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LAW/RWH

P.L.2011, CHAPTER 114, *approved August 18, 2011*
Senate, No. 2443 (*Fourth Reprint*)

1 AN ACT establishing a Medicaid Accountable Care Organization
2 Demonstration Project and supplementing Title 30 of the
3 Revised Statutes.

4

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

7

8 1. The Legislature finds and declares that:

9 a. The current health care delivery and payment system often
10 fails to provide high quality, cost-effective health care to the most
11 vulnerable patients residing in New Jersey, many of whom have
12 limited access to coordinated and primary care services and,
13 therefore, tend to **'[seek] delay'** care ¹, underutilize preventive
14 care, seek care¹ in hospital emergency departments or **'[are] be'**
15 admitted to hospitals for preventable problems;

16 b. The Accountable Care Organization (ACO) model has
17 gained recognition as a mechanism that can be used to improve
18 health care quality and **'[lower] health outcomes, while lowering'**
19 the overall costs of medical care by providing incentives to
20 coordinate care among providers throughout a region. Coordination
21 is achieved through initiatives such as creation of patient-centered
22 medical homes, sharing of patient health information among
23 providers, and implementation of care management programs
24 designed to facilitate best practices and improve communication
25 among providers and social services agencies throughout the
26 community;

27 c. Providers participating in the ACO are supported in their
28 efforts to share accountability for the overall quality and cost of
29 care rendered to patients. The ACO provides support for
30 coordination, identification of improvements in health outcomes,¹
31 quality ¹,¹ and cost savings, and the distribution of any overall cost
32 savings achieved, often referred to as "gainsharing," to the ACO
33 participants in a manner that furthers the goals of the ACO to
34 improve quality and accessibility while reducing ¹or stabilizing¹ the
35 costs of medical care throughout a region;

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 January 20, 2011.

²Senate SBA committee amendments adopted March 3, 2011.

³Assembly ABU committee amendments adopted June 27, 2011.

⁴Assembly floor amendments adopted June 29, 2011.

1 d. The ACO model can facilitate improvements in 'health
2 outcomes,' quality ',¹ and access ',¹ and '[reductions in] stabilize
3 or reduce' the rate of health care inflation while permitting patients
4 to maintain their current health care relationships. The Medicaid
5 ACO Demonstration Project to be established pursuant to this act is
6 specifically intended to: (1) increase access to primary care,
7 behavioral health care, 'pharmaceuticals,' and dental care by
8 Medicaid recipients residing in defined regions; (2) improve 'health
9 outcomes and' quality as measured by objective metrics and patient
10 experience of care; and (3) reduce unnecessary and inefficient care
11 without interfering with patients' access to their health care
12 providers or the providers' access to existing Medicaid
13 reimbursement systems. The Medicaid ACO Demonstration Project
14 may provide a model for achievement of improved 'health
15 outcomes,' quality ',¹ and decreased costs that can be replicated in
16 other settings to the benefit of patients and payers throughout New
17 Jersey, but is not intended to inhibit, prevent, or limit development
18 or implementation of alternative ACO models;

19 e. The Medicaid ACO Demonstration Project seeks to address
20 a variety of access, 'health outcomes,' coordination, and service
21 utilization problems that lead to increased health costs. One major
22 goal is to reduce the inappropriate utilization of high-cost
23 emergency care by Medicaid recipients and others, especially where
24 an individual's need is more properly addressed through non-
25 emergency primary care treatment. The Medicaid ACOs shall
26 develop relationships with primary care, behavioral health, dental,
27 'pharmacy,' and other health care providers to develop strategies to:
28 (1) engage these individuals in treatment; (2) promote 'medication
29 adherence and use of medication therapy management, and'
30 lifestyles, including, but not limited to, prevention and wellness
31 activities, smoking cessation, reducing substance use, and
32 improving nutrition; (3) develop skills in help-seeking behavior,
33 including self-management and illness management; (4) improve
34 access to services for primary care and behavioral health care needs
35 through home-based services and telephonic and web-based
36 communication, via culturally and linguistically appropriate means;
37 and (5) improve service coordination to ensure integrated care for
38 primary care, behavioral health care, dental care, and other health
39 care needs ', including prescription drugs';

40 f. It is, therefore, in the public interest to establish a Medicaid
41 ACO demonstration project whereby providers can continue to
42 receive Medicaid ⁴'[fee-for-service]'⁴ payments ⁴'[and other types of
43 Medicaid reimbursement, such as through prospective payment
44 methodologies and supplemental payments made to federally
45 qualified health centers,] from managed care organizations, and, in
46 the case of individuals not enrolled in managed care,'⁴ directly from

1 the Medicaid program, while simultaneously participating in a
2 certified Medicaid ACO designed to improve 'health outcomes,'
3 quality ¹,¹ and access to care through regional collaboration and
4 shared accountability, and while reducing the costs of medical care
5 throughout a region; and

6 g. The Legislature, therefore, intends to exempt activities
7 undertaken pursuant to the Medicaid ACO Demonstration Project
8 that might otherwise be constrained by State antitrust laws and to
9 provide immunity for such activities from federal antitrust laws
10 through the state action immunity doctrine; however,
11 notwithstanding this subsection, the Legislature does not intend to
12 allow and does not authorize any person or entity to engage in
13 activities or to conspire to engage in activities that would constitute
14 per se violations of State or federal antitrust laws.

15

16 2. As used in this act:

17 "ACO" means an accountable care organization.

18 "Behavioral health care provider" means a provider licensed or
19 approved by the ¹[Division of Mental Health Services or the
20 Division of Addiction Services in the]¹ Department of Human
21 Services to render services to New Jersey residents.

22 ¹"Department" means the Department of Human Services.

23 "Designated area" means a municipality or defined geographic
24 area in which no fewer than 5,000 Medicaid recipients reside.

25 ¹"Disproportionate share hospital" means a hospital designated
26 by the Commissioner of Human Services pursuant to Pub.L.89-87
27 (42 U.S.C.1396a et seq.) and Pub.L.102-234.¹

28 "Medicaid" means the Medicaid program established pursuant to
29 P.L.1968, c.413 (C.30:4D-1 et seq.).

30 "Medicaid ACO Demonstration Project" or "demonstration
31 project" means the demonstration project established pursuant to
32 this act.

33 "Primary care provider" includes the following licensed
34 individuals: physicians, physician assistants, advanced practice
35 nurses, and nurse midwives whose professional practice involves
36 the provision of primary care, including internal medicine, family
37 medicine, geriatric care, pediatric care, or obstetrical/gynecological
38 care.

39 "Qualified behavioral health care provider" means a behavioral
40 health care provider who participates in the Medicaid program and
41 renders clinic-based and home-based services to individuals
42 residing in the designated area served by the Medicaid ACO.

43 "Qualified primary care provider" means a primary care provider
44 who participates in the Medicaid program and who spends at least
45 25% of his professional time or 10 hours per seven-day week,
46 whichever is less, rendering clinical or clinical supervision services

1 at an office or clinic setting located within the designated area
2 served by a Medicaid ACO.

3
4 3. a. ¹**[Medicaid]** The Department of Human Services¹ shall
5 establish a three-year Medicaid ACO Demonstration Project in
6 which nonprofit corporations organized with the voluntary support
7 and participation of local general hospitals, clinics, ¹pharmacies,¹
8 health centers, qualified primary care and behavioral health care
9 providers, and public health and social services agencies may apply
10 to ¹**[Medicaid]** the department¹ for certification and participation in
11 the project. ¹**[Medicaid]** The department¹ shall consult with the
12 Department of Health and Senior Services with respect to
13 establishment and oversight of the demonstration project.

14 Nothing in this act shall preclude ⁴the department,⁴ Medicaid
15 managed care organizations, qualified primary care and behavioral
16 health care providers, licensed health care facilities, or any other
17 provider or payer of health care services from participating in other
18 ACOs, ⁴health or behavioral health ACO models,⁴ medical home
19 programs, or projects.

20 b. Applicants for participation in the demonstration project shall
21 be nonprofit corporations created and operated for the primary
22 purpose of improving the quality and efficiency of care provided to
23 Medicaid recipients residing in a given designated area.

24
25 4. a. ¹**[Medicaid]** The department¹ shall accept applications
26 for certification from demonstration project applicants beginning 60
27 days following the effective date of this act, and shall certify an
28 applicant as a Medicaid ACO for participation in the demonstration
29 project following its determination that the applicant meets the
30 requirements specified in this section. ²The department may deny
31 certification of any ACO applicant that the department determines
32 does not meet the requirements of this act. The department may
33 consider applications for approval, including revised applications
34 submitted by an ACO not previously approved to participate in the
35 demonstration project.²

36 b. ¹**[Medicaid]** The department, in consultation with the
37 Department of Health and Senior Services,¹ may certify as many
38 ¹**[Medicaid]**¹ ACOs for participation in the demonstration project
39 as it determines appropriate, but shall certify no more than one
40 ¹**[Medicaid]**¹ ACO for each designated area.

41 c. Prior to certification, a ¹**[Medicaid ACO]**¹ demonstration
42 project applicant shall demonstrate that it meets the following
43 minimum standards:

44 (1) The applicant has been formed as a nonprofit corporation
45 pursuant to the “New Jersey Nonprofit Corporation Act,” P.L. 1983,
46 c.127 (C.15A:1-1 et seq.), for the purposes described in this act;

47 (2) The applicant’s governing board includes:

1 (a) individuals representing the interests of: health care
2 providers, including, but not limited to, general hospitals, clinics,
3 private practice offices, physicians, behavioral health care
4 providers, and dentists; patients; and other social service agencies
5 or organizations located in the designated area; and

6 (b) voting representation from at least two consumer
7 organizations capable of advocating on behalf of patients residing
8 within the designated area of the ACO. At least one of the
9 organizations shall have extensive leadership involvement by
10 individuals residing within the designated area of the ACO, and
11 shall have a physical location within the designated area.
12 Additionally, at least one of the individuals representing a consumer
13 organization shall be an individual who resides within the
14 designated area served by the ACO;

15 (3) The applicant has support of its application by: all of the
16 general hospitals located in the designated area served by the ACO;
17 no fewer than 75% of the qualified primary care providers located
18 in the designated area; and at least ¹two ¹four qualified
19 behavioral health care providers located in the designated area;

20 (4) The applicant has a ¹mechanism ¹process for receipt of
21 gainsharing payments from ¹Medicaid ¹the department and any
22 voluntarily participating Medicaid managed care organizations, and
23 the subsequent distribution of such gainsharing payments in
24 accordance with a quality improvement and gainsharing plan to be
25 approved by ¹Medicaid ¹the department, in consultation with the
26 Department of Health and Senior Services¹;

27 (5) The applicant has a process for engaging members of the
28 community and for receiving public comments with respect to its
29 gainsharing plan; ³and³

30 (6) The applicant has a commitment to become accountable for
31 the ¹health outcomes,¹ quality, cost, and access to care of Medicaid
32 recipients residing in the designated area for a period of at least
33 three years following certification ³; and

34 (7) The applicant has a commitment to ensure the use of
35 electronic prescribing and electronic medical records by health care
36 providers located in the designated area³.

37 ²d. Nothing in this act shall be construed to prevent the
38 department from certifying an applicant as a Medicaid ACO that
39 also participates in a Medicare ACO demonstration project
40 approved by the federal Centers for Medicare and Medicaid
41 Services.²

42
43 5. a. A certified Medicaid ACO shall be eligible to receive and
44 distribute gainsharing payments only after having received approval
45 from ¹Medicaid ¹the department of its gainsharing plan, which
46 approval may be requested by the ¹Medicaid¹ ACO at the time of
47 certification or at any time within one year of certification. An

1 ACO may seek to amend its gainsharing plan at any time following
2 the plan's initial approval by submitting amendments to
3 '[Medicaid] the department' for approval.

4 b. The '[Medicaid ACO shall develop its gainsharing plan in
5 accordance with standards set forth in regulations adopted by the
6 Commissioner of Human Services. Medicaid,] department,' with
7 input from the Department of Health and Senior Services and
8 'utilizing outcome evaluation data provided by' the Rutgers Center
9 for State Health Policy, shall approve only those gainsharing plans
10 that promote: improvements in 'health outcomes and' quality of
11 care, as measured by objective benchmarks as well as patient
12 experience of care; expanded access to primary and behavioral
13 health care services; and the reduction of unnecessary and
14 inefficient costs associated with care rendered to Medicaid
15 recipients residing in the ACO's designated area. ⁴The department
16 and the Department of Health and Senior Services shall provide all
17 data necessary to the Rutgers Center for State Health Policy for
18 analysis in support of the department's review of gainsharing
19 plans.⁴ Criteria to be considered by '[Medicaid] the department
20 and the Department of Health and Senior Services' in approving a
21 gainsharing '[payment]' plan shall include, but are not limited to:

22 (1) whether the plan promotes: care coordination through multi-
23 disciplinary teams, including care coordination of patients with
24 chronic diseases and the elderly; expansion of the medical home
25 and chronic care models; 'increased patient medication adherence
26 and use of medication therapy management services;' use of health
27 information technology and sharing of health information; and use
28 of open access scheduling in clinical and behavioral health care
29 settings;

30 (2) whether the plan encourages services such as patient or
31 family health education and health promotion, home-based services,
32 telephonic communication, group care, and culturally and
33 linguistically appropriate care;

34 (3) whether the gainsharing payment system is structured to
35 reward quality and improved patient outcomes and experience of
36 care;

37 (4) whether the plan funds interdisciplinary collaboration
38 between behavioral health and primary care providers for patients
39 with complex care needs likely to inappropriately access an
40 emergency department and general hospital for preventable
41 conditions;

42 (5) whether the plan funds improved access to dental services
43 for high-risk patients likely to inappropriately access an emergency
44 department and general hospital for untreated dental conditions; and

45 (6) whether the plan has been developed with community input
46 and will be made available for inspection by members of the
47 community served by the ACO.

1 c. The gainsharing plan shall include '[a] an appropriate'
2 proposed time period beginning and ending on specified dates
3 'prior to the commencement of the demonstration project', which
4 shall be the benchmark period against which cost savings can be
5 measured on an annual basis going forward. Savings shall be
6 calculated in accordance with a methodology '[established pursuant
7 to regulations adopted by the Commissioner of Human Services,
8 with input from the Commissioner of Health and Senior Services
9 and the Rutgers Center for State Health Policy,]' that:

10 (1) identifies expenditures 'per recipient' by the Medicaid fee-
11 for-service program '[for all Medicaid recipients residing within
12 the designated area] during the benchmark period, adjusted for
13 '[historic trends for health inflation,] characteristics of recipients
14 and local conditions that predict future Medicaid spending but are
15 not amenable to the care coordination or management activities of
16 an ACO' which shall serve as the benchmark payment calculation;

17 (2) compares the benchmark payment calculation to amounts
18 paid by the Medicaid fee-for-service program for all such resident
19 recipients during subsequent periods; and

20 (3) provides that the benchmark payment calculation shall
21 remain fixed for a period of three years following approval of the
22 gainsharing plan.

23 d. The percentage of cost savings identified pursuant to
24 subsection c. of this section to be distributed to the '[Medicaid]'
25 ACO, retained by any voluntarily participating Medicaid managed
26 care organization, and retained by '[Medicaid] the State', shall be
27 identified in the gainsharing plan and shall remain in effect for a
28 period of three years following approval of the gainsharing plan.
29 Such percentages shall be designed to ensure that:

30 (1) '[Medicaid] the State' can achieve meaningful savings and
31 support the ongoing operation of the demonstration project, and

32 (2) the '[Medicaid]' ACO receives a sufficient portion of the
33 shared savings necessary to achieve its mission and expand its
34 scope of activities.

35 e. Notwithstanding the provisions of this section to the
36 contrary, '[Medicaid] the department' shall not approve a
37 gainsharing plan that provides direct or indirect financial incentives
38 for the reduction or limitation of medically necessary and
39 appropriate items or services provided to patients under a health
40 care provider's clinical care in violation of federal law.

41 'f. Notwithstanding the provisions of this section to the
42 contrary, a gainsharing plan that provides for shared savings
43 between general hospitals and physicians related to acute care
44 admissions utilizing the methodological component of the
45 Physician-Hospital Collaboration Demonstration awarded by the
46 federal Centers for Medicare and Medicaid Services to the New

1 Jersey Care ⁴Integration⁴ Consortium , shall not be required to be
2 approved by the department. ⁴The department shall not be under
3 any obligation to participate in the Physician-Hospital
4 Collaboration Demonstration.⁴

5 g. The department shall consider using a portion of any savings
6 generated to expand the nursing, primary care, behavioral health
7 care, and dental workforces ⁴and services⁴ in the area served by the
8 ACO.¹

9 ⁴h. A gainsharing plan submitted to the department for this ACO
10 demonstration project shall contain an assessment of the expected
11 impact of revenues on hospitals that agree to participate. The
12 assessment shall include estimates for changes in both direct patient
13 care reimbursement and indirect revenue, such as disproportionate
14 share payments, graduate medical education payments, and other
15 similar payments. The assessment shall include a review of
16 whether participation in the demonstration project could
17 significantly impact the financial stability of any hospital through
18 rapid reductions in revenue and how this impact will be mitigated.
19 The gainsharing plan shall include a letter of support from all
20 participating hospitals in order to be accepted by the department.⁴

21
22 6. ¹['Medicaid] The department¹ shall remit payment of cost
23 savings to a participating Medicaid ACO following approval by
24 ¹['Medicaid] the department, in consultation with the Department of
25 Health and Senior Services,¹ of the ACO's gainsharing plan and
26 identification of cost savings ⁴and agreement from the federal
27 government to share in the cost of the funds distributed⁴.

28
29 7. a. A managed care organization that has contracted with
30 ¹['Medicaid] the department¹ may voluntarily seek participation in
31 the demonstration project by notifying the Medicaid ACO of its
32 desire to participate. The ACO shall submit a separate Medicaid
33 managed care organization gainsharing plan meeting the
34 requirements of section 5 of this act to ¹['Medicaid] the
35 department¹ for review and approval. The ¹['Medicaid] managed
36 care organization gainsharing plan may be identical to the
37 gainsharing plan approved for use in connection with the Medicaid
38 fee-for-service program, or may contain variations with respect to
39 the manner in which ¹health outcomes,¹ quality, care coordination,
40 and access are to be improved and the manner in which cost savings
41 are achieved and distributed as gainsharing payments, but the
42 managed care organization gainsharing plan shall not affect the
43 calculation or distribution of shared savings pursuant to the
44 approved gainsharing plan applicable to the Medicaid fee-for-
45 service program or the calculation or distribution of shared savings
46 pursuant to any other approved gainsharing plan used by the ACO.

1 b. A Medicaid managed care organization may withdraw from
2 participation after one year by notifying ~~'[Medicaid]~~ the
3 department¹ in writing of its desire to withdraw.

4 c. Nothing in this act shall:

5 (1) alter or limit the obligations of a Medicaid managed care
6 organization participating in the demonstration project pursuant to
7 an approved gainsharing plan to comply with State and federal law
8 applicable to the Medicaid managed care organization; or

9 (2) preclude ~~'[a certified Medicaid]~~ an¹ ACO from expanding
10 its operations to include participation with new health care
11 providers located within the ACO's designated area ~~'[or outside the~~
12 designated area]¹.

