

Medicaid Accountable Care Organization Demonstration Project

This Act establishes a three-year Medicaid Accountable Care Organization (ACO) Demonstration Project (demonstration project) in the Department of Human Services (DHS).

Under the Act, participants in the demonstration project are to be nonprofit corporations organized and operated for the primary purpose of improving health outcomes and the quality and efficiency of care provided to Medicaid fee-for-service recipients residing in a “designated area” (defined as a municipality or defined geographic area in which no fewer than 5,000 Medicaid recipients reside). The bill also permits voluntary participation in the demonstration project by Medicaid managed care organizations for the membership they serve.

A certified Medicaid ACO is eligible to receive and distribute gainsharing or cost savings payments in accordance with a gainsharing plan approved by DHS. DHS, with input from the Department of Health and Human Services, is to approve only those gainsharing plans that promote: improvements in health outcomes and quality of care, as measured by objective benchmarks as well as patient experience of care; expanded access to primary and behavioral health care services; and the reduction of unnecessary and inefficient costs associated with care rendered to Medicaid recipients residing in the designated area of the ACO. (An ACO may request approval of its gainsharing plan at the time of certification or at any time within one year of certification, and may seek to amend its gainsharing plan by submitting amendments to DHS for approval.)

The demonstration project is to allow nonprofit corporations, organized with the voluntary support and participation of local general hospitals, clinics, health centers, qualified primary care and behavioral health care providers, and public health and social services agencies, to apply for certification and participation in the project.

Submitted as:

New Jersey

[Chapter 114 of 2011](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Medicaid Accountable Care
2 Organization Demonstration Project Act.”

3
4 Section 2. [*Findings.*] Insert findings clause.

5
6 Section 3. [*Definitions relative to a Medicaid Accountable Care Organization.*]

7 As used in this act:

- 8 1. "ACO" means an accountable care organization.
9 2. "Behavioral health care provider" means a provider licensed or approved by the Department
10 of Human Services to render services to [insert state] residents.
11 3. "Department" means the Department of Human Services.
12 4. "Designated area" means a municipality or defined geographic area in which no fewer than
13 5,000 Medicaid recipients reside.

- 1 5. "Disproportionate share hospital" means a hospital designated by the Commissioner of
2 Human Services pursuant to [insert citation].
- 3 6. "Medicaid" means the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1
4 et seq.).
- 5 7. "Medicaid ACO Demonstration Project" or "demonstration project" means the demonstration
6 project established pursuant to this act.
- 7 8. "Primary care provider" includes the following licensed individuals: physicians, physician
8 assistants, advanced practice nurses, and nurse midwives whose professional practice
9 involves the provision of primary care, including internal medicine, family medicine,
10 geriatric care, pediatric care, or obstetrical/gynecological care.
- 11 9. "Qualified behavioral health care provider" means a behavioral health care provider who
12 participates in the Medicaid program and renders clinic-based and home-based services to
13 individuals residing in the designated area served by the Medicaid ACO.
- 14 10. "Qualified primary care provider" means a primary care provider who participates in the
15 Medicaid program and who spends at least 25% of his professional time or 10 hours per
16 seven-day week, whichever is less, rendering clinical or clinical supervision services at an
17 office or clinic setting located within the designated area served by a Medicaid ACO.

18
19 Section 3. [*Establishment of three-year Medicaid ACO Demonstration Project.*]

20 A. The Department of Human Services shall establish a three-year Medicaid ACO
21 Demonstration Project in which nonprofit corporations organized with the voluntary support and
22 participation of local general hospitals, clinics, pharmacies, health centers, qualified primary care
23 and behavioral health care providers, and public health and social services agencies may apply to the
24 department for certification and participation in the project. The department shall consult with the
25 Department of Health and Senior Services with respect to establishment and oversight of the
26 demonstration project.

27 Nothing in this act shall preclude the department, Medicaid managed care organizations,
28 qualified primary care and behavioral health care providers, licensed health care facilities, or any
29 other provider or payer of health care services from participating in other ACOs, health or behavioral
30 health ACO models, medical home programs, or projects.

31 B. Applicants for participation in the demonstration project shall be nonprofit corporations
32 created and operated for the primary purpose of improving the quality and efficiency of care
33 provided to Medicaid recipients residing in a given designated area.

34
35 Section 4. [*Applications for certification as a Medicaid ACO.*]

36 A. The department shall accept applications for certification from demonstration project
37 applicants beginning 60 days following the effective date of this act, and shall certify an applicant as
38 a Medicaid ACO for participation in the demonstration project following its determination that the
39 applicant meets the requirements specified in this section. The department may deny certification of
40 any ACO applicant that the department determines does not meet the requirements of this act. The
41 department may consider applications for approval, including revised applications submitted by an
42 ACO not previously approved to participate in the demonstration project.

