

8869

I N A S S E M B L Y

(PREFILED)

January 4, 2012

Introduced by M. of A. GOTTFRIED -- read once and referred to the  
Committee on Health

AN ACT to amend the public health law, the social services law and the  
public authorities law, in relation to accountable care organizations

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

1 Section 1. Article 29-E of the public health law, as added by section  
2 66 of part H of chapter 59 of the laws of 2011, is amended to read as  
3 follows:

4 ARTICLE 29-E

5 ACCOUNTABLE CARE ORGANIZATIONS [DEMONSTRATION PROGRAM]

6 Section 2999-n. Accountable care organizations; findings; purpose.

7 2999-o. Definitions.

8 2999-p. Establishment of [ACO demonstration program] ACOS.

9 2999-q. Accountable care organizations; requirements.

10 2999-r. Other laws.

11 S 2999-n. Accountable care organizations; findings; purpose. [The  
12 legislature intends to test the ability of accountable care organiza-  
13 tions to assume a role in delivering an array of health care services,  
14 from primary and preventive care through acute inpatient hospital and  
15 post-hospital care.] The legislature finds that the formation and opera-  
16 tion of accountable care organizations under this article, and subject  
17 to appropriate regulation, can be consistent with the purposes of feder-  
18 al and state anti-trust, anti-referral, and other statutes, including  
19 reducing over-utilization and expenditures. The legislature finds that  
20 the development of accountable care organizations under this article  
21 will reduce health care costs, promote effective allocation of health  
22 care resources, and enhance the quality and accessibility of health  
23 care. The legislature finds that this article is necessary to promote  
24 the formation of accountable care organizations and protect the public  
25 interest and the interests of patients and health care providers.

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

LBD13268-03-1

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

4 1. "Accountable care organization" or "ACO" means an organization of  
5 clinically integrated health care providers certified by the commission-  
6 er under this article.

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

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

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

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

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

33 S 2999-p. Establishment of [ACO demonstration program] ACOS. 1. An  
34 accountable care organization: (a) is A NOT-FOR-PROFIT OR GOVERNMENTAL  
35 ENTITY THAT IS an organization of clinically integrated health care  
36 providers that work together to provide, manage, and coordinate health  
37 care (including primary care) for a defined population; with a mechanism  
38 for shared governance; the ability to negotiate, receive, and distribute  
39 payments; and accountability for the quality, cost, and delivery of  
40 health care to the ACO's patients; in accordance with this article; and  
41 (b) has been issued a certificate of authority by the commissioner under  
42 this article.

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

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

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

1 5. The commissioner is authorized to seek federal approvals and waiv-  
2 ers to implement this article, including but not limited to those  
3 approvals or waivers necessary to obtain federal financial partic-  
4 ipation.

5 S 2999-q. Accountable care organizations; requirements. 1. The commis-  
6 sioner shall promulgate regulations establishing criteria for certifi-  
7 cates of authority, quality standards for ACOs, reporting requirements  
8 and other matters deemed to be appropriate and necessary in the opera-  
9 tion and evaluation of [the demonstration program]ACOS UNDER THIS ARTI-  
10 CLE. In promulgating such regulations, the commissioner shall consult  
11 with the superintendent of financial services, health care providers,  
12 third-party health care payers, advocates representing patients, and  
13 other appropriate parties.

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

16 (a) The governance, leadership and management structure of the ACO  
17 THAT REASONABLY AND EQUITABLY REPRESENTS THE ACO'S PARTICIPATING HEALTH  
18 CARE PROVIDERS, EMPLOYEES OF PARTICIPATING HEALTH CARE PROVIDERS, THE  
19 ACO'S ENROLLEES AND PATIENTS, AND THE GENERAL PUBLIC, including the  
20 manner in which clinical and administrative systems and clinical partic-  
21 ipation will be managed;

22 (b) Definition of the population proposed to be served by the ACO,  
23 which may include reference to a geographical area and patient charac-  
24 teristics;