13

14 8. a. ~~'[The Rutgers Center for State Health Policy shall assist~~
15 Medicaid with] The department, in consultation with the
16 Department of Health and Senior Services, shall¹:

17 (1) ~~'[the]~~¹ design and ~~'[implementation of]~~ implement¹ the
18 application process for approval of participating ~~'[Medicaid]~~¹
19 ACOs in the demonstration project;

20 (2) ~~'[the collection of]~~ collect¹ data from participants in the
21 demonstration project; and

22 (3) ~~'[the establishment of]~~ approve¹ a methodology proposed
23 by the Medicaid ACO applicant¹ for calculation of cost savings and
24 for monitoring of health outcomes and¹ quality of care under the
25 demonstration project.

26 b. ~~'[Medicaid and the Rutgers Center for State Health Policy]~~
27 The department and the Department of Health and Senior Services¹
28 shall be authorized to jointly seek public and private grants to
29 implement and operate the demonstration project.

30

31 9. ~~'[Medicaid shall, with assistance from the Rutgers Center~~
32 for State Health Policy,] The department, in consultation with the
33 Department of Health and Senior Services, shall¹ evaluate the
34 demonstration project annually to assess whether: cost savings¹,
35 including, but not limited to, savings in administrative costs and
36 savings due to improved health outcomes,¹ are achieved through
37 implementation of the demonstration project¹ ~~'[; and]~~.

38 The department, in consultation with the Department of Health
39 and Senior Services, and with the assistance of the Rutgers Center
40 for State Health Policy, shall evaluate the demonstration project
41 annually to assess whether¹ there is improvement in the rates of
42 health screening, the outcomes and hospitalization rates for persons
43 with chronic illnesses, and the hospitalization and readmission rates
44 for patients residing in the designated areas served by the ACOs.
45 ⁴The department and the Department of Health and Senior Services
46 shall provide the Rutgers Center for State Health Policy with all

1 data necessary to perform the annual evaluation of the
2 demonstration project.⁴

3
4 10. a. The Commissioner of Human Services shall apply for
5 such State plan amendments or waivers as may be necessary to
6 implement the provisions of this act and to secure federal financial
7 participation for State Medicaid expenditures under the federal
8 Medicaid program¹, and shall take such additional steps as may be
9 necessary to secure on behalf of participating ACOs such waivers,
10 exemptions, or advisory opinions to ensure that such ACOs are in
11 compliance with applicable provisions of State and federal laws
12 related to fraud and abuse, including, but not limited to, anti-
13 kickback, self-referral, false claims, and civil monetary penalties.¹

14 b. The Commissioners of Health and Senior Services and
15 Human Services may apply for participation in federal ACO
16 demonstration projects that align with the goals of this act.

17 ²c. The provisions of this act shall not be construed to require
18 State funding for any evaluation or start-up costs of an ACO.²

19
20 11 Nothing in this act shall be construed to limit the choice of a
21 Medicaid recipient to access care for family planning services or
22 any other type of health care services from a qualified health care
23 provider who is not participating in the demonstration project.

24
25 12. a. Under the demonstration project, payment shall continue
26 to be made to providers of services and suppliers participating in
27 the ¹Medicaid¹ ACO ⁴[under the original Medicaid reimbursement
28 methodology] for services provided to managed care recipients or
29 individuals who receive services on a fee-for-service basis⁴ in the
30 same manner as they would otherwise be made, except that the
31 ¹[Medicaid]¹ ACO is eligible to receive gainsharing payments
32 under sections 5 and 6 of this act if it meets the requirements set
33 forth therein.

34 ⁴[The department, in consultation with the Department of
35 Health and Senior Services, shall, by regulation, promulgate a
36 methodology whereby a disproportionate share hospital
37 participating in a Medicaid ACO receives a credit from available
38 federal funds for its disproportionate share payments in an amount
39 equal to the reduction in disproportionate share payments to the
40 hospital resulting from its participation in the ACO, calculated on
41 the basis of the reduction in inpatient hospitalizations during any
42 year in which the hospital participates in the ACO, compared with
43 the benchmark period.]⁴

44 b. Nothing in this act shall be construed to authorize the
45 Departments of Human Services or Health and Senior Services to
46 waive or limit any provisions of federal or State law or
47 reimbursement methodologies governing Medicaid reimbursement

1 to federally qualified health centers, including, but not limited to,
2 Medicaid prospective payment reimbursement and any
3 supplemental payments made to a federally qualified health center
4 providing services ¹[pursuant to a contract between the center and a
5 managed care organization] to Medicaid managed care recipients¹.

6
7 13. Notwithstanding the requirements of P.L.1999, c.409
8 (C.17:48H-1 et seq.), a Medicaid ACO certified pursuant to this act
9 shall not be required to obtain licensure or certification from the
10 Department of Banking and Insurance as an organized delivery
11 system ²when providing services to Medicaid recipients².

12
13 14. **[The Commissioner]** Upon completion of the demonstration
14 project, the Commissioners¹ of Human Services ¹and Health and
15 Senior Services¹ shall report ¹[annually]¹ to the Governor, and to
16 the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-
17 19.1), on the demonstration project, and include in the report the
18 findings of the evaluation carried out pursuant to section 9 of this
19 act. The ¹[commissioner] commissioners¹ shall make such
20 recommendations as ¹[he deems] they deem¹ appropriate.

21 If, after three years following enactment of this act, the
22 ¹[commissioner finds] commissioners find¹ the demonstration
23 project was successful in reducing costs and improving ¹health
24 outcomes and¹ the quality of care for Medicaid recipients, the
25 ¹[commissioner] commissioners¹ ⁴[shall] may⁴ recommend that
26 ⁴[the demonstration project be expanded to include] Medicaid
27 ACOs be established on a permanent basis and in⁴ additional
28 communities in which Medicaid recipients reside ⁴[and become a
29 permanent program]⁴.

30
31 15. The Commissioner of Human Services, in accordance with
32 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
33 seq.) and with input from the Commissioner of Health and Senior
34 Services, shall, within 180 days of the effective date of this act,
35 adopt rules and regulations establishing the standards for
36 gainsharing plans submitted by Medicaid ACOs. The
37 Commissioner of Human Services shall also adopt, with input from
38 the Commissioner of Health and Senior Services, such rules and
39 regulations governing the ongoing oversight and monitoring of the
40 quality of care delivered to Medicaid recipients in the designated
41 areas served by the Medicaid ACOs, and such other requirements as
42 the Commissioner of Human Services deems necessary to carry out
43 the provisions of this act.

1 16. This act shall take effect ¹~~immediately~~ 60 days after the
2 date of enactment¹ and shall expire three years after the adoption of
3 regulations by the Commissioner of Human Services.

4

5

6

7

8 Establishes Medicaid Accountable Care Organization
9 Demonstration Project in DHS.

SENATE, No. 2443

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED DECEMBER 6, 2010

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator JIM WHELAN

District 2 (Atlantic)

Co-Sponsored by:

Senators Gordon and Rice

SYNOPSIS

Establishes Medicaid Accountable Care Organization Demonstration Project in DHS.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/21/2011)

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12 limited access to coordinated and primary care services and,
13 therefore, tend to seek care in hospital emergency departments or
14 are admitted to hospitals for preventable problems;

15 b. The Accountable Care Organization (ACO) model has
16 gained recognition as a mechanism that can be used to improve
17 health care quality and lower the overall costs of medical care by
18 providing incentives to coordinate care among providers throughout
19 a region. Coordination is achieved through initiatives such as
20 creation of patient-centered medical homes, sharing of patient
21 health information among providers, and implementation of care
22 management programs designed to facilitate best practices and
23 improve communication among providers and social services
24 agencies throughout the community;

25 c. Providers participating in the ACO are supported in their
26 efforts to share accountability for the overall quality and cost of
27 care rendered to patients. The ACO provides support for
28 coordination, identification of improvements in quality and cost
29 savings, and the distribution of any overall cost savings achieved,
30 often referred to as “gainsharing,” to the ACO participants in a
31 manner that furthers the goals of the ACO to improve quality and
32 accessibility while reducing the costs of medical care throughout a
33 region;

34 d. The ACO model can facilitate improvements in quality and
35 access and reductions in the rate of health care inflation while
36 permitting patients to maintain their current health care
37 relationships. The Medicaid ACO Demonstration Project to be
38 established pursuant to this act is specifically intended to: (1)
39 increase access to primary care, behavioral health care, and dental
40 care by Medicaid recipients residing in defined regions; (2) improve
41 quality as measured by objective metrics and patient experience of
42 care; and (3) reduce unnecessary and inefficient care without
43 interfering with patients’ access to their health care providers or the
44 providers’ access to existing Medicaid reimbursement systems. The
45 Medicaid ACO Demonstration Project may provide a model for
46 achievement of improved quality and decreased costs that can be
47 replicated in other settings to the benefit of patients and payers

1 throughout New Jersey, but is not intended to inhibit, prevent, or
2 limit development or implementation of alternative ACO models;

3 e. The Medicaid ACO Demonstration Project seeks to address
4 a variety of access, coordination, and service utilization problems
5 that lead to increased health costs. One major goal is to reduce the
6 inappropriate utilization of high-cost emergency care by Medicaid
7 recipients and others, especially where an individual's need is more
8 properly addressed through non-emergency primary care treatment.
9 The Medicaid ACOs shall develop relationships with primary care,
10 behavioral health, dental, and other health care providers to develop
11 strategies to: (1) engage these individuals in treatment; (2) promote
12 healthy lifestyles, including, but not limited to, prevention and
13 wellness activities, smoking cessation, reducing substance use, and
14 improving nutrition; (3) develop skills in help-seeking behavior,
15 including self-management and illness management; (4) improve
16 access to services for primary care and behavioral health care needs
17 through home-based services and telephonic and web-based
18 communication, via culturally and linguistically appropriate means;
19 and (5) improve service coordination to ensure integrated care for
20 primary care, behavioral health care, dental care, and other health
21 care needs;

22 f. It is, therefore, in the public interest to establish a Medicaid
23 ACO demonstration project whereby providers can continue to
24 receive Medicaid fee-for-service payments and other types of
25 Medicaid reimbursement, such as through prospective payment
26 methodologies and supplemental payments made to federally
27 qualified health centers, directly from the Medicaid program, while
28 simultaneously participating in a certified Medicaid ACO designed
29 to improve quality and access to care through regional collaboration
30 and shared accountability, and while reducing the costs of medical
31 care throughout a region; and

32 g. The Legislature, therefore, intends to exempt activities
33 undertaken pursuant to the Medicaid ACO Demonstration Project
34 that might otherwise be constrained by State antitrust laws and to
35 provide immunity for such activities from federal antitrust laws
36 through the state action immunity doctrine; however,
37 notwithstanding this subsection, the Legislature does not intend to
38 allow and does not authorize any person or entity to engage in
39 activities or to conspire to engage in activities that would constitute
40 per se violations of State or federal antitrust laws.

41

42 2. As used in this act:

43 "ACO" means an accountable care organization.

44 "Behavioral health care provider" means a provider licensed or
45 approved by the Division of Mental Health Services or the Division
46 of Addiction Services in the Department of Human Services to
47 render services to New Jersey residents.

1 "Designated area" means a municipality or defined geographic
2 area in which no fewer than 5,000 Medicaid recipients reside.

3 "Medicaid" means the Medicaid program established pursuant to
4 P.L.1968, c.413 (C.30:4D-1 et seq.).

5 "Medicaid ACO Demonstration Project" or "demonstration
6 project" means the demonstration project established pursuant to
7 this act.

8 "Primary care provider" includes the following licensed
9 individuals: physicians, physician assistants, advanced practice
10 nurses, and nurse midwives whose professional practice involves
11 the provision of primary care, including internal medicine, family
12 medicine, geriatric care, pediatric care, or obstetrical/gynecological
13 care.

14 "Qualified behavioral health care provider" means a behavioral
15 health care provider who participates in the Medicaid program and
16 renders clinic-based and home-based services to individuals
17 residing in the designated area served by the Medicaid ACO.

18 "Qualified primary care provider" means a primary care provider
19 who participates in the Medicaid program and who spends at least
20 25% of his professional time or 10 hours per seven-day week,
21 whichever is less, rendering clinical or clinical supervision services
22 at an office or clinic setting located within the designated area
23 served by a Medicaid ACO.

24

25 3. a. Medicaid shall establish a three-year Medicaid ACO
26 Demonstration Project in which nonprofit corporations organized
27 with the voluntary support and participation of local general
28 hospitals, clinics, health centers, qualified primary care and
29 behavioral health care providers, and public health and social
30 services agencies may apply to Medicaid for certification and
31 participation in the project. Medicaid shall consult with the
32 Department of Health and Senior Services with respect to
33 establishment and oversight of the demonstration project.

34 Nothing in this act shall preclude Medicaid managed care
35 organizations, qualified primary care and behavioral health care
36 providers, licensed health care facilities, or any other provider or
37 payer of health care services from participating in other ACOs,
38 medical home programs, or projects.

39 b. Applicants for participation in the demonstration project shall
40 be nonprofit corporations created and operated for the primary
41 purpose of improving the quality and efficiency of care provided to
42 Medicaid recipients residing in a given designated area.

43

44 4. a. Medicaid shall accept applications for certification from
45 demonstration project applicants beginning 60 days following the
46 effective date of this act, and shall certify an applicant as a
47 Medicaid ACO for participation in the demonstration project

1 following its determination that the applicant meets the
2 requirements specified in this section.

3 b. Medicaid may certify as many Medicaid ACOs for
4 participation in the demonstration project as it determines
5 appropriate, but shall certify no more than one Medicaid ACO for
6 each designated area.

7 c. Prior to certification, a Medicaid ACO demonstration
8 project applicant shall demonstrate that it meets the following
9 minimum standards:

10 (1) The applicant has been formed as a nonprofit corporation
11 pursuant to the "New Jersey Nonprofit Corporation Act," P.L. 1983,
12 c.127 (C.15A:1-1 et seq.), for the purposes described in this act;

13 (2) The applicant's governing board includes:

14 (a) individuals representing the interests of: health care
15 providers, including, but not limited to, general hospitals, clinics,
16 private practice offices, physicians, behavioral health care
17 providers, and dentists; patients; and other social service agencies
18 or organizations located in the designated area; and

19 (b) voting representation from at least two consumer
20 organizations capable of advocating on behalf of patients residing
21 within the designated area of the ACO. At least one of the
22 organizations shall have extensive leadership involvement by
23 individuals residing within the designated area of the ACO, and
24 shall have a physical location within the designated area.
25 Additionally, at least one of the individuals representing a consumer
26 organization shall be an individual who resides within the
27 designated area served by the ACO;

28 (3) The applicant has support of its application by: all of the
29 general hospitals located in the designated area served by the ACO;
30 no fewer than 75% of the qualified primary care providers located
31 in the designated area; and at least two qualified behavioral health
32 care providers located in the designated area;

33 (4) The applicant has a mechanism for receipt of gainsharing
34 payments from Medicaid and any voluntarily participating Medicaid
35 managed care organizations, and the subsequent distribution of such
36 gainsharing payments in accordance with a quality improvement
37 and gainsharing plan to be approved by Medicaid;

38 (5) The applicant has a process for engaging members of the
39 community and for receiving public comments with respect to its
40 gainsharing plan; and

41 (6) The applicant has a commitment to become accountable for
42 the quality, cost, and access to care of Medicaid recipients residing
43 in the designated area for a period of at least three years following
44 certification.

45

46 5. a. A certified Medicaid ACO shall be eligible to receive and
47 distribute gainsharing payments only after having received approval
48 from Medicaid of its gainsharing plan, which approval may be

1 requested by the Medicaid ACO at the time of certification or at any
2 time within one year of certification. An ACO may seek to amend
3 its gainsharing plan at any time following the plan's initial approval
4 by submitting amendments to Medicaid for approval.

5 b. The Medicaid ACO shall develop its gainsharing plan in
6 accordance with standards set forth in regulations adopted by the
7 Commissioner of Human Services. Medicaid, with input from the
8 Department of Health and Senior Services and the Rutgers Center
9 for State Health Policy, shall approve only those gainsharing plans
10 that promote: improvements in quality of care, as measured by
11 objective benchmarks as well as patient experience of care;
12 expanded access to primary and behavioral health care services; and
13 the reduction of unnecessary and inefficient costs associated with
14 care rendered to Medicaid recipients residing in the ACO's
15 designated area. Criteria to be considered by Medicaid in
16 approving a gainsharing payment plan shall include, but are not
17 limited to:

18 (1) whether the plan promotes: care coordination through multi-
19 disciplinary teams, including care coordination of patients with
20 chronic diseases and the elderly; expansion of the medical home
21 and chronic care models; use of health information technology and
22 sharing of health information; and use of open access scheduling in
23 clinical and behavioral health care settings;

24 (2) whether the plan encourages services such as patient or
25 family health education and health promotion, home-based services,
26 telephonic communication, group care, and culturally and
27 linguistically appropriate care;

28 (3) whether the gainsharing payment system is structured to
29 reward quality and improved patient outcomes and experience of
30 care;

31 (4) whether the plan funds interdisciplinary collaboration
32 between behavioral health and primary care providers for patients
33 with complex care needs likely to inappropriately access an
34 emergency department and general hospital for preventable
35 conditions;

36 (5) whether the plan funds improved access to dental services
37 for high-risk patients likely to inappropriately access an emergency
38 department and general hospital for untreated dental conditions; and

39 (6) whether the plan has been developed with community input
40 and will be made available for inspection by members of the
41 community served by the ACO.

42 c. The gainsharing plan shall include a proposed time period
43 beginning and ending on specified dates, which shall be the
44 benchmark period against which cost savings can be measured on
45 an annual basis going forward. Savings shall be calculated in
46 accordance with a methodology established pursuant to regulations
47 adopted by the Commissioner of Human Services, with input from

1 the Commissioner of Health and Senior Services and the Rutgers
2 Center for State Health Policy, that:

3 (1) identifies expenditures by the Medicaid fee-for-service
4 program for all Medicaid recipients residing within the designated
5 area during the benchmark period, adjusted for historic trends for
6 health inflation, which shall serve as the benchmark payment
7 calculation;

8 (2) compares the benchmark payment calculation to amounts
9 paid by the Medicaid fee-for-service program for all such resident
10 recipients during subsequent periods; and

11 (3) provides that the benchmark payment calculation shall
12 remain fixed for a period of three years following approval of the
13 gainsharing plan.

14 d. The percentage of cost savings identified pursuant to
15 subsection c. of this section to be distributed to the Medicaid ACO,
16 retained by any voluntarily participating Medicaid managed care
17 organization, and retained by Medicaid, shall be identified in the
18 gainsharing plan and shall remain in effect for a period of three
19 years following approval of the gainsharing plan. Such percentages
20 shall be designed to ensure that:

21 (1) Medicaid can achieve meaningful savings and support the
22 ongoing operation of the demonstration project, and

23 (2) the Medicaid ACO receives a sufficient portion of the shared
24 savings necessary to achieve its mission and expand its scope of
25 activities.

26 e. Notwithstanding the provisions of this section to the
27 contrary, Medicaid shall not approve a gainsharing plan that
28 provides direct or indirect financial incentives for the reduction or
29 limitation of medically necessary and appropriate items or services
30 provided to patients under a health care provider's clinical care in
31 violation of federal law.

