



General Assembly

February Session, 2014

***Raised Bill No. 5345***

LCO No. 1598



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:  
(LAB)

***AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) As used in this section  
2 and sections 2 to 11, inclusive:

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

12 (2) "Prospective health care collaborative" means an entity  
13 comprised of health care practitioners who practice in two or more  
14 separate firms that (A) is seeking recognition as a health care

15 collaborative, or (B) has been issued a preliminary certificate of public  
16 advantage by the Office of the Healthcare Advocate;

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

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

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

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

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

40 Sec. 2. (NEW) (*Effective October 1, 2014*) (a) Notwithstanding chapter  
41 624 of the general statutes, a prospective health care collaborative or a  
42 health care collaborative may negotiate on behalf of itself and its  
43 associated health care practitioners and enter into agreements with  
44 health plans to provide health care items and services for which

45 benefits are provided under such health plans, provided the  
46 Healthcare Advocate determines that the prospective health care  
47 collaborative or health care collaborative complies with the  
48 requirements of sections 1 to 11, inclusive, of this act.

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

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

58 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) Prior to negotiating and  
59 contracting with a health plan, a prospective health care collaborative  
60 shall:

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

76 health care practitioner services, and (G) any other information as the  
77 Healthcare Advocate may prescribe; and

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

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

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

103 (d) Not later than twenty days after receiving a prospective health  
104 care collaborative's application, the Healthcare Advocate shall notify,  
105 in writing, such prospective health care collaborative of his or her  
106 decision to approve or reject such application. If the Healthcare

107 Advocate rejects such application, he or she shall furnish a written  
108 explanation of any deficiencies, along with a statement of specific  
109 proposals for remedial measures to cure such deficiencies. The  
110 Healthcare Advocate may conduct a hearing, after giving notice to all  
111 interested parties, to obtain information necessary to make such  
112 decision.

113 Sec. 4. (NEW) (*Effective October 1, 2014*) (a) Upon receipt of a  
114 preliminary certificate of public advantage from the Healthcare  
115 Advocate authorizing negotiations between a health care collaborative  
116 and a health plan, a health care collaborative shall notify the  
117 Healthcare Advocate of any of the following events not later than  
118 fourteen days after the occurrence of such event: (1) The  
119 commencement of negotiations; (2) the conclusion of negotiations; (3)  
120 an impasse in the negotiations; or (4) the health plan's refusal to  
121 negotiate, cancellation of negotiations or failure to respond to a  
122 negotiation request. In such instances, a health care collaborative may  
123 request intervention from the Healthcare Advocate to require the  
124 health plan to participate in the negotiation pursuant to subsection (b)  
125 of this section.

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

130 (1) Designate a mediator to assist the parties in commencing or  
131 continuing such negotiations and in reaching a settlement of the issues  
132 presented in such negotiations. The mediator designated shall be  
133 experienced in health care mediation and shall be drawn from a list of  
134 such mediators maintained by the Healthcare Advocate, the American  
135 Arbitration Association or the Federal Mediation and Conciliation  
136 Service. The mediator so designated may only serve if approved by  
137 both parties. If the mediator is successful in resolving the impasse, the  
138 health care collaborative shall proceed as set forth in section 5 of this

139 act; and

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

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

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

166 (2) Any health plan that violates the provisions of this subsection  
167 shall be subject to a civil penalty of not more than twenty-five  
168 thousand dollars, to be fixed by the court, for each day for each  
169 violation. Each violation shall be a separate and distinct offense and, in

170 the case of a continuing violation, each day's continuance thereof shall  
171 be deemed to be a separate and distinct offense. Upon request of the  
172 Healthcare Advocate, the Attorney General shall institute a civil action  
173 in the superior court for the judicial district of New Britain to recover  
174 such penalty.

175 Sec. 5. (NEW) (*Effective October 1, 2014*) (a) Any agreement  
176 negotiated pursuant to sections 1 to 11, inclusive, of this act between a  
177 health care collaborative and a health plan shall be submitted to the  
178 Healthcare Advocate for an examination of its terms to determine  
179 whether such agreement shall be approved or rejected, in accordance  
180 with subsection (b) of this section.