43 B. The department, in consultation with the Department of Health and Senior Services, may
44 certify as many ACOs for participation in the demonstration project as it determines appropriate, but
45 shall certify no more than one ACO for each designated area.

46 C. Prior to certification, a demonstration project applicant shall demonstrate that it meets
47 the following minimum standards:

48 (1) The applicant has been formed as a nonprofit corporation pursuant to [insert
49 citation], for the purposes described in this Act;

1 (2) The applicant's governing board includes:

2 (a) individuals representing the interests of: health care providers, including,
3 but not limited to, general hospitals, clinics, private practice offices, physicians, behavioral health
4 care providers, and dentists; patients; and other social service agencies or organizations
5 located in the designated area; and

6 (b) voting representation from at least two consumer organizations capable of
7 advocating on behalf of patients residing within the designated area of the ACO. At least one of the
8 organizations shall have extensive leadership involvement by individuals residing within the
9 designated area of the ACO, and shall have a physical location within the designated area.

10 Additionally, at least one of the individuals representing a consumer organization shall be an
11 individual who resides within the designated area served by the ACO;

12 (3) The applicant has support of its application by: all of the general hospitals located
13 in the designated area served by the ACO; no fewer than 75% of the qualified primary care providers
14 located in the designated area; and at least four qualified behavioral health care providers located in
15 the designated area;

16 (4) The applicant has a process for receipt of gainsharing payments from the
17 department and any voluntarily participating Medicaid managed care organizations, and the
18 subsequent distribution of such gainsharing payments in accordance with a quality improvement and
19 gainsharing plan to be approved by the department, in consultation with the Department of
20 Health and Senior Services;

21 (5) The applicant has a process for engaging members of the community and for
22 receiving public comments with respect to its gainsharing plan;

23 (6) The applicant has a commitment to become accountable for the health outcomes,
24 quality, cost, and access to care of Medicaid recipients residing in the designated area for a period of
25 at least three years following certification; and

26 (7) The applicant has a commitment to ensure the use of electronic prescribing and
27 electronic medical records by health care providers located in the designated area.

28 D. Nothing in this act shall be construed to prevent the department from certifying an
29 applicant as a Medicaid ACO that also participates in a Medicare ACO demonstration project
30 approved by the federal Centers for Medicare and Medicaid Services.

31
32 Section 5. *[Eligibility to receive, distribute gainsharing payments.]*

33 A. A certified Medicaid ACO shall be eligible to receive and distribute gainsharing payments
34 only after having received approval from the department of its gainsharing plan, which approval may
35 be requested by the ACO at the time of certification or at any time within one year of certification.
36 An ACO may seek to amend its gainsharing plan at any time following the plan's initial approval by
37 submitting amendments to the department for approval.

38 B. The department, with input from the Department of Health and Senior Services and
39 utilizing outcome evaluation data provided by the Rutgers Center for State Health Policy, shall
40 approve only those gainsharing plans that promote: improvements in health outcomes and quality of
41 care, as measured by objective benchmarks as well as patient experience of care; expanded access to
42 primary and behavioral health care services; and the reduction of unnecessary and inefficient costs
43 associated with care rendered to Medicaid recipients residing in the ACO's designated area. The
44 department and the Department of Health and Senior Services shall provide all data necessary for
45 analysis in support of the department's review of gainsharing plans. Criteria to be considered by the
46 department and the Department of Health and Senior Services in approving a gainsharing plan shall
47 include, but are not limited to:

1 (1) whether the plan promotes: care coordination through multi-disciplinary teams,
2 including care coordination of patients with chronic diseases and the elderly; expansion of the
3 medical home and chronic care models; increased patient medication adherence and use of
4 medication therapy management services; use of health information technology and sharing of health
5 information; and use of open access scheduling in clinical and behavioral health care settings;

6 (2) whether the plan encourages services such as patient or family health education
7 and health promotion, home-based services, telephonic communication, group care, and culturally
8 and linguistically appropriate care;

9 (3) whether the gainsharing payment system is structured to reward quality and
10 improved patient outcomes and experience of care;

11 (4) whether the plan funds interdisciplinary collaboration between behavioral health
12 and primary care providers for patients with complex care needs likely to inappropriately access an
13 emergency department and general hospital for preventable conditions;

14 (5) whether the plan funds improved access to dental services for high-risk patients
15 likely to inappropriately access an emergency department and general hospital for untreated dental
16 conditions; and

17 (6) whether the plan has been developed with community input and will be made
18 available for inspection by members of the community served by the ACO.

