

CS FOR SENATE BILL NO. 37(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/14/01

Referred: 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, to the application of**
3 **state antitrust laws to agreements involving providers and groups of providers affected**
4 **by collective negotiations, and to the effect of the collective negotiation provisions on**
5 **health care providers."**

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

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

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

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

1 (b) The legislature finds that permitting physicians to engage in collective
 2 negotiations over fee-related terms may, in some circumstances, yield anti-competitive
 3 effects. There are, however, instances in which a health benefit plan dominates the
 4 market to the degree that fair negotiations between physicians and the health benefit
 5 plan are not possible in the absence of joint action on behalf of the physicians. In
 6 those circumstances, the health benefit plan can virtually dictate the terms of the
 7 contracts that it offers to physicians.

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

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

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

30 (b) Except as provided in (c) of this section, competing physicians may not
 31 meet and communicate for the purpose of collectively negotiating the following terms

1 and conditions with a health benefit plan:

2 (1) the fees or prices for services, including fees or prices arrived at by
3 applying any reimbursement methodology procedures;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) before engaging in collective negotiations with a health benefit

1 plan,

2 (A) file with the attorney general the information that identifies
3 the authorized third party, the physicians represented by the third party, the
4 authorized third party's plan of operation, and the authorized third party's
5 procedures to ensure compliance with this section;

6 (B) furnish to the attorney general, for the attorney general's
7 approval, a brief report that identifies the proposed subject matter of the
8 negotiations or discussions with a health benefit plan and that contains an
9 explanation of the efficiencies or benefits that are expected to be achieved
10 through the collective negotiations; the attorney general shall review whether
11 the group of physicians represented by the authorized third party is appropriate
12 to represent the interests involved in the negotiations; the attorney general may
13 not approve the report if the group of physicians is not appropriate to represent
14 the interests involved in the negotiations or if the proposed negotiations exceed
15 the authority granted in this chapter and, if the group is not appropriate or the
16 negotiations exceed the granted authority, shall enter an order prohibiting the
17 collective negotiations from proceeding; the authorized third party shall
18 provide supplemental information to the attorney general as new information
19 becomes available that indicates that the subject matter of negotiations with the
20 health benefit plan has changed or will change;

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

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

30 (g) The attorney general shall either approve or disapprove the contract that
31 was the subject of the collective negotiation within 30 days after receiving the reports

1 required under (f) of this section and completing the period for comment and review
 2 for interested parties required by this subsection. The review of the contract by the
 3 attorney general must allow adequate time for comment and review by interested
 4 parties and must include a review of whether the contract would harm consumers or
 5 providers who are not physicians. If the contract is disapproved, the attorney general
 6 shall furnish a written explanation of any deficiencies along with a statement of
 7 specific remedial measures that would correct any identified deficiencies. An
 8 authorized third party who fails to obtain the attorney general's approval is considered
 9 to be acting outside the authority of this section.

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

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

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

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

17 (1) restoration of the competitive balance in the market for health care
 18 services;

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

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

21 or

22 (4) improved communications between health care providers and
 23 health care insurers.

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

26 (1) provide for excessive payments; or

27 (2) contribute to the escalation of the cost of providing health care
 28 services.

29 (k) This section does not authorize competing physicians to act in concert in
 30 response to a report issued by an authorized third party related to the authorized third
 31 party's discussion or negotiations with a health benefit plan. The authorized third

1 party shall advise the physicians of the provisions of this subsection and shall warn
 2 them of the potential for legal action against those who violate state or federal anti-
 3 trust laws by exceeding the authority granted under this section.

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

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

8 (n) Nothing in this section shall be construed as exempting from the
 9 application of the antitrust laws the conduct of providers or negotiations or agreements
 10 between providers and a health benefit plan if the purpose or effect of the conduct,
 11 negotiations, or agreements would be, directly or indirectly, to exclude, limit the
 12 participation or reimbursement of, or otherwise limit the scope of services to be
 13 provided by separate or competing classes of providers who practice or seek to
 14 practice within the scope of the occupational licenses held by the providers.

15 (o) A contract entered into under this section must be consistent with
 16 AS 21.36.090(d).

17 (p) Nothing in this section shall be construed to make any conduct by
 18 providers unlawful if the conduct was lawful before the effective date of this Act.

19 (q) In this section,

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

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

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

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

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

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

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