

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, **may possibly** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH/JA

P.L. 2021, CHAPTER 347, *approved January 10, 2022*
Senate, No. 3632 (*First Reprint*)

1 AN ACT concerning health care practitioner referrals and amending
2 P.L.1989, c.19.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended to read
8 as follows:

9 2. a. A practitioner shall not refer a patient or direct an
10 employee of the practitioner to refer a patient to a health care
11 service in which the practitioner, or the practitioner's immediate
12 family, or the practitioner in combination with the practitioner's
13 immediate family has a significant beneficial interest; except that,
14 in the case of a practitioner, a practitioner's immediate family, or a
15 practitioner in combination with the practitioner's immediate family
16 who had the significant beneficial interest prior to the effective date
17 of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a
18 significant beneficial interest in a health care service that provides
19 lithotripsy or radiation therapy pursuant to an oncological protocol
20 that was held prior to the effective date of this section of P.L.2009,
21 c.24, the practitioner may continue to refer a patient or direct an
22 employee to do so if that practitioner discloses the significant
23 beneficial interest to the patient.

24 b. If a practitioner is permitted to refer a patient to a health care
25 service pursuant to this section, the practitioner shall provide the
26 patient with a written disclosure form, prepared pursuant to section
27 3 of P.L.1989, c.19 (C.45:9-22.6), and post a copy of this disclosure
28 form in a conspicuous public place in the practitioner's office.

29 c. The restrictions on referral of patients established in this
30 section shall not apply to:

31 (1) medical treatment or a procedure that is provided at the
32 practitioner's medical office and for which a bill is issued directly in
33 the name of the practitioner or the practitioner's medical office;

34 (2) renal dialysis;

35 (3) ambulatory surgery or procedures involving the use of any
36 anesthesia performed at a surgical practice licensed by the
37 Department of Health pursuant to subsection g. of section 12 of
38 P.L.1971, c.136 (C.26:2H-12) or at an ambulatory care facility
39 licensed by the Department of Health to perform surgical and
40 related services or lithotripsy services, if the following conditions
41 are met:

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted June 10, 2021.

- 1 (a) the practitioner who provided the referral personally
2 performs the procedure;
- 3 (b) the practitioner's remuneration as an owner of or investor in
4 the practice or facility is directly proportional to the practitioner's
5 ownership interest and not to the volume of patients the practitioner
6 refers to the practice or facility;
- 7 (c) all clinically-related decisions at a facility owned in part by
8 non-practitioners are made by practitioners and are in the best
9 interests of the patient; and
- 10 (d) disclosure of the referring practitioner's significant
11 beneficial interest in the practice or facility is made to the patient in
12 writing, at or prior to the time that the referral is made, consistent
13 with the provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6);
14 **'[and]'**
- 15 (4) medically-necessary intraoperative monitoring services
16 rendered during a neurosurgical, neurological, or neuro-radiological
17 surgical procedure that is performed in a hospital; **'[and]'**
- 18 (5) 'a value-based arrangement made in accordance with 42
19 C.F.R. 411.357(aa), a payment model authorized under a Medicare
20 shared savings program pursuant to 42 U.S.C. s.1395jjj, or a
21 demonstration operated by the Center for Medicare and Medicaid
22 Innovation established pursuant to at 42 U.S.C. s.1315a; and
- 23 **(6)¹** Referrals that a practitioner makes, or directs an employee
24 of the practitioner to make, to a health care service in which the
25 referring practitioner has a significant beneficial interest, when
26 participants in an alternative payment model registered with the
27 Department of Health pursuant to section 3 of P.L.2017, c.111
28 (C.45:9-22.5c) make a bona fide determination that; the significant
29 beneficial interest is reasonably related to the alternative payment
30 model standards filed with the Department of Health, provided that
31 the determination is documented and retained for a period of 10
32 years; and the referral is made in accordance with alternative
33 payment model standards and professional standards applicable to
34 the health care service in which the referring practitioner has a
35 significant beneficial interest.