32

33 6. Medicaid shall remit payment of cost savings to a
34 participating Medicaid ACO following approval by Medicaid of the
35 ACO's gainsharing plan and identification of cost savings.

36

37 7. a. A managed care organization that has contracted with
38 Medicaid may voluntarily seek participation in the demonstration
39 project by notifying the Medicaid ACO of its desire to participate.
40 The ACO shall submit a separate Medicaid managed care
41 organization gainsharing plan meeting the requirements of section 5
42 of this act to Medicaid for review and approval. The managed care
43 organization gainsharing plan may be identical to the gainsharing
44 plan approved for use in connection with the Medicaid fee-for-
45 service program, or may contain variations with respect to the
46 manner in which quality, care coordination, and access are to be
47 improved and the manner in which cost savings are achieved and
48 distributed as gainsharing payments, but the managed care

1 organization gainsharing plan shall not affect the calculation or
2 distribution of shared savings pursuant to the approved gainsharing
3 plan applicable to the Medicaid fee-for-service program or the
4 calculation or distribution of shared savings pursuant to any other
5 approved gainsharing plan used by the ACO.

6 b. A Medicaid managed care organization may withdraw from
7 participation after one year by notifying Medicaid in writing of its
8 desire to withdraw.

9 c. Nothing in this act shall:

10 (1) alter or limit the obligations of a Medicaid managed care
11 organization participating in the demonstration project pursuant to
12 an approved gainsharing plan to comply with State and federal law
13 applicable to the Medicaid managed care organization; or

14 (2) preclude a certified Medicaid ACO from expanding its
15 operations to include participation with new health care providers
16 located within the ACO's designated area or outside the designated
17 area.

18

19 8. a. The Rutgers Center for State Health Policy shall assist
20 Medicaid with:

21 (1) the design and implementation of the application process for
22 approval of participating Medicaid ACOs in the demonstration
23 project;

24 (2) the collection of data from participants in the demonstration
25 project; and

26 (3) the establishment of a methodology for calculation of cost
27 savings and for monitoring of quality of care under the
28 demonstration project.

29 b. Medicaid and the Rutgers Center for State Health Policy
30 shall be authorized to jointly seek public and private grants to
31 implement and operate the demonstration project.

32

33 9. Medicaid shall, with assistance from the Rutgers Center for
34 State Health Policy, evaluate the demonstration project annually to
35 assess whether: cost savings are achieved through implementation
36 of the demonstration project; and there is improvement in the rates
37 of health screening, the outcomes and hospitalization rates for
38 persons with chronic illnesses, and the hospitalization and
39 readmission rates for patients residing in the designated areas
40 served by the ACOs.

41

42 10. a. The Commissioner of Human Services shall apply for
43 such State plan amendments or waivers as may be necessary to
44 implement the provisions of this act and to secure federal financial
45 participation for State Medicaid expenditures under the federal
46 Medicaid program.

1 b. The Commissioners of Health and Senior Services and
2 Human Services may apply for participation in federal ACO
3 demonstration projects that align with the goals of this act.
4

5 11 Nothing in this act shall be construed to limit the choice of a
6 Medicaid recipient to access care for family planning services or
7 any other type of health care services from a qualified health care
8 provider who is not participating in the demonstration project.
9

10 12. a. Under the demonstration project, payment shall continue
11 to be made to providers of services and suppliers participating in
12 the ACO under the original Medicaid reimbursement methodology
13 in the same manner as they would otherwise be made, except that
14 the Medicaid ACO is eligible to receive gainsharing payments
15 under sections 5 and 6 of this act if it meets the requirements set
16 forth therein.

17 b. Nothing in this act shall be construed to authorize the
18 Departments of Human Services or Health and Senior Services to
19 waive or limit any provisions of federal or State law or
20 reimbursement methodologies governing Medicaid reimbursement
21 to federally qualified health centers, including, but not limited to,
22 Medicaid prospective payment reimbursement and any
23 supplemental payments made to a federally qualified health center
24 providing services pursuant to a contract between the center and a
25 managed care organization.
26

27 13. Notwithstanding the requirements of P.L.1999, c.409
28 (C.17:48H-1 et seq.), a Medicaid ACO certified pursuant to this act
29 shall not be required to obtain licensure or certification from the
30 Department of Banking and Insurance as an organized delivery
31 system.
32

33 14. The Commissioner of Human Services shall report annually
34 to the Governor, and to the Legislature pursuant to section 2 of
35 P.L.1991, c.164 (C.52:14-19.1), on the demonstration project, and
36 include in the report the findings of the evaluation carried out
37 pursuant to section 9 of this act. The commissioner shall make such
38 recommendations as he deems appropriate.

39 If, after three years following enactment of this act, the
40 commissioner finds the demonstration project was successful in
41 reducing costs and improving the quality of care for Medicaid
42 recipients, the commissioner shall recommend that the
43 demonstration project be expanded to include additional
44 communities in which Medicaid recipients reside and become a
45 permanent program.
46

47 15. The Commissioner of Human Services, in accordance with
48 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.) and with input from the Commissioner of Health and Senior
2 Services, shall, within 180 days of the effective date of this act,
3 adopt rules and regulations establishing the standards for
4 gainsharing plans submitted by Medicaid ACOs. The
5 Commissioner of Human Services shall also adopt, with input from
6 the Commissioner of Health and Senior Services, such rules and
7 regulations governing the ongoing oversight and monitoring of the
8 quality of care delivered to Medicaid recipients in the designated
9 areas served by the Medicaid ACOs, and such other requirements as
10 the Commissioner of Human Services deems necessary to carry out
11 the provisions of this act.

12

13 16. This act shall take effect immediately and shall expire three
14 years after the adoption of regulations by the Commissioner of
15 Human Services.

16

17

18

STATEMENT

19

20 This bill establishes a three-year Medicaid Accountable Care
21 Organization (ACO) Demonstration Project (demonstration project)
22 in the Department of Human Services (DHS). Participants in the
23 demonstration project would be nonprofit corporations organized
24 and operated for the primary purpose of improving the quality and
25 efficiency of care provided to Medicaid recipients residing in a
26 "designated area," which is defined in the bill as a municipality or
27 defined geographic area in which no fewer than 5,000 Medicaid
28 recipients reside. Additionally, the bill permits voluntary
29 participation in the demonstration project by Medicaid managed
30 care organizations.

31 Medicaid would certify applicants for participation in the
32 demonstration project, and begin accepting applications for
33 certification 60 days following the effective date of the bill.

34 A certified Medicaid ACO would be eligible to receive and
35 distribute gainsharing or cost savings payments in accordance with
36 a gainsharing plan. The plan would be developed in accordance
37 with standards set forth in regulations adopted by the Commissioner
38 of Human Services, and would be approved by Medicaid, with input
39 from the Department of Health and Senior Services (DHSS) and the
40 Rutgers Center for State Health Policy. Only those gainsharing
41 plans that promote: improvements in quality of care, as measured
42 by objective benchmarks as well as patient experience of care;
43 expanded access to primary and behavioral health care services; and
44 the reduction of unnecessary and inefficient costs associated with
45 care rendered to Medicaid recipients residing in the ACO's
46 designated area, would be approved. (An ACO may request
47 approval at the time of certification or at any time within one year

1 of certification, and may seek to amend its gainsharing plan by
2 submitting amendments to Medicaid for approval.)

3 Under the provisions of the bill:

4 • The demonstration project would allow nonprofit corporations
5 organized with the voluntary support and participation of local
6 general hospitals, clinics, health centers, qualified primary care
7 and behavioral health care providers, and public health and
8 social services agencies to apply for certification and
9 participation in the project. Medicaid would consult with DHSS
10 with respect to establishment and oversight of the demonstration
11 project;

12 • Medicaid may certify as many Medicaid ACOs for participation
13 in the demonstration project as it determines appropriate, but
14 shall certify no more than one Medicaid ACO for each
15 designated area;

16 • Prior to certification, an applicant must demonstrate that it
17 meets the following minimum standards:

18 --The applicant has been formed as a nonprofit corporation
19 pursuant to the "New Jersey Nonprofit Corporation Act",
20 P.L.1983, c.127 (C.15A:1-1 et seq.), for the purposes described
21 in the bill;

22 --The applicant's governing board includes: (1) individuals
23 representing the interests of: health care providers; patients; and
24 other social service agencies or organizations located in the
25 designated area; and (2) voting representation from at least two
26 consumer organizations capable of advocating on behalf of
27 patients residing within the designated area of the ACO;

28 --The applicant has support of its application by: all of the
29 general hospitals located in the designated area served by the
30 ACO; no fewer than 75% of the qualified primary care providers;
31 and at least two qualified behavioral health care providers;

32 --The applicant has a mechanism for receipt of gainsharing
33 payments from Medicaid and any voluntarily participating
34 Medicaid managed care organizations, and the subsequent
35 distribution of such gainsharing payments in accordance with a
36 quality improvement and gainsharing plan approved by
37 Medicaid, as discussed above;

38 --The applicant has a process for engaging members of the
39 community and receiving public comments with respect to its
40 gainsharing plan; and

41 --The applicant has a commitment to become accountable for the
42 quality, cost, and access to care of Medicaid recipients residing
43 in the designated area for a period of at least three years
44 following certification;

45 • Specific criteria to be considered by Medicaid in approving the
46 gainsharing plan of a Medicaid ACO would include whether:

47 -- the plan promotes: care coordination; expansion of the medical
48 home and chronic care models; use of health information

- 1 technology and sharing of health information; and use of open
2 access scheduling in clinical and behavioral health care settings;
3 -- the plan encourages services such as patient or family health
4 education and health promotion, home-based services, telephonic
5 communication, group care, and culturally and linguistically
6 appropriate care;
7 -- the gainsharing payment system is structured to reward quality
8 and improved patient outcomes and experience of care;
9 --the plan funds interdisciplinary collaboration between
10 behavioral health and primary care providers for patients with
11 complex care needs likely to inappropriately access an
12 emergency department and general hospital for preventable
13 conditions;
14 -- the plan funds improved access to dental services for high-risk
15 patients likely to inappropriately access an emergency
16 department and general hospital for untreated dental conditions;
17 and
18 --the plan has been developed with community input and will be
19 made available for inspection by members of the community
20 served by the ACO;
- 21 • The gainsharing plan would include a proposed time period with
22 specified dates, which would be the benchmark period against
23 which cost savings can be measured on an annual basis going
24 forward. The savings, which would be calculated in accordance
25 with a methodology established by regulations adopted by the
26 Commissioner of Human Services with input from the
27 Commissioner of Health and Senior Services and the Rutgers
28 Center for State Health Policy, would: (1) identify expenditures
29 by the Medicaid fee-for-service program for all Medicaid
30 recipients residing within the designated area during the
31 benchmark period, adjusted for historic trends for health
32 inflation, which shall serve as the benchmark payment
33 calculation; (2) compare the benchmark payment calculation to
34 amounts paid by the Medicaid fee-for-service program for all
35 such resident recipients during subsequent periods; and (3)
36 provide that the benchmark payment calculation would remain
37 fixed for a period of three years following approval of the
38 gainsharing plan;
 - 39 • The percentage of cost savings identified that would be
40 distributed to the Medicaid ACO, retained by any voluntarily
41 participating Medicaid managed care organization, and retained
42 by Medicaid, would be identified in the gainsharing plan and
43 remain in effect for a period of three years following approval
44 of the plan. The percentages would be designed to ensure that:
45 (1) Medicaid can achieve meaningful savings and support the
46 ongoing operation of the demonstration project, and (2) the
47 ACO receives a sufficient portion of the shared savings

- 1 necessary to achieve its mission and expand its scope of
2 activities;
- 3 • Medicaid shall not approve a gainsharing plan that provides
4 direct or indirect financial incentives for the reduction or
5 limitation of medically necessary and appropriate items or
6 services provided to patients under a health care provider's
7 clinical care in violation of federal law;
 - 8 • Medicaid would remit payment of cost savings to a participating
9 Medicaid ACO following approval by Medicaid of the ACO's
10 gainsharing plan and identification of cost savings;
 - 11 • A managed care organization that has contracted with Medicaid
12 may voluntarily seek participation in the demonstration project
13 by notifying the Medicaid ACO of its desire to participate. The
14 ACO would submit a separate Medicaid managed care
15 organization gainsharing plan for review and approval. The
16 managed care organization gainsharing plan may be identical to
17 the gainsharing plan approved for use in connection with the
18 Medicaid fee-for-service program, or may contain variations,
19 but the managed care organization gainsharing plan shall not
20 affect the calculation or distribution of shared savings pursuant
21 to the approved gainsharing plan applicable to the Medicaid fee-
22 for-service program or the calculation or distribution of shared
23 savings pursuant to any other approved gainsharing plan used by
24 the ACO;
 - 25 • A Medicaid managed care organization may withdraw from
26 participation after one year by notifying Medicaid in writing of
27 its desire to withdraw;
 - 28 • Nothing in the bill would: (1) alter or limit the obligations of a
29 Medicaid managed care organization participating in the
30 demonstration project pursuant to an approved gainsharing plan
31 to comply with State and federal law applicable to the Medicaid
32 managed care organization; or (2) preclude a certified Medicaid
33 ACO from expanding its operations to include participation with
34 new providers located within the ACO's designated area or
35 outside the designated area;
 - 36 • The Rutgers Center for State Health Policy would assist
37 Medicaid with:
 - 38 -- the design and implementation of the application process for
39 approval of participating Medicaid ACOs in the demonstration
40 project;
 - 41 -- the collection of data from participants in the demonstration
42 project; and
 - 43 -- the establishment of a methodology for calculation of cost
44 savings and for monitoring of quality of care under the
45 demonstration project;
 - 46 • Medicaid and the Rutgers Center for State Health Policy would
47 be authorized to jointly seek public and private grants to
48 implement and operate the demonstration project;

- 1 • Medicaid would, with assistance from the Rutgers Center for
2 State Health Policy, evaluate the demonstration project annually
3 to assess whether: cost savings are achieved through
4 implementation of the demonstration project; and there is
5 improvement in the rates of health screening, the outcomes and
6 hospitalization rates for persons with chronic illnesses, and the
7 hospitalization and readmission rates for patients residing in the
8 designated areas served by the ACOs;
- 9 • The Commissioner of Human Services must apply for State plan
10 amendments or waivers necessary to implement the provisions
11 of the bill and to secure federal financial participation for State
12 Medicaid expenditures;
- 13 • The Commissioners of Health and Senior Services and Human
14 Services may apply for participation in federal ACO
15 demonstration projects that align with the goals of the bill;
- 16 • Nothing in the bill would be construed to limit the choice of a
17 Medicaid recipient to access care for family planning services or
18 any other type of health care services from a qualified health
19 care provider who is not participating in the demonstration
20 project;
- 21 • Under the demonstration project, payment shall continue to be
22 made to providers of services and suppliers participating in the
23 ACO under the original Medicaid reimbursement methodology
24 in the same manner as they would otherwise be made, except the
25 Medicaid ACO is eligible to receive gainsharing payments;
- 26 • Nothing in the bill would be construed to authorize DHS or
27 DHSS to waive or limit any provisions of federal or State law or
28 reimbursement methodologies governing Medicaid
29 reimbursement to federally qualified health centers; and
- 30 • A certified Medicaid ACO would not be required to obtain
31 licensure or certification from the Department of Banking and
32 Insurance as an organized delivery system.

33 The bill requires the Commissioner of Human Services to report
34 annually to the Governor and the Legislature on the demonstration
35 project and include in the report the findings of the evaluation of
36 the demonstration project (conducted with the Rutgers Center for
37 State Health Policy), and such recommendations as the
38 commissioner deems appropriate. If, after three years following
39 enactment of the bill, the commissioner finds the demonstration
40 project was successful in reducing costs and improving the quality
41 of care for Medicaid recipients, the commissioner shall recommend
42 that the demonstration project be expanded to include additional
43 communities in which Medicaid recipients reside and become a
44 permanent program.

45 The bill also requires the Commissioner of Human Services to
46 adopt, within 180 days of the effective date of the bill, rules and
47 regulations establishing the standards for gainsharing plans. The
48 Commissioner of Human Services would also adopt, with input

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1 from the Commissioner of Health and Senior Services, rules and
2 regulations governing the ongoing oversight and monitoring of the
3 quality of care delivered to Medicaid recipients in the designated
4 areas served by the ACOs, and such other requirements as the
5 Commissioner of Human Services deems necessary to carry out the
6 provisions of the bill.

7 Lastly, the bill takes effect immediately and expires three years
8 after the adoption of regulations by the Commissioner of Human
9 Services.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2443

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 20, 2011

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with amendments Senate Bill No. 2443.

As amended by the committee, this bill establishes a three-year Medicaid Accountable Care Organization (ACO) Demonstration Project (demonstration project) in the Department of Human Services (DHS). Participants in the demonstration project would be nonprofit corporations organized and operated for the primary purpose of improving health outcomes and the quality and efficiency of care provided to Medicaid fee-for-service recipients residing in a "designated area," which is defined in the bill as a municipality or defined geographic area in which no fewer than 5,000 Medicaid recipients reside. Additionally, the bill permits voluntary participation in the demonstration project by Medicaid managed care organizations for the membership they serve.

DHS, in consultation with the Department of Health and Senior Services (DHSS), would certify applicants for participation in the demonstration project, and begin accepting applications for certification 60 days following the effective date of the bill.

A certified Medicaid ACO would be eligible to receive and distribute gainsharing or cost savings payments in accordance with a gainsharing plan. Only gainsharing plans that promote: improvements in health outcomes and quality of care, expanded access to primary and behavioral health care services; and the reduction of unnecessary and inefficient costs associated with care rendered to Medicaid recipients residing in the ACO's designated area, would be approved.

