

**CS FOR SENATE BILL NO. 256(RLS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Offered: 4/19/00

Referred: Today's Calendar

Sponsor(s): SENATOR PETE KELLY

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to allowing physicians to collectively negotiate with a health  
2 benefit plan that has substantial market power."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 23 is amended by adding a new chapter to read:

5 **Chapter 50. Collective Negotiation by Physicians.**

6 **Sec. 23.50.010. Legislative findings.** (a) The legislature finds that permitting  
7 competing physicians to engage in collective negotiation of certain terms and  
8 conditions of contracts with a health benefit plan will benefit competition, so long as  
9 the physicians do not engage in an express or implied threat of retaliatory collective  
10 action, including boycotts or strikes.

11 (b) The legislature finds that permitting physicians to engage in collective  
12 negotiations over fee-related terms may, in some circumstances, yield anti-competitive  
13 effects. There are, however, instances in which a health benefit plan dominates the  
14 market to the degree that fair negotiations between physicians and the health benefit

1 plan are not possible in the absence of joint action on behalf of the physicians. In  
 2 those circumstances, the health benefit plan can virtually dictate the terms of the  
 3 contracts that it offers to physicians.

4 (c) The legislature finds that it is appropriate and necessary to authorize  
 5 collective negotiations between competing physicians and health benefit plans on fee-  
 6 related and other issues when the imbalances in bargaining capacity described in this  
 7 section exist.

8 **Sec. 23.50.020. Collective action by physicians.** (a) Competing physicians  
 9 may meet and communicate in order to collectively negotiate with the health benefit  
 10 plan concerning any of the contract terms and conditions described in this subsection.  
 11 Competing physicians may not engage in a boycott related to these terms and  
 12 conditions. Competing physicians may meet and communicate concerning

- 13 (1) clinical practice guidelines and coverage criteria;
- 14 (2) the respective liability of physicians and the health benefit plan for  
 15 the treatment or lack of treatment of insured or enrolled persons;
- 16 (3) administrative procedures, including methods and timing of the  
 17 payment of services to physicians;
- 18 (4) procedures for the resolution of disputes between the health benefit  
 19 plan and physicians;
- 20 (5) patient referral procedures;
- 21 (6) the formulation and application of reimbursement methodology;
- 22 (7) quality assurance programs;
- 23 (8) health service utilization review procedures; and
- 24 (9) criteria to be used by health benefit plans for the selection and  
 25 termination of physicians, including whether to engage in selective contracting.

26 (b) Except as provided in (c) of this section, competing physicians may not  
 27 meet and communicate for the purpose of collectively negotiating the following terms  
 28 and conditions with a health benefit plan:

- 29 (1) the fees or prices for services, including fees or prices arrived at by  
 30 applying any reimbursement methodology procedures;
- 31 (2) the conversion factor in a resource-based relative value scale

1 reimbursement methodology or similar methodologies;

2 (3) the amount of any discount on the price of services to be rendered  
3 by the physicians;

4 (4) the dollar amount for capitation or fixed payment for each person  
5 covered by the health benefit plan for health services rendered by physicians to a  
6 health benefit plan's insureds, beneficiaries, or enrollees; or

7 (5) the inclusion or alteration of terms and conditions to the extent that  
8 they are prohibited or required by law; however, this paragraph does not limit  
9 physician rights to collectively petition the government for a change in the law.

10 (c) Competing physicians within the service area of a health benefit plan may  
11 collectively negotiate the terms and conditions of contracts described in (b) of this  
12 section if the health benefit plan has substantial market power. If the attorney general  
13 receives notice under (f) of this section that an authorized third party intends to  
14 negotiate with a health benefit plan, the attorney general shall provide written notice  
15 of the intended negotiation to the health benefit plan. A health benefit plan is  
16 rebuttably presumed to have substantial market power.