36
37 2. This act shall take effect immediately.
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40
41

42 Expands exemption from restrictions on health care practitioner
43 referrals; requires certain referrals to be made in accordance with
44 certain professional standards.

CHAPTER 347

AN ACT concerning health care practitioner referrals and amending P.L.1989, c.19.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended to read as follows:

C.45:9-22.5 Referral of patient by practitioner regulated.

2. a. A practitioner shall not refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner, or the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family has a significant beneficial interest; except that, in the case of a practitioner, a practitioner's immediate family, or a practitioner in combination with the practitioner's immediate family who had the significant beneficial interest prior to the effective date of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a significant beneficial interest in a health care service that provides lithotripsy or radiation therapy pursuant to an oncological protocol that was held prior to the effective date of this section of P.L.2009, c.24, the practitioner may continue to refer a patient or direct an employee to do so if that practitioner discloses the significant beneficial interest to the patient.

b. If a practitioner is permitted to refer a patient to a health care service pursuant to this section, the practitioner shall provide the patient with a written disclosure form, prepared pursuant to section 3 of P.L.1989, c.19 (C.45:9-22.6), and post a copy of this disclosure form in a conspicuous public place in the practitioner's office.

c. The restrictions on referral of patients established in this section shall not apply to:

(1) medical treatment or a procedure that is provided at the practitioner's medical office and for which a bill is issued directly in the name of the practitioner or the practitioner's medical office;

(2) renal dialysis;

(3) ambulatory surgery or procedures involving the use of any anesthesia performed at a surgical practice licensed by the Department of Health pursuant to subsection g. of section 12 of P.L.1971, c.136 (C.26:2H-12) or at an ambulatory care facility licensed by the Department of Health to perform surgical and related services or lithotripsy services, if the following conditions are met:

(a) the practitioner who provided the referral personally performs the procedure;

(b) the practitioner's remuneration as an owner of or investor in the practice or facility is directly proportional to the practitioner's ownership interest and not to the volume of patients the practitioner refers to the practice or facility;

(c) all clinically-related decisions at a facility owned in part by non-practitioners are made by practitioners and are in the best interests of the patient; and

(d) disclosure of the referring practitioner's significant beneficial interest in the practice or facility is made to the patient in writing, at or prior to the time that the referral is made, consistent with the provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6);

(4) medically-necessary intraoperative monitoring services rendered during a neurosurgical, neurological, or neuro-radiological surgical procedure that is performed in a hospital;

(5) a value-based arrangement made in accordance with 42 C.F.R. 411.357(aa), a payment model authorized under a Medicare shared savings program pursuant to 42 U.S.C. s.1395jjj,

or a demonstration operated by the Center for Medicare and Medicaid Innovation established pursuant to at 42 U.S.C. s.1315a; and

(6) Referrals that a practitioner makes, or directs an employee of the practitioner to make, to a health care service in which the referring practitioner has a significant beneficial interest, when participants in an alternative payment model registered with the Department of Health pursuant to section 3 of P.L.2017, c.111 (C.45:9-22.5c) make a bona fide determination that: the significant beneficial interest is reasonably related to the alternative payment model standards filed with the Department of Health, provided that the determination is documented and retained for a period of 10 years; and the referral is made in accordance with alternative payment model standards and professional standards applicable to the health care service in which the referring practitioner has a significant beneficial interest.

2. This act shall take effect immediately.

Approved January 10, 2022.

SENATE, No. 3632

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 19, 2021

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Requires certain health care practitioner referrals to be made in accordance with certain professional standards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/10/2021)

1 AN ACT concerning health care practitioner referrals and amending
2 P.L.1989, c.19.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended to read
8 as follows:

9 2. a. A practitioner shall not refer a patient or direct an
10 employee of the practitioner to refer a patient to a health care
11 service in which the practitioner, or the practitioner's immediate
12 family, or the practitioner in combination with the practitioner's
13 immediate family has a significant beneficial interest; except that,
14 in the case of a practitioner, a practitioner's immediate family, or a
15 practitioner in combination with the practitioner's immediate family
16 who had the significant beneficial interest prior to the effective date
17 of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a
18 significant beneficial interest in a health care service that provides
19 lithotripsy or radiation therapy pursuant to an oncological protocol
20 that was held prior to the effective date of this section of P.L.2009,
21 c.24, the practitioner may continue to refer a patient or direct an
22 employee to do so if that practitioner discloses the significant
23 beneficial interest to the patient.

