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Subject: SB 37

Date: Mon, 14 May 2001 21:16:07 -0800

From: "James Miller" <jdolphin@barrow.com>

To: <Senator_Lyda_Green@legis.state.ak.us>

I hope you got my letter-if not I am emailing a copy of it to you.....

I am writing to ask that you vote "No" on SB 37. I am a Family Nurse Practitioner student. I care a great deal about SB 37 because I will be working in this profession in Barrow, Alaska.

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

In essence, this bill would allow competing physicians to meet and communicate in order to collectively negotiate with a health plan concerning any of the contract terms and conditions. This bill would also allow price fixing with the obvious result that costs would increase. This bill will allow physicians to use market power to disadvantage Nurse Practitioners. This bill will remove antitrust protections that nurse practitioners need to protect them from discriminatory practices undertaken by physicians and other employers to prevent nurse practitioners from being included as providers in health care delivery systems. This bill will not protect patients or reduce health care costs for patients. This bill will raise health care costs. This bill will block access to nurse practitioners as health care providers.

Advanced practice nurses make independent and collaborative health care decisions. In order to provide complete health care, nurse practitioners obtain medical histories and perform physical examinations, diagnose and treat acute health problems such as infections and injuries, diagnose, treat, and monitor chronic diseases such as diabetes and high blood pressure, order, perform, and interpret diagnostic studies such as lab work and x-rays, prescribe medications and other treatments, provide prenatal care and family planning services, provide well-child care, including screening and immunizations. Research studies since 1965 have documented that Nurse practitioners provide high quality care, cost-effective care, and care that results in a high level of patient satisfaction. Nurse Practitioners do more than direct patient care. Many nurse practitioners are also actively involved in education, research, and legislative activities to promote quality health care for all people in the United States.

Please feel free to contact me at 907-852-6240 (home) or 907-852-9260 (work) for further information regarding this problem. Thank you for your help with this very difficult matter.

Sincerely,

James E. Miller RN, FNP/MSN Student

PO Box 29

Barrow, Ak 99723

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 37
(S) Publish Date: 2/22/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to collective negotiation by BRU Civil Division
physicians with health benefit plans; ..." Component Fair Business Practices
Sponsor Senator Pete Kelly
Requester Senate Judiciary Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|--------------|--------------|--------------|--------------|--------------|------------|
| Personal Services | 199.8 | 199.8 | 199.8 | 199.8 | 199.8 | |
| Travel | 5.6 | 5.6 | 5.6 | 5.6 | 5.6 | |
| Contractual | 135.9 | 135.9 | 135.9 | 135.9 | 135.9 | |
| Supplies | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | |
| Equipment | 13.0 | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 357.0 | 344.0 | 344.0 | 344.0 | 344.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | |
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|------------------------|--|-------|-------|-------|-------|-----|
| CHANGE IN REVENUES () | | 344.0 | 344.0 | 344.0 | 344.0 | 0.0 |
|------------------------|--|-------|-------|-------|-------|-----|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|--------------|--------------|--------------|--------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 249.9 | | | | | |
| 1005 GF/Program Receipts | 107.1 | 344.0 | 344.0 | 344.0 | 344.0 | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 357.0 | 344.0 | 344.0 | 344.0 | 344.0 | 0.0 |

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

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|-----------|---|---|---|---|---|--|
| Full-time | 2 | 2 | 2 | 2 | 2 | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*

SB 37 provides a method for physicians to collectively negotiate certain terms and conditions of contracts with a health benefit plan. If an authorized third party negotiates with the health benefit plan, the subject matter of the negotiations must be reviewed and approved by the attorney general, who then receives various reports on the progress of the negotiations. Once a negotiated contract proposal is reached, it is to be reviewed and approved by the attorney general, using specific criteria, within thirty days. The bill provides that registration fees for authorized third parties will be established to approximately equal the regulatory costs for the attorney general's oversight of joint negotiations between physicians and health benefit plans. The bill further contains a sunset provision, repealing the new program on July 1, 2006.

