*** § 4403-g. Developmental disability individual support and care coordination organizations.** 1. Definitions. As used in this section:

(a) "Developmental disability individual support and care coordination organization" or "DISCO" means an entity that has received a certificate of authority pursuant to this section to provide, or arrange for, health and long term care services, as determined by the commissioner and the commissioner of the office for people with developmental disabilities, on a capitated basis in accordance with this section, for a population of persons with developmental disabilities, as such term is defined in section 1.03 of the mental hygiene law, which the organization is authorized to enroll.

(b) "Eligible applicant" means an entity controlled by one or more non-profit organizations which have a history of providing or coordinating health and long term care services to persons with developmental disabilities.

(c) "Habilitation services" means services available through the state's home and community based services waiver for persons with developmental disabilities, state plan for medical assistance, and any other authorized federal funding for such services designed to assist persons in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings.

(d) "Health and long term care services" means comprehensive health services and other services as determined by the commissioner and the commissioner of the office for people with developmental disabilities, whether provided by state-operated programs or not-for-profit entities, including, but not limited to, habilitation services, home and community-based and institution-based long term care services, and ancillary services, that shall include medical supplies and nutritional supplements, that are necessary to meet the needs of persons whom the plan is authorized to enroll. Each person enrolled in a DISCO shall receive health and long term care services designed to achieve person-centered outcomes, to enable that person to live in the most integrated setting appropriate to that person's needs, and to enable that person to interact with nondisabled persons to the fullest extent possible in social, workplace and other community settings, provided that all such services are consistent with such person's wishes to the

extent that such wishes are known and in accordance with such person's needs.

2. Approval authority. An applicant shall be issued a certificate of authority as a DISCO for purposes of participating in the people first waiver program pursuant to section 13.40 of the mental hygiene law upon a determination by the commissioner and the commissioner of the office for people with developmental disabilities that the applicant complies with the operating requirements for a DISCO under this section.

3. Application for certificate of authority; form. The commissioner and the commissioner of the office for people with developmental disabilities shall jointly develop application forms for a certificate of authority to operate a DISCO. An eligible applicant shall submit an application for a certificate of authority to operate a DISCO upon forms prescribed by such commissioners. Such eligible applicant shall submit information and documentation to the commissioner which shall include, but not be limited to:

(a) A description of the service area proposed to be served by the DISCO with projections of enrollment that will result in a fiscally sound plan;

(b) A description of the services to be covered by such DISCO, which must include all health and long term care services, as defined in paragraph (d) of subdivision one of this section, and other services as determined by the commissioner and the commissioner of the office for people with developmental disabilities;

(c) A description of the proposed marketing plan and how marketing materials will be presented to persons with developmental disabilities or their authorized decision makers for the purposes of enabling them to make an informed choice;

(d) The names of the providers proposed to be in the DISCO's network;

(e) Evidence of the character and competence of the applicant's proposed operators, and of the incorporators, directors, stockholders or members of the applicant;

(f) Adequate documentation of the appropriate licenses, certifications or approvals to provide care as planned, including affiliate agreements or proposed contracts with such providers as may be necessary to provide

the full complement of services required to be provided under this section;

(g) A description of the proposed quality-assurance mechanisms, grievance procedures, mechanisms to protect the rights of enrollees and care coordination services to ensure continuity, quality, appropriateness and coordination of care;

(h) A description of the proposed quality assessment and performance improvement program that includes performance and outcome based quality standards for enrollee health status and satisfaction, and data collection and reporting for standard performance measures;

(i) A description of the management systems and systems to process payment for covered services;

(j) A description of how achievement of person-centered outcomes, as defined by the commissioner of the office for people with developmental disabilities, shall be assessed, as well as a description of how health and long term care services shall be used to meet such outcomes;

(k) A description of the mechanism to maximize reimbursement of and coordinate services reimbursed pursuant to title XVIII of the federal social security act and all other applicable benefits, with such benefit coordination including, but not limited to, measures to support sound clinical decisions, reduce administrative complexity, coordinate access to services, maximize benefits available pursuant to such title and ensure that necessary care is provided;

(l) A description of the systems for securing and integrating any potential sources of funding for services provided by or through the organization, including, but not limited to, funding available under titles XVI, XVIII, XIX and XX of the federal social security act and all other available sources of funding;

(m) A description of the proposed contractual arrangements for providers of health and long term care services in the benefit package; and

(n) Information related to the financial condition of the applicant.

