§ 4327. Stop loss funds for standardized health insurance contracts issued to qualifying small employers and qualifying individuals. (a) The superintendent shall establish a fund from which health maintenance organizations, corporations or insurers may receive reimbursement, to the extent of funds available therefor, for claims paid by such health maintenance organizations, corporations or insurers for members covered under qualifying group health insurance contracts issued pursuant to section four thousand three hundred twenty-six of this article. This fund shall be known as the "small employer stop loss fund".

(b) Health maintenance organizations, corporations or insurers shall be eligible to receive reimbursement for ninety percent of claims paid between five thousand and seventy-five thousand dollars in a calendar year for any member covered under a standardized contract issued pursuant to section four thousand three hundred twenty-six of this article. Claims paid for members covered under qualifying group health insurance contracts shall be reimbursable from the small employer stop loss fund. For the purposes of this section, claims shall include health care claims paid by a health maintenance organization on behalf of a covered member pursuant to such standardized contracts.

(c) The superintendent shall promulgate regulations that set forth procedures for the operation of the small employer stop loss fund and distribution of monies therefrom.

(d) The superintendent may adjust the level of stop loss coverage specified in subsection (b) of this section.

(e) Claims shall be reported and funds shall be distributed from the small employer stop loss fund on a calendar year basis. Claims shall be eligible for reimbursement only for the calendar year in which the claims are paid. Once claims paid on behalf of a covered member reach or exceed one hundred thousand dollars in a given calendar year, no further claims paid on behalf of such member in that calendar year shall be eligible for reimbursement.

(f) Each health maintenance organization, corporation or insurer shall submit a request for reimbursement from the stop loss fund on forms prescribed by the superintendent. The requests for reimbursement shall be submitted no later than April first following the end of the calendar year for which the reimbursement requests are being made. The superintendent may require health maintenance organizations,

corporations or insurers to submit such claims data in connection with the reimbursement requests as he deems necessary to enable him to distribute monies and oversee the operation of the small employer stop loss fund. The superintendent may require that such data be submitted on a per member, aggregate and/or categorical basis.

(g) For the stop loss fund, the superintendent shall calculate the total claims reimbursement amount for all health maintenance organizations, corporations or insurers for the calendar year for which claims are being reported.

(1) In the event that the total amount requested for reimbursement for a calendar year exceeds funds available for distribution for claims paid during that same calendar year, the superintendent shall provide for the pro-rata distribution of the available funds. Each health maintenance organization, corporation or insurer shall be eligible to receive only such proportionate amount of the available funds as the individual health maintenance organization's, corporation's or insurer's total eligible claims paid bears to the total eligible claims paid by all health maintenance organizations, corporations or insurers.

(2) In the event that funds available for distribution for claims paid by all health maintenance organizations, corporations or insurers during a calendar year exceeds the total amount requested for reimbursement by all health maintenance organizations, corporations or insurers during that same calendar year, any excess funds shall be carried forward and made available for distribution in the next calendar year. Such excess funds shall be in addition to the monies appropriated for the stop loss fund in the next calendar year.

(h) Upon the request of the superintendent, each health maintenance organization shall be required to furnish such data as the superintendent deems necessary to oversee the operation of the small employer stop loss fund. Such data shall be furnished in a form prescribed by the superintendent. Each health maintenance organization, corporation or insurer shall provide the superintendent with monthly reports of the total enrollment under the qualifying group health insurance contracts issued pursuant to section four thousand three hundred twenty-six of this article. The reports shall be in a form prescribed by the superintendent.

(i) The superintendent shall separately estimate the per member annual

cost of total claims reimbursement from each stop loss fund for qualifying group health insurance contracts based upon available data and appropriate actuarial assumptions. Upon request, each health maintenance organization, corporation or insurer shall furnish to the superintendent claims experience data for use in such estimations.