If enacted, this legislation places substantial responsibilities on the attorney general to approve proposed negotiations, monitor reports of on-going negotiations, and to make a very fact intensive determination whether to approve or not approve a proposed negotiated contract

Prepared by: Joan M. Kasson Phone 465-5370
Division: Attorney General's Office Date/Time 1/22/01 8:59 AM
Approved by: Kathryn Daughhettee for Bruce M. Botelho, Attorney General Date 1/22/2001
Agency: Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. SB 37 #1

ANALYSIS CONTINUATION

within a very short time frame. The economic and patient care detriment or benefit criteria the attorney general is directed to base approval or disapproval on will require significant analysis by expert health care economic assistance, as well as additional legal resources.

Under this bill, competing physicians within the service area of a health benefit plan can collectively negotiate certain defined terms and conditions of contracts with the health benefit plan. Negotiations can include fee and price related terms and conditions when the health benefit plan has a market share greater than 15 percent in the geographic service area of the negotiating physicians.

It is difficult to predict how many contracts and reports during a given year that the attorney general's office will have to review and approve. There are 2,050 licensed physicians currently in the State of Alaska, and we conservatively estimate more than 7,000 health benefit plans will be potentially subject to this bill. Given these numbers, we would anticipate the volume of collective negotiations under the bill to be significant enough that we will need additional resources to complete the required reviews and approvals.

The Department of Law anticipates a minimum of one new full-time equivalent attorney position and one full-time equivalent paraprofessional position will be needed to handle this new workload. Extensive regulation development will be necessary to implement the legislation by defining terms and setting forth the reporting requirements that authorized third parties will be required to submit in order to reduce, or preferably eliminate, investigation time during the 30 day review period. Once regulations are complete, these positions will perform the necessary investigation, review, and antitrust analyses on the collective bargaining reports submitted by the authorized third party, and represent the state when decisions of the attorney general are challenged.

Requests for approval of proposed negotiations and review of negotiated contracts by the attorney general are unlikely to be spread evenly throughout the course of a year. Instead, they may come at any time, and in any volume. Thus, we assume it will be more efficient to hire expert health care economic assistance by contract on an as needed basis. \$100,000 is included for outside expert costs (500 hours at an estimated average cost of \$200/hour).

In-house estimates are based on the department's FY 2002 standard full-time equivalent attorney and paraprofessional schedules, which include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. (FTE attorney: \$141,776, FTE paraprofessional: \$92,230). Each position estimate also includes an additional \$6,500 for one-time equipment purchases and \$5,000 for direct case costs, costs that cannot be included in the rate as overhead.

The bill assumes fees for the registration of authorized third parties will be established to cover the cost of the program upon implementation. In the first year, it will take several months to establish the regulatory framework. During this time, no fees will be generated. General funds are necessary for the first year to implement the program, at which point, the fees will be set to cover all program costs. The Department of Law estimates, based on Texas' experience, that at least nine months will be required to get regulations in place. Accordingly, funds are split 70/30 general fund and general fund program receipts in FY 2002.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 37
(S) Publish Date: 2/22/01

Revision Date/Time (Note if correction): 1/19/2001 5:25pm Dept. Affected: DCED
Title: An act relating to collective negotiation by BRU: Insurance
physicians with health benefit plans Component: Insurance
Sponsor: Senator Pete Kelly
Requester: Senate Judiciary Component Number: 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Personal Services | 23.6 | 23.6 | 24.1 | 24.6 | 25.1 | 25.6 |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 |
| Equipment | 5.0 | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 30.1 | 25.1 | 25.6 | 26.1 | 26.6 | 27.1 |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

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|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 30.1 | | | | | |
| 1005 GF/Program Receipts | | 25.1 | 25.6 | 26.1 | 26.6 | 27.1 |
| 1037 GF/Mental Health | | | | | | |
| 1156 RSS | | | | | | |
| TOTAL | 30.1 | 25.1 | 25.6 | 26.1 | 26.6 | 27.1 |

