



General Assembly

January Session, 2013

Amendment

LCO No. 6564

HB0643106564HDO

Offered by:

REP. TERCYAK, 26th Dist.

SEN. OSTEN, 19th Dist.

To: House Bill No. 6431

File No. 217

Cal. No. 160

"AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2013*) As used in this section
4 and sections 2 to 11, inclusive:

5 (1) "Health care collaborative" means an entity comprised of health
6 care practitioners who practice in two or more separate firms and that
7 (A) has entered or plans to enter into a compensation agreement with a
8 health plan to incentivize quality over volume and place healthcare
9 practitioners at risk for some or all of the costs of inefficient health care
10 delivery, or (B) has arranged to implement an ongoing program to
11 evaluate and modify health care practitioner practice patterns and
12 create interdependence and cooperation among health care
13 practitioners for the purpose of efficiently delivering health care;

14 (2) "Prospective health care collaborative" means an entity
15 comprised of health care practitioners who practice in two or more
16 separate firms that (A) is seeking recognition as a health care
17 collaborative, or (B) has been issued a preliminary certificate of public
18 advantage by the Office of the Healthcare Advocate;

19 (3) "Health care practitioner" means (A) a physician licensed under
20 chapter 370 of the general statutes, (B) a chiropractor licensed under
21 chapter 372 of the general statutes, (C) a podiatrist licensed under
22 chapter 375 of the general statutes, (D) a naturopath licensed under
23 chapter 373 of the general statutes, or (E) an optometrist licensed under
24 chapter 380 of the general statutes;

25 (4) "Health plan" means an entity that pays for health care services,
26 including, but not limited to, commercial health insurance plans, self-
27 insurance plans, health maintenance organizations, managed care
28 organizations, as defined in section 38a-478 of the general statutes, or
29 any insurer or corporation subject to the insurance laws of this state;

30 (5) "Preliminary certificate of public advantage" means the written
31 authorization issued by the Office of the Healthcare Advocate
32 authorizing a prospective health care collaborative to enter into
33 negotiations with a health plan regarding compensation, prices and
34 certain terms and conditions of service;

35 (6) "Certificate of public advantage" means the certificate issued by
36 the Office of the Healthcare Advocate authorizing a health care
37 collaborative to implement a final agreement with a health plan on
38 compensation, prices and certain terms and conditions of service,
39 subject to the supervision of the Healthcare Advocate; and

40 (7) "Person" means an individual, association, corporation or any
41 other legal entity.

42 Sec. 2. (NEW) (*Effective October 1, 2013*) (a) Notwithstanding the
43 antitrust laws, a prospective health care collaborative or a health care

44 collaborative may negotiate on behalf of itself and its associated health
45 care practitioners and enter into agreements with health plans to
46 provide health care items and services for which benefits are provided
47 under such health plans, provided the Healthcare Advocate
48 determines that the prospective health care collaborative or health care
49 collaborative complies with the requirements of sections 1 to 11,
50 inclusive, of this act.

51 (b) Nothing in sections 1 to 11, inclusive, of this act shall be deemed
52 to limit the right of health care practitioners collectively to negotiate
53 and jointly to contract with health plans without complying with the
54 requirements of sections 1 to 11, inclusive, of this act.

55 (c) Nothing in sections 1 to 11, inclusive, of this act shall be deemed
56 to affect or limit a health care practitioner from exercising his or her
57 rights under the National Labor Relations Act, 49 Stat. 449 (1935), 29
58 USC 151 et seq., or any other applicable provisions of federal or state
59 law.

60 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) Prior to negotiating and
61 contracting with a health plan, a prospective health care collaborative
62 shall:

63 (1) Apply for and obtain a preliminary certificate of public
64 advantage from the Office of the Healthcare Advocate. Such
65 application shall be in a form prescribed by the Healthcare Advocate
66 and shall identify: (A) The name of the prospective health care
67 collaborative, (B) the names of the health care practitioners associated
68 with the prospective health care collaborative, (C) the manner in which
69 the prospective health care collaborative's proposed method of health
70 plan payment incentivizes quality over volume and places health care
71 practitioners at risk for some or all of any inefficient health care
72 delivery, (D) the prospective health care collaborative's arrangements
73 to implement an active and ongoing program to evaluate and modify
74 health care practitioner practice patterns and create interdependence

75 and cooperation among health care practitioners for the purpose of
76 efficiently delivering care, (E) the name of the health plan, (F) the
77 expected effects of the negotiated contract on the quality and price of
78 health care practitioner services, and (G) any other information as the
79 Healthcare Advocate may prescribe; and

80 (2) Be found to be a health care collaborative by the Healthcare
81 Advocate.

82 (b) No prospective health care collaborative shall engage in
83 negotiations for the purpose of contracting with a health plan without
84 first being granted a preliminary certificate of public advantage by the
85 Healthcare Advocate.