Specifically, the bill provides as follows:

- The demonstration project would allow nonprofit corporations organized with the voluntary support and participation of local general hospitals, clinics, health centers, qualified primary care and behavioral health care providers, and public health and social services agencies to apply for certification and participation in the project. DHS would consult with DHSS with respect to establishment and oversight of the demonstration project;

- DHS, in consultation with DHSS, may certify as many Medicaid ACOs for participation in the demonstration project as it determines appropriate, but no more than one Medicaid ACO can be certified in a designated area;
- Prior to certification, an applicant must demonstrate that it meets the following minimum standards:
 - The applicant has been formed as a nonprofit corporation pursuant to the "New Jersey Nonprofit Corporation Act", P.L.1983, c.127 (C.15A:1-1 et seq.), for the purposes described in the bill;
 - The applicant's governing board includes: (1) individuals representing the interests of: health care providers; patients; and other social service agencies or organizations located in the designated area; and (2) voting representation from at least two consumer organizations capable of advocating on behalf of patients residing within the designated area of the ACO;
 - The applicant has support of its application by: all of the general hospitals located in the designated area served by the ACO; no fewer than 75% of the qualified primary care providers; and at least four qualified behavioral health care providers;
 - The applicant has a process for receipt of gainsharing payments from DHS and any voluntarily participating Medicaid managed care organizations, and the subsequent distribution of such gainsharing payments in accordance with a quality improvement and gainsharing plan approved by DHS, in consultation with DHSS, as discussed above;
 - The applicant has a process for engaging members of the community and receiving public comments with respect to its gainsharing plan; and
 - The applicant has a commitment to become accountable for the health outcomes, quality, cost, and access to care of Medicaid recipients residing in the designated area for a period of at least three years following certification;
- Specific criteria to be considered by DHS in approving a gainsharing plan would include whether:
 - the plan promotes: care coordination; expansion of the medical home and chronic care models; increased patient medication adherence and use of medication therapy management services; use of health information technology and sharing of health information; and use of open access scheduling in clinical and behavioral health care settings;
 - the plan encourages services such as patient or family health education and health promotion, home-based services, telephonic communication, group care, and culturally and linguistically appropriate care;
 - the gainsharing payment system is structured to reward quality and improved patient outcomes and experience of care;

--the plan funds interdisciplinary collaboration between behavioral health and primary care providers for patients with complex care needs likely to inappropriately access an emergency department and general hospital for preventable conditions;

-- the plan funds improved access to dental services for high-risk patients likely to inappropriately access an emergency department and general hospital for untreated dental conditions; and

--the plan has been developed with community input and will be made available for inspection by members of the community served by the ACO;

- The gainsharing plan would be required to include an appropriate proposed time period that ends before the demonstration project begins, to serve as the benchmark period against which cost savings can be measured on an annual basis going forward. The savings, which would be calculated in accordance with a methodology that would: (1) identify expenditures, per recipient, by the Medicaid fee-for-service program during the benchmark period, which shall serve as the benchmark payment calculation; (2) compare the benchmark payment calculation to amounts paid by the Medicaid fee-for-service program for all such resident recipients during subsequent periods; and (3) provide that the benchmark payment calculation would remain fixed for a period of three years following approval of the gainsharing plan;
- The percentage of cost savings identified that would be distributed to the ACO, retained by any voluntarily participating Medicaid managed care organization, and retained by the State, would be identified in the gainsharing plan and remain in effect for a period of three years following approval of the plan. The percentages would be designed to ensure that the State achieves meaningful savings and support the ongoing operation of the demonstration project, and the ACO receives a sufficient portion of the shared savings necessary to achieve its mission and expand its scope of activities;
- DHS shall not approve a gainsharing plan that provides direct or indirect financial incentives for the reduction or limitation of medically necessary and appropriate items or services provided to patients under a health care provider's clinical care in violation of federal law;
- Notwithstanding the provisions of the bill to the contrary, a gainsharing plan that provides for shared savings between general hospitals and physicians related to acute care admissions utilizing the methodological component of the Physician Hospital Collaboration Demonstration awarded by the federal Centers for Medicare and Medicaid Services to the New Jersey Care Consortium, shall not be required to be approved by DHS;

- DHS shall consider using a portion of any savings generated to expand the nursing, primary care, behavioral health care, and dental workforces in the area served by the ACO;
- DHS would remit payment of cost savings to a participating Medicaid ACO following its approval of the ACO's gainsharing plan and identification of cost savings;
- A managed care organization that has contracted with DHS may voluntarily seek participation in the demonstration project by notifying the Medicaid ACO of its desire to participate. The ACO would submit for approval a separate Medicaid managed care organization gainsharing plan, which may be identical to the gainsharing plan approved for use in connection with the Medicaid fee-for-service program, or may differ, but the managed care organization gainsharing plan shall not affect the calculation or distribution of shared savings pursuant to the approved gainsharing plan applicable to the Medicaid fee-for-service program or the calculation or distribution of shared savings pursuant to any other approved gainsharing plan used by the ACO;
- A Medicaid managed care organization may withdraw from participation after one year by notifying DHS in writing;
- Nothing in the bill would: (1) alter or limit the obligations of a Medicaid managed care organization participating in the demonstration project pursuant to an approved gainsharing plan to comply with State and federal law applicable to the Medicaid managed care organization; or (2) preclude a Medicaid ACO from expanding its operations to include participation with new providers located within the ACO's designated area;
- DHS, in consultation with DHSS, would design and implement the application process for approval of Medicaid ACOs in the demonstration project, collect data from participants, and establish a methodology, which would be proposed by the Medicaid ACO, for calculating cost savings and for monitoring health outcomes and quality of care;
- DHS and DHSS would be authorized to jointly seek public and private grants to implement and operate the demonstration project;
- DHS, in consultation with DHSS, would evaluate the demonstration project annually to assess whether cost savings are achieved from, among other things, savings in administrative costs, and improved health outcomes. DHS, in consultation with DHSS and with the assistance of the Rutgers Center for State Health Policy, shall evaluate whether there is improvement in the rates of health screenings, health outcomes and hospitalization rates for persons with chronic illnesses, and hospitalization and readmission rates for patients residing in the designated areas served by the ACOs;
- The Commissioner of Human Services must apply for State plan amendments or waivers necessary to implement the provisions of the bill and to secure federal financial participation for State

Medicaid expenditures, and take such additional steps as may be necessary to secure on behalf of participating ACOs such waivers, exemptions, or advisory opinions to ensure that the ACOs are in compliance with applicable provisions of State and federal laws related to fraud and abuse. The Commissioners of Health and Senior Services and Human Services may apply for participation in federal ACO demonstration projects that align with the goals of the bill;

- Nothing in the bill would be construed to limit the choice of a Medicaid recipient to access care for family planning services or any other type of health care services from a qualified health care provider who is not participating in the demonstration project;
- Under the demonstration project, payment shall continue to be made to providers of services and suppliers participating in the ACO under the original Medicaid reimbursement methodology in the same manner as they would otherwise be made, except the Medicaid ACO is eligible to receive gainsharing payments. DHS, in consultation with DHSS shall, by regulation, promulgate a methodology whereby a disproportionate share hospital participating in a Medicaid ACO receives a credit from available federal funds for its disproportionate share payments, and the bill provides a framework for developing that calculation;
- Nothing in the bill would be construed to authorize DHS or DHSS to waive or limit any provisions of federal or State law or reimbursement methodologies governing Medicaid reimbursement to federally qualified health centers;
- A Medicaid ACO would not be required to obtain licensure or certification from the Department of Banking and Insurance as an organized delivery system;
- The Commissioners of DHS and DHSS shall report to the Governor and the Legislature on the demonstration project, upon its completion, and include such recommendations as they deem appropriate. If, after three years following enactment of the bill, the commissioners find that the demonstration project was successful in reducing costs and improving the quality of care for Medicaid recipients, they shall recommend that the demonstration project be expanded to include additional communities in which Medicaid recipients reside, and become a permanent program;
- The Commissioner of Human Services shall adopt, within 180 days of the effective date of the bill, rules and regulations establishing the standards for gainsharing plans. The Commissioner of Human Services would also adopt, with input from the Commissioner of Health and Senior Services, rules and regulations governing the ongoing oversight and monitoring of the quality of care delivered to Medicaid recipients in the designated areas served by the ACOs, and such other requirements as the

Commissioner of Human Services deems necessary to carry out the provisions of the bill; and

- The bill takes effect 60 days after the date of enactment, and expires three years after the adoption of regulations by the Commissioner of Human Services.

The committee amendments:

- add references to improving health outcomes, and incorporating references related to medication therapy as a component of the project;
- make various technical changes throughout the bill, including replacing references to Medicaid with references to DHS;
- add DHSS involvement in the demonstration project;
- add details to the components of the gainsharing plan;
- exempt from DHS approval a gainsharing plan that provides for shared savings between general hospitals and physicians related to acute care admissions utilizing the methodological component of the Physician Hospital Collaboration Demonstration awarded by the federal Centers for Medicare and Medicaid Services to the New Jersey Care Consortium;
- add that DHS shall consider using a portion of any savings generated to expand the nursing, primary care, behavioral health care, and dental workforces in the area served by the ACO;
- delete references to the Rutgers Center for State Health Policy regarding designing and implementing the application process, so that DHS in consultation with DHSS, shall be primarily responsible;
- provide that the Rutgers Center for State Health Policy shall assist DHS and DHSS in evaluation the demonstration project, and add that administrative cost savings and health outcomes shall be included in the assessment;
- add the requirement that DHS take such additional steps to secure on behalf of participating ACOs such waivers, exemptions, or advisory opinions to ensure that such ACOs are in compliance with applicable provisions of State and federal laws related to fraud and abuse;
- include the definition of “disproportionate share hospital,” and provide that DHS in consultation with DHSS shall, by regulation, promulgate a methodology whereby a disproportionate share hospital participating in a Medicaid ACO receives a credit from available federal funds for its disproportionate share payments, and the bill provides a framework for developing that calculation;
- change the reporting requirement so that the commissioners of DHS and DHSS report to the Governor and Legislature upon

completion of the demonstration project, rather than annually,
and

- change the effective date from immediately to 60 days following enactment.

As amended, this bill is similar to Assembly No. 3636 (Coughlin/Greenwald), which is pending in the Assembly Health and Senior Services Committee.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2443

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 3, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2443 (1R), with committee amendments.

This bill establishes a three-year Medicaid Accountable Care Organization (ACO) Demonstration Project in the Department of Human Services (DHS). Participants in the demonstration project would be nonprofit corporations whose primary purpose is improving health outcomes and quality and efficiency of care provided to Medicaid fee-for-service recipients in certain designated areas specified in the bill. DHS would consult with the Department of Health and Senior Services (DHSS) in certifying applicants for participation in the demonstration project, and begin accepting applications for certification 60 days following the effective date of the bill.

Gainsharing, the distribution of any overall cost savings achieved through the demonstration project, is a key feature of the demonstration project. An ACO's gainsharing plan must promote improvements in health outcomes and quality of care, expand access to primary and behavioral health care services, and reduce unnecessary costs. The bill specifies the criteria to be considered by DHS in approving and remitting payment under a gainsharing plan, and requires DHS to adopt rules and regulations establishing standards for gainsharing plans within 180 days after the effective date of the bill. A gainsharing plan using a federally-approved methodology specified in the bill would not require DHS approval.

The bill sets forth the requirements for qualifying as an ACO, including nonprofit corporate status, a governing board comprised of individuals representing specified stakeholders, the support of various health care providers in the designated area to be served by the ACO, and processes for receiving gainsharing payments and engaging members of the public.

DHS shall consider using a portion of any savings generated by the demonstration project to expand the nursing, primary care, behavioral health care, and dental workforces in the area served by the ACO.

The bill provides for managed care organizations that have contracts with DHS to voluntarily participate in the project, and allows a Medicaid managed care organization to withdraw from participation after one year by notifying DHS in writing.

DHS and DHSS would be authorized to jointly seek public and private grants to implement and operate the demonstration project.

DHS, in consultation with DHSS, would evaluate the demonstration project annually. DHS, in consultation with DHSS and with the assistance of the Rutgers Center for State Health Policy, shall evaluate whether there is improvement in the rates of health screenings, health outcomes and hospitalization rates for persons with chronic illnesses, and hospitalization and readmission rates for patients residing in the designated areas served by the ACOs.

The bill directs the Commissioner of Human Services to apply for State plan amendments or waivers necessary to implement the demonstration project, secure federal financial participation for State Medicaid expenditures, and take such additional steps as may be necessary to secure on behalf of participating ACOs such waivers, exemptions, and advisory opinions to ensure compliance with State and federal laws related to fraud and abuse. The Commissioners of Health and Senior Services and Human Services may apply for participation in federal ACO demonstration projects that align with the goals of the bill.

The bill specifies that payment shall continue to be made to providers of services and suppliers participating in the ACO under the original Medicaid reimbursement methodology, except that a Medicaid ACO is eligible to receive gainsharing payments. DHS, in consultation with DHSS shall, by regulation, promulgate a methodology whereby a disproportionate share hospital participating in a Medicaid ACO receives a credit from available federal funds for its disproportionate share payments, and the bill provides a framework for developing that calculation.

A Medicaid ACO would not be required to obtain licensure or certification from the Department of Banking and Insurance as an organized delivery system when providing services to Medicaid recipients.

The Commissioners of DHS and DHSS shall report to the Governor and the Legislature on the demonstration project upon its completion, and include recommendations as they deem appropriate. If, after three years following enactment of the bill, the commissioners find that the demonstration project was successful in reducing costs and improving the quality of care for Medicaid recipients, they shall recommend expansion of the demonstration project to include additional communities in which Medicaid recipients reside, and become a permanent program.

The bill takes effect 60 days after the date of enactment, and expires three years after the adoption of regulations by the Commissioner of Human Services.

This bill, with committee amendments, is similar to Assembly No. 3636. (Coughlin/Greenwald/Polistina/Riley)

COMMITTEE AMENDMENTS:

The committee amendments clarify that:

- DHS may deny certification of any ACO applicant that it determines does not meet the requirements of the bill, and may consider applications for approval, including revised applications submitted by an ACO not previously approved to participate in the demonstration project (Section 4.a);
- Nothing in the bill shall be construed to prevent the department from certifying an applicant as a Medicaid ACO that also participates in a Medicare ACO demonstration project approved by the federal Centers for Medicare and Medicaid Services (Section 4.d); and
- The bill shall not be construed to require State funding for any evaluation or start-up costs of an ACO. (Section 10.c); and
- A Medicaid ACO certified pursuant to the bill shall not be required to obtain licensure or certification from the Department of Banking and Insurance as an organized delivery system “when providing services to Medicaid recipients” (Section 13).

FISCAL IMPACT:

The purpose of the Medicaid Accountable Care Organization Demonstration project is to improve health care outcomes while reducing overall Medicaid expenditures, and to distribute any savings (“gainsharing”) between the State and the ACOs established by the demonstration project.

The Office of Legislative Services (OLS) is unable to assess the fiscal impact of the legislation and determine whether any savings will be achieved, as there are too many unknown variables. One or more years of financial and statistical data based on the operation of the demonstration project will be needed before OLS or another entity can determine whether the demonstration project achieved savings while improving health care outcomes.

At present, there are no known federal Medicaid regulations that address ACOs. Thus, the contents of the State Plan Amendment the State will have to submit to the federal government in support of the demonstration project are not known. In the absence of applicable federal Medicaid regulations, it is not known when federal approval for the Medicaid ACO demonstration project will be obtained, so the timeframes specified in the legislation to implement the demonstration project may be difficult to meet.

There are also numerous other unknowns that make it difficult to determine the fiscal impact of the legislation:

- Though the demonstration project is potentially open to all Medicaid recipients within a designated area, the focus of the demonstration project is on those Medicaid recipients who are not enrolled in a managed care program and whose health care costs are reimbursed on a “fee-for-service” basis. The two largest groups of Medicaid recipients who are reimbursed on a “fee-for-service” basis are the elderly, blind, and disabled population (approximately 105,000 recipients) and children in out-of-home placement under the supervision of the Department of Children and Families (approximately 5,300 recipients). As many of the elderly, blind and disabled are also Medicare-eligible, the federal Medicare program would have to agree to participate in the demonstration project and share any savings with the ACOs. Further, data are not readily available as to how many “fee-for-service” persons may reside in an ACO’s designated area. Similarly, it is not known how many Medicaid recipients currently enrolled in a managed care organization will participate in the demonstration project; and
- The legislation allows Medicaid managed care organizations to voluntarily participate in the demonstration project. It is unclear how “gainsharing” will apply to managed care organizations as, at present, a managed care organization may retain any Medicaid capitation revenues it receives that are in excess of its documented medical and administrative expenditures.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2443

STATE OF NEW JERSEY 214th LEGISLATURE

DATED: MARCH 28, 2011

SUMMARY

- Synopsis:** Establishes Medicaid Accountable Care Organization Demonstration project in DHS.
- Type of Impact:** Possible reduction in Medicaid costs over the long term that cannot be determined.
- Agencies Affected:** Departments of Human Services (DHS) and Health and Senior Services (DHSS).

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1 - 3</u>
State Costs/Savings	Unable to determine.

- Federal approval of the demonstration project is necessary before the project can be implemented. As there currently are no federal Medicaid regulations concerning ACOs, what documentation the federal government will require as part of the State's State Plan Amendment is not known. Similarly, it is not known whether the federal government will agree to the State's gainsharing proposal, particularly if Medicare monies are also involved. Thus, it is likely that the demonstration project will not be implemented in the timeframe specified in the legislation.
- Though the provisions of the bill suggest that the demonstration project will reduce overall Medicaid expenditures, there is insufficient information available to assess whether any savings will be realized. It will take at least two years before sufficient financial and utilization data are available to determine the cost savings/expenditure impact of this project.

BILL DESCRIPTION

Senate Bill No. 2443 (2R) establishes a three-year Medicaid ACO demonstration project in DHS. Participants in the demonstration project would be nonprofit corporations organized and operated for the primary purpose of improving health outcomes and the quality and efficiency of

care provided to Medicaid fee-for-service recipients residing in a "designated area," which is defined in the bill as a municipality or defined geographic area in which no fewer than 5,000 Medicaid recipients reside. The bill also permits voluntary participation in the demonstration project by Medicaid managed care organizations for the membership served by the managed care organization.

DHS, in consultation with DHSS, would certify applicants for participation in the demonstration project and would begin accepting applications for certification 60 days following the effective date of the bill.

A certified Medicaid ACO would be eligible to receive and distribute gainsharing or cost savings payments to participating health care providers in accordance with a gainsharing plan. Only gainsharing plans that: improve health outcomes and quality of care; expand access to primary and behavioral health care services; and reduce unnecessary and inefficient costs associated with care rendered to Medicaid recipients residing in the ACO's designated area, would be approved.

The legislation includes numerous administrative and financial requirements that the Medicaid ACOs would have to meet with respect to patient care and any gainsharing that is realized. The legislation contains safeguards to assure that patient care is not compromised in order to achieve gainsharing.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None provided.

OFFICE OF LEGISLATIVE SERVICES

The purpose of the Medicaid Accountable Care Organization Demonstration project is to improve health care outcomes while reducing overall Medicaid expenditures, and to distribute any savings ("gainsharing") between the State and the ACOs established by the demonstration project.

The Office of Legislative Services (OLS) is unable to assess the fiscal impact of the legislation and determine whether any savings will be achieved, as there are too many unknown variables. One or more years of financial and statistical data based on the operation of the demonstration project will be needed before OLS or another entity can determine whether the demonstration project achieved savings while improving health care outcomes.

At present, there are no known federal Medicaid regulations that address ACOs. Thus, the contents of the State Plan Amendment the State will have to submit to the federal government in support of the demonstration project is not known. In the absence of applicable federal Medicaid regulations, it is not known when federal approval for the Medicaid ACO demonstration project will be obtained, so the timeframes specified in the legislation to implement the demonstration project may be difficult to meet.

There are also numerous other unknowns that make it difficult to determine the fiscal impact of the legislation:

- Though the demonstration project is potentially open to all Medicaid recipients within a designated area, the focus of the demonstration project is on those Medicaid recipients who are not enrolled in a managed care program and whose health care costs are reimbursed on a "fee-for-service" basis. The two largest groups of Medicaid recipients

who are reimbursed on a “fee-for-service” basis are the elderly, blind, and disabled population (approximately 105,000 recipients) and children in out-of-home placement under the supervision of the Department of Children and Families (approximately 5,300 recipients). As many of the elderly, blind and disabled are also Medicare-eligible, the federal Medicare program would have to agree to participate in the demonstration project and share any savings with the ACOs. Further complicating the enrollment of the elderly, blind, and disabled into the demonstration project, is that 25,000 – 30,000 such persons are in nursing homes and an additional 20,000 persons are on DHS or DHSS waiver programs as an alternative to institutional placement. Further, data are not readily available as to how many “fee-for-service” persons may reside in an ACO’s designated area. Similarly, it is not known how many Medicaid recipients currently enrolled in a managed care organization will participate in the demonstration project.

