§ 13.40 People first waiver program.

(a) The commissioner and the commissioner of health shall jointly establish a people first waiver program for purposes of developing a care coordination model that integrates various long-term habilitation supports and/or health care. The people first waiver program shall include the use of developmental disability individual support and care coordination organizations, herein referred to as DISCOs, pursuant to section forty-four hundred three-g of the public health law, health maintenance organizations, herein referred to as HMOs, providing services under subdivision eight of section forty-four hundred three of the public health law, and managed long term care plans, herein referred to as MLTCs, providing services under subdivisions twelve, thirteen and fourteen of section forty-four hundred three-f of the public health law. Services shall be provided as described in section forty-four hundred three-g of the public health law, subdivision eight of section forty-four hundred three of the public health law, and subdivisions twelve, thirteen and fourteen of section forty-four hundred three-f of the public health law.

(b) Entities providing services pursuant to this section shall provide health and long term care services as the term is defined in section forty-four hundred three-g of the public health law.

(c) No person with a developmental disability who is receiving or applying for medical assistance and who is receiving, or eligible to receive, services operated, funded, certified, authorized or approved by the office, shall be required to enroll in a DISCO, HMO or MLTC in order to receive such services until program features and reimbursement rates are approved by the commissioner and the commissioner of health, and until such commissioners determine that a sufficient number of plans that are authorized to coordinate care for individuals pursuant to this section or that are authorized to operate and to exclusively enroll persons with developmental disabilities pursuant to subdivision twenty-seven of section three hundred sixty-four-j of the social services law are operating in such person's county of residence to meet the needs of persons with developmental disabilities, and that such entities meet the standards of this section. No person shall be required to enroll in a DISCO, HMO or MLTC in order to receive services operated, funded, certified, authorized or approved by the office until there are

at least two entities operating under this section in such person's county of residence, unless federal approval is secured to require enrollment when there are less than two such entities operating in such county. Notwithstanding the foregoing or any other law to the contrary, any health care provider: (i) enrolled in the Medicaid program and (ii) rendering hospital services, as such term is defined in section twenty-eight hundred one of the public health law, to an individual with a developmental disability who is enrolled in a DISCO, HMO or MLTC, or a prepaid health services plan operating pursuant to section forty-four hundred three-a of the public health law, including, but not limited to, an individual who is enrolled in a plan authorized by section three hundred sixty-four-j or the social services law, shall accept as full reimbursement the negotiated rate or, in the event that there is no negotiated rate, the rate of payment that the applicable government agency would otherwise pay for such rendered hospital services.

(d) DISCOs, HMOs and MLTCs operating under this section shall ensure, to the greatest extent practicable, that their assessment, services, and the grievance and appeals processes are culturally and linguistically competent.

(e) 1. The commissioner and the commissioner of health shall identify one or more valid and reliable quality assurance instruments that include assessments of individual and family satisfaction, provision of services, and personal outcomes. The instruments shall:

(1) provide nationally validated, benchmarked, consistent, reliable and measurable data for a comprehensive quality improvement and review process, and

(2) include outcome-based measures such as health, safety, well-being, relationships, interactions with people who do not have a disability, employment, quality of life, integration, choice, service and consumer satisfaction.

2. Within available appropriations, the instruments identified in this subdivision may be expanded to collect additional data requested by other offices, departments or agencies of the state, local or federal government.

3. The commissioner may contract with an independent agency or

organization for the development of the quality assurance instruments described in this subdivision.

4. The commissioner shall establish the methodology by which the quality assurance instruments shall be administered.

5. The commissioner, in consultation with stakeholders, shall annually review the data collected from the quality assurance instruments described in this subdivision and shall review recommendations regarding additional or different criteria for the quality assurance instruments in order to assess the performance of the state's developmental disabilities services system and improve services for consumers.

(f) There shall be a joint advisory council chaired by the commissioner and the commissioner of health that shall be charged with advising both commissioners in regard to the oversight of DISCOs, HMOs providing services under subdivision eight of section forty-four hundred three of the public health law, and MLTCs providing services under subdivisions twelve, thirteen and fourteen of section forty-four hundred three-f of the public health law. The joint advisory council may be comprised of the members of existing advisory councils or similar entities serving the office, provided that it shall be comprised of twelve members, including individuals with developmental disabilities, family members of, advocates for, and providers of services to people with developmental disabilities. Three members of the joint advisory council shall also be members of the special advisory review panel on medicaid managed care established under section three hundred sixty-four-jj of the social services law. The joint advisory council shall review all managed care options provided to individuals with developmental disabilities, including: the adequacy of habilitation services; the record of compliance with person-centered planning, person-centered services and community integration; the adequacy of rates paid to providers in accordance with the provisions of paragraph one of subdivision four of section forty-four hundred three of the public health law, paragraph a-two of subdivision eight of section forty-four hundred three of the public health law or paragraph a-two of subdivision twelve of section forty-four hundred three-f of the public health law; and quality of life, health, safety and community

integration of individuals with developmental disabilities enrolled in managed care. The commissioner and commissioner of the office for people with developmental disabilities or their designees shall attend all meetings of the joint advisory council. The joint advisory council shall report its findings, recommendations, and any proposed amendments to pertinent sections of the law to the commissioner and the commissioner of health, the senate majority leader and speaker of the assembly. The joint advisory council shall have access to any and all information that may be lawfully disclosed to it and that is necessary to perform its functions under this section.

(g) Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law to the contrary, the commissioner and the commissioner of health are authorized to enter into a contract or contracts under section forty-four hundred three-g of the public health law, subdivision eight of section forty-four hundred three of the public health law, and subdivision twelve of section forty-four hundred three-f of the public health law, provided, however, that:

1. the office shall post on its website, for a period of no less than thirty days:

(1) a description of the proposed services to be provided pursuant to the contract or contracts;

(2) the criteria for selection of a contractor or contractors;

(3) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(4) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

2. all reasonable and responsive submissions that are received from prospective contractors in a timely fashion shall be reviewed by the commissioners; and

3. the commissioner and the commissioner of health may jointly select such contractor or contractors that, in their discretion, have

demonstrated the ability to effectively, efficiently and economically integrate health and long term care services as defined in section forty-four hundred three-g of the public health law, and meet the standards for a certificate of authority in the public health law for the provision of services operated, funded, certified, authorized or approved by the office for people with developmental disabilities and applicable to the type of managed care plan that such contractor proposes to operate.

* (h) Consistent with and subject to the terms of federal approval, the commissioner shall establish the managed care for persons with developmental disabilities advocacy program, hereinafter referred to as the advocacy program. The activities of the advocacy program shall be coordinated with the independent Medicaid managed care ombuds services provided to persons with disabilities enrolling in Medicaid managed care. The advocacy program shall advise individuals of applicable rights and responsibilities, provide information and assistance to address the needs of individuals with disabilities, and pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of and advocacy for the rights of the enrollees. The advocacy program shall provide support to eligible individuals with developmental disabilities enrolling in developmental disability individual support and care coordination organizations pursuant to section forty-four hundred three-g of the public health law, health maintenance organizations providing services pursuant to subdivision eight of section forty-four hundred three of the public health law, managed long term care plans providing services under subdivisions twelve, thirteen and fourteen of section forty-four hundred three-f of the public health law, and fully integrated dual advantage plans providing services under subdivision twenty-seven of section three hundred sixty-four-j of the social services law. The commissioner shall select an independent organization or organizations to provide advocacy services under this subdivision.

* NB Effective upon approval by the federal centers for medicare and medicaid services of a managed care advocacy program for individuals with developmental disabilities