

CHAPTER 114

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

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

C.30:4D-8.1 Findings, declarations relative to a Medicaid Accountable Care Organization Demonstration Project.

1. The Legislature finds and declares that:

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

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

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

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

e. The Medicaid ACO Demonstration Project seeks to address a variety of access, health outcomes, coordination, and service utilization problems that lead to increased health costs. One major goal is to reduce the inappropriate utilization of high-cost emergency care by Medicaid recipients and others, especially where an individual’s need is more properly addressed through non-emergency primary care treatment. The Medicaid ACOs shall develop relationships with primary care, behavioral health, dental, pharmacy, and other health care providers to develop strategies to: (1) engage these individuals in treatment; (2)

promote medication adherence and use of medication therapy management, and healthy lifestyles, including, but not limited to, prevention and wellness activities, smoking cessation, reducing substance use, and improving nutrition; (3) develop skills in help-seeking behavior, including self-management and illness management; (4) improve access to services for primary care and behavioral health care needs through home-based services and telephonic and web-based communication, via culturally and linguistically appropriate means; and (5) improve service coordination to ensure integrated care for primary care, behavioral health care, dental care, and other health care needs, including prescription drugs;

f. It is, therefore, in the public interest to establish a Medicaid ACO demonstration project whereby providers can 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, while simultaneously participating in a certified Medicaid ACO designed to improve health outcomes, quality, and access to care through regional collaboration and shared accountability, and while reducing the costs of medical care throughout a region; and

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

C.30:4D-8.2 Definitions relative to a Medicaid ACO.

2. As used in this act:

"ACO" means an accountable care organization.

"Behavioral health care provider" means a provider licensed or approved by the Department of Human Services to render services to New Jersey residents.

"Department" means the Department of Human Services.

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

"Disproportionate share hospital" means a hospital designated by the Commissioner of Human Services pursuant to Pub.L.89-87 (42 U.S.C. s.1396a et seq.) and Pub.L.102-234.

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

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

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

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

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

C.30:4D-8.3 Establishment of three-year Medicaid ACO Demonstration Project.

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

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

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

C.30:4D-8.4 Applications for certification as a Medicaid ACO.

4. a. The department shall accept applications for certification from demonstration project applicants beginning 60 days following the effective date of this act, and shall certify an applicant as a Medicaid ACO for participation in the demonstration project following its determination that the applicant meets the requirements specified in this section. The department may deny certification of any ACO applicant that the department determines does not meet the requirements of this act. The department may consider applications for approval, including revised applications submitted by an ACO not previously approved to participate in the demonstration project.

b. The department, in consultation with the Department of Health and Senior Services, may certify as many ACOs for participation in the demonstration project as it determines appropriate, but shall certify no more than one ACO for each designated area.

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

(1) 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 this act;

(2) The applicant's governing board includes:

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

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

(3) 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 located in the designated area; and at least four qualified behavioral health care providers located in the designated area;

(4) The applicant has a process for receipt of gainsharing payments from the department 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 to be approved by the department, in consultation with the Department of Health and Senior Services;

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

(6) 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

(7) 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.

d. Nothing in this act 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.

C.30:4D-8.5 Eligibility to receive, distribute gainsharing payments.

5. a. A certified Medicaid ACO shall be eligible to receive and distribute gainsharing payments only after having received approval from the department of its gainsharing plan, which approval may be requested by the ACO at the time of certification or at any time within one year of certification. An ACO may seek to amend its gainsharing plan at any time following the plan's initial approval by submitting amendments to the department for approval.

b. The department, with input from the Department of Health and Senior Services and utilizing outcome evaluation data provided by the Rutgers Center for State Health Policy, shall 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 ACO's designated area. The department and the Department of Health and Senior Services shall provide all data necessary to the Rutgers Center for State Health Policy for analysis in support of the department's review of gainsharing plans. Criteria to be considered by the department and the Department of Health and Senior Services in approving a gainsharing plan shall include, but are not limited to:

(1) whether the plan promotes: care coordination through multi-disciplinary teams, including care coordination of patients with chronic diseases and the elderly; 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;

(2) whether 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;

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

(4) whether 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;

(5) whether 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

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

c. The gainsharing plan shall include an appropriate proposed time period beginning and ending on specified dates prior to the commencement of the demonstration project, which shall be the benchmark period against which cost savings can be measured on an annual basis going forward. Savings shall be calculated in accordance with a methodology that:

(1) 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 shall 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 shall remain fixed for a period of three years following approval of the gainsharing plan.