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

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|-----------|---|---|---|---|---|---|
| Full-time | 1 | 1 | 1 | 1 | 1 | 1 |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

A part-time administrative clerk III position is needed in order to gather and report the health benefit plan market share information required under Sec. 23.50.020 (e)(6), page 4, lines 12&13. This position would be responsible for developing and sending out surveys, requesting data from over 18,000 employers in the state and for performing reasonableness checks on the data submitted, entering the data into a spreadsheet, and developing the required market share reports. Since the Division of Insurance does not have regulatory authority over health benefit plans (employers), it is anticipated that employers will be reluctant to respond to the survey (about 30% response rate). Therefore, a significant amount of this employee's time is anticipated to be spent following up with employers who do not respond to the survey.

Prepared by: Robert A. Lohr Phone 907-269-7900
Division: Insurance Date/Time 1/19/2001 5:25:00pm
Approved by: Commissioner, Deborah B. Sedwick Date 1/19/2001
Agency: Dept. of Community & Economic Development

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 37
(S) Publish Date: 2/22/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An Act relating to collective negotiation by BRU: Centralized Administrative Services
physicians with health benefit... Component: Retirement and Benefits
Sponsor: Senator Pete Kelly
Requester: Senate Judiciary Component Number: 64

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | * | * | * | * | * | * |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

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|--------------------------|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | * | * | * | * | * | * |

Estimate of any current year (FY2001) cost: _____

POSITIONS

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|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The bill would compromise the State's ability to manage health care costs. Analyses of similar legislation at the federal level estimate health care increases of 5-13% when this type of legislation is enacted. That represents a potential increase to the State's plan of \$3.5 - 9.1 million.

The State's contribution as an employer is capped by collective bargaining agreements and in statute for non covered employees. Any increase in cost will be borne by the employee. Based upon FY 01 premiums, this could raise each employee's cost \$34 to \$88 per month.

Prepared by: Guy Bell, Director Phone 465-4471
Division: Retirement and Benefits Date/Time January 18, 2001
Approved by: Commissioner Jim Duncan Date January 19, 2001
Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: SB 37
 (S) Publish Date: 2/22/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: Collective bargaining by physicians BRU: Medical Assistance
 Component: Medicaid Services
 Sponsor: Kelly
 Requester: Judiciary Component Number: 2077

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

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|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The Division of Medical Assistance assumes this bill will not impact the Medicaid and CAMA programs as the definition of health benefit plan in AS 21.54.500 does not include these public programs. Federal rules require Medicaid compensation to be sufficient to enlist enough providers so that services under the plan are available to the same extent as to the general public, however reimbursement rates for all services are also driven by appropriations. The Department of Health and Social Services supports exclusion of public programs from the physician negotiations provisions of this legislation.

Prepared by: Nancy Weller
 Division: Medical Assistance
 Approved by: Elmer A. Lindstrom, Special Assistant to the Commissioner
 Agency: Department of Health & Social Services

Phone 465-3355
 Date/Time 1/17/01 12:00 AM
 Date 1/23/01 3:44 PM

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSSB 37 (FIN)
 (S) Publish Date: 3/29/01

Revision Date/Time (Note if correction): 3/28/2001 Dept. Affected: Administration
 Title: "An Act relating to collective negotiation by BRU: Centralized Admin Svcs.
physicians with health benefit... Component: Retirement & Benefits
 Sponsor: Senate Finance
 Requester: Senate Finance Committee Component Number: 64

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This version of the bill will have no fiscal impact on the State's ability to manage health care costs.