- The legislation allows Medicaid managed care organizations to voluntarily participate in the demonstration project. It is unclear how “gainsharing” will apply to managed care organizations as, at present, a managed care organization may retain any Medicaid capitation revenues it receives that are in excess of its documented medical and administrative expenditures.

Section: Human Services

*Analyst: Jay Hershberg
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 2443

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Assembly Budget Committee reports favorably Senate Bill No. 2443 (2R), with committee amendments.

This bill establishes a three-year Medicaid Accountable Care Organization (ACO) Demonstration Project (demonstration project) in the Department of Human Services (DHS).

The bill provides specifically as follows:

- Participants in the demonstration project are to be nonprofit corporations organized and operated for the primary purpose of improving health outcomes and the quality and efficiency of care provided to Medicaid fee-for-service recipients residing in a “designated area” (defined as a municipality or defined geographic area in which no fewer than 5,000 Medicaid recipients reside). The bill also permits voluntary participation in the demonstration project by Medicaid managed care organizations for the membership they serve.
- DHS, in consultation with the Department of Health and Senior Services (DHSS), is to certify applicants for participation in the demonstration project, and begin accepting applications for certification 60 days following the effective date of the bill.
- A certified Medicaid ACO is eligible to receive and distribute gainsharing or cost savings payments in accordance with a gainsharing plan approved by DHS. DHS, with input from DHSS and the Rutgers Center for State Health Policy (CSHP), is to approve only those gainsharing plans that promote: improvements in health outcomes and quality of care, as measured by objective benchmarks as well as patient experience of care; expanded access to primary and behavioral health care services; and the reduction of unnecessary and inefficient costs associated with care rendered to Medicaid recipients residing in the designated area of the ACO. (An ACO may request approval of its gainsharing plan at the time of certification or at any time within one year of certification, and may seek to amend its gainsharing plan by submitting amendments to DHS for approval.)

- The demonstration project is to allow nonprofit corporations, organized with the voluntary support and participation of local general hospitals, clinics, health centers, qualified primary care and behavioral health care providers, and public health and social services agencies, to apply for certification and participation in the project. DHS is to consult with DHSS with respect to establishment and oversight of the demonstration project.
- DHS, in consultation with DHSS, may certify as many Medicaid ACOs for participation in the demonstration project as it determines appropriate, but is to certify no more than one Medicaid ACO for each designated area.
- Prior to certification, an applicant is required to demonstrate that it meets the following minimum standards:
 - The applicant has been formed as a nonprofit corporation pursuant to the "New Jersey Nonprofit Corporation Act", P.L.1983, c.127 (C.15A:1-1 et seq.), for the purposes described in the bill;
 - Its governing board includes: (1) individuals representing the interests of: health care providers, patients, and other social service agencies or organizations located in the designated area; and (2) voting representation from at least two consumer organizations capable of advocating on behalf of patients residing within the designated area of the ACO;
 - The applicant's application is supported by all of the general hospitals, at least 75% of the qualified primary care providers, and at least four qualified behavioral health care providers, located in the designated area served by the ACO;
 - The applicant has a process for receipt of gainsharing payments from DHS and any voluntarily participating Medicaid managed care organizations; and the subsequent distribution of these gainsharing payments is to be in accordance with a quality improvement and gainsharing plan approved by DHS, in consultation with DHSS, as described above;
 - The applicant has a process for engaging members of the community and receiving public comments with respect to its gainsharing plan;
 - The applicant has a commitment to become accountable for the health outcomes, quality, cost, and access to care of Medicaid recipients residing in the designated area for a period of at least three years following certification; and
 - The applicant has a commitment to ensure the use of electronic prescribing and electronic medical records by health care providers located in the designated area.
- The specific criteria to be considered by DHS in approving the gainsharing plan of a Medicaid ACO include whether:
 - the plan promotes: care coordination; expansion of the medical home and chronic care models; use of health information

technology and sharing of health information; and use of open access scheduling in clinical and behavioral health care settings;

-- the plan encourages services such as patient or family health education and health promotion, home-based services, telephonic communication, group care, and culturally and linguistically appropriate care;

-- the gainsharing payment system is structured to reward quality and improved patient outcomes and experience of care;

-- the plan funds interdisciplinary collaboration between behavioral health and primary care providers for patients with complex care needs likely to inappropriately access an emergency department and general hospital for preventable conditions;

-- the plan funds improved access to dental services for high-risk patients likely to inappropriately access an emergency department and general hospital for untreated dental conditions; and

-- the plan has been developed with community input and will be made available for inspection by members of the community served by the ACO.

- The gainsharing plan is to include an appropriate proposed time period that ends before the demonstration project begins, which is to serve as the benchmark period against which cost savings can be measured on an annual basis going forward. The savings are to be calculated in accordance with a methodology that: (1) identifies expenditures, per recipient, by the Medicaid fee-for-service program during the benchmark period, which are to serve as the benchmark payment calculation; (2) compares the benchmark payment calculation to amounts paid by the Medicaid fee-for-service program for all such resident recipients during subsequent periods; and (3) provides that the benchmark payment calculation is to remain fixed for a period of three years following approval of the gainsharing plan.
- The percentage of identified cost savings to be distributed to the Medicaid ACO, retained by any voluntarily participating Medicaid managed care organization, and retained by the State, is to be identified in the gainsharing plan and remain in effect for a period of three years following approval of the plan. The percentages are to be designed to ensure that: (1) Medicaid can achieve meaningful savings and support the ongoing operation of the demonstration project; and (2) the ACO receives a sufficient portion of the shared savings necessary to achieve its mission and expand its scope of activities.
- DHS is prohibited from approving a gainsharing plan that provides direct or indirect financial incentives for the reduction or limitation of medically necessary and appropriate items or services provided to patients under a health care provider's clinical care in violation of federal law.

- Notwithstanding the provisions of the bill to the contrary, a gainsharing plan that provides for shared savings between general hospitals and physicians related to acute care admissions, utilizing the methodological component of the Physician Hospital Collaboration Demonstration awarded by the federal Centers for Medicare and Medicaid Services to the New Jersey Care Consortium, does not require DHS approval;
- DHS is to consider using a portion of any savings generated to expand the nursing, primary care, behavioral health care, and dental workforces in the area served by the ACO;
- DHS is to remit payment of cost savings to a participating Medicaid ACO following its approval of the ACO's gainsharing plan and identification of cost savings.
- A managed care organization that has contracted with DHS may voluntarily seek participation in the demonstration project by notifying the Medicaid ACO of its desire to participate. The ACO is to submit a separate Medicaid managed care organization gainsharing plan for review and approval. The managed care organization gainsharing plan may be identical to the gainsharing plan approved for use in connection with the Medicaid fee-for-service program, or may differ, but the managed care organization gainsharing plan is not to affect the calculation or distribution of shared savings pursuant to the approved gainsharing plan applicable to the Medicaid fee-for-service program or the calculation or distribution of shared savings pursuant to any other approved gainsharing plan used by the ACO.
- A Medicaid managed care organization may withdraw from participation in the demonstration project after one year by notifying DHS in writing of its desire to withdraw.
- Nothing in the bill is to: (1) alter or limit the obligations of a Medicaid managed care organization participating in the demonstration project pursuant to an approved gainsharing plan to comply with State and federal law applicable to the organization; or (2) preclude a certified Medicaid ACO from expanding its operations to include participation with new providers located within the designated area of the ACO.
- DHS, in consultation with DHSS, is to:
 - design and implement the application process for approval of participating ACOs in the demonstration project;
 - collect data from participants in the demonstration project;and
 - approve a methodology proposed by the Medicaid ACO applicant for calculation of cost savings and for monitoring of health outcomes and quality of care under the demonstration project.
- DHS and DHSS are authorized to jointly seek public and private grants to implement and operate the demonstration project.

- DHS, in consultation with DHSS, is to evaluate the demonstration project annually to assess whether cost savings, including, but not limited to, savings in administrative costs and savings from improved health outcomes, are achieved through implementation of the demonstration project. DHS, in consultation with DHSS and with the assistance of CSHP, is to evaluate the demonstration project to assess whether there is improvement in: the rates of health screening; the outcomes and hospitalization rates for persons with chronic illnesses; and the hospitalization and readmission rates for patients residing in the designated areas served by the ACOs.
- The Commissioner of DHS is to: apply for State plan amendments or waivers necessary to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures; and take such additional steps as may be necessary to secure on behalf of participating ACOs such waivers, exemptions, or advisory opinions to ensure that the ACOs are in compliance with applicable provisions of State and federal laws related to fraud and abuse, including, but not limited to, anti-kickback, self-referral, false claims, and civil monetary penalties.
- The Commissioners of DHSS and DHS may apply for participation in federal ACO demonstration projects that align with the goals of the bill.
- Nothing in the bill is to be construed to limit the choice of a Medicaid recipient to access care for family planning services or any other type of health care services from a qualified health care provider who is not participating in the demonstration project.
- Under the demonstration project, payment will continue to be made to providers of services and suppliers participating in the Medicaid ACO under the original Medicaid reimbursement methodology in the same manner as they would otherwise be made, except that the ACO is eligible to receive gainsharing payments. DHS, in consultation with DHSS, is to promulgate by regulation a methodology whereby a disproportionate share hospital participating in a Medicaid ACO receives a credit from available federal funds for its disproportionate share payments in an amount equal to the reduction in disproportionate share payments to the hospital resulting from its participation in the ACO, calculated on the basis of the reduction in inpatient hospitalizations during any year in which the hospital participates in the ACO, compared with the benchmark period.
- Nothing in the bill is to be construed to authorize DHS or DHSS to waive or limit any provisions of federal or State law or reimbursement methodologies governing Medicaid reimbursement to federally qualified health centers providing services to Medicaid managed care recipients.

- A certified Medicaid ACO is not required to obtain licensure or certification from the Department of Banking and Insurance as an organized delivery system when providing services to Medicaid recipients.
- The Commissioners of DHS and DHSS are to report to the Governor and the Legislature on the demonstration project, upon its completion, and to include such recommendations as the commissioners deems appropriate. If, after three years following enactment of the bill, the commissioners find that the demonstration project was successful in reducing costs and improving the quality of care for Medicaid recipients, they are to recommend that the demonstration project be expanded to include additional communities in which Medicaid recipients reside and become a permanent program.
- The Commissioner of DHS is to adopt:
 - within 180 days of the effective date of the bill, rules and regulations establishing the standards for gainsharing plans; and
 - with input from the Commissioner of DHSS, rules and regulations governing the ongoing oversight and monitoring of the quality of care delivered to Medicaid recipients in the designated areas served by the ACOs, and such other requirements as the Commissioner of DHS deems necessary to carry out the provisions of the bill.
- The bill takes effect 60 days after the date of enactment and expires three years after the adoption of regulations by the Commissioner of DHS.

As amended and reported, this bill is identical to Assembly Bill No. 3636 (1R), as also amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) is unable to assess the fiscal impact of the legislation and determine whether any savings will be achieved, as there are significant unknown variables. One or more years of financial and statistical data based on the operation of the demonstration project will be needed before the OLS or another entity can determine whether the demonstration project achieved savings while improving health care outcomes. Additionally, the Executive branch has not provided information on the potential fiscal impact of this bill.

COMMITTEE AMENDMENTS:

The committee amendment inserts a new paragraph (7) to subsection c. of section 4., which adds an additional component to the minimum standards that demonstration project applicants must satisfy. Specifically, under the new paragraph (7) an applicant must demonstrate that the applicant has a commitment to ensure the use of

electronic prescribing and electronic medical records by health care providers located in the designated area.

STATEMENT TO
[Third Reprint]
SENATE, No. 2443

with Assembly Floor Amendments
(Proposed by Assemblyman COUGHLIN)

ADOPTED: JUNE 29, 2011

These amendments:

- revise the Legislative findings to specify that the intent is to enable providers to “continue to receive Medicaid payments from managed care organizations, and in the case of individuals not enrolled in managed care, directly from the Medicaid program” (section 1.f.);
- add a reference to the Department of Human Services (DHS) in the provision specifying that nothing precludes participation in other ACOs, and add “health or behavioral ACO models” to the types of ACOs in which participation would be permitted (section 3.a.);
- require DHS and the Department of Health and Senior Services (DHSS) to provide all data necessary to the Rutgers Center for State Health Policy for analysis in support of the department’s review of gainsharing plans (section 5.b.);
- provide that DHS is under no obligation to participate in the Physician-Hospital Collaboration Demonstration (section 5.f.);
- add that DHS shall consider using a portion of any savings generated to expand the nursing, primary care, behavioral health care, and dental workforces “and services” in the area served by the ACO (section 5.g.);
- add a new subsection to section 5, which states, “Gainsharing plans submitted to the department for the demonstration project shall contain an assessment of the expected impact of revenues on hospitals that agree to participate. The assessment shall include estimates for changes in both direct patient care reimbursement and indirect revenue, such as disproportionate share payments, graduate medical education payments, and other similar payments. The assessment shall include a review of whether participation in the ACO project could significantly impact the financial stability of any hospital through rapid reductions in revenue and how this impact will be mitigated. The gainsharing plan shall include a letter of support from all participating hospitals in order to be accepted by the department.” (section 5.h.);

- add that DHS shall remit payment upon agreement from the federal government to share in the cost of the funds distributed respecting the gainsharing plan (section 6);
- require that DHS and DHSS provide the Rutgers Center for State Health Policy with all data necessary to perform the annual evaluation of the demonstration project (section 9);
- clarify that payment shall continue to be made to providers of services and suppliers participating in the Medicaid ACO for services provided to managed care recipients or individuals who receive services on a fee-for-service basis (section 12);
- delete language directing DHS, in consultation with the DHSS, to promulgate a methodology for a disproportionate share hospital participating in a Medicaid ACO to receive a credit from available federal funds (section 12); and
- provide that, if, after three years following enactment of this bill, the commissioners find the demonstration project was successful in reducing costs and improving health outcomes and the quality of care for Medicaid recipients, the commissioners may recommend that Medicaid ACOs be established on a permanent basis and in additional communities in which Medicaid recipients reside (section 14).

ASSEMBLY, No. 3636

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 6, 2011

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman VINCENT J. POLISTINA

District 2 (Atlantic)

Assemblywoman CELESTE M. RILEY

District 3 (Salem, Cumberland and Gloucester)

Assemblywoman NANCY F. MUNOZ

District 21 (Essex, Morris, Somerset and Union)

Co-Sponsored by:

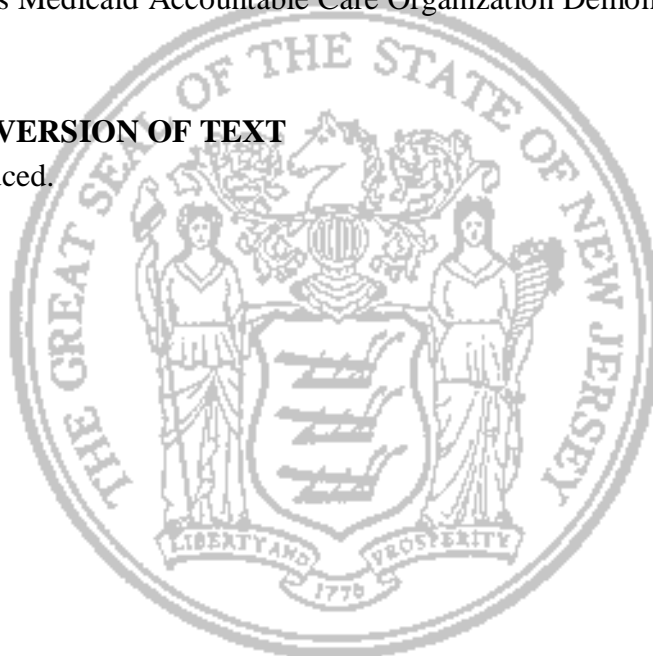
Assemblywomen Handlin, Wagner and Angelini

SYNOPSIS

Establishes Medicaid Accountable Care Organization Demonstration Project in DHS.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/8/2011)

1 AN ACT establishing a Medicaid Accountable Care Organization
2 Demonstration Project and supplementing Title 30 of the
3 Revised Statutes.

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

7
8 1. The Legislature finds and declares that:

9 a. The current health care delivery and payment system often
10 fails to provide high quality, cost-effective health care to the most
11 vulnerable patients residing in New Jersey, many of whom have
12 limited access to coordinated and primary care services and,
13 therefore, tend to seek care in hospital emergency departments or
14 are admitted to hospitals for preventable problems;

15 b. The Accountable Care Organization (ACO) model has
16 gained recognition as a mechanism that can be used to improve
17 health care quality and lower the overall costs of medical care by
18 providing incentives to coordinate care among providers throughout
19 a region. Coordination is achieved through initiatives such as
20 creation of patient-centered medical homes, sharing of patient
21 health information among providers, and implementation of care
22 management programs designed to facilitate best practices and
23 improve communication among providers and social services
24 agencies throughout the community;

25 c. Providers participating in the ACO are supported in their
26 efforts to share accountability for the overall quality and cost of
27 care rendered to patients. The ACO provides support for
28 coordination, identification of improvements in quality and cost
29 savings, and the distribution of any overall cost savings achieved,
30 often referred to as “gainsharing,” to the ACO participants in a
31 manner that furthers the goals of the ACO to improve quality and
32 accessibility while reducing the costs of medical care throughout a
33 region;

34 d. The ACO model can facilitate improvements in quality and
35 access and reductions in the rate of health care inflation while
36 permitting patients to maintain their current health care
37 relationships. The Medicaid ACO Demonstration Project to be
38 established pursuant to this act is specifically intended to: (1)
39 increase access to primary care, behavioral health care, and dental
40 care by Medicaid recipients residing in defined regions; (2) improve
41 quality as measured by objective metrics and patient experience of
42 care; and (3) reduce unnecessary and inefficient care without
43 interfering with patients’ access to their health care providers or the
44 providers’ access to existing Medicaid reimbursement systems. The
45 Medicaid ACO Demonstration Project may provide a model for
46 achievement of improved quality and decreased costs that can be
47 replicated in other settings to the benefit of patients and payers

1 throughout New Jersey, but is not intended to inhibit, prevent, or
2 limit development or implementation of alternative ACO models;

3 e. The Medicaid ACO Demonstration Project seeks to address
4 a variety of access, coordination, and service utilization problems
5 that lead to increased health costs. One major goal is to reduce the
6 inappropriate utilization of high-cost emergency care by Medicaid
7 recipients and others, especially where an individual's need is more
8 properly addressed through non-emergency primary care treatment.
9 The Medicaid ACOs shall develop relationships with primary care,
10 behavioral health, dental, and other health care providers to develop
11 strategies to: (1) engage these individuals in treatment; (2) promote
12 healthy lifestyles, including, but not limited to, prevention and
13 wellness activities, smoking cessation, reducing substance use, and
14 improving nutrition; (3) develop skills in help-seeking behavior,
15 including self-management and illness management; (4) improve
16 access to services for primary care and behavioral health care needs
17 through home-based services and telephonic and web-based
18 communication, via culturally and linguistically appropriate means;
19 and (5) improve service coordination to ensure integrated care for
20 primary care, behavioral health care, dental care, and other health
21 care needs;

22 f. It is, therefore, in the public interest to establish a Medicaid
23 ACO demonstration project whereby providers can continue to
24 receive Medicaid fee-for-service payments and other types of
25 Medicaid reimbursement, such as through prospective payment
26 methodologies and supplemental payments made to federally
27 qualified health centers, directly from the Medicaid program, while
28 simultaneously participating in a certified Medicaid ACO designed
29 to improve quality and access to care through regional collaboration
30 and shared accountability, and while reducing the costs of medical
31 care throughout a region; and

32 g. The Legislature, therefore, intends to exempt activities
33 undertaken pursuant to the Medicaid ACO Demonstration Project
34 that might otherwise be constrained by State antitrust laws and to
35 provide immunity for such activities from federal antitrust laws
36 through the state action immunity doctrine; however,
37 notwithstanding this subsection, the Legislature does not intend to
38 allow and does not authorize any person or entity to engage in
39 activities or to conspire to engage in activities that would constitute
40 per se violations of State or federal antitrust laws.

