§ 221-a. Health insurance for jockeys. 1. a. A franchised corporation shall, as a condition of racing, establish a program to administer the purchase of health insurance for eligible jockeys.

Such program shall be funded through the deposit of one and one-half percent of the gross purse enhancement amount from video lottery gaming at a thoroughbred track pursuant to paragraph two of subdivision b and paragraph one of subdivision f of section sixteen hundred twelve of the tax law. The franchised corporation shall establish a segregated account for the receipt of these monies and these monies shall remain separate from any other funds. Any corporation or association licensed pursuant to this article shall pay into such account any amount due within ten days of the receipt of revenue pursuant to section sixteen hundred twelve of the tax law.

b. Any portion of such funding to the account, outlined in paragraph a of this subdivision, unused during a calendar year, less an amount sufficient to cover anticipated premium liabilities over the next sixty days, shall be either (i) returned on a pro rata basis in accordance with the amounts originally contributed to be used for the purpose of enhancing purses at such tracks, (ii) deposited into the account established in paragraph c of this section, or (iii) distributed via a combination of both purposes outlined in subparagraphs (i) and (ii) of this paragraph. The distribution of such unused funding described in this paragraph shall be determined and agreed upon by the franchised corporation and the jockey's organization that represents at least fifty-one percent of eligible jockeys. Provided, however, if a corporation or association licensed pursuant to this article provides an alternative source of funding for this program, an amount equal to this alternative funding, but not in excess of the amount originally contributed during the year from the gross purse enhancement amount from video lottery gaming attributable to such corporation or association, shall be returned to the corporation or association and used for the purpose of enhancing purses at such track. Provided, further, any such alternative source of funding must be approved by the commission.

c. An additional segregated account may be established with such

monies as a reserve fund for the payment of premiums not yet paid. The amount paid into such fund during any calendar year, if any, shall be determined upon the agreement between the franchised corporation and the jockey's organization that represents at least fifty-one percent of eligible active jockeys outlined in paragraph b of this subdivision. If, after the establishment of such fund, a determination and agreement is made between the franchised corporation and the jockey's organization that represents at least fifty-one percent of eligible jockeys that such fund is no longer needed, the monies remaining in such fund shall be returned on a pro rata basis in accordance with the amounts originally contributed and shall be used for the purposes of enhancing purses at such tracks.

2. The franchised corporation shall enter into a memorandum of understanding with the jockey's organization that represents at least fifty-one percent of eligible active jockeys establishing a plan of operation for the program, provided that such memorandum of understanding shall be approved by the commission upon a determination that such memorandum of understanding meets the statutory requirements of this section and is in the best interest of racing and shall include, but not be limited to, the following conditions:

a. health insurance policies must be purchased on an American health benefit exchange established pursuant to 42 U.S.C. § 18031(b) by the insured;

b. health insurance policies eligible to be purchased under the program shall be any policy that is silver level of coverage or lower as defined by 42 U.S.C.§18022(d). Provided, however, the insured may elect to purchase a gold level or platinum level of coverage as defined by 42 U.S.C. § 18022(d) if the insured pays the difference in premiums between such policy and the premium for the silver level policy offered by the same insurer. Such payments shall be paid into the account established in subdivision one of this section and shall be governed by the terms of the memorandum of understanding required by this section;

c. notwithstanding the conditions set forth in paragraphs a and b of

this subdivision, a memorandum of understanding with the jockeys organization that represents at least fifty-one percent of the eligible active jockeys may be approved by the commission upon a determination that such memorandum of understanding is in the best interest of racing that creates a jockeys health trust to be administered by the franchised corporation for the purpose of obtaining jockey health benefits from a health insurance provider that covers jockeys and their dependents with a health insurance policy that is not purchased on an American health benefit exchange established pursuant to 42 U.S.C. § 18031(b) but does provide silver level coverage or lower as defined by 42 U.S.C. § 18022(d);

d. the payment of premiums pursuant to this section shall be made on behalf of eligible jockeys pursuant to paragraph e of this subdivision by the franchised corporation from monies in the account established in subdivision one of this section directly to the health plan selected pursuant to paragraph b or c of this subdivision;

e. to be eligible to receive health insurance through this program, an individual must meet one of the following requirements:

(i) have ridden in at least two hundred fifty races conducted by the franchised corporation during the prior calendar year or in at least one hundred fifty races conducted by any other corporation or association licensed pursuant to this article during the prior calendar year; provided, however, if an individual qualified for coverage in any prior year and fails to meet the qualification due to an injury not resulting in a permanent disability, that individual shall be deemed to have met the qualification; or

(ii) have retired from racing on or after January first, two thousand ten after having ridden in at least seventy-five hundred races conducted by any corporation or association licensed pursuant to this article. For the purposes of this section, an individual shall be considered retired from racing if they have ridden in fewer than fifty races at any track in the nation licensed to conduct thoroughbred racing during the calendar year; or

(iii) have become permanently disabled due to a racing accident while eligible to receive benefits or would become eligible to receive

benefits in the following year pursuant to subparagraph (i) of this paragraph; provided, however, if an individual fails to meet the qualification of such subparagraph (i) due to an injury resulting in a permanent disability, that individual shall be deemed to have met the qualification; and

f. the commission shall have the following powers:

(i) to rule on eligibility in the event of a denial of coverage pursuant to paragraph e of this subdivision. In the event of a denial of coverage, such individual denied eligibility may appeal to the commission;

(ii) to make a determination if an individual would have qualified pursuant to subparagraph (i) of paragraph e of this subdivision in the event that the individual suffers an injury and contends that he or she would have qualified had they not suffered such injury; and

(iii) to audit the books and records of the program.