Prepared by: SENATE FINANCE COMMITTEE Phone: 465-1881

Senator: SENATOR PETE KELLY, CO-CHAIR Date: 3/28/2001
SENATOR DAVE DONLEY, CO-CHAIR

Subject:**Date:** Sun, 18 Feb 2001 11:13:14 -0900**From:** "Roberta" <roberta1@gci.net>**To:** <Senator_Lyda_Green@legis.state.ak.us>

I am a student midwife and as such I am concerned about allowing physicians to unite together to negotiate contracts. This would effectively decrease the ability of advanced nurse practitioners to compete. Nurse-midwives, and advanced nurse practitioners are highly skilled in caring for people at the healthy end of the spectrum. People who utilize advanced nurse practitioners are generally very satisfied with their care and received much more one on one time with the care giver than generally given by a physician. Ideally, advanced nurse practitioners work independently, utilizing physicians as the next step in care when the client's problems are outside of their scope of care.

SB37

file Kelly
w/ Kelly
book



Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

For Release: September 20, 2000

Related Documents:

Fairbanks, Alaska Physician's Group to Settle FTC Charges Price-Fixing and Concerted Refusals to Deal with Health Plans

File No. 991 0103
In the Matter of Alaska Healthcare Network, Inc.

Agreement

Decision and Order

Complaint

Analysis

Separate Statement of Commissioner Swindle and Commissioner Leary

Alaska Healthcare Network (AHN), an association of 86 physicians who practice in the Fairbanks, Alaska area, has agreed to settle Federal Trade Commission charges that AHN and its members agreed to fix prices and other terms of dealing with health plans, and obstructed the entry of new health plans into Fairbanks. The result, the FTC said, was higher prices and fewer choices for patients of Fairbanks physicians. The proposed settlement would prohibit the illegal concerted actions alleged in the complaint, while allowing the respondent's members to engage in legitimate joint conduct. The settlement also includes a temporary structural remedy, which would limit for five years the proportion of Fairbanks physicians that can use AHN as a vehicle for contracting with health plans.

"AHN and its members engaged in a conspiracy to set prices and hamper the entry of managed care plans into the Fairbanks market, resulting in higher prices and limited choices for physician services," said Richard G. Parker, Director of the FTC's Bureau of Competition. "The proposed settlement is designed to prevent a repeat of such anticompetitive behavior by AHN."

Fairbanks is the second largest city in Alaska. AHN's members include over 60 per cent of the physicians in full-time, year-round private practice in Fairbanks, including almost half of the family and general practitioners, and from 70 to 100 per cent of the internists, pediatricians, obstetrician-gynecologists, and general surgeons.

The FTC's complaint alleges that AHN orchestrated agreements among its members to fix the prices they would accept from health plans, and operated de facto as its members' exclusive bargaining agent with payors. When AHN was formed in 1996, a wide range of health plans, including PPOs, HMOs, and government health care purchasing cooperatives, were seeking to contract with Fairbanks physicians. From early 1997 through 1998, AHN negotiated price and other contract terms on behalf of its physician members with at least seven third-party payors. According to the complaint, AHN devised a fee schedule based on members' current prices for use in negotiations with payors and engaged in protracted rate negotiations with payors on behalf of AHN members. With the exception of one payor, these negotiations ended with no resolution. In addition, AHN refused to transmit contract offers to its members unless negotiations were concluded to its satisfaction, and advised its members to deal with payors only through AHN in order to obtain better prices and other terms. The FTC complaint alleges that

through these actions AHN succeeded in blocking the entry of several health plans into the Fairbanks area, and substantially delayed others.

The proposed settlement would prohibit the respondent from entering into any agreement: (1) to negotiate or refuse to deal with health plans; (2) to determine the terms upon which physicians deal with health plans; and (3) to restrict the ability of physicians to deal with any health plan, whether on an individual basis or through any other arrangement.