(j) The superintendent shall determine total eligible enrollment under qualifying group health insurance contracts. The total eligible enrollment shall be determined by dividing the total funds available for distribution from the small employer stop loss fund by the estimated per member annual cost of total claims reimbursement from the small employer stop loss fund.

(k) The superintendent shall suspend the enrollment of new employers under qualifying group health insurance contracts if the superintendent determines that the total enrollment reported by all health maintenance organizations, corporations or insurers under such contracts exceeds the total eligible enrollment, thereby resulting in anticipated annual expenditures from the small employer stop loss fund in excess of the total funds available for distribution from such stop loss fund.

(l) The superintendent shall provide the health maintenance organizations, corporations or insurers with notification of any enrollment suspensions as soon as practicable after receipt of all enrollment data.

(m) If at any point during a suspension of enrollment of new qualifying small employers, the superintendent determines that funds are sufficient to provide for the addition of new enrollments, the superintendent shall be authorized to reactivate new enrollments and to notify all health maintenance organizations, corporations or insurers that enrollment of new employers may again commence.

(m-1) In the event that the superintendent suspends the enrollment of new individuals for qualifying group health insurance contracts, the superintendent shall ensure that small employers seeking to enroll in a qualified group health insurance contract pursuant to section forty-three hundred twenty-six of this article are provided information on and directed to coverage options available through the health benefit exchange established by this state.

(n) The suspension of issuance of qualifying group health insurance contracts to new qualifying small employers shall not preclude the

addition of new employees of an employer already covered under such a contract or new dependents of employees already covered under such contracts.

(o) The premiums for qualifying group health insurance contracts must factor in the availability of reimbursement from the small employer stop loss fund.

(p) The superintendent may obtain the services of an organization to administer the stop loss funds established by this section. The superintendent shall establish guidelines for the submission of proposals by organizations for the purposes of administering the funds. The superintendent shall make a determination whether to approve, disapprove or recommend modification to the proposal of an applicant to administer the funds. An organization approved to administer the funds shall submit reports to the superintendent in such form and at times as may be required by the superintendent in order to facilitate evaluation and ensure orderly operation of the funds, including an annual report of the affairs and operations of the fund, such report to be delivered to the superintendent and to the chairs of the senate finance committee and the assembly ways and means committee. An organization approved to administer the funds shall maintain records in a form prescribed by the superintendent and which shall be available for inspection by or at the request of the superintendent. The superintendent shall determine the amount of compensation to be allocated to an approved organization as payment for fund administration. Compensation shall be payable from the stop loss coverage funds. An organization approved to administer the funds may be removed by the superintendent and must cooperate in the orderly transition of services to another approved organization or to the superintendent.

(q) If the superintendent deems it appropriate for the proper administration of the small employer stop loss fund, the administrator of the fund, on behalf of and with the prior approval of the superintendent, shall be authorized to purchase stop loss insurance and/or reinsurance from an insurance company licensed to write such type of insurance in this state. Such stop loss insurance and/or reinsurance may be purchased to the extent of funds available therefor within such funds which are available for purposes of the stop loss funds established by this section.

(r) The superintendent may access funding from the small employer stop loss fund for the purposes of developing and implementing public education, outreach and facilitated enrollment strategies targeted to small employers without health insurance. The superintendent may contract with marketing organizations to perform or provide assistance with such education, outreach, and enrollment strategies. The superintendent shall determine the amount of funding available for the purposes of this subsection which in no event shall exceed eight percent of the annual funding amounts for the small employer stop loss fund.

(s) Brooklyn healthworks pilot program and upstate healthworks pilot program. Commencing on July first, two thousand six, the superintendent shall access funding from the small employer stop loss fund for the purpose of support and expansion of the existing pilot program Brooklyn healthworks approved by the superintendent and for the establishment and operation of a pilot program to be located in upstate New York. For the purpose of this subsection, in no event shall the amount of funding available exceed two percent of the annual funding amount for the small employer stop loss fund.