17 (d) A health benefit plan may rebut the presumption of substantial market  
18 power described under (c) of this section by providing proof satisfactory to the  
19 attorney general that the health benefit plan's market share does not exceed 15 percent

20 (1) as measured by the number of covered lives at the end of the most  
21 recently completed calendar year or by the actual number of consumers of prepaid  
22 comprehensive health services at the end of the most recently completed calendar  
23 quarter divided by the total population of the geographic service area as of the most  
24 recent census; or

25 (2) within a particular geographic service area when its market  
26 segments are added together for all types of health insurance insureds, beneficiaries,  
27 or enrollees and for Medicare and Medicaid beneficiaries.

28 (e) In exercising the collective rights granted by (a) and (c) of this section,

29 (1) physicians may communicate with each other with respect to the  
30 contractual terms and conditions to be negotiated with a health benefit plan;

31 (2) physicians may communicate with an authorized third party

1 regarding the terms and conditions of contracts allowed under this section;

2 (3) the authorized third party is the sole party authorized to negotiate  
3 with a health benefit plan on behalf of a defined group of physicians;

4 (4) physicians can be bound by the terms and conditions negotiated by  
5 the authorized third party that represents their interests;

6 (5) a health benefit plan communicating or negotiating with the  
7 authorized third party may contract with, or offer different contract terms and  
8 conditions to, individual competing physicians;

9 (6) an authorized third party may not represent more than 30 percent  
10 of the market of practicing physicians for the provision of services in the geographic  
11 service area or proposed geographic service area, if the health benefit plan has less  
12 than a five percent market share as determined by the number of covered lives as  
13 reported by the director of insurance for the most recently completed calendar year or  
14 by the actual number of consumers of prepaid comprehensive health services;

15 (7) the attorney general may limit the percentage of practicing  
16 physicians represented by an authorized third party; however, the limitation may not  
17 be less than 30 percent of the market of practicing physicians in the geographic service  
18 area or proposed geographic service area; when determining whether to impose a  
19 limitation described under this paragraph, the attorney general shall consider the  
20 provisions described under (h), (i), and (j) of this section; this paragraph does not  
21 apply if the market of practicing physicians in the geographic service area or proposed  
22 geographic service area consists of 40 or fewer individuals; and

23 (8) the authorized third party shall comply with the provisions of (f)  
24 of this section.

25 (f) A person acting or proposing to act as an authorized third party under this  
26 section shall,

27 (1) before engaging in collective negotiations with a health benefit plan,

28 (A) file with the attorney general the information that identifies  
29 the authorized third party, the authorized third party's plan of operation, and the  
30 authorized third party's procedures to ensure compliance with this section;

31 (B) furnish to the attorney general, for the attorney general's

1 approval, a brief report that identifies the proposed subject matter of the  
2 negotiations or discussions with a health benefit plan and that contains an  
3 explanation of the efficiencies or benefits that are expected to be achieved  
4 through the collective negotiations; the attorney general may not approve the  
5 report if the proposed negotiations exceed the authority granted in this chapter  
6 and, if they do, shall enter an order prohibiting the collective negotiations from  
7 proceeding; the authorized third party shall provide supplemental information  
8 to the attorney general as new information becomes available that indicates that  
9 the subject matter of negotiations with the health benefit plan has changed or  
10 will change;

11 (2) within 14 days after receiving a health benefit plan's decision to  
12 decline to negotiate or to terminate negotiations, or within 14 days after requesting  
13 negotiations with a health benefit plan who fails to respond within that time, report to  
14 the attorney general that negotiations have ended or have been declined;

15 (3) before reporting the results of negotiations with a health benefit  
16 plan and before giving physicians an evaluation of any offer made by a health benefit  
17 plan, provide to the attorney general, for the attorney general's approval, a copy of all  
18 communications to be made to physicians related to the negotiations, discussions, and  
19 health benefit plan offers.