The proposed consent order would not prevent AHN from operating or participating in legitimate joint ventures. It may engage in conduct (including collectively determining reimbursement and other terms of contracts) that is reasonably necessary to operate any "qualified risk-sharing joint arrangement" or "qualified clinically-integrated joint arrangement," as defined in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

In addition, Paragraph III of the proposed order imposes a structural remedy for a period of five years. If AHN operates a qualified risk-sharing or clinically-integrated joint arrangement, its participating physicians may constitute no more than 30 percent of Fairbanks physicians in the medical specialties of family practice and general internal medicine, obstetrics and/or gynecology, pediatrics, general surgery, and orthopedic surgery. The proposed order further provides that, when offering the services of its physicians through any other arrangement permitted by the order (e.g., if AHN acts as a "messenger" without facilitating agreements among its members on terms of dealing), AHN's participating physicians may constitute no more than 50 percent of Fairbanks physicians in those specialties.

The structural remedy is qualified to reflect practical considerations. Thus, AHN may include as a participating physician any single physician or any one pre-existing physician practice group, even if to do so means AHN exceeds the percentage limitations. In addition, AHN may exceed the percentage limitations where the excess results from certain changes in the marketplace beyond AHN's control, such as the exit of physicians from the market.

The Commission's analysis of the proposed order, issued along with the proposed settlement, explains that this time-limited structural remedy is warranted given the particular facts in this case, which indicate that there is a significant risk of continuing collusion among

AHN members that would not be addressed by an order limited to prohibiting certain specific conduct. For example, AHN purported to operate as a "messenger model", but actually acted as the collective bargaining agent of its members, orchestrating agreements on price and other terms. The five-year size limits are designed to protect consumers from continued coordination among AHN members on terms of dealing with health plans, without the need for more detailed Commission oversight of AHN activities.

The proposed settlement also contains a number of recordkeeping

and reporting requirements designed to assist the FTC in monitoring compliance with the terms of the order.

The Commission vote to accept the proposed settlement and place it on the public record for comment was 5-0, with Commissioners Orson Swindle and Thomas B. Leary issuing a separate statement. In their statement, the Commissioners opposed the "structural" remedy provision in Paragraph III of the proposed order, which imposes a "cap" on the number of Fairbanks physicians in each of five "relevant physician markets" who may participate in AHN. "Although we believe that limits on a physician group's market shares in particular specialties can be appropriate fencing-in relief for the type of conduct involved in this case, we are not persuaded that this provision will operate in a rational and predictable way in a market as small as Fairbanks," the Commissioners wrote.

The statement said this concern was compounded by the first proviso to Paragraph III, which allows the respondent to "grandfather" in "any one pre-existing practice group" -- no matter how large. Citing examples of the markets where a significant proportion of participating practitioners would be "grandfathered," Swindle and Leary said, "We can certainly understand the desire to refrain from forcing the breakup of a presumably efficient practice group, but this proviso makes the percentage caps ineffective for those specialties. On the other hand, the order itself potentially inhibits the formation of similarly efficient practice groups in the specialties where the caps are effective."

The Commissioners concluded their statement by saying, "We hope that the public comment period on this consent agreement will yield some illuminating advice from the bar, the medical community, and the public at large, both with respect to the general appropriateness of structural measures in conduct cases and with regard to whether such measures make sense in a thinly populated market such as Fairbanks."

An announcement regarding the proposed consent agreement will be published in the Federal Register shortly. The agreement will be subject to public comment until October 20, 2000, after which the Commission will decide whether to make it final. Comments should be addressed to the FTC, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000 per day.

Copies of the complaint and proposed settlement, an analysis of the agreement to aid in public comment, and the statement by Commissioners Swindle and Leary, are available from the FTC's web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; toll-free: 877-FTC-HELP (877-382-4357); TDD for the hearing impaired 202-326-2502. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710.

MEDIA CONTACT:
Howard Shapiro

Office of Public Affairs
202-326-2176

STAFF CONTACT:

Bureau of Competition
Richard A. Feinstein or Paul J. Nolan
202-326-3688 or 202-326-2770

(FTC File No.: 991 0103)
(<http://www.ftc.gov/opa/2000/09/alaskahealthnet.htm>)

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement with the Alaska Healthcare Network, Inc. ("AHN") containing a proposed consent order. The agreement settles charges that AHN violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by facilitating or implementing agreements among its members to fix prices and other terms of dealing with payors, and to refuse to deal with payors except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by AHN that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations in the Commission's proposed complaint are summarized below.