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

(1) the State 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.

e. Notwithstanding the provisions of this section to the contrary, the department 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.

f. Notwithstanding the provisions of this section 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 Integration Consortium, shall not be required to be approved by the department. The department shall not be under any obligation to participate in the Physician-Hospital Collaboration Demonstration.

g. The department 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.

h. A gainsharing plan submitted to the department for this ACO 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 demonstration 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.

C.30:4D-8.6 Remission of payment to ACO.

6. The department shall remit payment of cost savings to a participating Medicaid ACO following approval by the department, in consultation with the Department of Health and Senior Services, of the ACO's gainsharing plan and identification of cost savings and agreement from the federal government to share in the cost of the funds distributed.

C.30:4D-8.7 Voluntary participation in demonstration project.

7. a. A managed care organization that has contracted with the department may voluntarily seek participation in the demonstration project by notifying the Medicaid ACO of its desire to participate. The ACO shall submit a separate Medicaid managed care organization gainsharing plan meeting the requirements of section 5 of this act to the department for review and approval. The Medicaid 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 contain variations with respect to the manner in which health outcomes, quality, care coordination, and access are to be improved and the manner in which cost savings are achieved and distributed as gainsharing payments, 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.

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

c. Nothing in this act shall:

(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 an ACO from expanding its operations to include participation with new health care providers located within the ACO's designated area.

C.30:4D-8.8 Duties of the department; authorization to seek grants.

8. a. The department, in consultation with the Department of Health and Senior Services, shall:

(1) design and implement the application process for approval of participating ACOs in the demonstration project;

(2) collect data from participants in the demonstration project; and

(3) 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.

b. The department and the Department of Health and Senior Services shall be authorized to jointly seek public and private grants to implement and operate the demonstration project.

C.30:4D-8.9 Annual evaluation.

9. The department, in consultation with the Department of Health and Senior Services, shall evaluate the demonstration project annually to assess whether: cost savings, including, but not limited to, savings in administrative costs and savings due to improved health outcomes, are achieved through implementation of the demonstration project.

The department, in consultation with the Department of Health and Senior Services, and with the assistance of the Rutgers Center for State Health Policy, shall evaluate the demonstration project annually 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 department and the Department of Health and Senior Services shall provide the Rutgers Center for State Health Policy with all data necessary to perform the annual evaluation of the demonstration project.

C.30:4D-8.10 Application for State plan amendments, waivers.

10. a. The Commissioner of Human Services shall apply for such State plan amendments or waivers as may be necessary to implement the provisions of this act and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program, and shall take such additional steps as may be necessary 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, including, but not limited to, anti-kickback, self-referral, false claims, and civil monetary penalties.

b. 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 this act.

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

C.30:4D-8.11 Construction of act.

11. Nothing in this act shall 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.

C.30:4D-8.12 Continuation of payments for certain services.

12. a. Under the demonstration project, 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 in the same manner as they would otherwise be made, except that the ACO is eligible to receive gainsharing payments under sections 5 and 6 of this act if it meets the requirements set forth therein.

b. Nothing in this act shall be construed to authorize the Departments of Human Services or Health and Senior Services to waive or limit any provisions of federal or State law or reimbursement methodologies governing Medicaid reimbursement to federally qualified health centers, including, but not limited to, Medicaid prospective payment reimbursement and any supplemental payments made to a federally qualified health center providing services to Medicaid managed care recipients.

C.30:4D-8.13 Certain licensure requirements waived.

13. Notwithstanding the requirements of P.L.1999, c.409 (C.17:48H-1 et seq.), a Medicaid ACO certified pursuant to this act 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.

C.30:4D-8.14 Report to Governor, Legislature.

14. Upon completion of the demonstration project, the Commissioners of Human Services and Health and Senior Services shall report to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), on the demonstration project, and include in the report the findings of the evaluation carried out pursuant to section 9 of this act. The commissioners shall make such recommendations as they deem appropriate.

If, after three years following enactment of this act, 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.

C.30:4D-8.15 Rules, regulations.

15. The Commissioner of Human Services, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and with input from the Commissioner of Health and Senior Services, shall, within 180 days of the effective date of this act, adopt rules and regulations establishing the standards for gainsharing plans submitted by Medicaid ACOs. The Commissioner of Human Services shall also adopt, with input from the Commissioner of Health and Senior Services, such 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 Medicaid ACOs, and such other requirements as the Commissioner of Human Services deems necessary to carry out the provisions of this act.

16. This act shall take effect 60 days after the date of enactment and shall expire three years after the adoption of regulations by the Commissioner of Human Services.

Approved August 18, 2011.