4. Certificate of authority approval. The commissioner shall not approve an application for a certificate of authority unless the applicant demonstrates to the satisfaction of the commissioner and the commissioner of the office for people with developmental disabilities:

(a) That it will have in place acceptable quality assurance mechanisms, grievance procedures and mechanisms to protect the rights of enrollees and care coordination services to ensure continuity, quality, appropriateness and coordination of care;

(b) That it will have in place a mechanism or means to assure that persons with developmental disabilities can make informed choices either individually or through an authorized decision maker regarding the development of a person-centered plan, as defined by the commissioner of the office for people with developmental disabilities;

(c) That it has developed a quality assessment and performance improvement program that includes performance and outcome based quality standards for enrollee health status and satisfaction, which shall be reviewed by the commissioner and the commissioner of the office for people with developmental disabilities. The program shall include data collection and reporting for standard performance measures as required by the commissioner and the commissioner of the office for people with developmental disabilities;

(d) That an otherwise eligible enrollee shall not be involuntarily disenrolled without the prior approval of the commissioner of the office for people with developmental disabilities;

(e) That the applicant shall not use deceptive or coercive marketing methods to encourage participants to enroll and that the applicant shall not distribute marketing materials to potential enrollees before such materials have been approved by the commissioner and the commissioner of the office for people with developmental disabilities;

(f) Satisfactory evidence of the character and competence of the applicant's proposed operators, incorporators, directors, stockholders and members;

(g) Reasonable assurance that the applicant will provide high quality services to an enrolled population, that the applicant's network of providers is adequate and that such providers have demonstrated sufficient competency to deliver high quality services to the enrolled population and that policies and procedures will be in place to address the cultural and linguistic needs of the enrolled population;

(h) Sufficient management systems capacity to meet the requirements of this section and the ability to efficiently process payment for covered services;

(i) Readiness and capability to maximize reimbursement of and coordinate services reimbursed pursuant to title XVIII of the federal social security act and all other applicable benefits, with such benefit coordination including, but not limited to, measures to support sound clinical decisions, reduce administrative complexity, coordinate access to services, maximize benefits available pursuant to such title and ensure that necessary care is provided;

(j) Readiness and capability of organizing, marketing, managing, promoting and operating a health and long term care services plan, or has an affiliation agreement with an entity that has such readiness and capability;

(k) Willingness and capability of taking, or cooperating in, all steps necessary to secure and integrate any potential sources of funding for services provided by or through the DISCO, including, but not limited to, funding available under titles XVI, XVIII, XIX and XX of the federal social security act and all other available sources of funding;

(l) That the contractual arrangements for providers of health and long term care services in the benefit package are sufficient to ensure the availability and accessibility of such services to the proposed enrolled population consistent with guidelines established by the commissioner and the commissioner of the office for people with developmental disabilities. With respect to a person receiving non-residential services operated, certified, funded, authorized or approved by the office for people with developmental disabilities prior to enrollment in the DISCO, such guidelines shall require the DISCO to contract with the current provider of non-residential services at the rates established by the office for ninety days, in order to ensure continuity of care. With respect to a person living in a residential facility operated or certified by the office for people with developmental disabilities prior to enrollment in the DISCO, such guidelines shall require the DISCO to contract with the provider of residential services for that residence at the rates established by the office for so long as such individual lives in that residence pursuant to an approved plan of care;

(m) That the applicant is financially responsible and shall be expected to meet its obligations to its enrolled members; and

(n) That the applicant shall assess person-centered outcomes as defined by the commissioner of the office for people with developmental

disabilities, and has satisfactory mechanisms by which it will assess how health and long term care services will be used to meet such outcomes.

5. Enrollment. (a) Only persons with developmental disabilities, as determined by the office for people with developmental disabilities, shall be eligible to enroll in DISCOs.

(b) The office for people with developmental disabilities or its designee shall enroll an eligible person in the DISCO chosen by him or her, his or her guardian or other legal representative, provided that such DISCO is authorized to enroll such person.

(c) No person with a developmental disability who is receiving or applying for medical assistance and who is receiving, or eligible to receive, services funded, certified, authorized or approved by the office for people with developmental disabilities, shall be required to enroll in a DISCO in order to receive such services until program features and reimbursement rates are approved by the commissioner and the commissioner of the office for people with developmental disabilities, and until such commissioners determine that there are a sufficient number of plans authorized to coordinate care for persons with developmental disabilities pursuant to this article operating in such person's county of residence to meet the needs of persons with developmental disabilities, and that such DISCOs meet the standards of this section. No person shall be required to enroll in a DISCO in order to receive services operated, funded, certified, authorized or approved by the office for people with developmental disabilities until there are at least two plans authorized to coordinate care for persons with developmental disabilities pursuant to this article 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.