Respondent AHN is a non-profit corporation composed of more than 60 percent of the physicians with active medical staff privileges at Fairbanks Memorial Hospital (the only private general acute care hospital in the Fairbanks area). AHN's members include almost half of the family and general practitioners, and from 70 to 100 percent of the internists, pediatricians, obstetrician-gynecologists, and general surgeons in full-time, year-round private practice in Fairbanks.

AHN has served as a vehicle for its physician members to negotiate collectively with health plans. When AHN was formed, a wide range of health plans, including PPOs, HMOs, and government health care purchasing cooperatives, were seeking to contract with Fairbanks physicians. AHN members authorized AHN's Executive Director to bargain on their behalf over the terms and conditions under which individual physicians would deal with third-party payors. AHN emphasized to its members that - as a result of its size and its members' agreement to allow AHN to bargain on their behalf - AHN would be able to bargain from a position of strength and thus avert the competition among physicians that might otherwise be introduced into the Fairbanks area by managed care plans.

From early 1997 through 1998, AHN negotiated price and other contract terms on behalf of its physician members with at least seven third-party payors. It used fee information collected from its member physicians to develop a fee schedule to use in contract negotiations. AHN told its members that its fee schedule represented members' usual fees, and that the fee schedule would be used to obtain a favorable level of reimbursement for area physicians. AHN's Board of Directors and Contracting Committee also adopted a model contract that required payors to use AHN's fee schedule and to delegate their credentialing, utilization review, and formulary management to AHN rather than operating their own programs.

AHN purported to operate as a "messenger model," under which an agent conveys payors' contract offers to individual physicians, who each make an independent decision whether

to accept or reject each contract. In practice, however, AHN's Executive Director and Contracting Committee bargained with payors over payment and other terms, and refused to transmit contract offers to AHN members unless the payors agreed to AHN's terms.

AHN functioned de facto as the exclusive representative of its members. Through statements in its newsletters, documents, and other media, AHN repeatedly advised members to deal with payors only through AHN in order to obtain better prices and other terms. Some payors who were seeking to enter the Fairbanks area attempted unsuccessfully to contract with individual physicians instead of dealing with AHN: physicians told the payors that AHN handled contracting for them and for other Fairbanks physicians. Payors believed that they could not go around AHN to contract individually with physicians in Fairbanks, and thus that they had no alternative but to reach agreement with AHN or give up their planned entry into Fairbanks. In several instances, payors approached individual physicians in mass mailings, requests for proposals, or phone calls, and received no responses. This was completely unprecedented and contradicted by payors' favorable responses to RFPs in other markets, including Anchorage, Alaska, and demonstrated the unwillingness of AHN and its members to deal with an entire category of payors.

AHN reached agreement with one payor - NYLCare - in 1998, and transmitted a contract to individual AHN members for their approval. AHN's Executive Director told the members that the Contracting Committee had revised the NYLCare contract proposal in a way that was responsive to the common economic interest of all AHN members. AHN engaged six other third-party payors in protracted negotiations over price and non-price terms that often extended for more than a year with no resolution. AHN demanded that the payors use AHN's fee schedule and its model contract that required payors to delegate credentialing, quality assurance, and utilization review to AHN physicians. However, AHN had not implemented any utilization review, quality assurance, or credentialing systems, and it lacked the capacity to implement some or all of those services. AHN did not refer contract offers from any of these payors to its members. As a result of AHN's conduct, a wide range of third-party payors of physician services, including PPOs, HMOs, and employer health care purchasing cooperatives, were unable to secure physician contracts and thus were unable to do business in the Fairbanks area.

