S T A T E O F N E W Y O R K

6443

I N S E N A T E

February 9, 2012

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to accountable care organizations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 29-E of the public health law, as added by section 66 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

ARTICLE 29-E

ACCOUNTABLE CARE ORGANIZATIONS [DEMONSTRATION PROGRAM]

Section 2999-n. Accountable care organizations; findings; purpose.
2999-o. Definitions.
2999-p. Establishment of [ACO demonstration program] ACOS.
2999-q. Accountable care organizations; requirements.
2999-r. Other laws.

S 2999-n. Accountable care organizations; findings; purpose. [The legislature intends to test the ability of accountable care organizations to assume a role in delivering an array of health care services, from primary and preventive care through acute inpatient hospital and post-hospital care.] The legislature finds that the formation and operation of accountable care organizations under this article, and subject to appropriate regulation, can be consistent with the purposes of federal and state anti-trust, anti-referral, and other statutes, including reducing over-utilization and expenditures. The legislature finds that the development of accountable care organizations under this article will reduce health care costs, promote effective allocation of health care resources, and enhance the quality and accessibility of health care. The legislature finds that this article is necessary to promote the formation of accountable care organizations and protect the public interest and the interests of patients and health care providers.

S 2999-o. Definitions. As used in this article, the following terms shall have the following meanings, unless the context clearly requires otherwise:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1. "Accountable care organization" or "ACO" means an organization of clinically integrated health care providers certified by the commissioner under this article.

2. "Certificate of authority" or "certificate" means a certificate of authority issued by the commissioner under this article.

3. "Health care provider" includes but is not limited to an entity licensed or certified under article twenty-eight or thirty-six of this chapter; an entity licensed or certified under article sixteen, thirty-one or thirty-two of the mental hygiene law; or a health care practitioner licensed or certified under title eight of the education law or a lawful combination of such health care practitioners; and may also include, to the extent provided by regulation of the commissioner, other entities that provide technical assistance, information systems and services, care coordination and other services to health care providers and patients participating in an ACO.

4. "Primary care" means the health care fields of family practice, general pediatrics, primary care internal medicine, primary care obstetrics, or primary care gynecology, without regard to board certification, provided by a health care provider acting within his, her, or its lawful scope of practice.

5. "Third-party health care payer" has its ordinary meanings and may include any entities provided for by regulation of the commissioner, which may include an entity such as a pharmacy benefits manager, fiscal administrator, or administrative services provider that participates in the administration of a third-party health care payer system.

[6. Any references to the "department of financial services" and the "superintendent of financial services" in this article shall mean, prior to October third, two thousand eleven, respectively, the "department of insurance" and the "superintendent of insurance."]

S 2999-p. Establishment of [ACO demonstration program] ACOS. 1. An accountable care organization: (a) is an organization of clinically integrated health care providers that work together to provide, manage, and coordinate health care (including primary care) for a defined population; with a mechanism for shared governance; the ability to negotiate, receive, and distribute payments; and accountability for the quality, cost, and delivery of health care to the ACO's patients; in accordance with this article; and (b) has been issued a certificate of authority by the commissioner under this article.

2. The commissioner shall establish a [demonstration] program within the department to [test the ability] PROMOTE AND REGULATE THE USE of ACOs to deliver an array of health care services for the purpose of improving the quality, coordination and accountability of services provided to patients in New York.

3. The commissioner may issue a certificate of authority to an entity that meets conditions for ACO certification as set forth in regulations promulgated by the commissioner pursuant to section twenty-nine hundred ninety-nine-q of this article. The commissioner shall not [issue more than seven certificates under this article, and shall not] issue any new certificate under this article after December thirty-first, two thousand fifteen.

4. The commissioner may limit, suspend, or terminate a certificate of authority if an ACO is not operating in accordance with this article.

5. The commissioner is authorized to seek federal approvals and waivers to implement this article, including but not limited to those approvals or waivers necessary to obtain federal financial participation.

S 2999-q. Accountable care organizations; requirements. 1. The commissioner shall promulgate regulations establishing criteria for certificates of authority, quality standards for ACOs, reporting requirements and other matters deemed to be appropriate and necessary in the operation and evaluation of [the demonstration program] ACOS UNDER THIS ARTICLE. In promulgating such regulations, the commissioner shall consult with the superintendent of financial services, health care providers, third-party health care payers, advocates representing patients, and other appropriate parties.