24 b. If a practitioner is permitted to refer a patient to a health care
25 service pursuant to this section, the practitioner shall provide the
26 patient with a written disclosure form, prepared pursuant to section
27 3 of P.L.1989, c.19 (C.45:9-22.6), and post a copy of this disclosure
28 form in a conspicuous public place in the practitioner's office.

29 c. The restrictions on referral of patients established in this
30 section shall not apply to:

31 (1) medical treatment or a procedure that is provided at the
32 practitioner's medical office and for which a bill is issued directly in
33 the name of the practitioner or the practitioner's medical office;

34 (2) renal dialysis;

35 (3) ambulatory surgery or procedures involving the use of any
36 anesthesia performed at a surgical practice licensed by the
37 Department of Health pursuant to subsection g. of section 12 of
38 P.L.1971, c.136 (C.26:2H-12) or at an ambulatory care facility
39 licensed by the Department of Health to perform surgical and
40 related services or lithotripsy services, if the following conditions
41 are met:

42 (a) the practitioner who provided the referral personally
43 performs the procedure;

44 (b) the practitioner's remuneration as an owner of or investor in
45 the practice or facility is directly proportional to the practitioner's

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 ownership interest and not to the volume of patients the practitioner
2 refers to the practice or facility;

3 (c) all clinically-related decisions at a facility owned in part by
4 non-practitioners are made by practitioners and are in the best
5 interests of the patient; and

6 (d) disclosure of the referring practitioner's significant
7 beneficial interest in the practice or facility is made to the patient in
8 writing, at or prior to the time that the referral is made, consistent
9 with the provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6);
10 and

11 (4) medically-necessary intraoperative monitoring services
12 rendered during a neurosurgical, neurological, or neuro-radiological
13 surgical procedure that is performed in a hospital; and

14 (5) Referrals that a practitioner makes, or directs an employee of
15 the practitioner to make, to a health care service in which the
16 referring practitioner has a significant beneficial interest, when
17 participants in an alternative payment model registered with the
18 Department of Health pursuant to section 3 of P.L.2017, c.111
19 (C.45:9-22.5c) make a bona fide determination that: the significant
20 beneficial interest is reasonably related to the alternative payment
21 model standards filed with the Department of Health, provided that
22 the determination is documented and retained for a period of 10
23 years; and the referral is made in accordance with alternative
24 payment model standards and professional standards applicable to
25 the health care service in which the referring practitioner has a
26 significant beneficial interest.

27 (cf: P.L.2017, c.283, s.2)

28

29 2. This act shall take effect immediately.

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STATEMENT

33

34 This bill requires that certain health care practitioner referrals be
35 made in accordance with certain professional standards.

36 Under current law, a health care practitioner generally is not to
37 refer a patient or direct an employee of the practitioner to refer a
38 patient to a health care service in which the practitioner, the
39 practitioner's immediate family, or the practitioner in combination
40 with the practitioner's immediate family, has a significant beneficial
41 interest.

42 However, there are exceptions to this general rule. One
43 exception pertains to referrals a health care practitioner makes to a
44 health care service in which the referring practitioner has a
45 significant beneficial interest, when participants in an alternative
46 payment model registered with the Department of Health make a
47 bona fide determination that the significant beneficial interest is
48 reasonably related to the alternative payment model standards filed

S3632 CODEY, VITALE

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1 with the Department of Health, provided that the determination is
2 documented and retained for a period of 10 years.

3 This bill narrows the above exception by also requiring that the
4 referral be made in accordance with alternative payment model
5 standards and the professional standards applicable to the health
6 care service in which the referring practitioner has a significant
7 beneficial interest.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3632

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 2021

The Assembly Health Committee reports favorably Senate Bill No. 3632 (1R).

