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.