20 (g) The attorney general shall either approve or disapprove the contract that  
21 was the subject of the collective negotiation within 30 days after receiving the reports  
22 required under (f) of this section. If the contract is disapproved, the attorney general  
23 shall furnish a written explanation of any deficiencies along with a statement of  
24 specific remedial measures that would correct any identified deficiencies. An  
25 authorized third party who fails to obtain the attorney general's approval is considered  
26 to be acting outside the authority of this section.

27 (h) The attorney general shall approve a collective negotiation if

28 (1) the competitive and other benefits of the contract terms outweigh  
29 any anticompetitive effects; and

30 (2) the contract terms are consistent with other applicable laws and  
31 regulations.

1 (i) The competitive and other benefits of joint negotiations or negotiated  
2 provider contract terms may include

3 (1) restoration of the competitive balance in the market for health care  
4 services;

5 (2) protections for access to quality patient care;

6 (3) promotion of health care infrastructure and medical advancement;  
7 or

8 (4) improved communications between health care providers and health  
9 care insurers.

10 (j) When weighing the anticompetitive effects of contract terms, the attorney  
11 general may consider whether the terms

12 (1) provide for excessive payments; or

13 (2) contribute to the escalation of the cost of providing health care  
14 services.

15 (k) This section does not authorize competing physicians to act in concert in  
16 response to a report issued by an authorized third party related to the authorized third  
17 party's discussion or negotiations with a health benefit plan. The authorized third party  
18 shall advise the physicians of the provisions of this subsection and shall warn them of  
19 the potential for legal action against those who violate state or federal anti-trust laws  
20 by exceeding the authority granted under this section.

21 (l) A contract allowed under this section may not exceed a term of five years.

22 (m) The documents relating to a collective negotiation described under this  
23 section that are in the possession of the Department of Law are confidential and not  
24 open to public inspection.

25 **Sec. 23.50.030. Fee for registration of authorized third parties.** (a) The  
26 attorney general shall adopt regulations that establish the amount and manner of  
27 payment of a registration fee for authorized third parties. The attorney general shall  
28 establish the fee level so that the total amount of fees collected from authorized third  
29 parties approximately equals the actual regulatory costs for the oversight of joint  
30 negotiations between physicians and health benefit plans. The attorney general shall  
31 annually review the fee level to determine whether the regulatory costs are

1 approximately equal to fee collections. If the review indicates that the fee collections  
 2 and regulatory costs are not approximately equal, the attorney general shall calculate  
 3 fee adjustments and adopt regulations under this subsection to implement the  
 4 adjustments. In January of each year, the attorney general shall report on the fee level  
 5 and revisions for the previous year under this subsection to the office of management  
 6 and budget.

7 (b) In this section, "regulatory costs" means costs of the Department of Law  
 8 that are attributable to oversight of joint negotiations between physicians and health  
 9 benefit plans.

10 **Sec. 23.50.040. Regulations.** The attorney general may adopt regulations  
 11 necessary to implement this chapter.

12 **Sec. 23.50.099. Definitions.** In this chapter,

13 (1) "authorized third party" means a person authorized by the  
 14 physicians to negotiate on their behalf with a health benefit plan under this chapter;

15 (2) "covered lives" means the total number of individuals who are  
 16 entitled to benefits under the health benefit plan;

17 (3) "geographic service area" means the geographic area of the  
 18 physicians seeking to jointly negotiate;

19 (4) "health benefit plan" has the meaning given in AS 21.54.500.

20 \* **Sec. 2.** AS 45.50.572 is amended by adding a new subsection to read:

21 (k) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of  
 22 organizations of physicians acting in accordance with AS 23.50, or forbid or restrain  
 23 members of those organizations from lawfully carrying out the legitimate objectives  
 24 of them; nor are these organizations or members illegal combinations or conspiracies  
 25 in restraint of trade under the provisions of AS 45.50.562 - 45.50.596.

26 \* **Sec. 3.** AS 23.50.010, 23.50.020, 23.50.030, 23.50.040, 23.50.099; and AS 45.50.572(k)  
 27 are repealed July 1, 2005.