

CS FOR SENATE BILL NO. 256(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/7/00
Referred: Rules

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, or a particular
11 physician type or specialty in the geographic service area or proposed geographic
12 service area, if the health benefit plan has less than a five percent market share as
13 determined by the number of covered lives as reported by the director of insurance for
14 the most recently completed calendar year or by the actual number of consumers of
15 prepaid comprehensive health services; and

16 (7) the authorized third party shall comply with the provisions of (f)
17 of this section.

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

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

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

24 (B) furnish to the attorney general, for the attorney general's
25 approval, a brief report that identifies the proposed subject matter of the
26 negotiations or discussions with a health benefit plan and that contains an
27 explanation of the efficiencies or benefits that are expected to be achieved
28 through the collective negotiations; the attorney general may not approve the
29 report if the proposed negotiations exceed the authority granted in this chapter
30 and, if they do, shall enter an order prohibiting the collective negotiations from
31 proceeding; the authorized third party shall provide supplemental information

1 to the attorney general as new information becomes available that indicates that
 2 the subject matter of negotiations with the health benefit plan has changed or
 3 will change;

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

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

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

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

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

23 (2) the contract terms are consistent with other applicable laws and
 24 regulations.

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

27 (1) restoration of the competitive balance in the market for health care
 28 services;

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

30 (3) promotion of health care infrastructure and medical advancement;

31 or

1 (4) improved communications between health care providers and health
2 care insurers.

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

5 (1) provide for excessive payments; or

6 (2) contribute to the escalation of the cost of providing health care
7 services.

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

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

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

18 **Sec. 23.50.030. Fee for registration of authorized third parties.** (a) The
19 attorney general shall adopt regulations that establish the amount and manner of
20 payment of a registration fee for authorized third parties. The attorney general shall
21 establish the fee level so that the total amount of fees collected from authorized third
22 parties approximately equals the actual regulatory costs for the oversight of joint
23 negotiations between physicians and health benefit plans. The attorney general shall
24 annually review the fee level to determine whether the regulatory costs are
25 approximately equal to fee collections. If the review indicates that the fee collections
26 and regulatory costs are not approximately equal, the attorney general shall calculate
27 fee adjustments and adopt regulations under this subsection to implement the
28 adjustments. In January of each year, the attorney general shall report on the fee level
29 and revisions for the previous year under this subsection to the office of management
30 and budget.

31 (b) In this section, "regulatory costs" means costs of the Department of Law

1 that are attributable to oversight of joint negotiations between physicians and health
2 benefit plans.

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

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

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

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

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

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

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

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

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