41

42 2. As used in this act:

43 "ACO" means an accountable care organization.

44 "Behavioral health care provider" means a provider licensed or
45 approved by the Division of Mental Health Services or the Division
46 of Addiction Services in the Department of Human Services to
47 render services to New Jersey residents.

1 "Designated area" means a municipality or defined geographic
2 area in which no fewer than 5,000 Medicaid recipients reside.

3 "Medicaid" means the Medicaid program established pursuant to
4 P.L.1968, c.413 (C.30:4D-1 et seq.).

5 "Medicaid ACO Demonstration Project" or "demonstration
6 project" means the demonstration project established pursuant to
7 this act.

8 "Primary care provider" includes the following licensed
9 individuals: physicians, physician assistants, advanced practice
10 nurses, and nurse midwives whose professional practice involves
11 the provision of primary care, including internal medicine, family
12 medicine, geriatric care, pediatric care, or obstetrical/gynecological
13 care.

14 "Qualified behavioral health care provider" means a behavioral
15 health care provider who participates in the Medicaid program and
16 renders clinic-based and home-based services to individuals
17 residing in the designated area served by the Medicaid ACO.

18 "Qualified primary care provider" means a primary care provider
19 who participates in the Medicaid program and who spends at least
20 25% of his professional time or 10 hours per seven-day week,
21 whichever is less, rendering clinical or clinical supervision services
22 at an office or clinic setting located within the designated area
23 served by a Medicaid ACO.

24

25 3. a. Medicaid shall establish a three-year Medicaid ACO
26 Demonstration Project in which nonprofit corporations organized
27 with the voluntary support and participation of local general
28 hospitals, clinics, health centers, qualified primary care and
29 behavioral health care providers, and public health and social
30 services agencies may apply to Medicaid for certification and
31 participation in the project. Medicaid shall consult with the
32 Department of Health and Senior Services with respect to
33 establishment and oversight of the demonstration project.

34 Nothing in this act shall preclude Medicaid managed care
35 organizations, qualified primary care and behavioral health care
36 providers, licensed health care facilities, or any other provider or
37 payer of health care services from participating in other ACOs,
38 medical home programs, or projects.

39 b. Applicants for participation in the demonstration project
40 shall be nonprofit corporations created and operated for the primary
41 purpose of improving the quality and efficiency of care provided to
42 Medicaid recipients residing in a given designated area.

43

44 4. a. Medicaid shall accept applications for certification from
45 demonstration project applicants beginning 60 days following the
46 effective date of this act, and shall certify an applicant as a
47 Medicaid ACO for participation in the demonstration project

1 following its determination that the applicant meets the
2 requirements specified in this section.

3 b. Medicaid may certify as many Medicaid ACOs for
4 participation in the demonstration project as it determines
5 appropriate, but shall certify no more than one Medicaid ACO for
6 each designated area.

7 c. Prior to certification, a Medicaid ACO demonstration project
8 applicant shall demonstrate that it meets the following minimum
9 standards:

10 (1) The applicant has been formed as a nonprofit corporation
11 pursuant to the "New Jersey Nonprofit Corporation Act," P.L. 1983,
12 c.127 (C.15A:1-1 et seq.), for the purposes described in this act;

13 (2) The applicant's governing board includes:

14 (a) individuals representing the interests of: health care
15 providers, including, but not limited to, general hospitals, clinics,
16 private practice offices, physicians, behavioral health care
17 providers, and dentists; patients; and other social service agencies
18 or organizations located in the designated area; and

19 (b) voting representation from at least two consumer
20 organizations capable of advocating on behalf of patients residing
21 within the designated area of the ACO. At least one of the
22 organizations shall have extensive leadership involvement by
23 individuals residing within the designated area of the ACO, and
24 shall have a physical location within the designated area.
25 Additionally, at least one of the individuals representing a consumer
26 organization shall be an individual who resides within the
27 designated area served by the ACO;

28 (3) The applicant has support of its application by: all of the
29 general hospitals located in the designated area served by the ACO;
30 no fewer than 75% of the qualified primary care providers located
31 in the designated area; and at least two qualified behavioral health
32 care providers located in the designated area;

33 (4) The applicant has a mechanism for receipt of gainsharing
34 payments from Medicaid and any voluntarily participating Medicaid
35 managed care organizations, and the subsequent distribution of such
36 gainsharing payments in accordance with a quality improvement
37 and gainsharing plan to be approved by Medicaid;

38 (5) The applicant has a process for engaging members of the
39 community and for receiving public comments with respect to its
40 gainsharing plan; and

41 (6) The applicant has a commitment to become accountable for
42 the quality, cost, and access to care of Medicaid recipients residing
43 in the designated area for a period of at least three years following
44 certification.

45

46 5. a. A certified Medicaid ACO shall be eligible to receive and
47 distribute gainsharing payments only after having received approval
48 from Medicaid of its gainsharing plan, which approval may be

1 requested by the Medicaid ACO at the time of certification or at any
2 time within one year of certification. An ACO may seek to amend
3 its gainsharing plan at any time following the plan's initial approval
4 by submitting amendments to Medicaid for approval.

5 b. The Medicaid ACO shall develop its gainsharing plan in
6 accordance with standards set forth in regulations adopted by the
7 Commissioner of Human Services. Medicaid, with input from the
8 Department of Health and Senior Services and the Rutgers Center
9 for State Health Policy, shall approve only those gainsharing plans
10 that promote: improvements in quality of care, as measured by
11 objective benchmarks as well as patient experience of care;
12 expanded access to primary and behavioral health care services; and
13 the reduction of unnecessary and inefficient costs associated with
14 care rendered to Medicaid recipients residing in the ACO's
15 designated area. Criteria to be considered by Medicaid in
16 approving a gainsharing payment plan shall include, but are not
17 limited to:

18 (1) whether the plan promotes: care coordination through multi-
19 disciplinary teams, including care coordination of patients with
20 chronic diseases and the elderly; expansion of the medical home
21 and chronic care models; use of health information technology and
22 sharing of health information; and use of open access scheduling in
23 clinical and behavioral health care settings;

24 (2) whether the plan encourages services such as patient or
25 family health education and health promotion, home-based services,
26 telephonic communication, group care, and culturally and
27 linguistically appropriate care;

28 (3) whether the gainsharing payment system is structured to
29 reward quality and improved patient outcomes and experience of
30 care;

31 (4) whether the plan funds interdisciplinary collaboration
32 between behavioral health and primary care providers for patients
33 with complex care needs likely to inappropriately access an
34 emergency department and general hospital for preventable
35 conditions;

36 (5) whether the plan funds improved access to dental services
37 for high-risk patients likely to inappropriately access an emergency
38 department and general hospital for untreated dental conditions; and

39 (6) whether the plan has been developed with community input
40 and will be made available for inspection by members of the
41 community served by the ACO.

42 c. The gainsharing plan shall include a proposed time period
43 beginning and ending on specified dates, which shall be the
44 benchmark period against which cost savings can be measured on
45 an annual basis going forward. Savings shall be calculated in
46 accordance with a methodology established pursuant to regulations
47 adopted by the Commissioner of Human Services, with input from

1 the Commissioner of Health and Senior Services and the Rutgers
2 Center for State Health Policy, that:

3 (1) identifies expenditures by the Medicaid fee-for-service
4 program for all Medicaid recipients residing within the designated
5 area during the benchmark period, adjusted for historic trends for
6 health inflation, which shall serve as the benchmark payment
7 calculation;

8 (2) compares the benchmark payment calculation to amounts
9 paid by the Medicaid fee-for-service program for all such resident
10 recipients during subsequent periods; and

11 (3) provides that the benchmark payment calculation shall
12 remain fixed for a period of three years following approval of the
13 gainsharing plan.

14 d. The percentage of cost savings identified pursuant to
15 subsection c. of this section to be distributed to the Medicaid ACO,
16 retained by any voluntarily participating Medicaid managed care
17 organization, and retained by Medicaid, shall be identified in the
18 gainsharing plan and shall remain in effect for a period of three
19 years following approval of the gainsharing plan. Such percentages
20 shall be designed to ensure that:

21 (1) Medicaid can achieve meaningful savings and support the
22 ongoing operation of the demonstration project, and

23 (2) the Medicaid ACO receives a sufficient portion of the shared
24 savings necessary to achieve its mission and expand its scope of
25 activities.

26 e. Notwithstanding the provisions of this section to the
27 contrary, Medicaid shall not approve a gainsharing plan that
28 provides direct or indirect financial incentives for the reduction or
29 limitation of medically necessary and appropriate items or services
30 provided to patients under a health care provider's clinical care in
31 violation of federal law.

32

33 6. Medicaid shall remit payment of cost savings to a
34 participating Medicaid ACO following approval by Medicaid of the
35 ACO's gainsharing plan and identification of cost savings.

36

37 7. a. A managed care organization that has contracted with
38 Medicaid may voluntarily seek participation in the demonstration
39 project by notifying the Medicaid ACO of its desire to participate.
40 The ACO shall submit a separate Medicaid managed care
41 organization gainsharing plan meeting the requirements of section 5
42 of this act to Medicaid for review and approval. The managed care
43 organization gainsharing plan may be identical to the gainsharing
44 plan approved for use in connection with the Medicaid fee-for-
45 service program, or may contain variations with respect to the
46 manner in which quality, care coordination, and access are to be
47 improved and the manner in which cost savings are achieved and
48 distributed as gainsharing payments, but the managed care

1 organization gainsharing plan shall not affect the calculation or
2 distribution of shared savings pursuant to the approved gainsharing
3 plan applicable to the Medicaid fee-for-service program or the
4 calculation or distribution of shared savings pursuant to any other
5 approved gainsharing plan used by the ACO.

6 b. A Medicaid managed care organization may withdraw from
7 participation after one year by notifying Medicaid in writing of its
8 desire to withdraw.

9 c. Nothing in this act shall:

10 (1) alter or limit the obligations of a Medicaid managed care
11 organization participating in the demonstration project pursuant to
12 an approved gainsharing plan to comply with State and federal law
13 applicable to the Medicaid managed care organization; or

14 (2) preclude a certified Medicaid ACO from expanding its
15 operations to include participation with new health care providers
16 located within the ACO's designated area or outside the designated
17 area.

18

19 8. a. The Rutgers Center for State Health Policy shall assist
20 Medicaid with:

21 (1) the design and implementation of the application process for
22 approval of participating Medicaid ACOs in the demonstration
23 project;

24 (2) the collection of data from participants in the demonstration
25 project; and

26 (3) the establishment of a methodology for calculation of cost
27 savings and for monitoring of quality of care under the
28 demonstration project.

29 b. Medicaid and the Rutgers Center for State Health Policy
30 shall be authorized to jointly seek public and private grants to
31 implement and operate the demonstration project.

32

33 9. Medicaid shall, with assistance from the Rutgers Center for
34 State Health Policy, evaluate the demonstration project annually to
35 assess whether: cost savings are achieved through implementation
36 of the demonstration project; and there is improvement in the rates
37 of health screening, the outcomes and hospitalization rates for
38 persons with chronic illnesses, and the hospitalization and
39 readmission rates for patients residing in the designated areas
40 served by the ACOs.

41

42 10. a. The Commissioner of Human Services shall apply for
43 such State plan amendments or waivers as may be necessary to
44 implement the provisions of this act and to secure federal financial
45 participation for State Medicaid expenditures under the federal
46 Medicaid program.

1 b. The Commissioners of Health and Senior Services and
2 Human Services may apply for participation in federal ACO
3 demonstration projects that align with the goals of this act.
4

5 11. Nothing in this act shall be construed to limit the choice of a
6 Medicaid recipient to access care for family planning services or
7 any other type of health care services from a qualified health care
8 provider who is not participating in the demonstration project.
9

10 12. a. Under the demonstration project, payment shall continue
11 to be made to providers of services and suppliers participating in
12 the ACO under the original Medicaid reimbursement methodology
13 in the same manner as they would otherwise be made, except that
14 the Medicaid ACO is eligible to receive gainsharing payments
15 under sections 5 and 6 of this act if it meets the requirements set
16 forth therein.

17 b. Nothing in this act shall be construed to authorize the
18 Departments of Human Services or Health and Senior Services to
19 waive or limit any provisions of federal or State law or
20 reimbursement methodologies governing Medicaid reimbursement
21 to federally qualified health centers, including, but not limited to,
22 Medicaid prospective payment reimbursement and any
23 supplemental payments made to a federally qualified health center
24 providing services pursuant to a contract between the center and a
25 managed care organization.
26

27 13. Notwithstanding the requirements of P.L.1999, c.409
28 (C.17:48H-1 et seq.), a Medicaid ACO certified pursuant to this act
29 shall not be required to obtain licensure or certification from the
30 Department of Banking and Insurance as an organized delivery
31 system.
32

33 14. The Commissioner of Human Services shall report annually
34 to the Governor, and to the Legislature pursuant to section 2 of
35 P.L.1991, c.164 (C.52:14-19.1), on the demonstration project, and
36 include in the report the findings of the evaluation carried out
37 pursuant to section 9 of this act. The commissioner shall make such
38 recommendations as he deems appropriate.

39 If, after three years following enactment of this act, the
40 commissioner finds the demonstration project was successful in
41 reducing costs and improving the quality of care for Medicaid
42 recipients, the commissioner shall recommend that the
43 demonstration project be expanded to include additional
44 communities in which Medicaid recipients reside and become a
45 permanent program.
46

47 15. The Commissioner of Human Services, in accordance with
48 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.) and with input from the Commissioner of Health and Senior
2 Services, shall, within 180 days of the effective date of this act,
3 adopt rules and regulations establishing the standards for
4 gainsharing plans submitted by Medicaid ACOs. The
5 Commissioner of Human Services shall also adopt, with input from
6 the Commissioner of Health and Senior Services, such rules and
7 regulations governing the ongoing oversight and monitoring of the
8 quality of care delivered to Medicaid recipients in the designated
9 areas served by the Medicaid ACOs, and such other requirements as
10 the Commissioner of Human Services deems necessary to carry out
11 the provisions of this act.

12

13 16. This act shall take effect immediately and shall expire three
14 years after the adoption of regulations by the Commissioner of
15 Human Services.

16

17

18

STATEMENT

19

20 This bill establishes a three-year Medicaid Accountable Care
21 Organization (ACO) Demonstration Project (demonstration project)
22 in the Department of Human Services (DHS). Participants in the
23 demonstration project would be nonprofit corporations organized
24 and operated for the primary purpose of improving the quality and
25 efficiency of care provided to Medicaid recipients residing in a
26 "designated area," which is defined in the bill as a municipality or
27 defined geographic area in which no fewer than 5,000 Medicaid
28 recipients reside. Additionally, the bill permits voluntary
29 participation in the demonstration project by Medicaid managed
30 care organizations.

31 Medicaid would certify applicants for participation in the
32 demonstration project, and begin accepting applications for
33 certification 60 days following the effective date of the bill.

34 A certified Medicaid ACO would be eligible to receive and
35 distribute gainsharing or cost savings payments in accordance with
36 a gainsharing plan. The plan would be developed in accordance
37 with standards set forth in regulations adopted by the Commissioner
38 of Human Services, and would be approved by Medicaid, with input
39 from the Department of Health and Senior Services (DHSS) and the
40 Rutgers Center for State Health Policy. Only those gainsharing
41 plans that promote: improvements in quality of care, as measured
42 by objective benchmarks as well as patient experience of care;
43 expanded access to primary and behavioral health care services; and
44 the reduction of unnecessary and inefficient costs associated with
45 care rendered to Medicaid recipients residing in the ACO's
46 designated area, would be approved. (An ACO may request
47 approval at the time of certification or at any time within one year

1 of certification, and may seek to amend its gainsharing plan by
2 submitting amendments to Medicaid for approval.)