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

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

30 (e) Mechanisms by which an ACO will provide, manage, and coordinate  
31 quality health care for its patients [and provide] INCLUDING ELEVATING  
32 THE SERVICES OF PRIMARY CARE HEALTH CARE PROVIDERS TO MEET PATIENT-CEN-  
33 TERED MEDICAL HOME STANDARDS, COORDINATING INTENSIVE SERVICES FOR  
34 COMPLEX HIGH-NEED PATIENTS, AND PROVIDING access to health care provid-  
35 ers that are not participants in the ACO;

36 (f) Mechanisms by which the ACO shall receive and distribute payments  
37 to its participating health care providers, which may include incentive  
38 payments (WHICH MAY INCLUDE MEDICAL HOME PAYMENTS) or mechanisms for  
39 pooling payments received by participating health care providers from  
40 third-party payers and patients;

41 (g) Mechanisms and criteria for accepting health care providers to  
42 participate in the ACO that are related to the needs of the patient  
43 population to be served and needs and purposes of the ACO, and prevent-  
44 ing unreasonable discrimination;

45 (h) Mechanisms for quality assurance and grievance procedures for  
46 patients or health care providers where appropriate, AND PROCEDURES FOR  
47 REVIEWING AND APPEALING PATIENT CARE DECISIONS;

48 (i) Mechanisms that promote evidence-based health care, patient  
49 engagement, coordination of care, electronic health records, including  
50 participation in health information exchanges, and other enabling tech-  
51 nologies;

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

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

1 (l) Posting on the department's website information about ACOs that  
2 would be useful to health care providers and patients AND DATA RELATING  
3 TO:

4 (I) THE ACO'S PARTICIPATING HEALTH CARE PROVIDERS, INCLUDING INDIVID-  
5 UAL HEALTH CARE PRACTITIONERS AFFILIATED WITH SUCH HEALTH CARE PROVIDER  
6 WHO PROVIDE HEALTH CARE TO THE HEALTH CARE PROVIDER'S PATIENTS; AND

7 (II) DATA, INCLUDING ENCOUNTER DATA, RELATING TO THE NATURE, OUTCOME,  
8 AND QUALITY OF, AND PAYMENT FOR, HEALTH CARE PROVIDED BY THE PARTICIPAT-  
9 ING HEALTH CARE PROVIDER TO THE PARTICIPATING PATIENT;

10 (m) Requirements for the submission of information and data by ACOs  
11 and their participating and affiliated health care providers as neces-  
12 sary for the evaluation of the success of [the demonstration program]  
13 SUCH ACOS;

14 (n) Protection of patient rights as appropriate;

15 (o) The impact of the establishment and operation of an ACO [on],  
16 INCLUDING PROVIDING THAT IT SHALL NOT DIMINISH access to any health care  
17 service FOR THE POPULATION SERVED AND in the area served; and

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

20 3. (A) AN ACO NETWORK OF PARTICIPATING PROVIDERS SHALL INCLUDE AT  
21 LEAST ONE FEDERALLY-QUALIFIED HEALTH CENTER; PROVIDED THAT THE COMMIS-  
22 SIONER MAY WAIVE THIS REQUIREMENT IF THERE IS NO FEDERALLY-QUALIFIED  
23 HEALTH CENTER SERVING THE AREA SERVED BY THE ACO.

24 (B) AN ACO MAY SEEK TO FOCUS ON PROVIDING HEALTH CARE SERVICES TO  
25 PATIENTS WITH ONE OR MORE CHRONIC CONDITIONS OR SPECIAL NEEDS. HOWEVER,  
26 AN ACO MAY NOT OTHERWISE, ON THE BASIS OF A PERSON'S MEDICAL OR DEMO-  
27 GRAPHIC CHARACTERISTICS, DISCRIMINATE FOR OR AGAINST OR DISCOURAGE OR  
28 ENCOURAGE ANY PERSON OR PERSON WITH RESPECT TO ENROLLING OR PARTICIPAT-  
29 ING IN THE ACO.