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

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

199 (1) Are consistent with fees in similar practitioner communities;

200 (2) Ensure reasonable access to practitioner care;

201 (3) Improve the health care collaborative's ability to render services  
202 efficiently;

203 (4) Provide for the financial stability of the health care collaborative;  
204 and

205 (5) Encourage innovative approaches to medical care that may  
206 improve patient outcomes and lower health care costs.

207 Sec. 6. (NEW) (*Effective October 1, 2014*) The Healthcare Advocate  
208 shall actively monitor agreements approved under sections 1 to 11,  
209 inclusive, of this act to ensure that a health care collaborative's  
210 performance under the agreement remains in compliance with the  
211 conditions of approval. Upon request and at least annually, each  
212 health plan and health care collaborative operating under a certificate  
213 of public advantage shall submit to the Healthcare Advocate a written  
214 report, in the form and manner prescribed by the Healthcare  
215 Advocate, regarding agreement compliance. The Healthcare Advocate  
216 may revoke a certificate of public advantage upon a finding that  
217 performance pursuant to the agreement is not in substantial  
218 compliance with the terms of the application or the conditions of  
219 approval and issuance of a certificate of public advantage.

220 Sec. 7. (NEW) (*Effective October 1, 2014*) Any person aggrieved by a  
221 final decision of the Healthcare Advocate under sections 1 to 11,  
222 inclusive, of this act may appeal the decision to the Superior Court in  
223 accordance with section 4-183 of the general statutes.

224 Sec. 8. (NEW) (*Effective October 1, 2014*) Any applications, reports,  
225 records, documents or other information obtained by the Healthcare  
226 Advocate pursuant to sections 1 to 11, inclusive, of this act shall not be  
227 subject to disclosure under the Freedom of Information Act, as defined  
228 in section 1-200 of the general statutes.

229 Sec. 9. (NEW) (*Effective October 1, 2014*) (a) The Healthcare Advocate  
230 shall charge each prospective health care collaborative an

231 administrative fee of one thousand dollars for determining whether  
232 such prospective health care collaborative is authorized to engage in  
233 negotiations with a health plan within the authority granted under  
234 sections 1 to 11, inclusive, of this act.

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

239 Sec. 10. (NEW) (*Effective October 1, 2014*) On or before October 1,  
240 2015, and annually thereafter, the Healthcare Advocate shall submit, in  
241 accordance with the provisions of section 11-4a of the general statutes,  
242 to the Governor and the joint standing committee of the General  
243 Assembly having cognizance of matters relating to labor and public  
244 employees an annual report on the operations and activities of the  
245 Healthcare Advocate pursuant to sections 1 to 11, inclusive, of this act.

246 Sec. 11. (NEW) (*Effective October 1, 2014*) If any provision of this  
247 section and sections 1 to 10, inclusive, of this act, or its application to  
248 any person or circumstance, is held invalid by a court of competent  
249 jurisdiction, the invalidity shall not affect any other provisions or  
250 applications of this section and sections 1 to 10, inclusive, of this act,  
251 that can be given effect without the invalid provision or application,  
252 and to this end such provisions are severable. The provisions of this  
253 section and sections 1 to 10, inclusive, of this act shall be liberally  
254 construed to effect the purposes thereof.

255 Sec. 12. (NEW) (*Effective October 1, 2014*) The Healthcare Advocate  
256 shall adopt rules and regulations, pursuant to chapter 54 of the general  
257 statutes, establishing application and review procedures, methods for  
258 determining whether to issue a certificate of public advantage and any  
259 other procedures or standards necessary for the administration of  
260 sections 1 to 11, inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section
Sec. 2	<i>October 1, 2014</i>	New section
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>October 1, 2014</i>	New section
Sec. 5	<i>October 1, 2014</i>	New section
Sec. 6	<i>October 1, 2014</i>	New section
Sec. 7	<i>October 1, 2014</i>	New section
Sec. 8	<i>October 1, 2014</i>	New section
Sec. 9	<i>October 1, 2014</i>	New section
Sec. 10	<i>October 1, 2014</i>	New section
Sec. 11	<i>October 1, 2014</i>	New section
Sec. 12	<i>October 1, 2014</i>	New section

**Statement of Purpose:**

To permit health care providers to enter into cooperative arrangements that would be exempt from certain antitrust laws after receiving approval from the Attorney General.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*