2. Such regulations may, and shall as necessary for purposes of this article, address matters including but not limited to:

(a) The governance, leadership and management structure of the ACO, including the manner in which clinical and administrative systems and clinical participation will be managed;

(b) Definition of the population proposed to be served by the ACO, which may include reference to a geographical area and patient characteristics;

(c) The character, competence and fiscal responsibility and soundness of an ACO and its principals, if and to the extent deemed appropriate by the commissioner;

(d) The adequacy of an ACO's network of participating health care providers, including primary care health care providers;

(e) Mechanisms by which an ACO will provide, manage, and coordinate quality health care for its patients and provide access to health care providers that are not participants in the ACO;

(f) Mechanisms by which the ACO shall receive and distribute payments to its participating health care providers, which may include incentive payments or mechanisms for pooling payments received by participating health care providers from third-party payers and patients;

(g) Mechanisms and criteria for accepting health care providers to participate in the ACO that are related to the needs of the patient population to be served and needs and purposes of the ACO, and preventing unreasonable discrimination;

(h) Mechanisms for quality assurance and grievance procedures for patients or health care providers where appropriate;

(i) Mechanisms that promote evidence-based health care, patient engagement, coordination of care, electronic health records, including participation in health information exchanges, and other enabling technologies;

(j) Performance standards for, and measures to assess, the quality and utilization of care provided by an ACO;

(k) Appropriate requirements for ACOs to promote compliance with the purposes of this article;

(l) Posting on the department's website information about ACOs that would be useful to health care providers and patients;

(m) Requirements for the submission of information and data by ACOs and their participating and affiliated health care providers as necessary for the evaluation of the success of [the demonstration program] SUCH ACOS;

(n) Protection of patient rights as appropriate;

(o) The impact of the establishment and operation of an ACO on access to any health care service in the area served; and

(p) Establishment of standards, as appropriate, to promote the ability of an ACO to participate in applicable federal programs for ACOs.

3. (a) Subject to regulations of the commissioner: (i) an ACO may enter into arrangements with one or more third-party health care payers

to establish payment methodologies for health care services for the third-party health care payer's enrollees provided by the ACO or for which the ACO is responsible, such as full or partial capitation or other arrangements; (ii) such arrangements may include provision for the ACO to receive and distribute payments to the ACO's participating health care providers, including incentive payments and payments for health care services from third-party health care payers and patients; and (iii) an ACO may include mechanisms for pooling payments received by participating health care providers from third-party payers and patients.

(b) Subject to regulations of the commissioner, the commissioner, in consultation with the superintendent of financial services, may authorize a third-party health care payer to participate in payment methodologies with an ACO under this subdivision, notwithstanding any contrary provision of this chapter, the insurance law, the social services law, or the elder law, on finding that the payment methodology is consistent with the purposes of this article.

4. The provision of health care services directly or indirectly by an ACO through health care providers shall not be considered the practice of a profession under title eight of the education law by the ACO.

S 2999-r. Other laws. 1. (a) It is the policy of the state to permit and encourage cooperative, collaborative and integrative arrangements among third-party health care payers and health care providers who might otherwise be competitors under the active supervision of the commissioner. To the extent that it is necessary to accomplish the purposes of this article, competition may be supplanted and the state may provide state action immunity under state and federal antitrust laws to payors and health care providers.

(b) The commissioner may engage in state supervision to promote state action immunity under state and federal antitrust laws and may inspect, require, or request additional documentation and take other actions under this article to verify and make sure that this article is implemented in accordance with its intent and purpose.

2. With respect to the planning, implementation, and operation of ACOs, the commissioner, by regulation, may specifically delineate safe harbors that exempt ACOs from the application of the following statutes:

(a) article twenty-two of the general business law relating to arrangements and agreements in restraint of trade;

(b) article one hundred thirty-one-A of the education law relating to fee-splitting arrangements; and

(c) title two-D of article two of this chapter relating to health care practitioner referrals.

3. For the purposes of this article, an ACO shall be deemed to be a hospital for purposes of sections twenty-eight hundred five-j, twenty-eight hundred five-k, twenty-eight hundred five-l and twenty-eight hundred five-m of this chapter and subdivisions three and five of section sixty-five hundred twenty-seven of the education law.

S 2. This act shall take effect immediately.