30 (C) AN ACO SHALL NOT, BY INCENTIVES OR OTHERWISE, DISCOURAGE A HEALTH  
31 CARE PROVIDER FROM PROVIDING OR AN ENROLLEE OR PATIENT FROM SEEKING  
32 APPROPRIATE HEALTH CARE SERVICES.

33 (D) AN ACO SHALL NOT DISCRIMINATE AGAINST OR DISADVANTAGE A PATIENT OR  
34 PATIENT'S REPRESENTATIVE FOR THE EXERCISE OF PATIENT AUTONOMY.

35 4. (a) Subject to regulations of the commissioner: (i) an ACO may  
36 enter into arrangements with one or more third-party health care payers  
37 to establish payment methodologies for health care services for the  
38 third-party health care payer's enrollees provided by the ACO or for  
39 which the ACO is responsible, such as full or partial capitation or  
40 other arrangements; (ii) such arrangements may include provision for the  
41 ACO to receive and distribute payments to the ACO's participating health  
42 care providers, including incentive payments and payments for health  
43 care services from third-party health care payers and patients; and  
44 (iii) an ACO may include mechanisms for pooling payments received by  
45 participating health care providers from third-party payers and  
46 patients.

47 (b) Subject to regulations of the commissioner, the commissioner, in  
48 consultation with the superintendent of financial services, may author-  
49 ize a third-party health care payer to participate in payment methodol-  
50 ogies with an ACO under this subdivision, notwithstanding any contrary  
51 provision of this chapter, the insurance law, the social services law,  
52 or the elder law, on finding that the payment methodology is consistent  
53 with the purposes of this article.

54 (C) NO THIRD-PARTY HEALTH CARE PAYER SHALL:

55 (I) IMPOSE ANY DEDUCTIBLE, CO-PAYMENT OR OTHER FORM OF CO-INSURANCE ON  
56 ANY ENROLLEE OR PATIENT IN CONNECTION WITH THE ENROLLEE OR PATIENT

1 PARTICIPATING IN AN ACO THAT IS HIGHER THAN IT WOULD OTHERWISE IMPOSE;  
2 OR

3 (II) MAKE ANY DISTINCTION OR DISCRIMINATION AGAINST ANY ENROLLEE OR  
4 PATIENT IN CONNECTION WITH THE ENROLLEE OR PATIENT PARTICIPATING IN AN  
5 ACO, OR IMPOSE ANY RESTRICTION ON WHICH OF ITS ENROLLEES OR PATIENTS MAY  
6 PARTICIPATE IN AN ACO; PROVIDED THAT:

7 (A) THIS SUBDIVISION SHALL NOT BE CONSTRUED TO BAR A THIRD-PARTY  
8 HEALTH CARE PAYER FROM PROVIDING INCENTIVES FOR ENROLLEES OR PATIENTS TO  
9 PARTICIPATE IN AN ACO; AND

10 (B) ENROLLEE, PATIENT, AND HEALTH CARE PROVIDER PARTICIPATION IN AN  
11 ACO SHALL BE ON A VOLUNTARY BASIS.

12 [4.] 5. The provision of health care services directly or indirectly  
13 by an ACO through health care providers shall not be considered the  
14 practice of a profession under title eight of the education law by the  
15 ACO.