86 (c) The Healthcare Advocate shall find that a prospective health care
87 collaborative is a health care collaborative if such prospective health
88 care collaborative (1) has placed or plans to place its associated health
89 care practitioners at risk for some or all of their inefficient health care
90 delivery through methods, including, but not limited to, pay-for-
91 performance, capitation, shared savings and costs, bundled payment
92 arrangements or other financial incentives or risk assumption
93 mechanisms based in whole or in part on per episode, per population
94 or per procedure costs, outcomes, patient satisfaction, education or
95 welfare activities; or (2) implements an active and ongoing program to
96 modify practice patterns by the health care collaborative's health care
97 practitioners and creates a high degree of interdependence and
98 cooperation among the health care practitioners to insure quality,
99 including: (A) Mechanisms to monitor and control utilization of health
100 care services that are designed to control costs and assure quality of
101 care; (B) selecting network health compensations that are likely to
102 further these efficiency objectives; or (C) investing capital, both
103 monetary and human, in the necessary infrastructure and capability to
104 realize the claimed efficiencies.

105 (d) Not later than twenty days after receiving a prospective health

106 care collaborative's application, the Healthcare Advocate shall notify,
107 in writing, such prospective health care collaborative of his or her
108 decision to approve or reject such application. If the Healthcare
109 Advocate rejects such application, he or she shall furnish a written
110 explanation of any deficiencies, along with a statement of specific
111 proposals for remedial measures to cure such deficiencies. The
112 Healthcare Advocate may conduct a hearing, after giving notice to all
113 interested parties, to obtain information necessary to make such
114 decision.

115 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) Upon receipt of a
116 preliminary certificate of public advantage from the Healthcare
117 Advocate authorizing negotiations between a health care collaborative
118 and a health plan, a health care collaborative shall notify the
119 Healthcare Advocate of any of the following events not later than
120 fourteen days after the occurrence of such event: (1) The
121 commencement of negotiations; (2) the conclusion of negotiations; (3)
122 an impasse in the negotiations; or (4) the health plan's refusal to
123 negotiate, cancellation of negotiations or failure to respond to a
124 negotiation request. In such instances, a health care collaborative may
125 request intervention from the Healthcare Advocate to require the
126 health plan to participate in the negotiation pursuant to subsection (b)
127 of this section.

128 (b) If the Healthcare Advocate determines that an impasse exists in
129 the negotiations, or in the event a health plan declines to negotiate,
130 cancels negotiations or fails to respond to a request for negotiation, the
131 Healthcare Advocate shall:

132 (1) Designate a mediator to assist the parties in commencing or
133 continuing such negotiations and in reaching a settlement of the issues
134 presented in such negotiations. The mediator designated shall be
135 experienced in health care mediation and shall be drawn from a list of
136 such mediators maintained by the Healthcare Advocate, the American
137 Arbitration Association or the Federal Mediation and Conciliation

138 Service. The mediator so designated may only serve if approved by
139 both parties. If the mediator is successful in resolving the impasse, the
140 health care collaborative shall proceed as set forth in section 5 of this
141 act; and

142 (2) If, after a reasonable period of mediation, the parties are unable
143 to reach an agreement, appoint a fact-finding board of not more than
144 three members drawn from the list of mediators maintained by the
145 Healthcare Advocate, the American Arbitration Association or the
146 Federal Mediation and Conciliation Service. Upon a vote of the
147 majority of its members, the board shall have the power to make
148 recommendations for the resolution of the dispute.

149 (c) The fact-finding board shall, not later than sixty days after the
150 board's appointment, submit, in writing, its findings and
151 recommendations to the Healthcare Advocate, the health care
152 collaborative and the health plan. If the impasse continues beyond
153 twenty days from the date on which the board submitted its findings
154 and recommendations, the Healthcare Advocate shall order a
155 resolution to the negotiations based upon the findings of fact and
156 recommendations submitted by the board.

157 (d) (1) A health plan shall be prohibited from refusing to negotiate
158 in good faith with a health care collaborative. Whenever, in the
159 judgment of the Healthcare Advocate, a health plan has refused to
160 negotiate in good faith with a health care collaborative in violation of
161 this subsection, or any regulation adopted or order issued pursuant to
162 this section, at the request of the Healthcare Advocate, the Attorney
163 General may bring an action in the superior court for the judicial
164 district of New Britain for an order directing compliance with this
165 subsection. The Healthcare Advocate shall have the discretion to
166 observe such good faith negotiations between the health plan and the
167 health care collaborative.

168 (2) Any health plan that violates the provisions of this subsection

169 shall be subject to a civil penalty of not more than twenty-five
170 thousand dollars, to be fixed by the court, for each day for each
171 violation. Each violation shall be a separate and distinct offense and, in
172 the case of a continuing violation, each day's continuance thereof shall
173 be deemed to be a separate and distinct offense. Upon request of the
174 Healthcare Advocate, the Attorney General shall institute a civil action
175 in the superior court for the judicial district of New Britain to recover
176 such penalty.

177 Sec. 5. (NEW) (*Effective October 1, 2013*) (a) Any agreement
178 negotiated pursuant to sections 1 to 11, inclusive, of this act between a
179 health care collaborative and a health plan shall be submitted to the
180 Healthcare Advocate for an examination of its terms to determine
181 whether such agreement shall be approved or rejected, in accordance
182 with subsection (b) of this section.