This bill requires certain health care practitioner referrals to be made in accordance with certain professional standards.

Under current law, a health care practitioner generally is not to refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest.

However, there are exceptions to this general rule. One exception pertains to referrals a health care practitioner makes to a health care service in which the referring practitioner has a significant beneficial interest, when participants in an alternative payment model registered with the Department of Health make a bona fide determination that the significant beneficial interest is reasonably related to the alternative payment model standards filed with the Department of Health, provided that the determination is documented and retained for a period of 10 years.

This bill narrows the above exception to the general rule by also requiring that the referral be made in accordance with alternative payment model standards and the professional standards applicable to the health care service in which the referring practitioner has a significant beneficial interest.

In addition, the bill adds an exception to the general rule by providing that restrictions on referrals of patients are not to apply to a value-based arrangement made in accordance with 42 C.F.R. 411.357(aa), a payment model authorized under a Medicare shared savings program pursuant to 42 U.S.C. s.1395jjj, or a demonstration operated by the Center for Medicare and Medicaid Innovation established pursuant to at 42 U.S.C. s.1315a.

As reported by the committee, Senate Bill No. 3632 (1R) is identical to Assembly Bill No. 5645 which was reported by the committee on this date.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 3632

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 10, 2021

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 3632.

As amended by the committee, this bill requires certain that health care practitioner referrals be made in accordance with certain professional standards.

Under current law, a health care practitioner generally is not to refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest.

However, there are exceptions to this general rule. One exception pertains to referrals a health care practitioner makes to a health care service in which the referring practitioner has a significant beneficial interest, when participants in an alternative payment model registered with the Department of Health make a bona fide determination that the significant beneficial interest is reasonably related to the alternative payment model standards filed with the Department of Health, provided that the determination is documented and retained for a period of 10 years.

This bill narrows the above exception to the general rule by also requiring that the referral be made in accordance with alternative payment model standards and the professional standards applicable to the health care service in which the referring practitioner has a significant beneficial interest.

In addition, the bill adds an exception to the general rule by providing that restrictions on referrals of patients are not to apply to a value-based arrangement made in accordance with 42 C.F.R. 411.357(aa), a payment model authorized under a Medicare shared savings program pursuant to 42 U.S.C. s.1395jjj, or a demonstration operated by the Center for Medicare and Medicaid Innovation established pursuant to at 42 U.S.C. s.1315a.

COMMITTEE AMENDMENTS:

The committee amendments make technical changes and provide that restrictions on referrals of patients are not to apply to a value-based arrangement made in accordance with 42 C.F.R. 411.357(aa), a payment model authorized under a Medicare shared savings program pursuant to 42 U.S.C. s.1395jjj, or a demonstration operated by the Center for Medicare and Medicaid Innovation established pursuant to at 42 U.S.C. s.1315a. The amendments update the synopsis of the bill to reflect these changes.

ASSEMBLY, No. 5645

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 12, 2021

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman STERLEY S. STANLEY

District 18 (Middlesex)

SYNOPSIS

Requires certain health care practitioner referrals to be made in accordance with certain professional standards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/15/2021)

1 AN ACT concerning health care practitioner referrals and amending
2 P.L.1989, c.19.

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7 1. Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended to read
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13 immediate family has a significant beneficial interest; except that,
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15 practitioner in combination with the practitioner's immediate family
16 who had the significant beneficial interest prior to the effective date
17 of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a
18 significant beneficial interest in a health care service that provides
19 lithotripsy or radiation therapy pursuant to an oncological protocol
20 that was held prior to the effective date of this section of P.L.2009,
21 c.24, the practitioner may continue to refer a patient or direct an
22 employee to do so if that practitioner discloses the significant
23 beneficial interest to the patient.

24 b. If a practitioner is permitted to refer a patient to a health care
25 service pursuant to this section, the practitioner shall provide the
26 patient with a written disclosure form, prepared pursuant to section
27 3 of P.L.1989, c.19 (C.45:9-22.6), and post a copy of this disclosure
28 form in a conspicuous public place in the practitioner's office.