19 C. The gainsharing plan shall include an appropriate proposed time period beginning and
20 ending on specified dates prior to the commencement of the demonstration project, which shall be
21 the benchmark period against which cost savings can be measured on an annual basis going forward.
22 Savings shall be calculated in accordance with a methodology that:

23 (1) identifies expenditures per recipient by the Medicaid fee-for-service program
24 during the benchmark period, adjusted for characteristics of recipients and local conditions that
25 predict future Medicaid spending but are not amenable to the care coordination or management
26 activities of an ACO which shall serve as the benchmark payment calculation;

27 (2) compares the benchmark payment calculation to amounts paid by the Medicaid
28 fee-for-service program for all such resident recipients during subsequent periods; and

29 (3) provides that the benchmark payment calculation shall remain fixed for a period
30 of three years following approval of the gainsharing plan.

31 D. The percentage of cost savings identified pursuant to subsection c. of this section to be
32 distributed to the ACO, retained by any voluntarily participating Medicaid managed care
33 organization, and retained by the State, shall be identified in the gainsharing plan and shall remain in
34 effect for a period of three years following approval of the gainsharing plan. Such percentages shall
35 be designed to ensure that:

36 (1) the State can achieve meaningful savings and support the ongoing operation of the
37 demonstration project, and

38 (2) the ACO receives a sufficient portion of the shared savings necessary to achieve
39 its mission and expand its scope of activities.

40 E. Notwithstanding the provisions of this section to the contrary, the department shall not
41 approve a gainsharing plan that provides direct or indirect financial incentives for the reduction or
42 limitation of medically necessary and appropriate items or services provided to patients under a
43 health care provider's clinical care in violation of federal law.

44 F. Notwithstanding the provisions of this section to the contrary, a gainsharing plan that
45 provides for shared savings between general hospitals and physicians related to acute care
46 admissions utilizing the methodological component of the Physician-Hospital Collaboration
47 Demonstration awarded by the federal Centers for Medicare and Medicaid, shall not be required to
48 be approved by the department. The department shall not be under any obligation to participate in
49 the Physician-Hospital Collaboration Demonstration.

1 G. The department shall consider using a portion of any savings generated to expand the
2 nursing, primary care, behavioral health care, and dental workforces and services in the area served
3 by the ACO.

4 H. A gainsharing plan submitted to the department for this ACO demonstration project shall
5 contain an assessment of the expected impact of revenues on hospitals that agree to participate. The
6 assessment shall include estimates for changes in both direct patient care reimbursement and indirect
7 revenue, such as disproportionate share payments, graduate medical education payments, and other
8 similar payments. The assessment shall include a review of whether participation in the
9 demonstration project could significantly impact the financial stability of any hospital through rapid
10 reductions in revenue and how this impact will be mitigated. The gainsharing plan shall include a
11 letter of support from all participating hospitals in order to be accepted by the department.
12

13 Section 6. [*Remission of payment to ACO.*]

14 The department shall remit payment of cost savings to a participating Medicaid ACO
15 following approval by the department, in consultation with the Department of Health and Senior
16 Services, of the ACO's gainsharing plan and identification of cost savings and agreement from the
17 federal government to share in the cost of the funds distributed.
18

19 Section.7 [*Voluntary participation in demonstration project.*]

20 A. A managed care organization that has contracted with the department may voluntarily
21 seek participation in the demonstration project by notifying the Medicaid ACO of its desire to
22 participate. The ACO shall submit a separate Medicaid managed care organization gainsharing plan
23 meeting the requirements of section 5 of this Act to the department for review and approval. The
24 Medicaid managed care organization gainsharing plan may be identical to the gainsharing plan
25 approved for use in connection with the Medicaid fee-for-service program, or may contain variations
26 with respect to the manner in which health outcomes, quality, care coordination, and access are to be
27 improved and the manner in which cost savings are achieved and distributed as gainsharing
28 payments, but the managed care organization gainsharing plan shall not affect the calculation or
29 distribution of shared savings pursuant to the approved gainsharing plan applicable to the Medicaid
30 fee-for-service program or the calculation or distribution of shared savings pursuant to any other
31 approved gainsharing plan used by the ACO.

32 B. A Medicaid managed care organization may withdraw from participation after one
33 year by notifying the department in writing of its desire to withdraw.

34 C. Nothing in this act shall:

35 (1) alter or limit the obligations of a Medicaid managed care organization
36 participating in the demonstration project pursuant to an approved gainsharing plan to comply with
37 State and federal law applicable to the Medicaid managed care organization; or

38 (2) preclude an ACO from expanding its operations to include participation with new
39 health care providers located within the ACO's designated area.
40

41 Section 8. [*Duties of the department; authorization to seek grants.*]

42 A. The department, in consultation with the Department of Health and Senior Services,
43 shall:

44 (1) design and implement the application process for approval of participating ACOs
45 in the demonstration project;

46 (2) collect data from participants in the demonstration project; and

1 (3) approve a methodology proposed by the Medicaid ACO applicant for calculation
2 of cost savings and for monitoring of health outcomes and quality of care under the demonstration
3 project.