183 (b) Not later than sixty days after submission of the agreement, the
184 Healthcare Advocate shall provide a tentative decision to approve or
185 reject the agreement. The Healthcare Advocate shall provide such
186 decision after issuing public notice and providing a thirty-day
187 opportunity for public comment regarding such opinion. The
188 Healthcare Advocate's tentative decision shall be accompanied by a
189 written opinion expressly considering the agreement's expected effects
190 on the reasonableness of fees and the quality and price of health care
191 practitioner services. No agreement shall become final and effective
192 unless and until, following the thirty-day comment period, the
193 Healthcare Advocate approves the agreement and issues a certificate
194 of public advantage on the basis that the agreement fosters reasonably
195 priced, quality practitioner services. The Healthcare Advocate may
196 collect information from any person to assist in evaluating the impact
197 of the proposed agreement on the health care marketplace.

198 (c) In determining the reasonableness of fees and quality of services,
199 the Healthcare Advocate shall consider whether the health care
200 collaborative's proposed fees:

- 201 (1) Are consistent with fees in similar practitioner communities;
- 202 (2) Ensure reasonable access to practitioner care;
- 203 (3) Improve the health care collaborative's ability to render services
204 efficiently;
- 205 (4) Provide for the financial stability of the health care collaborative;
206 and
- 207 (5) Encourage innovative approaches to medical care that may
208 improve patient outcomes and lower health care costs.

209 (d) The Healthcare Advocate shall adopt rules and regulations,
210 pursuant to chapter 54 of the general statutes, establishing application
211 and review procedures, methods for determining whether to issue a
212 certificate of public advantage and any other procedures or standards
213 necessary for the administration of sections 1 to 11, inclusive, of this
214 act.

215 Sec. 6. (NEW) (*Effective October 1, 2013*) The Healthcare Advocate
216 shall actively monitor agreements approved under sections 1 to 11,
217 inclusive, of this act to ensure that a health care collaborative's
218 performance under the agreement remains in compliance with the
219 conditions of approval. Upon request and at least annually, each
220 health plan and health care collaborative operating under a certificate
221 of public advantage shall submit to the Healthcare Advocate a written
222 report, in the form and manner prescribed by the Healthcare
223 Advocate, regarding agreement compliance. The Healthcare Advocate
224 may revoke a certificate of public advantage upon a finding that
225 performance pursuant to the agreement is not in substantial
226 compliance with the terms of the application or the conditions of
227 approval and issuance of a certificate of public advantage.

228 Sec. 7. (NEW) (*Effective October 1, 2013*) Any person aggrieved by a
229 final decision of the Healthcare Advocate under sections 1 to 11,

230 inclusive, of this act may appeal the decision to the Superior Court in
231 accordance with section 4-183 of the general statutes.

232 Sec. 8. (NEW) (*Effective October 1, 2013*) Any applications, reports,
233 records, documents or other information obtained by the Healthcare
234 Advocate pursuant to sections 1 to 11, inclusive, of this act shall not be
235 subject to disclosure under the Freedom of Information Act, as defined
236 in section 1-200 of the general statutes.

237 Sec. 9. (NEW) (*Effective October 1, 2013*) (a) The Healthcare Advocate
238 shall charge each prospective health care collaborative an
239 administrative fee of one thousand dollars for determining whether
240 such prospective health care collaborative is authorized to engage in
241 negotiations with a health plan within the authority granted under
242 sections 1 to 11, inclusive, of this act.

243 (b) The Healthcare Advocate shall set fees in amounts deemed
244 reasonable and necessary for determining whether the agreement
245 between the prospective health care collaborative and a health plan
246 shall be approved or disapproved.

247 Sec. 10. (NEW) (*Effective October 1, 2013*) On or before October 1,
248 2014, and annually thereafter, the Healthcare Advocate shall submit, in
249 accordance with the provisions of section 11-4a of the general statutes,
250 to the Governor and the joint standing committee of the General
251 Assembly having cognizance of matters relating to labor and public
252 employees an annual report on the operations and activities of the
253 Healthcare Advocate pursuant to sections 1 to 11, inclusive, of this act.

254 Sec. 11. (NEW) (*Effective October 1, 2013*) If any provision of this
255 section and sections 1 to 10, inclusive, of this act, or its application to
256 any person or circumstance, is held invalid by a court of competent
257 jurisdiction, the invalidity shall not affect any other provisions or
258 applications of this section and sections 1 to 10, inclusive, of this act,
259 that can be given effect without the invalid provision or application,
260 and to this end such provisions are severable. The provisions of this

261 section and sections 1 to 10, inclusive, of this act shall be liberally
 262 construed to effect the purposes thereof."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	New section
Sec. 9	<i>October 1, 2013</i>	New section
Sec. 10	<i>October 1, 2013</i>	New section
Sec. 11	<i>October 1, 2013</i>	New section