(d) Persons required to enroll in a DISCO shall have no less than sixty days to select a DISCO, and such persons and their guardians or other legal representatives shall be provided with information to make an informed choice. Where a person, guardian or other legal representative has not selected a DISCO, the commissioner of the office for people with developmental disabilities or its designee shall enroll

such person in a DISCO chosen by such commissioner, taking into account quality, capacity and geographic accessibility. The office for people with developmental disabilities or its designee shall automatically re-enroll a person with the same DISCO if there is a loss of medicaid eligibility of two months or less.

(e) Enrolled persons may change their enrollment at any time without cause, provided, however, that a person required to enroll in a DISCO in order to receive services funded, licensed, authorized or approved by the office for people with developmental disabilities may only disenroll from a DISCO if he or she enrolls in another DISCO authorized to enroll him or her. Such disenrollment shall be effective no later than the first day of the second month following the request.

(f) A DISCO may request the involuntary disenrollment of an enrolled person in writing to the office for people with developmental disabilities. Such disenrollment shall not be effective until the request is reviewed and approved by such office. Notice shall be provided to the enrollee and the enrollee may request a fair hearing regarding such disenrollment. The department and the office for people with developmental disabilities shall adopt rules and regulations governing this process.

6. Assessments. The office for people with developmental disabilities, or its designee, shall complete a comprehensive assessment that shall include, but not be limited to, an evaluation of the medical, social, habilitative and environmental needs of each prospective enrollee in a DISCO as such needs relate to each individual's health, safety, living environment and wishes, to the extent that such wishes are known. This assessment shall also serve as the basis for the development and provision of an appropriate plan of care for the enrollee. Such plan of care shall be focused on the achievement of person-centered outcomes and shall be consistent with and help inform any other person-centered plan required for the enrollee by the commissioner of the office for people with developmental disabilities. The assessment shall be completed by the office for people with developmental disabilities or in consultation with the prospective enrollee's health care practitioner as necessary. The commissioner of the office for people with developmental disabilities shall prescribe the forms on which the assessment shall be

made. The office for people with developmental disabilities may designate the DISCO to perform reassessments, but shall not designate the DISCO to perform the initial assessment of a prospective enrollee.

7. Program oversight and administration. (a) The commissioner and the commissioner of the office for people with developmental disabilities shall jointly promulgate regulations to implement this section, to provide for oversight of DISCOs, including on site reviews, and to ensure the quality, appropriateness and cost-effectiveness of the services provided by DISCOs.

(b) The commissioner and the commissioner of the office for people with developmental disabilities may waive rules and regulations of their respective department or office, including but not limited to, those pertaining to duplicative requirements concerning record keeping, boards of directors, staffing and reporting, when such waiver shall promote the efficient delivery of appropriate, quality, cost-effective services and when the health, safety and general welfare of DISCO enrollees shall not be impaired as a result of such waiver. The commissioners shall report annually to the legislature and to the joint advisory council established pursuant to section 13.40 of the mental hygiene law on all rules and regulations waived pursuant to this paragraph. In order to achieve DISCO system efficiencies and coordination and to promote the objectives of high quality, integrated and cost effective care, the commissioners shall establish a single coordinated surveillance process, allow for a comprehensive quality improvement and review process to meet component quality requirements, and require a uniform cost report. The commissioners shall require DISCOs to utilize quality improvement measures, based on the achievement of personal outcomes and quality of life, health outcomes data, and assessments of individual and family satisfaction, for internal quality assessment processes and may utilize such measures as part of the single coordinated surveillance process.

(c) Notwithstanding any inconsistent provision of the social services law to the contrary, the commissioner in consultation with the commissioner of the office for people with developmental disabilities shall, pursuant to regulation, determine whether and the extent to which the applicable provisions of the social services law or regulations relating to approvals and authorizations of, and utilization limitations

on, health and long term care services reimbursed pursuant to title XIX of the federal social security act are inconsistent with the flexibility necessary for the efficient administration of DISCOs, and such regulations shall provide that such provisions shall not be applicable to enrollees of DISCOs, provided that such determinations are consistent with applicable federal law and regulation.

(d) The commissioner and the commissioner of the office for people with developmental disabilities shall ensure, through periodic reviews of DISCOs, that organization services are promptly available to enrollees when appropriate. Such periodic reviews shall be made according to standards as determined by the commissioners in regulations.

