§ 4326. Standardized health insurance contracts for qualifying small employers and individuals. (a) A program is hereby established for the purpose of making standardized health insurance contracts available to qualifying small employers as defined in this section. Such program is designed to encourage small employers to offer health insurance coverage to their employees.

(b) Participation in the program established by this section and section four thousand three hundred twenty-seven of this article is limited to corporations or insurers organized or licensed under this article or article forty-two of this chapter and health maintenance organizations issued a certificate of authority under article forty-four of the public health law or licensed under this article. Participation by all health maintenance organizations is mandatory, provided, however, that such requirements shall not apply to a holder of a special purpose certificate of authority issued pursuant to section four thousand four hundred three-a of the public health law or a health maintenance organization exclusively serving individuals enrolled pursuant to title eleven of article five of the social services law, title eleven-D of article five of the social services law, title one-A of article twenty-five of the public health law or title eighteen of the federal Social Security Act. On and after January first, two thousand one, all health maintenance organizations shall offer qualifying group health insurance contracts as defined in this section. For the purposes of this section and section four thousand three hundred twenty-seven of this article, article forty-three corporations or article forty-two insurers which voluntarily participate in compliance with the requirements of this program shall be eligible for reimbursement from the stop loss funds created pursuant to section four thousand three hundred twenty-seven of this article under the same terms and conditions as health maintenance organizations.

(c) The following definitions shall be applicable to the insurance contracts offered under the program established by this section:

(1) (A) A qualifying small employer is an employer with:

(i) not more than fifty employees;

(ii) no group health insurance that provides benefits on an expense reimbursed or prepaid basis covering employees in effect during the twelve month period prior to application for a qualifying group health

insurance contract under the program established by this section; and

(iii) at least thirty percent of its employees receiving annual wages from the employer at a level equal to or less than thirty thousand dollars. The thirty thousand dollar figure shall be adjusted periodically pursuant to subparagraph (D) of this paragraph.

(B) The twelve month period set forth in item (ii) of subparagraph (A) of this paragraph may be adjusted by the superintendent from twelve months to eighteen months if he determines that the twelve month period is insufficient to prevent inappropriate substitution of qualifying group health insurance contracts for other health insurance contracts.

(C) An employer shall cease to be a qualifying small employer if any health insurance that provides benefits on an expense reimbursed or prepaid basis covering an employer's employees, other than qualifying group health insurance purchased pursuant to this section, is purchased or otherwise takes effect subsequent to purchase of qualifying group health insurance under the program established by this section.

(D) The wage levels utilized in subparagraph (A) of this paragraph shall be adjusted annually, beginning in two thousand two. The adjustment shall take effect on July first of each year. For July first, two thousand two, the adjustment shall be a percentage of the annual wage figure specified in subparagraph (A) of this paragraph. For subsequent years, the adjustment shall be a percentage of the annual wage figure that took effect on July first of the prior year. The percentage adjustment shall be the same percentage by which the current year's non-farm federal poverty level, as defined and updated by the federal department of health and human services, for a family unit of four persons for the forty-eight contiguous states and Washington, D.C., changed from the same level established for the prior year.

(2) A qualifying group health insurance contract is a group contract purchased from a health maintenance organization, corporation or insurer by a qualifying small employer that provides the benefits set forth in subsection (d) of this section. The contract must insure not less than fifty percent of the employees.

(d) A qualifying group health insurance contract shall provide coverage for the essential health benefits package as defined in paragraph three of subsection (e) of section four thousand three hundred six-h of this article.

(d-1) Covered services shall not include drugs, procedures and supplies for the treatment of erectile dysfunction when provided to, or prescribed for use by, a person who is required to register as a sex offender pursuant to article six-C of the correction law, provided that: (1) any denial of coverage pursuant to this subsection shall provide the enrollee with the means of obtaining additional information concerning both the denial and the means of challenging such denial; (2) all drugs, procedures and supplies for the treatment of erectile dysfunction may be subject to prior authorization by corporations, insurers or health maintenance organizations for the purposes of implementing this subsection; and (3) the superintendent shall promulgate regulations to implement the denial of coverage pursuant to this subsection giving health maintenance organizations, corporations and insurers at least sixty days following promulgation of the regulations to implement their denial procedures pursuant to this subsection.

(d-2) No person or entity authorized to provide coverage under this section shall be subject to any civil or criminal liability for damages for any decision or action pursuant to subsection (d-1) of this section, made in the ordinary course of business if that authorized person or entity acted reasonably and in good faith with respect to such information.

(d-3) Notwithstanding any other provision of law, if the commissioner of health makes a finding pursuant to subdivision twenty-three of section two hundred six of the public health law, the superintendent is authorized to remove a drug, procedure or supply from the services covered by the standardized health insurance contract established by this section for those persons required to register as sex offenders pursuant to article six-C of the correction law.

(e) A qualifying group health insurance contract shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to eighty percent of the full actuarial value of the benefits provided under the plan. The superintendent shall standardize the benefit package and cost sharing requirements of qualified group health insurance contracts consistent with coverage offered through the health benefit exchange established by this state.

(f) The mandated and make-available benefits set forth in sections three thousand two hundred twenty-one of this chapter and four thousand

three hundred three of this article shall not be applicable to the contracts issued pursuant to this section.

(g) A health maintenance organization, corporation or insurer must offer the benefit package without change or additional benefits. A qualifying small employer shall be issued the benefit package in a qualifying group health insurance contract.

(h) A health maintenance organization, corporation or insurer shall obtain from the employer written certification at the time of initial application and annually thereafter ninety days prior to the contract renewal date that such employer meets the requirements of a qualifying small employer pursuant to this section. A health maintenance organization, corporation or insurer may require the submission of appropriate documentation in support of the certification.

(i) Applications for qualifying group health insurance contracts must be accepted from any qualifying small employer at all times throughout the year. The superintendent, by regulation, may require health maintenance organizations, corporations or insurers to give preference to qualifying small employers whose employees have the lowest average salaries.

(j) A corporation shall not impose any pre-existing condition limitation in a qualifying group health insurance contract.

(k) A qualifying small employer shall elect whether to make coverage under the qualifying group health insurance contract available to dependents of employees. Any employee or dependent who is enrolled in Medicare is ineligible for coverage, unless required by federal law. Dependents of an employee who is enrolled in Medicare will be eligible for dependent coverage provided the dependent is not also enrolled in Medicare.

(l) A qualifying small employer must pay at least fifty percent of the premium for employees covered under a qualifying group health insurance contract and must offer coverage to all employees receiving annual wages at a level of thirty thousand dollars or less, and at least one such employee shall accept such coverage. The thirty thousand dollar wage level shall be adjusted periodically in accordance with subparagraph (D) of paragraph one of subsection (c) of this section. The employer premium contribution must be the same percentage for all covered employees.

(m) Premium rate calculations for qualifying group health insurance

contracts shall be subject to the following:

(1) coverage must be community rated and the superintendent shall set standard rating tiers for family units and standard rating relativities between tiers applicable to all contracts subject to this section; and

(2) beginning January first, two thousand fourteen, every policy subject to this section shall use standardized regions established by the superintendent; and

(3) claims experience under contracts issued to qualifying small employers must be pooled with the health maintenance organization, corporation or insurer's small group business for rate setting purposes.

(n) A health maintenance organization, corporation or insurer shall submit reports to the superintendent in such form and at times as may be reasonably required in order to evaluate the operations and results of the standardized health insurance program established by this section.