§ 4406-a. Arbitration provisions of health maintenance organization contracts. 1. The enrollee contract of a health maintenance organization may permit enrollees and adult members of the enrollee's family who are covered by such contract to elect to have all claims for damages because of injury or death resulting from health care or treatment rendered or failed to be rendered pursuant to the contract by a physician, dentist, hospital, health maintenance organization or other health care provider subject to binding arbitration, pursuant to article seventy-five-A of the civil practice law and rules. For the purposes of this section, "health maintenance organizations" shall include those health maintenance organizations organized pursuant to this article or pursuant to article forty-three of the insurance law. The enrollee contract may permit arbitration elections to be executed on behalf of minor children or persons judicially determined to be incompetent by a parent, legal guardian, committee or conservator or other person legally authorized to enroll the minor or incompetent person in a health maintenance organization. Arbitration election notices, described in subdivisions two and three of this section, must be executed by covered adult family members in order to bind such persons to the arbitration election.

2. After receiving the approval of the superintendent of financial services, pursuant to section five thousand six hundred five of the insurance law, health maintenance organizations may provide arbitration election notices to current enrollees and their covered adult family members. Such notice shall contain the following provision in at least twelve point boldface type immediately above spaces for the signature of the enrollee or covered adult family member: "By signing this form, I am agreeing to have any issue of alleged health care malpractice decided by neutral arbitration rather than by a court trial before a judge or jury. (Health care malpractice means claims for damages because of injury or death resulting from health care or treatment rendered or failed to be rendered pursuant to my health maintenance organization contract by the health maintenance organization, a physician, dentist, hospital or other health care provider.) I understand that I will be given the opportunity to cancel my agreement, but that all claims arising during the time of my agreement will be subject to arbitration. I understand that by signing the form, I am deemed to have received and reviewed the

information describing arbitration that has been provided to me. I also understand that there is no requirement that I sign this form and that my decision not to sign this form will not in any way affect my membership or benefits in this health maintenance organization."

3. After receiving the approval of the superintendent of financial services, pursuant to section five thousand six hundred five of the insurance law, health maintenance organizations may also provide arbitration election notices, as specified in subdivision two of this section, to new enrollees and their covered adult family members. In the alternative, a health maintenance organization may, after receiving the superintendent's approval, elect to provide an alternative notice to new enrollees and their covered adult family members that provides that new enrollees and their covered adult family members shall be subject to the arbitration of claims unless a form is executed by such persons that declines consent to the arbitration of claims. A health maintenance organization that chooses to provide such alternative notice shall provide an arbitration declination form and notice to all new enrollees and their covered adult family members with the following provision in a least twelve point boldface type immediately above spaces for the signature of the enrollee or covered adult family member: "Unless you sign this form to decline the option of arbitration, by electing to enroll in this health maintenance organization, you are agreeing to have any issue of health care malpractice decided by neutral arbitration rather than by a court trial before a judge or jury. (Health care malpractice means all claims for damages because of injury or death resulting from health care or treatment rendered or failed to be rendered pursuant to your health maintenance organization contract by the health maintenance organization, a physician, dentist, hospital or other health care provider.) If you do not sign this form to decline arbitration, you will be given the opportunity to cancel your agreement to arbitrate these claims, but all claims arising prior to the time that you cancel the agreement will be subject to arbitration. You are entitled to receive information describing arbitration before making this decision. Your decision to sign this form to decline arbitration will not in any way affect your membership or benefits in this health maintenance organization."

4. Arbitration election notices may be provided, from time to time, by health maintenance organizations to persons who have not agreed to arbitration of such claims. The health maintenance organizations shall, in a form and manner determined to be sufficient by the superintendent of financial services and on at least an annual basis, provide notice to persons who have agreed to arbitration of such claims that such persons may cancel their agreement to arbitrate, including information as to how such person may cancel the arbitration agreement; provided, however, that the agreement to arbitrate shall remain in force during such person's enrollment or membership in the health maintenance organization unless the health maintenance organization receives notification of such person's cancellation of the arbitration agreement or the health maintenance organization withdraws its agreement to arbitrate and provides notice of this fact to persons who elected arbitration.

5. Every such notice shall be accompanied by or be part of an information brochure, prepared in accordance with section five thousand six hundred four of the insurance law, which clearly explains the nature and scope of arbitration and the procedures that will be used to conduct these arbitration proceedings.

6. All claims arising from surgical, medical, dental and other health care procedures performed or failed to be performed and treatment provided or failed to be provided by a physician, dentist, hospital, health maintenance organization or other health care provider pursuant to the enrollee contract to an enrollee or a covered adult family member who signs the arbitration election notice or who fails to sign the arbitration declination form specified in subdivision three of this section shall be subject to arbitration and such enrollees or covered adult family members shall be bound by the agreement to arbitrate such claims. All physicians, dentists, hospitals, health maintenance organizations and other health care providers who provide or receive compensation for health care services pursuant to the enrollee contract shall be bound by the agreement to arbitrate.

7. Notwithstanding any inconsistent provisions of law, an agreement to

arbitrate which complies with the provisions of this section shall be presumed valid.