§ 4328. Individual enrollee direct payment contracts offered by health maintenance organization on and after October first, two thousand thirteen. (a) On and after October first, two thousand thirteen, every health maintenance organization issued a certificate of authority under article forty-four of the public health law or licensed under this article shall offer an individual enrollee direct payment contract in accordance with the requirements of this section; provided, however, that this requirement 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, except as otherwise required under subsection (l) of section four thousand three hundred four of this article, 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. The superintendent may, after giving consideration to the public interest, exempt a health maintenance organization from the requirements of this section provided that another health insurer or health maintenance organization within the health maintenance organization's same holding company system, as defined in article fifteen of this chapter, including a health maintenance organization operated as a line of business of a health service corporation licensed under this article, offers an individual enrollee direct payment contract that, at a minimum, complies with this section and provides all of the consumer protections required to be provided by a health maintenance organization pursuant to the public health law and regulations, including those consumer protections contained in sections four thousand four hundred three and four thousand four hundred eight-a of the public health law. The enrollee contracts issued by a health maintenance organization under this section also shall be the only contracts issued by the health maintenance organization for purposes of conversion pursuant to sections four thousand three hundred four and four thousand three hundred five of this article.

(b) (1) The individual enrollee direct payment contract offered pursuant to this section 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.

(2) A health maintenance organization shall offer at least one individual enrollee direct payment contract at each level of coverage as defined in subsection (b) of section four thousand three hundred six-h of this article. A health maintenance organization also shall offer one child-only plan, as required by section 1302(f) of the affordable care act, 42 U.S.C. § 18022(f), at each level of coverage.

(3) Within the health benefit exchange established by this state, a health maintenance organization may offer an individual enrollee direct payment contract that is a catastrophic health plan as defined in section 1302(e) of the affordable care act, 42 U.S.C. § 18022(e), or any regulations promulgated thereunder.

(4) (A) The individual enrollee direct payment contract offered pursuant to this section shall have the same enrollment periods, including special enrollment periods, as required for an individual direct payment contract offered within the health benefit exchange established by this state.

(B) In addition to the enrollment periods required in subparagraph (A) of this paragraph, an individual enrollee direct payment contract offered pursuant to this section shall allow for the enrollment of a pregnant individual. Such individual may enroll at any time after a health care professional licensed pursuant to title eight of the education law and acting within the scope of his or her practice certifies that the individual is pregnant. Such health insurance policy or contract shall not impose a fee or other penalty for special enrollment of the pregnant individual. Upon enrollment, coverage shall be effective as of the first day of the month in which the health care professional certifies that the individual is pregnant, unless the individual elects to have coverage effective on the first day of the month following the date that the individual received certification of the pregnancy.

(5) The individual enrollee direct payment contract offered pursuant to this section shall be issued without regard to evidence of insurability and without an exclusion for pre-existing conditions.

(6) A health maintenance organization offering an individual enrollee direct payment contract pursuant to this section shall not establish rules for eligibility, including continued eligibility, of any

individual or dependent of the individual to enroll under the contract based on any of the following health status-related factors:

(A) health status;

(B) medical condition, including both physical and mental illnesses;

(C) claims experience;

(D) receipt of health care;

(E) medical history;

(F) genetic information;

(G) evidence of insurability, including conditions arising out of acts of domestic violence; or

(H) disability.

(7) The individual enrollee direct payment contract offered pursuant to this section shall be community rated. For purposes of this paragraph, "community rated" means a rating methodology in which the premium for all persons covered by a contract form is the same, based on the experience of the entire pool of risks, without regard to age, sex, health status, tobacco usage, or occupation.

(c) In addition to or in lieu of the individual enrollee direct payment contracts required under this section, all health maintenance organizations issued a certificate of authority under article forty-four of the public health law or licensed under this article may offer individual enrollee direct payment contracts within the health benefit exchange established by this state, subject to any requirements established by the health benefit exchange. If a health maintenance organization satisfies the requirements of subsection (a) of this section by offering individual enrollee direct payment contracts, only within the health benefit exchange, the health maintenance organization, not including a holder of a special purpose certificate of authority issued pursuant to section four thousand four hundred three-a of the public health law, shall also offer at least one individual enrollee direct payment contract at each level of coverage as defined in subsection (b) section four thousand three hundred six-h of this article, outside the health benefit exchange.

(d)(1) Nothing in this section shall be deemed to require health maintenance organizations to discontinue individual direct payment contracts issued prior to October first, two thousand thirteen or prevent health maintenance organizations from discontinuing individual

direct payment contracts issued prior to October first, two thousand thirteen. If a health maintenance organization discontinues individual direct payment contracts issued prior to October first, two thousand thirteen, regardless of whether it is a grandfathered health plan, then the health maintenance organization shall comply with the requirements of subsection (c) of section four thousand three hundred four of this article.

(2) For purposes of this subsection, "grandfathered health plan" means coverage provided by a corporation in which an individual was enrolled on March twenty-third, two thousand ten for as long as the coverage maintains grandfathered status in accordance with section 1251(e) of the affordable care act, 42 U.S.C. § 18011(e).

(e) The superintendent may promulgate regulations implementing the requirements of this section, including regulations that modify or add additional standardized individual enrollee direct payment contracts if the superintendent determines additional contracts with different levels of coverage are necessary to meet the needs of the public.