3 Under the provisions of the bill:

- 4 • The demonstration project would allow nonprofit corporations
5 organized with the voluntary support and participation of local
6 general hospitals, clinics, health centers, qualified primary care
7 and behavioral health care providers, and public health and
8 social services agencies to apply for certification and
9 participation in the project. Medicaid would consult with DHSS
10 with respect to establishment and oversight of the demonstration
11 project;
- 12 • Medicaid may certify as many Medicaid ACOs for participation
13 in the demonstration project as it determines appropriate, but
14 shall certify no more than one Medicaid ACO for each
15 designated area;
- 16 • Prior to certification, an applicant must demonstrate that it
17 meets the following minimum standards:
 - 18 --The applicant has been formed as a nonprofit corporation
19 pursuant to the "New Jersey Nonprofit Corporation Act", P.L.
20 1983, c.127 (C.15A:1-1 et seq.), for the purposes described in the
21 bill;
 - 22 --The applicant's governing board includes: (1) individuals
23 representing the interests of: health care providers; patients; and
24 other social service agencies or organizations located in the
25 designated area; and (2) voting representation from at least two
26 consumer organizations capable of advocating on behalf of
27 patients residing within the designated area of the ACO;
 - 28 --The applicant has support of its application by: all of the
29 general hospitals located in the designated area served by the
30 ACO; no fewer than 75% of the qualified primary care providers;
31 and at least two qualified behavioral health care providers;
 - 32 --The applicant has a mechanism for receipt of gainsharing
33 payments from Medicaid and any voluntarily participating
34 Medicaid managed care organizations, and the subsequent
35 distribution of such gainsharing payments in accordance with a
36 quality improvement and gainsharing plan approved by
37 Medicaid, as discussed above;
 - 38 --The applicant has a process for engaging members of the
39 community and receiving public comments with respect to its
40 gainsharing plan; and
 - 41 --The applicant has a commitment to become accountable for the
42 quality, cost, and access to care of Medicaid recipients residing
43 in the designated area for a period of at least three years
44 following certification;
- 45 • Specific criteria to be considered by Medicaid in approving the
46 gainsharing plan of a Medicaid ACO would include whether:
 - 47 -- the plan promotes: care coordination; expansion of the medical
48 home and chronic care models; use of health information

- 1 technology and sharing of health information; and use of open
2 access scheduling in clinical and behavioral health care settings;
3 -- the plan encourages services such as patient or family health
4 education and health promotion, home-based services, telephonic
5 communication, group care, and culturally and linguistically
6 appropriate care;
7 -- the gainsharing payment system is structured to reward quality
8 and improved patient outcomes and experience of care;
9 --the plan funds interdisciplinary collaboration between
10 behavioral health and primary care providers for patients with
11 complex care needs likely to inappropriately access an
12 emergency department and general hospital for preventable
13 conditions;
14 -- the plan funds improved access to dental services for high-risk
15 patients likely to inappropriately access an emergency
16 department and general hospital for untreated dental conditions;
17 and
18 --the plan has been developed with community input and will be
19 made available for inspection by members of the community
20 served by the ACO;
- 21 • The gainsharing plan would include a proposed time period with
22 specified dates, which would be the benchmark period against
23 which cost savings can be measured on an annual basis going
24 forward. The savings, which would be calculated in accordance
25 with a methodology established by regulations adopted by the
26 Commissioner of Human Services with input from the
27 Commissioner of Health and Senior Services and the Rutgers
28 Center for State Health Policy, would: (1) identify expenditures
29 by the Medicaid fee-for-service program for all Medicaid
30 recipients residing within the designated area during the
31 benchmark period, adjusted for historic trends for health
32 inflation, which shall serve as the benchmark payment
33 calculation; (2) compare the benchmark payment calculation to
34 amounts paid by the Medicaid fee-for-service program for all
35 such resident recipients during subsequent periods; and (3)
36 provide that the benchmark payment calculation would remain
37 fixed for a period of three years following approval of the
38 gainsharing plan;
 - 39 • The percentage of cost savings identified that would be
40 distributed to the Medicaid ACO, retained by any voluntarily
41 participating Medicaid managed care organization, and retained
42 by Medicaid, would be identified in the gainsharing plan and
43 remain in effect for a period of three years following approval
44 of the plan. The percentages would be designed to ensure that:
45 (1) Medicaid can achieve meaningful savings and support the
46 ongoing operation of the demonstration project, and (2) the
47 ACO receives a sufficient portion of the shared savings

- 1 necessary to achieve its mission and expand its scope of
2 activities;
- 3 • Medicaid shall not approve a gainsharing plan that provides
4 direct or indirect financial incentives for the reduction or
5 limitation of medically necessary and appropriate items or
6 services provided to patients under a health care provider's
7 clinical care in violation of federal law;
 - 8 • Medicaid would remit payment of cost savings to a participating
9 Medicaid ACO following approval by Medicaid of the ACO's
10 gainsharing plan and identification of cost savings;
 - 11 • A managed care organization that has contracted with Medicaid
12 may voluntarily seek participation in the demonstration project
13 by notifying the Medicaid ACO of its desire to participate. The
14 ACO would submit a separate Medicaid managed care
15 organization gainsharing plan for review and approval. The
16 managed care organization gainsharing plan may be identical to
17 the gainsharing plan approved for use in connection with the
18 Medicaid fee-for-service program, or may contain variations,
19 but the managed care organization gainsharing plan shall not
20 affect the calculation or distribution of shared savings pursuant
21 to the approved gainsharing plan applicable to the Medicaid fee-
22 for-service program or the calculation or distribution of shared
23 savings pursuant to any other approved gainsharing plan used by
24 the ACO;
 - 25 • A Medicaid managed care organization may withdraw from
26 participation after one year by notifying Medicaid in writing of
27 its desire to withdraw;
 - 28 • Nothing in the bill would: (1) alter or limit the obligations of a
29 Medicaid managed care organization participating in the
30 demonstration project pursuant to an approved gainsharing plan
31 to comply with State and federal law applicable to the Medicaid
32 managed care organization; or (2) preclude a certified Medicaid
33 ACO from expanding its operations to include participation with
34 new providers located within the ACO's designated area or
35 outside the designated area;
 - 36 • The Rutgers Center for State Health Policy would assist
37 Medicaid with:
 - 38 --the design and implementation of the application process for
39 approval of participating Medicaid ACOs in the demonstration
40 project;
 - 41 --the collection of data from participants in the demonstration
42 project; and
 - 43 --the establishment of a methodology for calculation of cost
44 savings and for monitoring of quality of care under the
45 demonstration project;
 - 46 • Medicaid and the Rutgers Center for State Health Policy would
47 be authorized to jointly seek public and private grants to
48 implement and operate the demonstration project;

- 1 • Medicaid would, with assistance from the Rutgers Center for
2 State Health Policy, evaluate the demonstration project annually
3 to assess whether: cost savings are achieved through
4 implementation of the demonstration project; and there is
5 improvement in the rates of health screening, the outcomes and
6 hospitalization rates for persons with chronic illnesses, and the
7 hospitalization and readmission rates for patients residing in the
8 designated areas served by the ACOs;
- 9 • The Commissioner of Human Services must apply for State plan
10 amendments or waivers necessary to implement the provisions
11 of the bill and to secure federal financial participation for State
12 Medicaid expenditures;
- 13 • The Commissioners of Health and Senior Services and Human
14 Services may apply for participation in federal ACO
15 demonstration projects that align with the goals of the bill;
- 16 • Nothing in the bill would be construed to limit the choice of a
17 Medicaid recipient to access care for family planning services or
18 any other type of health care services from a qualified health
19 care provider who is not participating in the demonstration
20 project;
- 21 • Under the demonstration project, payment shall continue to be
22 made to providers of services and suppliers participating in the
23 ACO under the original Medicaid reimbursement methodology
24 in the same manner as they would otherwise be made, except the
25 Medicaid ACO is eligible to receive gainsharing payments;
- 26 • Nothing in the bill would be construed to authorize DHS or
27 DHSS to waive or limit any provisions of federal or State law or
28 reimbursement methodologies governing Medicaid
29 reimbursement to federally qualified health centers; and
- 30 • A certified Medicaid ACO would not be required to obtain
31 licensure or certification from the Department of Banking and
32 Insurance as an organized delivery system.

33 The bill requires the Commissioner of Human Services to report
34 annually to the Governor and the Legislature on the demonstration
35 project and include in the report the findings of the evaluation of
36 the demonstration project (conducted with the Rutgers Center for
37 State Health Policy), and such recommendations as the
38 commissioner deems appropriate. If, after three years following
39 enactment of the bill, the commissioner finds the demonstration
40 project was successful in reducing costs and improving the quality
41 of care for Medicaid recipients, the commissioner shall recommend
42 that the demonstration project be expanded to include additional
43 communities in which Medicaid recipients reside and become a
44 permanent program.

45 The bill also requires the Commissioner of Human Services to
46 adopt, within 180 days of the effective date of the bill, rules and
47 regulations establishing the standards for gainsharing plans. The
48 Commissioner of Human Services would also adopt, with input

1 from the Commissioner of Health and Senior Services, rules and
2 regulations governing the ongoing oversight and monitoring of the
3 quality of care delivered to Medicaid recipients in the designated
4 areas served by the ACOs, and such other requirements as the
5 Commissioner of Human Services deems necessary to carry out the
6 provisions of the bill.

7 Lastly, the bill takes effect immediately and expires three years
8 after the adoption of regulations by the Commissioner of Human
9 Services.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3636
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: FEBRUARY 18, 2011

SUMMARY

Synopsis: Establishes Medicaid Accountable Care Organization Demonstration project in DHS.

Type of Impact: Possible reduction in Medicaid costs over the long term that cannot be determined.

Agencies Affected: Departments of Human Services (DHS) and Health and Senior Services (DHSS).

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1 - 3</u>
State Costs/Savings	Unable to determine.

- Federal approval of the demonstration project is necessary before the project can be implemented. As there currently are no federal Medicaid regulations concerning an Accountable Care Organization (ACO), what documentation the federal government will require as part of the State's State Plan Amendment is not known. Similarly it is not known whether the federal government will agree to the State's gainsharing proposal, particularly if Medicare monies are also involved. Thus, it is likely that the demonstration project will not be implemented in the timeframe specified in the legislation.
- Though the provisions of the bill suggest that the demonstration project will reduce overall Medicaid expenditures, there is insufficient information available to assess whether any savings will be realized. It will take at least two years before sufficient financial and utilization data are available to determine the cost savings/expenditure impact of this project.

BILL DESCRIPTION

Assembly Bill No. 3636 of 2010 establishes a three-year Medicaid ACO demonstration project in the DHS. Participants in the demonstration project would be nonprofit corporations organized and operated for the primary purpose of improving health outcomes and the quality and efficiency of care provided to Medicaid fee-for-service recipients residing in a "designated area," which is defined in the bill as a municipality or defined geographic area in which no fewer

than 5,000 Medicaid recipients reside. The bill also permits voluntary participation in the demonstration project by Medicaid managed care organizations for the membership served by the managed care organization.

The DHS, in consultation with the DHSS, would certify applicants for participation in the demonstration project and would begin accepting applications for certification 60 days following the effective date of the bill.

A certified Medicaid ACO would be eligible to receive and distribute gainsharing or cost savings payments to participating health care providers in accordance with a gainsharing plan. Only gainsharing plans that: improve health outcomes and quality of care; expand access to primary and behavioral health care services; and reduce unnecessary and inefficient costs associated with care rendered to Medicaid recipients residing in the ACO's designated area, would be approved.

The legislation includes numerous administrative and financial requirements that the Medicaid ACOs would have to meet with respect to patient care and any gainsharing that is realized. The legislation contains safeguards to assure that patient care is not compromised in order to achieve gainsharing.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None provided.

OFFICE OF LEGISLATIVE SERVICES

The purpose of the Medicaid Accountable Care Organization Demonstration project is to improve health care outcomes while reducing overall Medicaid expenditures, and to distribute any savings ("gainsharing") between the State and the ACOs established by the demonstration project.

The Office of Legislative Services (OLS) is unable to assess the fiscal impact of the legislation and determine whether any savings will be achieved, as there are too many unknown variables. One or more years of financial and statistical data based on the operation of the demonstration project will be needed before the OLS or another entity can determine whether the demonstration project achieved savings while improving health care outcomes.

At present, there are no known federal Medicaid regulations that address ACOs. Thus, the contents of the State Plan Amendment the State will have to submit to the federal government in support of the demonstration project is not known. In the absence of applicable federal Medicaid regulations, it is not known when federal approval for the Medicaid ACO demonstration project will be obtained, so the timeframes specified in the legislation to implement the demonstration project may be difficult to meet.

There are also numerous other unknowns that make it difficult to determine the fiscal impact of the legislation:

- Though the demonstration project is potentially open to all Medicaid recipients within a designated area, the focus of the demonstration project is on those Medicaid recipients who are not enrolled in a managed care program and whose health care costs are reimbursed on a "fee-for-service" basis. The two largest groups of Medicaid recipients who are reimbursed on a "fee-for-service" basis are: (1) the elderly, blind, and disabled population (approximately 105,000 recipients); and (2) children in out-of-home placement under the supervision of the Department of Children and Families

(approximately 5,300 recipients). As many of the elderly, blind and disabled are also Medicare-eligible, the federal Medicare program would have to agree to participate in the demonstration project and share any savings with the ACOs. Further complicating the enrollment of the elderly, blind, and disabled into the demonstration project is that 25,000 – 30,000 such persons are in nursing homes and an additional 20,000 persons are on DHS or DHSS waiver programs as an alternative to institutional placement. Further, data are not readily available as to how many “fee-for-service” persons will reside in an ACO’s designated area. Similarly, it is not known how many Medicaid recipients currently enrolled in a managed care program will participate in the demonstration project.

- The legislation allows Medicaid managed care organizations to voluntarily participate in the demonstration project. It is unclear how “gainsharing” will apply to managed care organizations as, at present, a managed care organization may retain any Medicaid capitation revenues it receives that are in excess of its documented medical and administrative expenditures.

Section: Human Services

*Analyst: Jay Hershberg
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3636

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 7, 2011

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 3636.

As amended by the committee, this bill establishes a three-year Medicaid Accountable Care Organization (ACO) Demonstration Project (demonstration project) in the Department of Human Services (DHS).

The bill provides specifically as follows:

- Participants in the demonstration project are to be nonprofit corporations organized and operated for the primary purpose of improving health outcomes and the quality and efficiency of care provided to Medicaid fee-for-service recipients residing in a “designated area” (defined as a municipality or defined geographic area in which no fewer than 5,000 Medicaid recipients reside). The bill also permits voluntary participation in the demonstration project by Medicaid managed care organizations for the membership they serve.
- DHS, in consultation with the Department of Health and Senior Services (DHSS), is to certify applicants for participation in the demonstration project, and begin accepting applications for certification 60 days following the effective date of the bill.
- A certified Medicaid ACO is eligible to receive and distribute gainsharing or cost savings payments in accordance with a gainsharing plan approved by DHS. DHS, with input from DHSS and the Rutgers Center for State Health Policy (CSHP), is to approve only those gainsharing plans that promote: improvements in health outcomes and quality of care, as measured by objective benchmarks as well as patient experience of care; expanded access to primary and behavioral health care services; and the reduction of unnecessary and inefficient costs associated with care rendered to Medicaid recipients residing in the designated area of the ACO. (An ACO may request approval of its gainsharing plan at the time of certification or at any time within one year of certification, and may seek to amend its gainsharing plan by submitting amendments to DHS for approval.)

- The demonstration project is to allow nonprofit corporations, organized with the voluntary support and participation of local general hospitals, clinics, health centers, qualified primary care and behavioral health care providers, and public health and social services agencies, to apply for certification and participation in the project. DHS is to consult with DHSS with respect to establishment and oversight of the demonstration project.
- DHS, in consultation with DHSS, may certify as many Medicaid ACOs for participation in the demonstration project as it determines appropriate, but is to certify no more than one Medicaid ACO for each designated area.
- Prior to certification, an applicant is required to demonstrate that it meets the following minimum standards:
 - The applicant has been formed as a nonprofit corporation pursuant to the "New Jersey Nonprofit Corporation Act", P.L.1983, c.127 (C.15A:1-1 et seq.), for the purposes described in the bill;
 - Its governing board includes: (1) individuals representing the interests of: health care providers, patients, and other social service agencies or organizations located in the designated area; and (2) voting representation from at least two consumer organizations capable of advocating on behalf of patients residing within the designated area of the ACO;
 - The applicant's application is supported by all of the general hospitals, at least 75% of the qualified primary care providers, and at least four qualified behavioral health care providers, located in the designated area served by the ACO;
 - The applicant has a process for receipt of gainsharing payments from DHS and any voluntarily participating Medicaid managed care organizations; and the subsequent distribution of these gainsharing payments is to be in accordance with a quality improvement and gainsharing plan approved by DHS, in consultation with DHSS, as described above;
 - The applicant has a process for engaging members of the community and receiving public comments with respect to its gainsharing plan;
 - The applicant has a commitment to become accountable for the health outcomes, quality, cost, and access to care of Medicaid recipients residing in the designated area for a period of at least three years following certification; and
 - The applicant has a commitment to ensure the use of electronic prescribing and electronic medical records by health care providers located in the designated area.
- The specific criteria to be considered by DHS in approving the gainsharing plan of a Medicaid ACO include whether:
 - the plan promotes: care coordination; expansion of the medical home and chronic care models; use of health information

technology and sharing of health information; and use of open access scheduling in clinical and behavioral health care settings;

-- the plan encourages services such as patient or family health education and health promotion, home-based services, telephonic communication, group care, and culturally and linguistically appropriate care;

-- the gainsharing payment system is structured to reward quality and improved patient outcomes and experience of care;

-- the plan funds interdisciplinary collaboration between behavioral health and primary care providers for patients with complex care needs likely to inappropriately access an emergency department and general hospital for preventable conditions;

-- the plan funds improved access to dental services for high-risk patients likely to inappropriately access an emergency department and general hospital for untreated dental conditions; and

-- the plan has been developed with community input and will be made available for inspection by members of the community served by the ACO.

- The gainsharing plan is to include an appropriate proposed time period that ends before the demonstration project begins, which is to serve as the benchmark period against which cost savings can be measured on an annual basis going forward. The savings are to be calculated in accordance with a methodology that: (1) identifies expenditures, per recipient, by the Medicaid fee-for-service program during the benchmark period, which are to serve as the benchmark payment calculation; (2) compares the benchmark payment calculation to amounts paid by the Medicaid fee-for-service program for all such resident recipients during subsequent periods; and (3) provides that the benchmark payment calculation is to remain fixed for a period of three years following approval of the gainsharing plan.
- The percentage of identified cost savings to be distributed to the Medicaid ACO, retained by any voluntarily participating Medicaid managed care organization, and retained by the State, is to be identified in the gainsharing plan and remain in effect for a period of three years following approval of the plan. The percentages are to be designed to ensure that: (1) Medicaid can achieve meaningful savings and support the ongoing operation of the demonstration project; and (2) the ACO receives a sufficient portion of the shared savings necessary to achieve its mission and expand its scope of activities.
- DHS is prohibited from approving a gainsharing plan that provides direct or indirect financial incentives for the reduction or limitation of medically necessary and appropriate items or services provided to patients under a health care provider's clinical care in violation of federal law.

- Notwithstanding the provisions of the bill to the contrary, a gainsharing plan that provides for shared savings between general hospitals and physicians related to acute care admissions, utilizing the methodological component of the Physician Hospital Collaboration Demonstration awarded by the federal Centers for Medicare and Medicaid Services to the New Jersey Care Consortium, does not require DHS approval;
- DHS is to consider using a portion of any savings generated to expand the nursing, primary care, behavioral health care, and dental workforces in the area served by the ACO;
- DHS is to remit payment of cost savings to a participating Medicaid ACO following its approval of the ACO's gainsharing plan and identification of cost savings.
- A managed care organization that has contracted with DHS may voluntarily seek participation in the demonstration project by notifying the Medicaid ACO of its desire to participate. The ACO is to submit a separate Medicaid managed care organization gainsharing plan for review and approval. The managed care organization gainsharing plan may be identical to the gainsharing plan approved for use in connection with the Medicaid fee-for-service program, or may differ, but the managed care organization gainsharing plan is not to affect the calculation or distribution of shared savings pursuant to the approved gainsharing plan applicable to the Medicaid fee-for-service program or the calculation or distribution of shared savings pursuant to any other approved gainsharing plan used by the ACO.
- A Medicaid managed care organization may withdraw from participation in the demonstration project after one year by notifying DHS in writing of its desire to withdraw.
- Nothing in the bill is to: (1) alter or limit the obligations of a Medicaid managed care organization participating in the demonstration project pursuant to an approved gainsharing plan to comply with State and federal law applicable to the organization; or (2) preclude a certified Medicaid ACO from expanding its operations to include participation with new providers located within the designated area of the ACO.
- As a condition of receiving approval from DHS to participate in the demonstration project, a managed care organization that has contracted with DHS is to:
 - permit a Medicaid recipient to receive covered services from a specialist health care provider in its provider network without obtaining a written or electronic referral from the recipient's primary care provider, provided that the recipient's primary care provider of record: provides the recipient with a New Jersey Prescription Blank or other official form of communication that includes a diagnosis or reason for the referral, which the patient is to present to the specialist network provider, and which will be operative for a period of one year

from the date of issuance by the primary care provider; or transmits such a communication to the specialist network provider by computer, telephone facsimile machine, or other means; and

-- only require prior authorization in order for a recipient to access those health care services for which the managed care organization does not routinely approve coverage, as documented by an audited report of such prior authorization determinations for the previous plan year submitted to the Department of Banking and Insurance and DHS, or as otherwise demonstrated to the satisfaction of the Commissioner of DHS.

