

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/26/02

Referred: Judiciary, 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. 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) An authorized third party that intends to negotiate with a health benefit
 29 plan the items identified under (a) of this section shall provide the attorney general
 30 with written notice of the intended negotiations before the negotiations begin.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (3) during the negotiation process, provide the attorney general upon
27 the attorney general's request with a copy of all written communications that are
28 between physicians and the health benefit plan, that are relevant to the negotiations,
29 and that are in the possession of the authorized third party;

30 (4) before reporting the results of negotiations with a health benefit
31 plan and before giving physicians an evaluation of any offer made by a health benefit

1 plan, provide to the attorney general, for the attorney general's approval, a copy of all
2 communications to be made to physicians related to the negotiations, discussions, and
3 health benefit plan offers.

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

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

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

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

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

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

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

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

22 or

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

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

27 (1) provide for excessive payments; or

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

30 (i) This section does not authorize competing physicians to act in concert in
31 response to a report issued by an authorized third party related to the authorized third

1 party's discussion or negotiations with a health benefit plan. The authorized third
2 party shall advise the physicians of the provisions of this subsection and shall warn
3 them of the potential for legal action against those who violate state or federal anti-
4 trust laws by exceeding the authority granted under this section.

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

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

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

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

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

20 (o) In this section,

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

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

24 **Sec. 23.50.030. Fee for registration of authorized third parties.** (a) The
25 attorney general shall adopt regulations that establish the amount and manner of
26 payment of a registration fee for authorized third parties. The attorney general shall
27 establish the fee level so that the total amount of fees collected from authorized third
28 parties approximately equals the actual regulatory costs for the oversight of joint
29 negotiations between physicians and health benefit plans. The attorney general shall
30 annually review the fee level to determine whether the regulatory costs are
31 approximately equal to fee collections. If the review indicates that the fee collections

1 and regulatory costs are not approximately equal, the attorney general shall calculate
2 fee adjustments and adopt regulations under this subsection to implement the
3 adjustments. In January of each year, the attorney general shall report on the fee level
4 and revisions for the previous year under this subsection to the office of management
5 and budget.

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

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

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

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

14 (2) "health benefit plan" means a health care insurer as defined in
15 AS 21.54.500, but does not include a multiple employer welfare arrangement or a self-
16 insured health benefit plan.

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

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