

**CS FOR SENATE BILL NO. 37(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 2/22/01**

**Referred: Labor and Commerce, Finance**

**Sponsor(s): SENATOR KELLY**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to collective negotiation by physicians with health benefit plans, to**  
2 **health benefit plan contracts with individual competing physicians, and to the**  
3 **application of state antitrust laws to agreements involving providers and groups of**  
4 **providers affected by collective negotiations."**

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

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

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

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

13 (b) The legislature finds that permitting physicians to engage in collective  
14 negotiations over fee-related terms may, in some circumstances, yield anti-competitive

1 effects. There are, however, instances in which a health benefit plan dominates the  
 2 market to the degree that fair negotiations between physicians and the health benefit  
 3 plan are not possible in the absence of joint action on behalf of the physicians. In  
 4 those circumstances, the health benefit plan can virtually dictate the terms of the  
 5 contracts that it offers to physicians.

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

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

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

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

- 31 (1) the fees or prices for services, including fees or prices arrived at by

1 applying any reimbursement methodology procedures;

2 (2) the conversion factor in a resource-based relative value scale  
3 reimbursement methodology or similar methodologies;

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

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

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

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

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

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

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

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

31 (1) physicians may communicate with each other with respect to the

1 contractual terms and conditions to be negotiated with a health benefit plan;

2 (2) physicians may communicate with an authorized third party  
3 regarding the terms and conditions of contracts allowed under this section;

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

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

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

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

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

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

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

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

31 (A) file with the attorney general the information that identifies

1 the authorized third party, the authorized third party's plan of operation, and  
2 the authorized third party's procedures to ensure compliance with this section;

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

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

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

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

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

31 (1) the competitive and other benefits of the contract terms outweigh

1 any anticompetitive effects; and

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

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

6 (1) restoration of the competitive balance in the market for health care  
7 services;

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

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

10 or

11 (4) improved communications between health care providers and  
12 health care insurers.

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

15 (1) provide for excessive payments; or

16 (2) contribute to the escalation of the cost of providing health care  
17 services.

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

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

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

28 (n) This section does not exempt from the application of the antitrust laws an  
29 agreement or conspiracy that excludes services provided by a provider or group of  
30 providers or that limits the participation or reimbursement of or otherwise limits the  
31 scope of services provided by a provider or group of providers with respect to the

1 performance of services that are within the scope of the occupational licenses held by  
2 the providers.

3 (o) In this section,

4 (1) "covered lives" means the total number of individuals who are  
5 entitled to benefits under the health benefit plan;

6 (2) "geographic service area" means the geographic area of the  
7 physicians seeking to jointly negotiate;

8 (3) "provider" has the meaning given in AS 21.36.090(d).

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

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

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

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

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

30 (2) "health benefit plan" has the meaning given in AS 21.54.500.

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

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

6       \* **Sec. 3.** AS 23.50.010, 23.50.020, 23.50.030, 23.50.040, 23.50.099; and AS 45.50.572(k)  
7 are repealed July 1, 2006.