



General Assembly

**Substitute Bill No. 5345**

February Session, 2014



**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) (i) the manner in  
67 which the prospective health care collaborative's proposed method of  
68 health plan payment incentivizes quality over volume and places  
69 health care practitioners at risk for some or all of any inefficient health  
70 care delivery, or (ii) the prospective health care collaborative's  
71 arrangements to implement an active and ongoing program to  
72 evaluate and modify health care practitioner practice patterns and  
73 create interdependence and cooperation among health care  
74 practitioners for the purpose of efficiently delivering care, (D) the  
75 name of the health plan, (E) the expected effects of the negotiated  
76 contract on the quality and price of health care practitioner services,  
77 and (F) any other information as the Healthcare Advocate may  
78 prescribe; and

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

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

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

104 (d) Not later than twenty days after receiving a prospective health  
105 care collaborative's application, the Healthcare Advocate shall notify,  
106 in writing, such prospective health care collaborative of his or her  
107 decision to approve or reject such application. If the Healthcare  
108 Advocate rejects such application, he or she shall furnish a written  
109 explanation of any deficiencies, along with a statement of specific  
110 proposals for remedial measures to cure such deficiencies. The  
111 Healthcare Advocate may conduct a hearing, after giving notice to all  
112 interested parties, to obtain information necessary to make such  
113 decision.

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

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

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

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

147 recommendations for the resolution of the dispute.

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

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

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

176 Sec. 5. (NEW) (*Effective October 1, 2014*) (a) Any agreement  
177 negotiated pursuant to sections 1 to 11, inclusive, of this act between a  
178 health care collaborative and a health plan shall be submitted to the

179 Healthcare Advocate for an examination of its terms to determine  
180 whether such agreement shall be approved or rejected, in accordance  
181 with subsection (b) of this section.

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

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

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

201 (2) Ensure reasonable access to practitioner care;

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

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

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

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

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

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

230       Sec. 9. (NEW) (*Effective October 1, 2014*) (a) The Healthcare Advocate  
231 shall charge each prospective health care collaborative an  
232 administrative fee of one thousand dollars for determining whether  
233 such prospective health care collaborative is authorized to engage in  
234 negotiations with a health plan within the authority granted under  
235 sections 1 to 11, inclusive, of this act.

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

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

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

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

In section 3(a)(1), clauses (i) and (ii) were inserted in subparagraph (C), "(D)" was deleted, and subparagraphs (E) to (G), inclusive, were redesignated as subparagraphs (D) to (F), inclusive, for clarity and internal consistency.

**LAB**      *Joint Favorable Subst. -LCO*