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

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

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

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

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

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

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

43 4. (A) IN RELATION TO PATIENTS' RIGHTS OF ACCESS TO UTILIZATION REVIEW  
44 AND EXTERNAL APPEAL, AN ACO (I) SHALL BE DEEMED TO BE A HEALTH PLAN,  
45 SOLELY FOR PURPOSES OF ARTICLE FORTY-NINE OF THIS CHAPTER, EXCEPT WHERE  
46 THE FUNCTIONS OF A HEALTH PLAN UNDER THAT ARTICLE ARE THE RESPONSIBILITY  
47 OF A THIRD-PARTY HEALTH CARE PAYER, AND (II) SHALL BE DEEMED TO BE A  
48 MANAGED CARE PRODUCT, SOLELY FOR PURPOSES OF ARTICLE FORTY-EIGHT OF THE  
49 INSURANCE LAW, EXCEPT WHERE THE FUNCTIONS OF A MANAGED CARE PRODUCT  
50 UNDER THAT ARTICLE ARE THE RESPONSIBILITY OF A THIRD-PARTY HEALTH CARE  
51 PAYER.

52 (B) WHERE AN ACO CONTRACTS WITH AN ENROLLEE OR PATIENT TO PROVIDE  
53 HEALTH CARE SERVICES TO THAT PERSON, WHERE PAYMENT FOR THOSE SERVICES IS  
54 NOT PRIMARILY THE RESPONSIBILITY OF A THIRD-PARTY HEALTH CARE PAYER,  
55 NOTHING IN THIS ARTICLE SHALL PRECLUDE THE ACO FROM BEING DEEMED TO BE A  
56 HEALTH MAINTENANCE ORGANIZATION SUBJECT TO ARTICLE FORTY-FOUR OF THIS

1 CHAPTER OR ENGAGED IN THE BUSINESS OF INSURANCE AND SUBJECT TO APPLICA-  
2 BLE PROVISIONS OF THIS INSURANCE LAW, INCLUDING ARTICLE FORTY-EIGHT OF  
3 THE INSURANCE LAW.

4 5. THE COMMISSIONER IS AUTHORIZED TO SEEK FEDERAL GRANTS, APPROVALS,  
5 AND WAIVERS TO IMPLEMENT THIS ARTICLE, INCLUDING FEDERAL FINANCIAL  
6 PARTICIPATION UNDER PUBLIC HEALTH COVERAGE. THE COMMISSIONER SHALL  
7 PROVIDE COPIES OF APPLICATIONS AND OTHER DOCUMENTS, INCLUDING DRAFTS,  
8 SUBMITTED TO THE FEDERAL GOVERNMENT SEEKING SUCH FEDERAL GRANTS,  
9 APPROVALS, AND WAIVERS TO THE CHAIRS OF THE SENATE FINANCE COMMITTEE,  
10 THE ASSEMBLY WAYS AND MEANS COMMITTEE, AND THE SENATE AND ASSEMBLY  
11 HEALTH COMMITTEES SIMULTANEOUSLY WITH THEIR SUBMISSION TO THE FEDERAL  
12 GOVERNMENT.

13 6. THE COMMISSIONER MAY DIRECTLY, OR BY CONTRACT WITH NOT-FOR-PROFIT  
14 ORGANIZATIONS, PROVIDE:

15 (A) CONSUMER ASSISTANCE TO PATIENTS PARTICIPATING IN OR CONSIDERING  
16 PARTICIPATING IN AN ACO AS TO MATTERS RELATING TO ACOS;

17 (B) TECHNICAL AND OTHER ASSISTANCE TO HEALTH CARE PROVIDERS PARTIC-  
18 IPATING IN AN ACO AS TO MATTERS RELATING TO THE ACO;

19 (C) ASSISTANCE TO ACOS TO PROMOTE THEIR FORMATION AND IMPROVE THEIR  
20 OPERATION, INCLUDING ASSISTANCE UNDER SECTION TWENTY-EIGHT HUNDRED EIGH-  
21 TEEN OF THIS CHAPTER; AND

22 (D) INFORMATION SHARING AND OTHER ASSISTANCE AMONG ACOS TO IMPROVE THE  
23 OPERATION OF ACOS.