4 B. The department and the Department of Health and Senior Services shall be authorized
5 to jointly seek public and private grants to implement and operate the demonstration project.
6

7 Section 9. [*Annual evaluation.*]

8 The department, in consultation with the Department of Health and Senior Services, shall
9 evaluate the demonstration project annually to assess whether: cost savings, including, but not
10 limited to, savings in administrative costs and savings due to improved health outcomes, are
11 achieved through implementation of the demonstration project. The department, in consultation with
12 the Department of Health and Senior Services, shall evaluate the demonstration project annually to
13 assess whether there is improvement in the rates of health screening, the outcomes and
14 hospitalization rates for persons with chronic illnesses, and the hospitalization and readmission rates
15 for patients residing in the designated areas served by the ACOs.
16

17 Section 10. [*Application for State plan amendments, waivers.*]

18 A. The Commissioner of Human Services shall apply for such State plan amendments or
19 waivers as may be necessary to implement the provisions of this act and to secure federal financial
20 participation for State Medicaid expenditures under the federal Medicaid program, and shall take
21 such additional steps as may be necessary to secure on behalf of participating ACOs such waivers,
22 exemptions, or advisory opinions to ensure that such ACOs are in compliance with applicable
23 provisions of State and federal laws related to fraud and abuse, including, but not limited to, anti-
24 kickback, self-referral, false claims, and civil monetary penalties.

25 B. The Commissioners of Health and Senior Services and Human Services may apply for
26 participation in federal ACO demonstration projects that align with the goals of this Act.

27 C. The provisions of this act shall not be construed to require State funding for any
28 evaluation or start-up costs of an ACO.
29

30 Section 11. [*Construction of Act.*]

31 Nothing in this Act shall be construed to limit the choice of a Medicaid recipient to access
32 care for family planning services or any other type of health care services from a qualified health
33 care provider who is not participating in the demonstration project.
34

35 Section 12. [*Continuation of payments for certain services.*]

36 A. Under the demonstration project, payment shall continue to be made to providers of
37 services and suppliers participating in the Medicaid ACO for services provided to managed care
38 recipients or individuals who receive services on a fee-for-service basis in the same manner as they
39 would otherwise be made, except that the ACO is eligible to receive gainsharing payments under
40 sections 5 and 6 of this act if it meets the requirements set forth therein.

41 B. Nothing in this act shall be construed to authorize the Departments of Human Services or
42 Health and Senior Services to waive or limit any provisions of federal or State law or reimbursement
43 methodologies governing Medicaid reimbursement to federally qualified health centers, including,
44 but not limited to, Medicaid prospective payment reimbursement and any supplemental payments
45 made to a federally qualified health center providing services to Medicaid managed care recipients.

46 Section 13. [*Certain licensure requirements waived.*]

47 Notwithstanding the requirements of [insert citation] a Medicaid ACO certified pursuant to
48 this Act shall not be required to obtain licensure or certification from the Department of Banking and
49 Insurance as an organized delivery system when providing services to Medicaid recipients.

1 Section 14. [*Report to Governor, Legislature.*]

2 Upon completion of the demonstration project, the Commissioners of Human Services and
3 Health and Senior Services shall report to the Governor, and to the Legislature pursuant to [insert
4 citation], on the demonstration project, and include in the report the findings of the evaluation
5 carried out pursuant to section 9 of this Act. The commissioners shall make such recommendations
6 as they deem appropriate. If, after three years following enactment of this act, the commissioners
7 find the demonstration project was successful in reducing costs and improving health outcomes and
8 the quality of care for Medicaid recipients, the commissioners may recommend that Medicaid ACOs
9 be established on a permanent basis and in additional communities in which Medicaid recipients
10 reside.

11
12 Section 15. [*Rules, regulations.*]

13 The Commissioner of Human Services, in accordance with the "Administrative Procedure
14 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and with input from the Commissioner of Health and
15 Senior Services, shall, within 180 days of the effective date of this Act, adopt rules and regulations
16 establishing the standards for gainsharing plans submitted by Medicaid ACOs. The Commissioner of
17 Human Services shall also adopt, with input from the Commissioner of Health and Senior Services,
18 such rules and regulations governing the ongoing oversight and monitoring of the quality of care
19 delivered to Medicaid recipients in the designated areas served by the Medicaid ACOs, and such
20 other requirements as the Commissioner of Human Services deems necessary to carry out the
21 provisions of this Act.

22
23 Section 16. [*Severability.*] Insert severability clause.

24
25 Section 17. [*Repealer.*] Insert repealer clause.

26
27 Section 18. [*Effective Date.*] Insert effective date.