(e) The commissioner and the commissioner of the office for people with developmental disabilities shall have the authority to conduct both on site and off site reviews of DISCOs. Such reviews may include, but not be limited to, the following components: governance; fiscal and financial reporting; recordkeeping; internal controls; marketing; network contracting and adequacy; program integrity assurances; utilization control and review systems; grievance and appeals systems; quality assessment and assurance systems; care management; enrollment and disenrollment; management information systems, and other operational and management components.

8. Solvency. (a) The commissioner, in consultation with the commissioner of the office for people with developmental disabilities, shall be responsible for evaluating, approving and regulating all matters relating to fiscal solvency, including reserves, surplus and provider contracts. The commissioner shall promulgate regulations to implement this section. The commissioner, in the administration of this subdivision:

(i) shall be guided by the standards that govern the fiscal solvency of a health maintenance organization, provided, however, that the commissioner shall recognize the specific delivery components, operational capacity and financial capability of the eligible applicant for a certificate of authority;

(ii) shall not apply financial solvency standards that exceed those required for a health maintenance organization; and

(iii) shall establish reasonable capitalization and contingent reserve requirements.

(b) Standards established pursuant to this subdivision shall be adequate to protect the interests of enrollees in the DISCO. The commissioner shall be satisfied that the eligible applicant is financially sound, and has made adequate provisions to pay for quality services that are cost effective and appropriate to needs and the protection of health, safety, welfare and satisfaction of those served.

9. Role of the superintendent of financial services. (a) The superintendent of financial services shall determine and approve premiums in accordance with the insurance law whenever any population of enrollees not eligible under title XIX of the federal social security act is to be covered. The determination and approval of the superintendent of financial services shall relate to premiums charged to such enrollees not eligible under title XIX of the federal social security act.

(b) The superintendent of financial services shall evaluate and approve any enrollee contracts whenever such enrollee contracts are to cover any population of enrollees not eligible under title XIX of the federal social security act.

10. Payment rates for DISCO enrollees eligible for medical assistance. The commissioner shall establish payment rates for services provided to enrollees eligible under title XIX of the federal social security act. Such payment rates shall be subject to approval by the director of the division of the budget. Payment rates shall be actuarially sound for covered services, including but not limited to habilitation services, and, when there is sufficient reliable data to permit, shall be risk-adjusted to take into account the characteristics of enrollees, or proposed enrollees, which may include: frailty, disability level, health and functional status, age, gender, the nature of services provided to such enrollees, and other factors as determined by the commissioner and the commissioner of the office for people with developmental disabilities. The risk adjusted premiums may also be combined with disincentives or requirements designed to mitigate any incentives to obtain higher payment categories.

11. Continuation of certificate of authority. Continuation of a certificate of authority issued under this section shall be contingent upon compliance by the DISCO with applicable provisions of this section and rules and regulations promulgated thereunder; the continuing fiscal solvency of the DISCO; and federal financial participation in payments on behalf of enrollees who are eligible to receive services under title XIX of the federal social security act.

12. Protection of enrollees. The commissioner may, in his or her discretion and with the concurrence of the commissioner of the office for people with developmental disabilities, for the purpose of the protection of enrollees, impose measures including, but not limited to bans on further enrollments until any identified problems are resolved to the satisfaction of the commissioner, or fines upon a finding that the DISCO has failed to comply with the provisions of any applicable statute, rule or regulation.

13. Information sharing. The commissioner and the commissioner of the office for people with developmental disabilities shall, as necessary and consistent with federal regulations promulgated pursuant to the Health Insurance Portability and Accountability Act, share with such DISCO the following data if it is available:

(a) information concerning utilization of services and providers by each of its enrollees prior to and during enrollment.

(b) Aggregate data concerning utilization and costs for enrollees and for comparable cohorts served through the Medicaid fee-for-service program.

14. Applicability of other laws. DISCOs shall be subject to the provisions of the insurance law and regulations applicable to health maintenance organizations, this article and regulations promulgated thereunder. To the extent that the provisions of this section are inconsistent with the provisions of this chapter or the provisions of the insurance law, the provisions of this section shall prevail.

15. Effectiveness. The provisions of this section shall only be

effective if, for so long as, and to the extent that federal financial participation is available for the costs of services provided by the DISCOs to enrollees who are recipients of medical assistance pursuant to title eleven of article five of the social services law. The commissioner shall make any necessary amendments to the state plan for medical assistance submitted pursuant to section three hundred sixty-three-a of the social services law, and/or submit one or more applications for waivers of the federal social security act, in order to ensure such federal financial participation.

* NB Repealed December 31, 2027