24 S 2. Paragraph (b) of subdivision 1 of section 364-j of the social  
25 services law, as amended by chapter 649 of the laws of 1996, subpara-  
26 graphs (i) and (ii) as amended by chapter 433 of the laws of 1997, is  
27 amended to read as follows:

28 (b) "Managed care provider". An entity that provides or arranges for  
29 the provision of medical assistance services and supplies to partic-  
30 ipants directly or indirectly (including by referral), including case  
31 management; and:

32 (i) is authorized to operate under article forty-four of the public  
33 health law or article forty-three of the insurance law and provides or  
34 arranges, directly or indirectly (including by referral) for covered  
35 comprehensive health services on a full capitation basis; [or]

36 (ii) is authorized as a partially capitated program pursuant to  
37 section three hundred sixty-four-f of this title or section forty-four  
38 hundred three-e of the public health law or section 1915b of the social  
39 security act; OR

40 (III) IS AN ACCOUNTABLE CARE ORGANIZATION UNDER ARTICLE TWENTY-NINE-E  
41 OF THE PUBLIC HEALTH LAW.

42 S 3. Section 2818 of the public health law is amended by adding a new  
43 subdivision 7 to read as follows:

44 7. NOTWITHSTANDING SUBDIVISIONS ONE AND TWO OF THIS SECTION, SECTIONS  
45 ONE HUNDRED TWELVE AND ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW,  
46 OR ANY OTHER INCONSISTENT PROVISION OF LAW, OF THE FUNDS AVAILABLE FOR  
47 EXPENDITURE PURSUANT TO THIS SECTION, TEN MILLION DOLLARS MAY BE ALLO-  
48 CATED AND DISTRIBUTED BY THE COMMISSIONER WITHOUT A COMPETITIVE BID OR  
49 REQUEST FOR PROPOSAL PROCESS FOR GRANTS TO ACCOUNTABLE CARE ORGANIZA-  
50 TIONS UNDER ARTICLE TWENTY-NINE-E OF THIS CHAPTER FOR THE PURPOSE OF  
51 PROMOTING THEIR FORMATION AND IMPROVING THEIR OPERATION. CONSIDERATION  
52 RELIED UPON BY THE COMMISSIONER IN DETERMINING THE ALLOCATION AND  
53 DISTRIBUTION OF THESE FUNDS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE  
54 NEED FOR AND CAPACITY OF THE ACCOUNTABLE CARE ORGANIZATION TO ACCOMPLISH  
55 THE PURPOSES OF ARTICLE TWENTY-NINE-E OF THIS CHAPTER IN THE AREA TO BE  
56 SERVED.

1 S 4. The opening paragraph of section 1680-j of the public authorities  
2 law, as amended by section 54 of part B of chapter 58 of the laws of  
3 2005, is amended to read as follows:

4 Notwithstanding any other provision of law to the contrary, the dormi-  
5 tory authority of the state of New York is hereby authorized to issue  
6 bonds or notes in one or more series in an aggregate principal amount  
7 not to exceed seven hundred fifty million dollars excluding bonds issued  
8 to fund one or more debt service reserve funds, to pay costs of issuance  
9 of such bonds, and bonds or notes issued to refund or otherwise repay  
10 such bonds or notes previously issued, for the purposes of financing  
11 project costs authorized under section twenty-eight hundred eighteen of  
12 the public health law. Of such seven hundred fifty million dollars, ten  
13 million dollars shall be made available to the community health centers  
14 capital program established pursuant to section twenty-eight hundred  
15 seventeen of the public health law; AND TEN MILLION DOLLARS SHALL BE  
16 MADE AVAILABLE TO ACCOUNTABLE CARE ORGANIZATIONS UNDER SUBDIVISION SIX  
17 OF SECTION TWENTY-NINE HUNDRED NINETY-NINE-R AND SUBDIVISION SEVEN OF  
18 SECTION TWENTY-EIGHT HUNDRED EIGHTEEN OF THE PUBLIC HEALTH LAW.

19 S 5. This act shall take effect immediately; provided that the amend-  
20 ments to section 364-j of the social services law made by section two of  
21 this act shall not affect the repeal of such section and shall be deemed  
22 repealed therewith.