

CS FOR SENATE BILL NO. 37(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 3/29/01

Referred: Rules

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. Competing physicians may not engage in a boycott related to these terms
 14 and conditions. Competing physicians may meet and communicate concerning

- 15 (1) physician 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 (d) 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) An authorized third party that intends to negotiate with a health benefit
13 plan the items identified under (a) of this section shall provide the attorney general
14 with written notice of the intended negotiations before the negotiations begin.
15 Negotiation of items identified in (a) of this section shall be conducted separately
16 from, and shall be concluded before, negotiations are begun of the items identified in
17 (b) of this section.

18 (d) Competing physicians within the service area of a health benefit plan may
19 collectively negotiate with a health benefit plan the items described in (b) of this
20 section if

21 (1) the health benefit plan has substantial market power;

22 (2) negotiation of items identified under (a) of this section has
23 concluded;

24 (3) the physicians and the health benefit plan jointly request the
25 attorney general to authorize them to negotiate the items identified under (b) of this
26 section; and

27 (4) the attorney general issues a written authorization for the
28 physicians and the health benefit plan to negotiate the items.

29 (e) The attorney general shall provide the authorization described under (d) of
30 this section if the requirements of (d)(1), (2), and (3) have been met.

31 (f) A health benefit plan is rebuttably presumed to have substantial market

1 power. A health benefit plan may rebut the presumption of substantial market power
 2 by providing proof satisfactory to the attorney general that the health benefit plan's
 3 market share does not exceed 15 percent

4 (1) as measured by the number of covered lives at the end of the most
 5 recently completed calendar year or by the actual number of consumers of prepaid
 6 comprehensive health services at the end of the most recently completed calendar
 7 quarter divided by the total population of the geographic service area as of the most
 8 recent census; or

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

12 (g) In exercising the collective rights granted by (a) and (d) of this section,

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

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

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

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

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

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

30 (7) the attorney general may limit the percentage of practicing
 31 physicians represented by an authorized third party; however, the limitation may not

1 be less than 30 percent of the market of practicing physicians in the geographic service
2 area or proposed geographic service area; when determining whether to impose a
3 limitation described under this paragraph, the attorney general shall consider the
4 provisions described under (j), (k), and (l) of this section; this paragraph does not
5 apply if the market of practicing physicians in the geographic service area or proposed
6 geographic service area consists of 40 or fewer individuals; and

7 (8) the authorized third party shall comply with the provisions of (h) of
8 this section.

9 (h) A person acting or proposing to act as an authorized third party under this
10 section shall,

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

13 (A) file with the attorney general the information that identifies
14 the authorized third party, the physicians represented by the third party, the
15 authorized third party's plan of operation, and the authorized third party's
16 procedures to ensure compliance with this section;

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

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

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

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

17 (j) The attorney general shall approve a collective negotiation contract if

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

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

22 (k) The competitive and other benefits of joint negotiations or negotiated
 23 provider contract terms may include

24 (1) restoration of the competitive balance in the market for health care
 25 services;

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

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

28 or

29 (4) improved communications between health care providers and
 30 health care insurers.

31 (l) When weighing the anticompetitive effects of contract terms, the attorney

1 general may consider whether the terms

2 (1) provide for excessive payments; or

3 (2) contribute to the escalation of the cost of providing health care
4 services.

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

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

12 (o) The documents relating to a collective negotiation described under this
13 section that are in the possession of the Department of Law are confidential and not
14 open to public inspection.

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

22 (q) A contract entered into under this section must be consistent with
23 AS 21.36.090(d).

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

26 (s) In this section,

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

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

31 (3) "provider" has the meaning given in AS 21.36.090(d);

1 (4) "substantial market power" means more than 15 percent of the
2 market share.

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

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

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

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

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

24 (2) "health benefit plan" has the meaning given in AS 21.54.500, but
25 does not include a health benefit plan that is a self-insured health benefit plan.

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

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