AHN did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. Its actions have restrained price and other competition among physicians in the Fairbanks area and thereby harmed consumers (including third-party payors, subscribers, and their employers) by increasing the prices for physician services, delaying the development of alternative health care financing and delivery systems, and limiting competition among health plans.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint, while allowing AHN and its members to engage in legitimate joint conduct. The core prohibitions of the proposed order are contained in Paragraph II. Paragraph II.A prohibits AHN from entering into or facilitating any agreement: (1) to negotiate on behalf of any physicians with any payor or provider; (2) to deal or refuse to deal with any payor or provider; (3) regarding any term on which any physicians deal, or are willing to deal, with any payor or provider; or (4) to restrict the ability of any physician to deal with any payor or provider on an individual basis or through any other arrangement.

Paragraph II.B prohibits AHN from exchanging or facilitating the exchange of information among Fairbanks area physicians concerning: (1) negotiation with any payor or provider regarding reimbursement terms; or (2) any physician's intentions or decisions with respect to any dealings with any payor or provider. Paragraph II.C prohibits AHN

from encouraging, advising, or pressuring any person, other than the government, to engage in any action that would be prohibited if the person were subject to the order.

Paragraph II contains two provisos. The first proviso permits respondent to engage in conduct that is approved and supervised by the State of Alaska, so long as that conduct is exempt from liability under the federal antitrust laws under the state action doctrine. That doctrine protects private conduct that is both: (1) in accordance with a clearly articulated and affirmatively expressed state policy to supplant competition; and (2) actively supervised by the state itself. *See, e.g., FTC v. Ticor Title Insurance Co.*, 504 U.S. 621 (1992); *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980).

The second proviso in Paragraph II allows AHN to engage in conduct (including collectively determining reimbursement and other terms of contracts) that is reasonably necessary to operate any "qualified risk-sharing joint arrangement" or "qualified clinically-integrated joint arrangement," provided respondent complies with the prior notification requirements set forth in Paragraph VI of the order. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact.

As defined in the order, a "qualified risk-sharing joint arrangement" must satisfy three conditions. First, all physician participants must share substantial financial risk through the arrangement. The definition of financial risk-sharing tracks the discussion of that term contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. Second, any agreement on prices or terms of reimbursement must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Third, the arrangement must be non-exclusive - that is, it must not restrict the ability, or facilitate the refusal, of participating physicians to deal with payors individually or through any other network or venture.

A "qualified clinically-integrated joint arrangement" is one in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. This definition also reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. Participating physicians must establish a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided. In addition, the arrangement must be non-exclusive, and any agreement on prices or terms of reimbursement must be reasonably necessary to obtaining significant efficiencies through the arrangement.

The proposed order also imposes a structural remedy for a period of five years. Although the Commission has not routinely imposed structural relief on physician groups in previous cases, such relief is not unprecedented. *See, e.g., Home Oxygen and Medical Equipment Co.*, 118 F.T.C. 661 (1994) (pulmonologists prohibited for ten years from acquiring ownership interest in any entity that provides home oxygen delivery services if more than 25 percent of the pulmonologists in the area would be affiliated with the entity), and *Physicians Group, Inc.*, 120 F.T.C. 567 (1995) (physician organization ordered to dissolve). The Commission will continue to consider the option of structural remedies in these cases when necessary to achieve effective relief.

Paragraph III.A requires that if AHN operates a qualified risk-sharing or clinically-integrated joint arrangement, its participating physicians must constitute no more than 30 percent of Fairbanks physicians in any of the key medical specialties of family practice and general internal medicine, obstetrics and/or gynecology, pediatrics, general surgery, and orthopedic surgery. Paragraph III.B of the proposed order further requires that, when offering the services of its physicians through any other arrangement,

AHN's participating physicians constitute no more than 50 percent of Fairbanks physicians in any of those specialties. Paragraph III.B permits participation by a greater percentage of physicians because it is intended to apply to arrangements in which there is no agreement among AHN participating physicians on price or other competitively significant terms, including messenger model arrangements.