- DHS, in consultation with DHSS, is to:
 - design and implement the application process for approval of participating ACOs in the demonstration project;
 - collect data from participants in the demonstration project;
 and
 - approve a methodology proposed by the Medicaid ACO applicant for calculation of cost savings and for monitoring of health outcomes and quality of care under the demonstration project.
- DHS and DHSS are authorized to jointly seek public and private grants to implement and operate the demonstration project.
- DHS, in consultation with DHSS, is to evaluate the demonstration project annually to assess whether cost savings, including, but not limited to, savings in administrative costs and savings from improved health outcomes, are achieved through implementation of the demonstration project. DHS, in consultation with DHSS and with the assistance of CSHP, is to evaluate the demonstration project to assess whether there is improvement in: the rates of health screening; the outcomes and hospitalization rates for persons with chronic illnesses; and the hospitalization and readmission rates for patients residing in the designated areas served by the ACOs.
- The Commissioner of DHS is to: apply for State plan amendments or waivers necessary to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures; and take such additional steps as may be necessary to secure on behalf of participating ACOs such waivers, exemptions, or advisory opinions to ensure that the ACOs are in compliance with applicable provisions of State and federal laws related to fraud and abuse, including, but not limited to, anti-kickback, self-referral, false claims, and civil monetary penalties.
- The Commissioners of DHSS and DHS may apply for participation in federal ACO demonstration projects that align with the goals of the bill.
- Nothing in the bill is to be construed to limit the choice of a Medicaid recipient to access care for family planning services or

any other type of health care services from a qualified health care provider who is not participating in the demonstration project.

- Under the demonstration project, payment will continue to be made to providers of services and suppliers participating in the Medicaid ACO under the original Medicaid reimbursement methodology in the same manner as they would otherwise be made, except that the ACO is eligible to receive gainsharing payments. DHS, in consultation with DHSS, is to promulgate by regulation a methodology whereby a disproportionate share hospital participating in a Medicaid ACO receives a credit from available federal funds for its disproportionate share payments in an amount equal to the reduction in disproportionate share payments to the hospital resulting from its participation in the ACO, calculated on the basis of the reduction in inpatient hospitalizations during any year in which the hospital participates in the ACO, compared with the benchmark period.
- Nothing in the bill is to be construed to authorize DHS or DHSS to waive or limit any provisions of federal or State law or reimbursement methodologies governing Medicaid reimbursement to federally qualified health centers providing services to Medicaid managed care recipients.
- A certified Medicaid ACO is not required to obtain licensure or certification from the Department of Banking and Insurance as an organized delivery system when providing services to Medicaid recipients.
- The Commissioners of DHS and DHSS are to report to the Governor and the Legislature on the demonstration project, upon its completion, and to include such recommendations as the commissioners deems appropriate. If, after three years following enactment of the bill, the commissioners find that the demonstration project was successful in reducing costs and improving the quality of care for Medicaid recipients, they are to recommend that the demonstration project be expanded to include additional communities in which Medicaid recipients reside and become a permanent program.
- The Commissioner of DHS is to adopt:
 - within 180 days of the effective date of the bill, rules and regulations establishing the standards for gainsharing plans; and
 - with input from the Commissioner of DHSS, rules and regulations governing the ongoing oversight and monitoring of the quality of care delivered to Medicaid recipients in the designated areas served by the ACOs, and such other requirements as the Commissioner of DHS deems necessary to carry out the provisions of the bill.
- The bill takes effect 60 days after the date of enactment and expires three years after the adoption of regulations by the Commissioner of DHS.

As reported by the committee, this bill is similar to Senate Bill No. 2443 (2R) (Vitale/Whelan), which is pending before the Senate.

COMMITTEE AMENDMENTS

The committee amendments to the bill:

- add references to improving health outcomes, and incorporate references related to medication therapy as a component of the demonstration project;

- make various technical changes throughout the bill, including replacing references to Medicaid with references to DHS;

- provide for DHSS involvement in the demonstration project;

- clarify that DHS may deny certification of any applicant for certification as an ACO that DHS determines does not meet the requirements of the bill, and that DHS may consider for approval revised applications submitted by an ACO not previously approved to participate in the demonstration project;

- require an applicant for certification as a Medicaid ACO to have support of its application by four (rather than two) qualified behavioral health care providers located in the designated area to be served by the ACO;

- require an applicant for certification as a Medicaid ACO to have a commitment to ensure the use of electronic prescribing and electronic medical records by health care providers located in the designated area to be served by the ACO;

- stipulate that nothing in the bill is to be construed to prevent DHS from certifying an applicant as a Medicaid ACO that also participates in a Medicare ACO demonstration project approved by the federal Centers for Medicare and Medicaid Services;

- include, among the criteria to be considered by DHS and DHSS in approving a gainsharing plan, whether the plan promotes increased patient medication adherence and use of medication therapy management services;

- require that cost savings from implementing the demonstration project be calculated in accordance with a methodology that identifies expenditures per recipient by the Medicaid fee-for-service program during the benchmark period (adjusted for characteristics of recipients and local conditions that predict future Medicaid spending but are not amenable to the care coordination or management activities of an ACO which will serve as the benchmark payment calculation);

- exempt from DHS approval a gainsharing plan that provides for shared savings between general hospitals and physicians related to acute care admissions utilizing the methodological component of the Physician Hospital Collaboration Demonstration awarded by the federal Centers for Medicare and Medicaid Services to the New Jersey Care Consortium;

-- require DHS to consider using a portion of any savings generated to expand the nursing, primary care, behavioral health care, and dental workforces in the area served by the ACO;

-- require that, as a condition of receiving approval from DHS to participate in the demonstration project, a managed care organization that has contracted with DHS permit a Medicaid recipient to receive covered services from a specialist health care provider in its provider network without obtaining a written or electronic referral from the recipient's primary care provider, and only require prior authorization in order for a recipient to access those health care services for which the managed care organization does not routinely approve coverage;

-- confer on DHS, in consultation with DHSS, primary responsibility for the design and implementation of the application process for approval of participating ACOs in the demonstration project, and delete references to CSHP in regard to that process, and;

-- provide for CSHP assistance to DHS and DHSS in their annual evaluation of the demonstration project, and require that the assessment of whether cost savings are achieved through implementation of the demonstration project include administrative cost savings and savings due to improved health outcomes;

-- require the Commissioner of DHS to take additional steps to secure waivers, exemptions, or advisory opinions on behalf of participating ACOs, to ensure that they are in compliance with applicable provisions of State and federal laws related to fraud and abuse;

-- stipulate that the provisions of the bill are not to be construed to require State funding for any evaluation or start-up costs of an ACO;

-- include a definition of "disproportionate share hospital" in section 2 (the definitions section); require DHS, in consultation with DHSS and by regulation, to promulgate a methodology whereby a disproportionate share hospital participating in a Medicaid ACO receives a credit from available federal funds for its disproportionate share payments; and provide a framework for developing that calculation;

-- clarify that a Medicaid ACO certified pursuant to the bill is not required to obtain licensure or certification from the Department of Banking and Insurance as an organized delivery system when providing services to Medicaid recipients;

-- require the Commissioners of DHS and DHSS to report to the Governor and Legislature upon completion of the demonstration project (rather than annually); and

-- revise the effective date from immediately to 60 days after the date of enactment.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3636

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Assembly Budget Committee reports favorably Assembly Bill No. 3636 (1R), with committee amendments.

This bill establishes a three-year Medicaid Accountable Care Organization (ACO) Demonstration Project (demonstration project) in the Department of Human Services (DHS).

The bill provides specifically as follows:

- Participants in the demonstration project are to be nonprofit corporations organized and operated for the primary purpose of improving health outcomes and the quality and efficiency of care provided to Medicaid fee-for-service recipients residing in a “designated area” (defined as a municipality or defined geographic area in which no fewer than 5,000 Medicaid recipients reside). The bill also permits voluntary participation in the demonstration project by Medicaid managed care organizations for the membership they serve.
- DHS, in consultation with the Department of Health and Senior Services (DHSS), is to certify applicants for participation in the demonstration project, and begin accepting applications for certification 60 days following the effective date of the bill.
- A certified Medicaid ACO is eligible to receive and distribute gainsharing or cost savings payments in accordance with a gainsharing plan approved by DHS. DHS, with input from DHSS and the Rutgers Center for State Health Policy (CSHP), is to approve only those gainsharing plans that promote: improvements in health outcomes and quality of care, as measured by objective benchmarks as well as patient experience of care; expanded access to primary and behavioral health care services; and the reduction of unnecessary and inefficient costs associated with care rendered to Medicaid recipients residing in the designated area of the ACO. (An ACO may request approval of its gainsharing plan at the time of certification or at any time within one year of certification, and may seek to amend its gainsharing plan by submitting amendments to DHS for approval.)

- The demonstration project is to allow nonprofit corporations, organized with the voluntary support and participation of local general hospitals, clinics, health centers, qualified primary care and behavioral health care providers, and public health and social services agencies, to apply for certification and participation in the project. DHS is to consult with DHSS with respect to establishment and oversight of the demonstration project.
- DHS, in consultation with DHSS, may certify as many Medicaid ACOs for participation in the demonstration project as it determines appropriate, but is to certify no more than one Medicaid ACO for each designated area.
- Prior to certification, an applicant is required to demonstrate that it meets the following minimum standards:
 - The applicant has been formed as a nonprofit corporation pursuant to the "New Jersey Nonprofit Corporation Act", P.L.1983, c.127 (C.15A:1-1 et seq.), for the purposes described in the bill;
 - Its governing board includes: (1) individuals representing the interests of: health care providers, patients, and other social service agencies or organizations located in the designated area; and (2) voting representation from at least two consumer organizations capable of advocating on behalf of patients residing within the designated area of the ACO;
 - The applicant's application is supported by all of the general hospitals, at least 75% of the qualified primary care providers, and at least four qualified behavioral health care providers, located in the designated area served by the ACO;
 - The applicant has a process for receipt of gainsharing payments from DHS and any voluntarily participating Medicaid managed care organizations; and the subsequent distribution of these gainsharing payments is to be in accordance with a quality improvement and gainsharing plan approved by DHS, in consultation with DHSS, as described above;
 - The applicant has a process for engaging members of the community and receiving public comments with respect to its gainsharing plan;
 - The applicant has a commitment to become accountable for the health outcomes, quality, cost, and access to care of Medicaid recipients residing in the designated area for a period of at least three years following certification; and
 - The applicant has a commitment to ensure the use of electronic prescribing and electronic medical records by health care providers located in the designated area.
- The specific criteria to be considered by DHS in approving the gainsharing plan of a Medicaid ACO include whether:
 - the plan promotes: care coordination; expansion of the medical home and chronic care models; use of health information

technology and sharing of health information; and use of open access scheduling in clinical and behavioral health care settings;

-- the plan encourages services such as patient or family health education and health promotion, home-based services, telephonic communication, group care, and culturally and linguistically appropriate care;

-- the gainsharing payment system is structured to reward quality and improved patient outcomes and experience of care;

-- the plan funds interdisciplinary collaboration between behavioral health and primary care providers for patients with complex care needs likely to inappropriately access an emergency department and general hospital for preventable conditions;

-- the plan funds improved access to dental services for high-risk patients likely to inappropriately access an emergency department and general hospital for untreated dental conditions; and

-- the plan has been developed with community input and will be made available for inspection by members of the community served by the ACO.

- The gainsharing plan is to include an appropriate proposed time period that ends before the demonstration project begins, which is to serve as the benchmark period against which cost savings can be measured on an annual basis going forward. The savings are to be calculated in accordance with a methodology that: (1) identifies expenditures, per recipient, by the Medicaid fee-for-service program during the benchmark period, which are to serve as the benchmark payment calculation; (2) compares the benchmark payment calculation to amounts paid by the Medicaid fee-for-service program for all such resident recipients during subsequent periods; and (3) provides that the benchmark payment calculation is to remain fixed for a period of three years following approval of the gainsharing plan.
- The percentage of identified cost savings to be distributed to the Medicaid ACO, retained by any voluntarily participating Medicaid managed care organization, and retained by the State, is to be identified in the gainsharing plan and remain in effect for a period of three years following approval of the plan. The percentages are to be designed to ensure that: (1) Medicaid can achieve meaningful savings and support the ongoing operation of the demonstration project; and (2) the ACO receives a sufficient portion of the shared savings necessary to achieve its mission and expand its scope of activities.
- DHS is prohibited from approving a gainsharing plan that provides direct or indirect financial incentives for the reduction or limitation of medically necessary and appropriate items or services provided to patients under a health care provider's clinical care in violation of federal law.

- Notwithstanding the provisions of the bill to the contrary, a gainsharing plan that provides for shared savings between general hospitals and physicians related to acute care admissions, utilizing the methodological component of the Physician Hospital Collaboration Demonstration awarded by the federal Centers for Medicare and Medicaid Services to the New Jersey Care Consortium, does not require DHS approval;
- DHS is to consider using a portion of any savings generated to expand the nursing, primary care, behavioral health care, and dental workforces in the area served by the ACO;
- DHS is to remit payment of cost savings to a participating Medicaid ACO following its approval of the ACO's gainsharing plan and identification of cost savings.
- A managed care organization that has contracted with DHS may voluntarily seek participation in the demonstration project by notifying the Medicaid ACO of its desire to participate. The ACO is to submit a separate Medicaid managed care organization gainsharing plan for review and approval. The managed care organization gainsharing plan may be identical to the gainsharing plan approved for use in connection with the Medicaid fee-for-service program, or may differ, but the managed care organization gainsharing plan is not to affect the calculation or distribution of shared savings pursuant to the approved gainsharing plan applicable to the Medicaid fee-for-service program or the calculation or distribution of shared savings pursuant to any other approved gainsharing plan used by the ACO.
- A Medicaid managed care organization may withdraw from participation in the demonstration project after one year by notifying DHS in writing of its desire to withdraw.
- Nothing in the bill is to: (1) alter or limit the obligations of a Medicaid managed care organization participating in the demonstration project pursuant to an approved gainsharing plan to comply with State and federal law applicable to the organization; or (2) preclude a certified Medicaid ACO from expanding its operations to include participation with new providers located within the designated area of the ACO.
- DHS, in consultation with DHSS, is to:
 - design and implement the application process for approval of participating ACOs in the demonstration project;
 - collect data from participants in the demonstration project;and
 - approve a methodology proposed by the Medicaid ACO applicant for calculation of cost savings and for monitoring of health outcomes and quality of care under the demonstration project.
- DHS and DHSS are authorized to jointly seek public and private grants to implement and operate the demonstration project.

- DHS, in consultation with DHSS, is to evaluate the demonstration project annually to assess whether cost savings, including, but not limited to, savings in administrative costs and savings from improved health outcomes, are achieved through implementation of the demonstration project. DHS, in consultation with DHSS and with the assistance of CSHP, is to evaluate the demonstration project to assess whether there is improvement in: the rates of health screening; the outcomes and hospitalization rates for persons with chronic illnesses; and the hospitalization and readmission rates for patients residing in the designated areas served by the ACOs.
- The Commissioner of DHS is to: apply for State plan amendments or waivers necessary to implement the provisions of the bill and to secure federal financial participation for State Medicaid expenditures; and take such additional steps as may be necessary to secure on behalf of participating ACOs such waivers, exemptions, or advisory opinions to ensure that the ACOs are in compliance with applicable provisions of State and federal laws related to fraud and abuse, including, but not limited to, anti-kickback, self-referral, false claims, and civil monetary penalties.
- The Commissioners of DHSS and DHS may apply for participation in federal ACO demonstration projects that align with the goals of the bill.
- Nothing in the bill is to be construed to limit the choice of a Medicaid recipient to access care for family planning services or any other type of health care services from a qualified health care provider who is not participating in the demonstration project.
- Under the demonstration project, payment will continue to be made to providers of services and suppliers participating in the Medicaid ACO under the original Medicaid reimbursement methodology in the same manner as they would otherwise be made, except that the ACO is eligible to receive gainsharing payments. DHS, in consultation with DHSS, is to promulgate by regulation a methodology whereby a disproportionate share hospital participating in a Medicaid ACO receives a credit from available federal funds for its disproportionate share payments in an amount equal to the reduction in disproportionate share payments to the hospital resulting from its participation in the ACO, calculated on the basis of the reduction in inpatient hospitalizations during any year in which the hospital participates in the ACO, compared with the benchmark period.
- Nothing in the bill is to be construed to authorize DHS or DHSS to waive or limit any provisions of federal or State law or reimbursement methodologies governing Medicaid reimbursement to federally qualified health centers providing services to Medicaid managed care recipients.

- A certified Medicaid ACO is not required to obtain licensure or certification from the Department of Banking and Insurance as an organized delivery system when providing services to Medicaid recipients.
- The Commissioners of DHS and DHSS are to report to the Governor and the Legislature on the demonstration project, upon its completion, and to include such recommendations as the commissioners deems appropriate. If, after three years following enactment of the bill, the commissioners find that the demonstration project was successful in reducing costs and improving the quality of care for Medicaid recipients, they are to recommend that the demonstration project be expanded to include additional communities in which Medicaid recipients reside and become a permanent program.
- The Commissioner of DHS is to adopt:
 - within 180 days of the effective date of the bill, rules and regulations establishing the standards for gainsharing plans; and
 - with input from the Commissioner of DHSS, rules and regulations governing the ongoing oversight and monitoring of the quality of care delivered to Medicaid recipients in the designated areas served by the ACOs, and such other requirements as the Commissioner of DHS deems necessary to carry out the provisions of the bill.
- The bill takes effect 60 days after the date of enactment and expires three years after the adoption of regulations by the Commissioner of DHS.

As amended and reported, this bill is identical to Senate Bill No. 2443 (2R), as also amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) is unable to assess the fiscal impact of the legislation and determine whether any savings will be achieved, as there are significant unknown variables. One or more years of financial and statistical data based on the operation of the demonstration project will be needed before the OLS or another entity can determine whether the demonstration project achieved savings while improving health care outcomes. Additionally, the Executive branch has not provided information on the potential fiscal impact of this bill.

COMMITTEE AMENDMENTS:

The committee amendments delete subsection d. of section 7 of the bill. Subsection d. established conditions for managed care organizations to satisfy in order to receive approval from DHS to participate in the demonstration project. Specifically, subsection d. required a managed care organization to: permit a Medicaid recipient to receive covered services from a specialist health care provider in its

provider network without obtaining a written or electronic referral from the recipient's primary care provider, provided that the recipient's primary care provider of record: provides the recipient with a New Jersey Prescription Blank or other official form of communication that includes a diagnosis or reason for the referral, which the patient is to present to the specialist network provider, and which will be operative for a period of one year from the date of issuance by the primary care provider; or transmits such a communication to the specialist network provider by computer, telephone facsimile machine, or other means. Subsection d. also required a managed care organization to only require prior authorization in order for a recipient to access those health care services for which the managed care organization does not routinely approve coverage, as documented by an audited report of such prior authorization determinations for the previous plan year submitted to the Department of Banking and Insurance and DHS, or as otherwise demonstrated to the satisfaction of the Commissioner of DHS.