29 c. The restrictions on referral of patients established in this
30 section shall not apply to:

31 (1) medical treatment or a procedure that is provided at the
32 practitioner's medical office and for which a bill is issued directly in
33 the name of the practitioner or the practitioner's medical office;

34 (2) renal dialysis;

35 (3) ambulatory surgery or procedures involving the use of any
36 anesthesia performed at a surgical practice licensed by the
37 Department of Health pursuant to subsection g. of section 12 of
38 P.L.1971, c.136 (C.26:2H-12) or at an ambulatory care facility
39 licensed by the Department of Health to perform surgical and
40 related services or lithotripsy services, if the following conditions
41 are met:

42 (a) the practitioner who provided the referral personally
43 performs the procedure;

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45 the practice or facility is directly proportional to the practitioner's

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 ownership interest and not to the volume of patients the practitioner
2 refers to the practice or facility;
3 (c) all clinically-related decisions at a facility owned in part by
4 non-practitioners are made by practitioners and are in the best
5 interests of the patient; and
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7 beneficial interest in the practice or facility is made to the patient in
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9 with the provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6);
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15 the practitioner to make, to a health care service in which the
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17 participants in an alternative payment model registered with the
18 Department of Health pursuant to section 3 of P.L.2017, c.111
19 (C.45:9-22.5c) make a bona fide determination that: the significant
20 beneficial interest is reasonably related to the alternative payment
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22 the determination is documented and retained for a period of 10
23 years; and the referral is made in accordance with alternative
24 payment model standards and professional standards applicable to
25 the health care service in which the referring practitioner has a
26 significant beneficial interest.
27 (cf: P.L.2017, c.283, s.2)

28
29 2. This act shall take effect immediately.

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32 STATEMENT

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34 This bill requires that certain health care practitioner referrals be
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36 Under current law, a health care practitioner generally is not to
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A5645 CONAWAY, MUKHERJI

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1 bona fide determination that the significant beneficial interest is
2 reasonably related to the alternative payment model standards filed
3 with the Department of Health, provided that the determination is
4 documented and retained for a period of 10 years.

5 This bill narrows the above exception by also requiring that the
6 referral be made in accordance with alternative payment model
7 standards and the professional standards applicable to the health
8 care service in which the referring practitioner has a significant
9 beneficial interest.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5645

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 2021

The Assembly Health Committee reports favorably and with committee amendments Assembly Bill No. 5645.

As amended by the committee, this bill requires certain health care practitioner referrals to be made in accordance with certain professional standards.

Under current law, a health care practitioner generally is not to refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest.

However, there are exceptions to this general rule. One exception pertains to referrals a health care practitioner makes to a health care service in which the referring practitioner has a significant beneficial interest, when participants in an alternative payment model registered with the Department of Health make a bona fide determination that the significant beneficial interest is reasonably related to the alternative payment model standards filed with the Department of Health, provided that the determination is documented and retained for a period of 10 years.

This bill narrows the above exception to the general rule by also requiring that the referral be made in accordance with alternative payment model standards and the professional standards applicable to the health care service in which the referring practitioner has a significant beneficial interest.

In addition, the bill adds an exception to the general rule by providing that restrictions on referrals of patients are not to apply to a value-based arrangement made in accordance with 42 C.F.R. 411.357(aa), a payment model authorized under a Medicare shared savings program pursuant to 42 U.S.C. s.1395jjj, or a demonstration operated by the Center for Medicare and Medicaid Innovation established pursuant to at 42 U.S.C. s.1315a.

As reported by the committee, Assembly Bill No. 5645 is identical to Senate Bill No. 3632 (1R) which was reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments make technical changes and provide that restrictions on referrals of patients are not to apply to a value-based arrangement made in accordance with 42 C.F.R. 411.357(aa), a payment model authorized under a Medicare shared savings program pursuant to 42 U.S.C. s.1395jjj, or a demonstration operated by the Center for Medicare and Medicaid Innovation established pursuant to 42 U.S.C. s.1315a. The amendments update the synopsis of the bill to reflect these changes.