*** § 4408-a. Integrated delivery systems.** 1. Legislative purpose and findings. The legislature intends to facilitate the ability of integrated delivery systems to assume a larger role in delivering a full array of health care services, from primary and preventive care through acute inpatient hospital and post-hospital care to a defined population for a determined price. The legislature finds that the formation and operation of integrated delivery systems under this section will promote the purposes of federal and state anti-referral statutes which are to reduce over-utilization and expenditures and finds that such statutes should not be interpreted to interfere with the development of such integrated delivery systems or impose liability for arrangements between an integrated delivery system certified pursuant to this section and its participating providers and entities. The legislature further finds that the development of integrated delivery systems will reduce costs and enhance quality. It intends that systems acting pursuant to a certificate of authority issued under this section shall not be subject to state or federal antitrust liability for doing so.

2. Definitions. For the purposes of this section:

(a) "Applicant" means a separate legal entity created for the purpose of establishing and operating an integrated delivery system. Such entity shall be composed of or controlled by one or more affiliated providers or one or more affiliated groups of providers.

(b) "Provider" means an entity licensed or certified under article twenty-eight or thirty-six of this chapter; an entity licensed or certified under article sixteen, twenty-three, thirty-one or thirty-two of the mental hygiene law; or a health care practitioner, or combination of health care practitioners, licensed under title eight of the education law. Every provider shall be: (i) a natural person; (ii) a partnership all of whose members are natural persons and that is not a limited partnership; or (iii) a corporation none of whose stock is owned by another corporation.

3. The commissioner, after receiving from the superintendent of financial services the evaluations and approvals required pursuant to subdivision seven of this section, may issue a certificate of authority to an applicant which satisfies the conditions under this section for

issuance established by the commissioner and which seeks to deliver comprehensive health services, on a capitated basis, including inpatient services, to:

(a) persons who are receiving benefits under title XVIII of the federal social security act; or

(b) persons who are receiving benefits under title XIX of the federal social security act and commercial enrollees; or

(c) an enrollee population which includes persons receiving benefits under titles XVIII and XIX of the federal social security act and commercial enrollees.

4. An applicant must demonstrate to the commissioner that it will provide at least seventy-five percent of the total expenditures for covered health care items and services directly to its enrollees through the provider, affiliated providers or affiliated groups of providers comprising such applicant. The applicant shall make arrangements or referrals for any covered health care items and services not provided directly to its enrollees by such applicant.

5. A provider shall be deemed affiliated with another provider or group of providers if, through contract, ownership or otherwise:

(a) one provider, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than fifty-one percent of the voting rights or governance rights of another;

(b) each provider is a participant in a lawful combination under which each provider shares, either directly or indirectly, substantial financial risk in connection with the activities and services of such combination; or

(c) a provider is a corporate member of a provider organized as a not-for-profit corporation duly designated pursuant to section six hundred one of the not-for-profit corporation law.

6. The commissioner shall be responsible for evaluating, approving and regulating all matters relating to delivery systems, quality of care and access to care to be provided through the integrated delivery system. In performing this responsibility, the commissioner shall assure:

(a) that the formation and operation of the integrated delivery system

will enhance access to health services in the area to be served; and

(b) subject to subdivision four of this section, the comprehensive health services will be provided by the applicant through its proposed delivery system (including through providers other than those composing, affiliated with or controlling the applicant).

7. (a) The superintendent of financial services, in consultation with the commissioner in accordance with a protocol to be specified in a memorandum of understanding between the commissioner and the superintendent of financial services regarding fiscal solvency, shall be responsible for evaluating, approving and regulating all matters relating to premium rates, subscriber contracts and fiscal solvency, including reserves, surplus and provider contracts to the extent such contracts relate to fiscal solvency matters. The superintendent of financial services, in the administration of this subdivision, shall:

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

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

(b) Standards established pursuant to this subdivision shall be adequate to protect the interests of the subscribers to integrated delivery systems. The superintendent of financial services must be satisfied that the applicant is fiscally sound, and has made adequate provisions to pay for services:

(i) that are furnished by providers that are not affiliated with the applicant;

(ii) to meet the specialized health care needs of certain enrollees needing care at specialty care centers; and

(iii) for which claims are submitted after the period for which the applicant will receive payments.

8. The integrated delivery system shall have its premiums determined on a community-rated basis in accordance with the insurance law except where the enrollees are eligible to receive services under title XIX of

the federal social security act in which case the premium rates shall be established by the commissioner, in consultation with the superintendent of financial services, subject to the approval of the director of the division of the budget.

9. An integrated delivery system shall be subject to the provisions of the insurance law that are applicable to health maintenance organizations, this chapter and regulations applicable to health maintenance organization, and any regulations promulgated by the commissioner or superintendent of financial services to implement this section. 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.

10. No certificate of authority for an integrated delivery system shall be issued pursuant to this section on or after April first, two thousand two and integrated delivery systems issued certificates before such date shall accept no new enrollees thereafter.

* NB There are 2 § 4408-a's