June first, nineteen hundred ninety-two, with the superintendent, in a form prescribed by the superintendent, on or before April first, nineteen hundred ninety-three and shall report annually thereafter until such groups comply with the provisions of subparagraph (B) of this paragraph; and (D) the types or categories of employers or groups eligible to join the association are not altered or expanded after June first, nineteen hundred ninety-two.

(3) A corporation may apply to the superintendent for an extension or extensions of time beyond April first, nineteen hundred ninety-four in which to implement the provisions of this subsection as they relate to groups registered with the superintendent pursuant to subparagraph (C) of paragraph two of this subsection; any such extension or extensions

may not exceed two years in aggregate duration, and the ten percent per year limitation of subparagraph (A) of paragraph two of this subsection shall be reduced to five percent per year during the period of any such extension or extensions. Any application for an extension shall demonstrate that a significant financial hardship to such group would result from such implementation.

(f)(1) If the corporation issues coverage to an association group (including chambers of commerce), as defined in subparagraph (K) of paragraph one of subsection (c) of section four thousand two hundred thirty-five of this chapter, then the corporation shall issue the same coverage to individual proprietors who purchase coverage through the association group as the corporation issues to groups that purchase coverage through the association group; provided, however, that a corporation that, on the effective date of this subsection, is issuing coverage to individual proprietors not connected with an association group, may continue to issue such coverage provided that the coverage is otherwise in accordance with this subsection and all other applicable provisions of law.

(2) For coverage purchased pursuant to this subsection through December thirty-first, two thousand thirteen, individual proprietors shall be classified in their own community rating category, provided however, up to and including December thirty-first, two thousand thirteen, the premium rate established for individual proprietors purchased pursuant to paragraph one of this subsection shall not be greater than one hundred fifteen percent of the rate established for the same coverage issued to groups. Coverage purchased or renewed pursuant to this subsection on or after January first, two thousand fourteen shall be classified in the individual rating category.

(3) The corporation may require members of the association purchasing health insurance to verify that all employees electing health insurance are legitimate employees of the employers, as documented on New York state tax form NYS-45-ATT-MN or comparable documentation. In order to be eligible to purchase health insurance pursuant to this subsection and obtain the same group insurance products as are offered to groups, a sole employee of a corporation or a sole proprietor of an unincorporated business or entity must (A) work at least twenty hours per week, (B) if purchasing the coverage through an association group, be a member of the

association for at least sixty days prior to the effective date of the insurance contract, and (C) present a copy of the following documentation to the corporation or health plan administrator on an annual basis:

(i) NYS tax form 45-ATT, or comparable documentation of active employee status;

(ii) for an unincorporated business, the prior year's federal income tax Schedule C for an incorporated business subject to Subchapter S with a sole employee, federal income tax Schedule E for other incorporated businesses with a sole employee, a W-2 annual wage statement, or federal tax form 1099 with federal income tax Schedule F; or

(iii) for a business in business for less than one year, a cancelled business check, a certificate of doing business, or appropriate tax documentation; and

(iv) such other documentation as may be reasonably required by the insurer as approved by the superintendent to verify eligibility of an individual to purchase health insurance pursuant to this subsection.

(4) Notwithstanding the provisions of item (I) of clause (i) of subparagraph (K) of paragraph one of subsection (c) of section four thousand two hundred thirty-five of this chapter, for purposes of this section, an association group shall include chambers of commerce with less than two hundred members and which are 501C3 or 501C6 organizations.