

**HOUSE CS FOR CS FOR SENATE BILL NO. 37(JUD)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 4/25/02**  
**Referred: Finance**

**Sponsor(s): SENATOR KELLY**

**A BILL**

**FOR AN ACT ENTITLED**

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

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 competing physicians.** (a) Competing  
 11 physicians may meet and communicate in order to collectively negotiate with a health  
 12 benefit plan concerning any of the contract terms and conditions described in this  
 13 subsection, but may not negotiate the exclusion of providers who are non-physicians  
 14 from direct reimbursement by a health benefit plan, and may not negotiate the setting  
 15 in which providers who are non-physicians deliver services. Competing physicians  
 16 may not engage in a boycott related to these terms and conditions. Competing  
 17 physicians may meet and communicate concerning

18 (1) physician clinical practice guidelines and coverage criteria;

19 (2) the respective liability of physicians and the health benefit plan for  
 20 the treatment or lack of treatment of insured or enrolled persons;

21 (3) administrative procedures, including methods and timing of the  
 22 payment of services to physicians;

23 (4) procedures for the resolution of disputes between the health benefit  
 24 plan and physicians;

25 (5) patient referral procedures;

26 (6) the formulation and application of reimbursement methodology;

27 (7) quality assurance programs;

28 (8) health service utilization review procedures; and

29 (9) criteria to be used by health benefit plans for the selection and  
 30 termination of physicians, including whether to engage in selective contracting.

31 (b) An authorized third party that intends to negotiate with a health benefit

1 plan the items identified under (a) of this section shall provide the attorney general  
2 with written notice of the intended negotiations before the negotiations begin.

3 (c) In exercising the collective rights granted by (a) of this section,

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

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

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

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

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

15 (6) an authorized third party may not represent more than 30 percent of  
16 the market of practicing physicians for the provision of services in the geographic  
17 service area or proposed geographic service area, if the health benefit plan has less  
18 than a five percent market share as determined by the number of covered lives as  
19 reported by the director of insurance for the most recently completed calendar year or  
20 by the actual number of consumers of prepaid comprehensive health services; in this  
21 paragraph, "covered lives" means the total number of individuals who are entitled to  
22 benefits under the health benefit plan;

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

31 (8) the authorized third party shall comply with the provisions of (d) of

1 this section.

2 (d) A person acting or proposing to act as an authorized third party under this  
3 section shall,

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

6 (A) file with the attorney general the information that identifies  
7 the authorized third party, the physicians represented by the third party, the  
8 authorized third party's plan of operation, and the authorized third party's  
9 procedures to ensure compliance with this section;

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

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

29 (3) during the negotiation process, provide the attorney general upon  
30 the attorney general's request with a copy of all written communications that are  
31 between physicians and the health benefit plan, that are relevant to the negotiations,

1 and that are in the possession of the authorized third party;

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

7 (e) The attorney general shall either approve or disapprove the contract that  
8 was the subject of the collective negotiation within 60 days after receiving the reports  
9 required under (d) of this section. If the contract is disapproved, the attorney general  
10 shall furnish a written explanation of any deficiencies along with a statement of  
11 specific remedial measures that would correct any identified deficiencies. An  
12 authorized third party who fails to obtain the attorney general's approval is considered  
13 to be acting outside the authority of this section.

14 (f) The attorney general shall approve a collective negotiation contract if

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

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

19 (g) The competitive and other benefits of joint negotiations or negotiated  
20 provider contract terms must include

21 (1) restoration of the competitive balance in the market for health care  
22 services;

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

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

25 or

26 (4) improved communications between health care providers and  
27 health care insurers.

28 (h) When weighing the anticompetitive effects of contract terms, the attorney  
29 general shall consider whether the terms

30 (1) provide for excessive payments; or

31 (2) contribute to the escalation of the cost of providing health care

1 services.

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

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

9 (k) The documents relating to a collective negotiation described under this  
10 section that are in the possession of the Department of Law are confidential and not  
11 open to public inspection.

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

19 (m) A contract entered into under this section must be consistent with  
20 AS 21.36.090(d).

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

23 (o) In this section,

24 (1) "geographic service area" means the geographic area of the  
25 physicians seeking to jointly negotiate;

26 (2) "provider" has the meaning given in AS 21.36.090(d).

27 **Sec. 23.50.030. Fee for registration of authorized third parties.** (a) The  
28 attorney general shall adopt regulations that establish the amount and manner of  
29 payment of a registration fee for authorized third parties. The attorney general shall  
30 establish the fee level so that the total amount of fees collected from authorized third  
31 parties approximately equals the actual regulatory costs for the oversight of joint

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

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

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

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

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

17 (2) "health benefit plan" means a health care insurer as defined in  
 18 AS 21.54.500, but does not include a self-insured health benefit plan.

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

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