Paragraph III contains two provisos. The first proviso permits AHN to include as a participating physician any single physician or any one pre-existing physician practice group, without regard to the percentage limitations. The single physician exception allows AHN to exceed the percentage limitations in instances where there may be only a few physicians in a designated medical speciality; and the one pre-existing practice group exception allows AHN to exceed the percentage limitations where the alternative would be to require an integrated practice group to downsize. The second proviso permits AHN to exceed the percentage limitations to the extent that the excess arises from certain changes in the marketplace. As a result of these provisos, once AHN is operating in conformity with percentage limitations contained in the order, it will not be required to reduce its physician membership because of (1) the addition of a physician (who was not already in practice in Fairbanks) to a member practice group, or (2) a reduction in the total number of physicians in a particular specialty (and thus in the denominator used in calculating the percentage of physicians in a specialty who can be AHN members) as a result of physician exit from the market.

The structural relief in this case is necessary to prevent continuing tacit collusion among AHN members. Fairbanks is an isolated community with a relatively small number of physicians, a high proportion of whom are AHN members. According to the allegations of the complaint, these doctors have demonstrated an unwillingness to participate in health plans independently of AHN. In these circumstances, there is a significant risk of continuing tacit collusion among AHN members that cannot adequately be addressed by an order limited to prohibiting certain specified conduct (i.e., AHN members might be able to coordinate their refusals to deal with payors without engaging in overt acts of collusion). Moreover, since AHN purported to operate as a messenger model, but in fact actively negotiated price and nonprice terms on behalf of its physician members, an order limited to conduct remedies would have required detailed provisions governing AHN's future operation as a messenger. The structural relief, by contrast, will permit AHN, subject to the five-year size limits, to carry on its activities as it finds most effective without detailed oversight by the Commission, so long as the core prohibitions of Paragraph II are respected.

The structural relief contained in the order responds to the particular facts of this case, and is intended to interrupt the chain of effects flowing from the conduct alleged in the complaint and to permit time for new market structures and relationships to develop among Fairbanks physicians and between the physicians and health plans. The presence of this provision in the proposed order does not suggest that other physician networks whose membership exceeds the percentage limitations are likely to have anticompetitive effects. The provision is limited to five years in order to give AHN the greatest possible freedom to respond to changing market conditions thereafter, once the effects of the challenged conduct have dissipated.

The remaining provisions of the proposed order impose obligations on AHN with respect to distributing the order and complaint to its members and other specified persons and reporting information to the Commission. The order terminates twenty years after the date it issues.



Lakes Medical Clinic

Charles D. Layman M. D.
P.O. Box 876009
Wasilla, Alaska 99687

Brentwood Plaza, Suite D
Palmer Wasilla Highway

Telephone (907) 357-0820
Fax (907) 357-0821

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Senator Lyda Green
600 E Railroad Avenue
Wasilla AK 99654

Dear Lyda:

Thank you very much for your quick response to my concerns regarding Senate Bill 37. It is quite a threat to small business people involved in medicine, like myself.

I realize that the legislature is going to have to do something to generate income for the state as time progresses. Everyone I have spoken with seems to be much more accepting when a state sales tax is discussed as a possible remedy. A sales tax would be a fair across-the-board tax, as all people who participate in the economy of the state are affected. I am very bothered by the fact that many people who serve us in the legislature only want to tax those of us who are already taxed in the form of a federal income tax. Why not consider allowing all of the people in the state of Alaska to participate in the generation of income? I would support ~~an income tax~~, as many of my friends and colleagues would, when and if a tax is actually necessary. None of us are willing to support a state income tax and we would appreciate your support in this direction.

A sales tax

Thank you for your assistance in the matter of Dr. Layman. I have expressed to him that you have been in contact with Commissioner Godfrey. Dr. Layman is very much in favor of parental notification. A new regulation in this regard would be certainly a step in the right direction.

Again, thank you for all of your assistance.

Sincerely,

Ed Manning, II.

EM/afc